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Legislative Disapprovals

Upon disapproval by the Legislature of an agency's rules, the agency must publish a notice of such legislative disapproval in the Register.

For additional information on legislative disapprovals, see 75 O.S., Sections 308 and 308.3.

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

[OAR Docket #23-603]

RULEMAKING ACTION:

Legislative disapproval of PERMANENT rules

RULES:

Subchapter 24. Import of Cervids
800:25-24-3. Requirements [AMENDED]-paragraph (2)
of subsection (c)

LEGISLATIVE DISAPPROVAL:

These rules were disapproved by the Legislature in SJR 22,
effective May 31, 2023.

EMERGENCY RULES TERMINATED:

The following emergency rules are also terminated by the
disapproval:

RULES:

Subchapter 24. Import of Cervids
800:25-24-3 (2) (c). Requirements [AMENDED]

GUBERNATORIAL APPROVAL:

October 12, 2022

REGISTER PUBLICATION:

22-977
40 Ok Reg 511

[OAR Docket #23-603; filed 6-26-23]

Emergency Adoptions

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

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

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next regular legislative session after its promulgation, or on an earlier date specified by the agency, if not already superseded by a permanent rule or terminated through legislative action as described in 75 O.S., Section 253(H)(2).

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

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

TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY CHAPTER 10. MEDICAL MARIJUANA REGULATIONS

[OAR Docket #23-699]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Medical Marijuana Businesses [NEW]

442:10-5-1.1 [NEW]

442:10-5-2 [NEW]

442:10-5-3 [NEW]

442:10-5-3.3 [NEW]

442:10-5-16 [NEW]

AUTHORITY:

Executive Director of the Oklahoma Medical Marijuana Authority; 63 O.S. § 427.14 and 63 O.S. § 427.26

ADOPTION:

June 23, 2023

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

July 3, 2023

EXPIRATION:

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

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 5. General Provisions [NEW]

442:10-5-1.1 [NEW]

442:10-5-2 [NEW]

442:10-5-3 [NEW]

442:10-5-16 [NEW]

Gubernatorial approval:

November 1, 2022

Register publication:

40 Ok Reg 382

Docket number:

22-804

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

The proposed emergency rules implement legislative changes mandated by SB 913; address changes in statute under 63 O.S. § 427.14 and new requirements in 63 O.S. § 427.26. The emergency rules are intended to provide a structure for the implementation of the medical marijuana bond requirement. Permanent rules implementing the requirements set forth in the new legislation cannot be promulgated until 2024.

GIST/ANALYSIS:

The amendments require applicants for a commercial grower license to submit to the Authority a bond covering the permit area upon which the business licensee will initiate and conduct commercial growing operations or an attestation that the permit area on which the licensee operates the commercial growing operation has been owned by the licensee for at least a five (5) year period prior to submission of application. OAC 442:10-5-1.1 is amended to include the required bond or attestation and requires that information be updated. OAC 442:10-5-2(e) requires business licensees submitting material change requests to include information regarding the bond or attestation and requires licensees notify the Authority in writing of any change to or cancellation of a bond. OAC 442:10-5-3(e)(13) adds the required grower bond or attestation to the list of supporting documentation required to be submitted by licensees. OAC 442:10-5-3.3 is a new section governing the required commercial grower bond and includes specific bond requirements and application materials required to be submitted by licensees. The prohibition that growers shall not engage in any commercial growing operations without a bond or attestation is added to OAC 442:10-5-16(t).

CONTACT PERSON:

Ashley Crall, Senior Policy Analyst and Legislative Liaison, Oklahoma Medical Marijuana Authority, 2501 N. Lincoln Blvd., OK 73105, 405-568-5766. Ashley.Crall@omma.ok.gov.

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

SUBCHAPTER 5. MEDICAL MARIJUANA BUSINESSES

442:10-5-1.1. Responsibilities of the license holder

Upon acceptance of the license issued by the Authority, the license holder in order to retain the license shall:

- (1) Post the license or permit in a location in the licensed premises that is conspicuous;
- (2) Comply with the provisions in this Chapter;
- (3) Allow representatives of the Authority access to the medical marijuana business as specified under OAC 442:10-5-4 and OAC 442:10-5-6(i);
- (4) Comply with directives of the Authority including time frames for corrective actions specified in inspection reports, audit reports, notices, orders, warnings, and other directives issued by the Authority in regard to the license

Emergency Adoptions

holder's medical marijuana business or in response to community emergencies;

(5) Accept notices issued and served by the Authority according to law;

(6) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Chapter or a directive of the Authority, including time frames for corrective actions specified in inspection reports, audit reports, notices, orders, warnings, and other directives;

(7) Ensure that all information and records maintained in the licensee's online OMMA license account-including the hours of operation for all licensed premises, trade name, and a valid mailing address, if applicable-are complete, accurate, and updated in a timely manner in accordance with these Rules;

(8) If applicable, submit the annual renewal application and pay all renewal license and late fees, if any;

(9) Bear the financial responsibility for all compliance and inventory tracking obligations and responsibilities set forth in Oklahoma statutes and these Rules. The Authority will not contribute to, fund, or subsidize any commercial licensee's compliance or tracking expenses. Nothing herein shall be construed to require the Authority to contribute to, subsidize, or fund in any way a commercial licensee's compliance or tracking expenses; and

(10) If multiple commercial licensees are located at the same location, each commercial license must ensure that all inventory is separately and properly tracked, accounted for, and physically and distinctly separated from the inventory of any other commercial licensee such that licensees and the Authority are readily able to distinguish as to which licensee each item of medical marijuana and medical marijuana products belongs.

(11) All medical marijuana commercial grower licensees who operate an outdoor medical marijuana production facility shall be required to register with the Oklahoma Department of Agriculture, Food, and Forestry as an environmentally sensitive crop owner. Registration shall provide notice to commercial and private pesticide applicators of the locations of medical marijuana crops and help minimize the potential for damaging pesticide drift. Medical marijuana commercial grower licensees shall provide their business name, address, Global Positioning System (GPS) coordinates for all outdoor medical marijuana production facilities, and any other information required by the Department when registering with the Environmentally Sensitive Area Registry.

(12) All medical marijuana commercial grower licensees shall file with the Authority a bond or attestation as required under OAC 442:10-5-3.3 and ensure that all information and records are complete, accurate, and updated in a timely manner in accordance with OAC 442:10-5-2(e)(3)

442:10-5-2. Licenses

(a) **Timeframe.** A medical marijuana business license shall be issued for a twelve (12) month period expiring one (1) year

from the date of issuance. The license may be issued upon receipt of a completed application, payment of application fee, and verification by the Authority the individual or entity complies with the requirements set forth in Oklahoma law and this Chapter.

(b) **Location.** A business license issued to a grower, processor, dispensary, or testing laboratory shall only be valid for a single location at the address listed on the application. A transporter license shall only be valid at the physical locations that have been submitted to and approved by the Authority and are listed on the application.

(c) **Renewal of license.**

(1) It is the responsibility of the license holder to renew the license, with all applicable documentation, prior to the date of expiration of the license by following the procedures provided in OAC 442:10-5-3.

(2) Before renewing a license, the Authority may require further information and documentation and may require additional background checks to determine the licensee continues to meet the requirements set forth in Oklahoma law and these Rules. Once a certificate of compliance is properly submitted showing full compliance, no additional certificate of compliance will be required for license renewal unless a change of use or occupancy occurs, or other change that would require additional inspection, licensure, or permitting by the state or municipality.

(3) The Authority may refuse to renew a license of a medical marijuana business for the following:

(A) Failure to meet the requirements for licensure set forth in 63 O.S. § 420 et seq; the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.; or OAC 442:10.

(B) Noncompliance with 63 O.S. § 420 et seq.; the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.; the Oklahoma Medical Marijuana Waste Management Act, 63 O.S. § 427a et seq.; or OAC 442:10.

(4) Upon the determination that a licensee has not met the requirements for renewal, the Authority shall provide written notice to the licensee. The notice shall provide an explanation for the denial of the renewal application.

(5) A commercial licensee that attempts to renew its license after the expiration date of the license shall pay a nonrefundable late renewal fee in the amount of \$500.00 to reinstate the license once processed and approved by the Authority. A license that has been expired for more than ninety (90) days shall not be renewed.

(d) **Liquidation of products.** A medical marijuana business licensee whose license is not renewed, or whose license is revoked, suspended, or voluntarily surrendered, shall cease all operations immediately upon expiration of the license and shall dispose of any medical marijuana or medical marijuana products in accordance with OAC 442:10-5-10 that were not liquidated prior to licensure expiration in accordance with Oklahoma law and these Rules.

(e) **Change in information.**

(1) Licensees shall notify the Authority in writing within fourteen (14) days of any changes in contact

information by electronically submitting a change request in accordance with the Authority's instructions.

(2) Licensees shall obtain Authority approval for any material changes that affect the licensee's qualifications for licensure. No licensee shall operate under the conditions of a material change unless and until the Authority has approved in writing the material change. Licensees shall submit a material change request to the Authority in writing in advance of any material change that may affect the licensee's qualifications for licensure by electronically submitting a change request, along with any relevant documentation and fees, in accordance with the Authority's instructions. When submitting a material change request, the licensee will be required to pay a \$500.00 nonrefundable fee. Except as is otherwise authorized by the Authority, licensees are limited to one location change request, one name change request, and one ownership change request per year of licensure.

(A) Medical marijuana business licensees submitting a location change must provide the information and documentation required in OAC 442:10-5-3 relating to locations, including but not limited to the following:

(i) If applicable, proof as required in OAC 442:10-5-3(e)(6) that the location of the dispensary or grower is at least one thousand (1,000) feet from any public and private school;

(ii) A certificate of compliance as required in OAC 442:10-5-3(e)(8) on a form prescribed or otherwise authorized by the Authority that is issued by the political subdivision where the licensed premises is to be located certifying compliance with the categories listed in 63 O.S. § 426.1(E);

(iii) If applicable, a bond or attestation as required under OAC 442:10-5-3.3 certifying compliance with 63 O.S. § 427.26, and

(iv) Any further documentation the Authority determines is necessary to ensure the business licensee is still qualified under Oklahoma law and this Chapter to obtain a business license.

(B) Medical marijuana business licensees submitting an ownership change request must provide the information and documentation required in OAC 442:10-5-3 relating to owners, including but not limited to the following:

(i) A list of all owners and principal officers of the commercial applicant and supporting documentation as set forth in OAC 442:10-5-3(e)(1);

(ii) An affidavit of lawful presence for each new owner;

(iii) Documents required under OAC 442:10-5-3(e)(7) establishing that the applicant; and the members, managers, and board members if applicable; and seventy-five percent (75%) of the commercial applicant's ownership interests are Oklahoma residents as required in

the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.;

(iv) A background check in accordance with OAC 442:10-1-5;

(v) If applicable, a bond or attestation as required under OAC 442:10-5-3.3 certifying compliance with 63 O.S. § 427.26, and

(vi) Any further documentation the Authority determines is necessary to ensure the business licensee is still qualified under Oklahoma law and this Chapter to obtain a business license.

(C) A medical marijuana business licensee submitting a name change request must provide the information and documentation required in OAC 442:10-5-3 relating to the business name, including, but not limited to, the following:

(i) A certificate of good standing from the Oklahoma Secretary of State issued within thirty (30) days of submission of the application;

(ii) If applicable, official documentation from the Secretary of State establishing the applicant's trade name;

(iii) If applicable, an electronic copy or digital image in color of a sales tax permit issued by the Oklahoma Tax Commission;

(iv) A list of all owners and principal officers of the licensee under the new name and supporting documentation as set forth in OAC 442:10-5-3(e)(1);

(v) Documents establishing that seventy-five (75%) of the ownership of the licensee under the new name are Oklahoma residents in accordance with OAC 442:10-5-3(e)(7); and

(vi) If applicable, a bond or attestation as required under OAC 442:10-5-3.3 certifying compliance with 63 O.S. § 427.26, and

(v) Any further documentation the Authority determines is necessary to ensure the business licensee is still qualified under Oklahoma law and this Chapter to obtain a business license.

(D) Medical marijuana growers, processors, or commercial transporters that have held a valid medical marijuana business license for at least eighteen (18) months and are operating in good standing may submit an ownership change request to add a publicly traded company as an owner. The publicly traded company shall not own more than forty percent (40%) of the equity in the existing medical marijuana grower, processor, or commercial transporter. The following documentation must be provided:

(i) If applicable, a certificate of good standing from the Oklahoma Secretary of State issued within thirty (30) days of submission of the application.

(ii) A list of all owners, excluding all shareholders of the publicly traded company, and principal officers of the commercial applicant and

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supporting documentation as set forth in OAC 442:10-5-3(e)(1);

(iii) Documents required under OAC 442:10-5-3(e)(7) establishing that the applicant; and the members, managers, and board members if applicable; and seventy-five percent (75%) of the grower, processor, or transporter applicant's ownership interests, excluding the publicly traded company, are Oklahoma residents as required in the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.

(3) Commercial grower licensees shall notify the Authority in writing by certified mail on forms prescribed by the Authority within fourteen (14) days of any change to or cancellation of a bond required under OAC 442:10-5-3.3. Upon cancellation of a bond, commercial grower licensees shall provide proof to the Authority of a new alternate bond meeting the requirements of OAC 442:10-5-3.3 before the date of cancellation of the previous bond.

(f) **Transfer of license.** Licenses may not be changed from one license type to another.

(g) **Surrender of license.**

(1) A licensee may voluntarily surrender a license to the Authority at any time.

(2) If a licensee voluntarily surrenders a license, the licensee shall:

(A) Return the license to the Authority;

(B) Submit on a form prescribed by the Authority a report to the Authority including the reason for surrendering the license; contact information following the close of business; the person or persons responsible for the close of the business; and where business records will be retained;

(C) Submit proof of the licensee's identity through submission of documentation identified in OAC 442:10-1-7 (relating to Proof of Identity); and

(D) Liquidate or dispose of any medical marijuana or medical marijuana products remaining in the possession of the licensee in accordance with OAC 442:10-5-2(d) and OAC 442:10-5-10.

442:10-5-3. Applications

(a) **Application fee.** An applicant for a medical marijuana business, or renewal thereof, shall submit to the Authority a completed application on a form and in a manner prescribed by the Authority, along with the application fee as established in 63 O.S. § 420 et seq. and the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.

(b) **Submission.** Applications for a business license will be accepted by the Authority no earlier than sixty (60) days from the date that the State Question is approved by the voters of the State of Oklahoma. The application shall be on the Authority prescribed form and shall include the following information about the establishment:

(1) Name of the establishment;

(2) Physical address of the establishment, including the county in which any licensed premises will be located;

(3) GPS coordinates of the establishment;

(4) Phone number and email of the establishment; and

(5) Hours of operation for any licensed premises.

(c) **Individual applicant.** The application for a business license made by an individual on his or her own behalf shall be on the Authority prescribed form and shall include at a minimum:

(1) The applicant's first name, middle name, last name and suffix if applicable;

(2) The applicant's residence address and valid mailing address;

(3) The applicant's date of birth;

(4) The applicant's telephone number and email address;

(5) An attestation that the information provided by the applicant is true and correct;

(6) An attestation that any licensed premises shall not be located on tribal lands;

(7) An attestation that the business has obtained all applicable local licenses and permits for all licensed premises;

(8) An attestation that no individual with ownership interest in the business is a sheriff, deputy sheriff, police officer, prosecuting officer, an officer or employee of OMMA, or an officer or employee of a municipality in which the commercial entity is located; and

(9) A statement signed by the applicant pledging not to divert marijuana to any individual or entity that is not lawfully entitled to possess marijuana.

(d) **Application on behalf of an entity.** In addition to requirements of Subsection (c), an application for a business license made by an individual on behalf of an entity shall include:

(1) An attestation that applicant is authorized to make application on behalf of the entity;

(2) Full name of organization;

(3) Trade name, if applicable;

(4) Type of business organization;

(5) Mailing address;

(6) Telephone number and email address; and

(7) The name, residence address, and date of birth of each owner and each member, manager, and board member, if applicable.

(e) **Supporting documentation.** Each application shall be accompanied by the following documentation:

(1) A list of all owners and principal officers of the business applicant and supporting documentation, including, but not limited to: certificate of incorporation, bylaws, articles of organization, operating agreement, certificate of limited partnership, resolution of a board of directors, or other similar documents;

(2) If applicable, a certificate of good standing from the Oklahoma Secretary of State issued within thirty (30) days of submission of the application;

(3) If applicable, official documentation from the Secretary of State establishing the applicant's trade name;

(4) If applicable, an electronic copy or digital image in color of a sales tax permit issued by the Oklahoma Tax Commission;

- (5) An Affidavit of Lawful Presence for each owner;
- (6) If a licensed dispensary or grower, proof that the location of the facility is at least one thousand (1,000) feet from a public or private school. For a dispensary, the distance specified shall be measured in a straight line from the nearest property line of such public school or private school to the nearest perimeter wall of the licensed premise of such medical marijuana dispensary. For a grower, the distance specified shall be measured in a straight line from the nearest property line of such public school or private school to the nearest property line of the licensed premises of such medical marijuana commercial grower. For the purposes of this subsection, a school shall not include a property owned, used, or operated by a public or private school that is not used for classroom instruction on core curriculum, such as an administrative building, athletic facility, ballpark, field, or stadium, unless such property is located on the same campus as a building used for classroom instruction on core curriculum;
- (7) Documents establishing the applicant; and the members, managers, and board members if applicable; and seventy-five percent (75%) of the commercial applicant's ownership interests are Oklahoma residents as required in the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq.
 - (A) Applicants seeking to renew a commercial license issued prior to the enactment of the Oklahoma Medical Marijuana and Patient Protection Act, 63 O.S. § 427.1 et seq., shall submit documentation establishing proof of residency in accordance with OAC 442:10-1-6 (relating to proof of residency);
 - (B) All other applicants shall submit documentation establishing proof of residency in accordance with OAC 442:10-5-3.1 (relating to proof of residency for business licenses).
- (8) If applicable, a certificate of compliance on a form prescribed or otherwise authorized by the Authority that is issued by the political subdivision where the licensed premises is to be located certifying compliance with the categories listed in 63 O.S. § 426.1(E);
- (9) If applicable, accreditation documentation, including documentation of enrollment in analyte-specific proficiency testing results, showing applicants meet requirements stated in OAC 442:10-8-2(a);
- (10) If a licensed grower, processor or transporter has added or is seeking to add a publicly traded company as an owner, additional documentation as required under OAC 442:10-5-2(e)(2)(C) to show the grower, processor, or transporter applicants meet the requirements stated in 63 O.S. § 427.15a;
- (11) If applicable, a list of all chemicals a processor will utilize to process marijuana;
- (12) If applicable, safety data sheets for every chemical a processor will utilize to process marijuana;
- (13) If applicable, a bond or attestation as required under OAC 442:10-5-3.3 certifying compliance with 63 O.S. § 427.26; and

(14) Any further documentation the Authority determines is necessary to ensure the commercial applicant is qualified under Oklahoma law and this Chapter to obtain a commercial license.

- (f) **Incomplete application.** Failure to submit a complete application with all required information and documentation shall result in a rejection of the application. The Authority shall notify the applicant via email through the electronic application account of the reasons for the rejection, and the applicant shall have thirty (30) days from the date of notification to correct and complete the application without an additional fee. If the applicant fails to correct and complete the application within the thirty (30) day period, the application shall expire. Unless the Authority determines otherwise, an application that has been resubmitted but is still incomplete or contains errors that are not clerical or typographical in nature shall be denied.
- (g) **Status update letter.** If a delay in processing has occurred, the Authority shall notify the applicant via email of the delay and the reason for the delay.
- (h) **Moratorium.** Beginning August 1, 2022, and ending August 1, 2024, there shall be a moratorium on processing and issuing new medical marijuana business licenses for dispensaries, processors, and growers. The Authority will review and process applications received on or before August 1, 2022. The Executive Director of the Authority may terminate the moratorium prior to August 1, 2024, upon a determination that all pending license reviews, inspections, or investigations have been completed. The moratorium shall not apply to:

- (1) The renewal of a medical marijuana business license for dispensaries, processors, or growers;
- (2) The issuance of a medical marijuana business license necessitated by a change in the ownership or location of a dispensary, processor, or grower; or
- (3) The issuance or renewal of a testing laboratory, transporter, education facility, research, or waste disposal license.

442:10-5-3.3. Commercial grower bond required

All medical marijuana commercial grower licensees shall file with the Authority either a bond covering the permit area upon which the business licensee will initiate and conduct commercial growing operations or an attestation that the permit area on which the licensee operates the commercial growing operation has been owned by the licensee for at least a five (5) year period prior to submission of application. For the purposes of this section, "permit area" means the "licensed premises" as defined in OAC 442:10-1-4:

- (1) All commercial grower license applicants shall submit on forms prescribed by the Authority:
 - (A) a bond covering the area of land within the permit area upon which the business licensee will initiate and conduct commercial growing operations, or
 - (B) an attestation and accompanying documentation showing that the permit area on which the licensee will initiate or conduct commercial growing operations has been owned by the licensee for at least a five (5) year period prior to submission of application.

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(2) The bond shall be in an amount no less than fifty thousand dollars (\$50,000.00) for each license sought or held and shall be issued by a surety company qualified to do business in the State of Oklahoma as a surety. The Authority may require a higher amount depending on the reclamation requirements to assure the completion of the reclamation plan or to defray the cost of restoration of the property including removing equipment, destruction of waste, remediation of environmental hazards, prohibiting public access, addressing improperly coded buildings, or determination of the final disposition of any seized property.

(3) Bonds that expire shall be renewed prior to thirty (30) days before the expiration date of the bond.

(4) A surety may cancel the bond prior to expiration of the bond by providing written notice to the Authority via certified mail thirty (30) days prior to the date of cancellation. Upon cancellation of a bond, the commercial grower shall provide proof to the Authority of a new, alternate bond meeting the requirements of 63 O.S. § 427.26 and this section on forms prescribed by the Authority by certified mail before the date of cancellation of the previous bond.

(5) The Authority may recall the bond up to one (1) year after revocation or surrender of the license or cancellation of the bond.

(6) Any grower that fails to comply with this section shall be subject to disciplinary action including, but not limited to, revocation, nonrenewal, or monetary penalties.

442:10-5-16. Prohibited acts

(a) No commercial licensee shall allow the consumption of alcohol or the smoking or vaping of medical marijuana or medical marijuana products on the licensed premises, except that if the licensed premises is a residence, a commercial licensee shall only be prohibited from consuming alcohol or the smoking or vaping of medical marijuana in areas of the licensed premises where operations of the business are conducted.

(b) No commercial licensee shall employ any person under the age of eighteen (18).

(c) No commercial licensee shall allow for or provide the delivery of medical marijuana or medical marijuana products to licensed patients or caregivers.

(d) No dispensary shall allow any physician to be located, maintain an office, write recommendations, or otherwise provide medical services to patients at the same physical address as a dispensary.

(e) No commercial licensee shall engage in advertising prohibited under OAC 442:10-7-3.

(f) No commercial licensee shall sell or offer to sell medical marijuana or medical marijuana product by means of any advertisement or promotion that includes any statement, representation, symbol, depiction, or reference, directly or indirectly, which would reasonably be expected to induce minors to purchase or consume marijuana or medical marijuana products.

(g) No commercial licensee shall falsify or misrepresent any documents, forms, or other materials or information submitted to the Authority.

(h) No commercial licensee shall threaten or harm a patient, medical practitioner, or an employee of the Authority.

(i) No commercial licensee shall fail to adhere to any acknowledgment, verification, or other representation made to the Authority.

(j) No licensed grower shall possess, sell or otherwise transfer, or offer to sell or otherwise transfer medical marijuana products.

(k) No licensee shall operate or otherwise use any extraction equipment or processes utilizing butane, propane, carbon dioxide or any potentially hazardous material in residential property.

(l) Licensees shall not sell or otherwise transfer, purchase, obtain, or otherwise accept the transfer of medical marijuana or medical marijuana products from an any individual or entity that is not an Oklahoma-licensed medical marijuana business, except that licensed dispensaries may sell medical marijuana and medical marijuana products to licensed patients and caregivers and a processor may process medical marijuana directly on behalf of a licensed patient or caregiver in accordance with OAC 442:10-5-5. No licensee shall purchase or sell medical marijuana or medical marijuana products to or from any unlicensed individual or entity.

(m) After implementation of the State inventory tracking system, no licensee shall sell or otherwise transfer, purchase, obtain or otherwise accept the transfer of medical marijuana or otherwise accept the transfer of medical marijuana or medical marijuana products that are not properly inputted and tracked in the State inventory tracking system in accordance with Oklahoma law and regulations.

(n) Medical marijuana growers and dispensaries shall not make or package infused pre-rolls.

(o) Medical marijuana growers and dispensaries shall not make or package pre-rolls that exceed one (1) gram in net weight.

(p) Licensees shall not allow any other entity or person to use their OMMA license number who is not an owner, employee, or authorized contractor of the commercial licensee while conducting business on behalf of that commercial licensee.

(q) No commercial licensee shall make, sell, transfer, or offer to sell any alcoholic beverage that has been infused with medical marijuana or medical marijuana products.

(r) Growers shall not purchase, make, sell, transfer, or otherwise obtain any medical marijuana products except growers may package and sell noninfused pre-rolls and kief in accordance with these Rules.

(s) Dispensaries shall not package or alter packaging or labeling of medical marijuana or medical marijuana products except for the following reasons:

(1) Dispensaries are authorized to package and sell noninfused pre-rolled marijuana;

(2) Dispensaries, or employees thereof, may handle loose or nonpackaged medical marijuana to be placed in packaging for retail sale consistent with Oklahoma

law and these Rules, including packaging and labeling requirements in OAC 442:10-7-1(d)-(e);

(3) Dispensaries may apply barcodes, qr codes, or other inventory tracking tags and labels. These items shall not obscure required label and packaging requirements; and

(4) Dispensaries must place medical marijuana or medical marijuana products into a child-resistant exit package at the point of transfer to a patient or caregiver if those items are not already in child-resistant packaging.

(t) Growers shall not engage in any commercial growing operations without a bond or attestation as required under OAC 442:10-5-3.3 certifying compliance with 63 O.S. § 427.26.

[OAR Docket #23-699; filed 7-6-23]

**TITLE 540. HEALTH CARE WORKFORCE TRAINING COMMISSION
CHAPTER 55. HEALTH CARE WORKFORCE DEVELOPMENT GRANT PROGRAM**

[OAR Docket #23-670]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 1. General Provisions [NEW]
540:55-1-1 [NEW]
540:55-1-2 [NEW]
- Subchapter 3. Program Administration [NEW]
540:55-3-1 [NEW]
540:55-3-2 [NEW]
540:55-3-3 [NEW]
540:55-3-4 [NEW]
540:55-3-5 [NEW]
540:55-3-6 [NEW]
540:55-3-7 [NEW]
540:55-3-8 [NEW]
540:55-3-9 [NEW]
- Subchapter 5. Violations and Corrective Actions [NEW]
540:55-5-1 [NEW]
540:55-5-2 [NEW]

AUTHORITY:

Health Care Workforce Training Commission; S.B. 1458, 58th Leg., 2d Reg. Sess. (Okla. 2022) (enacted); S.B. 8xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); S.B. 9xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); S.B. 10xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); S.B. 17xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); and H.B. 1025, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted).

COMMENT PERIOD:

November 15, 2022 through November 30, 2022

PUBLIC HEARING:

December 8, 2022

ADOPTION:

December 8, 2022

EFFECTIVE:

Immediately upon Governor's approval

APPROVED BY GOVERNOR:

January 27, 2023

EXPIRATION:

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

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Title 2 of the Code of Federal Regulations; U.S. Treasury Final Rule, Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4338 (Jan. 27, 2022); State and Local Fiscal Recovery Funds Compliance and Reporting Guide

Incorporating rules:

- 540:55-1-2
- 540:55-3-1
- 540:55-3-2
- 540:55-3-3
- 540:55-3-4
- 540:55-3-5
- 540:55-3-7
- 540:55-3-8
- 540:55-3-9
- 540:55-5-2

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday, Health Care Workforce Training Commission, 119 North Robinson Avenue, Suite 520, Oklahoma City, OK 73102.

FINDING OF EMERGENCY:

Creation of these rules are necessary as an emergency measure pursuant to the criteria set forth in 75 O.S., § 253(A), specifically that the rules are necessary to comply with establishing program requirements for the Health Care Workforce Development Grant program, through which the Health Care Workforce Training Commission ("HWTC") will distribute federal American Rescue Plan Act ("ARPA") funds to grantees for specific health care workforce projects, including, but not limited to, capital improvements to nursing schools, as directed by the Oklahoma Legislature.

GIST/ANALYSIS:

The creation of Chapter 55 serves to comply with establishing administration program requirements for the Health Care Development Grant program and how HWTC will distribute and manage the ARPA funds to grantees.

CONTACT PERSON:

Janie Thompson, Executive Director, (405) 604-0020, Janie.Thompson@hwtc.ok.gov or for legal questions: Maria Maule, Assistant Attorney General, (405) 522-0055, Maria.Maule@oag.ok.gov.

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

SUBCHAPTER 1. GENERAL PROVISIONS

540:55-1-1. Purpose

The purpose of the Health Care Workforce Development Grant program is to use federal funds distributed to the State of Oklahoma pursuant to the American Rescue Plan Act, Pub. L. No. 117-2 (Mar. 11, 2021) ("ARPA"), to help recruit, educate, and stabilize Oklahoma's health care workforce. The Oklahoma Legislature designated the Health Care Workforce Training Commission ("HWTC") as a pass-through entity through which federal ARPA funding will be further distributed to grantees for specific health care workforce projects, including, but not limited to, capital improvements to nursing schools. See S.B. 1458, 58th Leg., 2d Reg. Sess. (Okla. 2022) (enacted); S.B. 8xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); S.B. 9xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); S.B. 10xx, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted); S.B. 17xx, 58th Leg., 2d Spec. Sess. (Okla. 2022)

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(enacted); and H.B. 1025, 58th Leg., 2d Spec. Sess. (Okla. 2022) (enacted).

540:55-1-2. Definitions

When used in this chapter, the following words or terms shall have the following meaning, unless the context clearly indicates otherwise:

"ARPA" means the American Rescue Plan Act, Pub. L. No. 117-2 (Mar. 11, 2021), as amended.

"C.F.R." means Code of Federal Regulations, available at <https://www.ecfr.gov>.

"Grantee" means a recipient of ARPA funds awarded through the Health Care Workforce Development Grant program, regardless of whether the recipient is a "pass-through entity" or "subrecipient."

"HWTC" or **"the Commission"** means Health Care Workforce Training Commission.

"OMES" means Office of Management and Enterprise Services.

"Pass-through entity" or **"PTE"** means a non-federal entity that provides a subaward to a subrecipient to carry out part of a federal program, consistent with the definition at 2 C.F.R., § 200.1.

"SAM" means System for Award Management.

"Subrecipient" means an entity that receives a subaward from a pass-through entity to carry out part of a federal award, but does not include an individual that is a beneficiary of such award, consistent with the definition at 2 C.F.R., § 200.1.

"U.S. Treasury" means United States Department of the Treasury.

SUBCHAPTER 3. PROGRAM ADMINISTRATION

540:55-3-1. System for Award Management ("SAM")

All eligible grantees must have an active registration with SAM.gov pursuant to Part 25 of Title 2 of the C.F.R. This registration must be active prior to the submission of mandatory reporting.

540:55-3-2. Capital expenditures

(a) In accordance with Section 35.6(b)(4) of the Treasury Final Rule, grantees expending \$1,000,000 or more for capital expenditures related to the response to the COVID-19 public health emergency or its negative economic impacts, must provide the following written justification:

(1) A description of the specific harm or need to be addressed, and why the harm was exacerbated or caused by the public health emergency. The grantee may provide quantitative information on the extent and the type of harm, such as the number of individuals or entities affected.

(2) An explanation of why a capital expenditure is appropriate. For example, a grantee should explain why existing equipment or facilities, or policy changes or additional funding to pertinent programs or services, would be inadequate.

(3) A comparison of the proposed capital project against at least two (2) alternative capital expenditures and a demonstration of why the proposed capital expenditure is superior. Grantees should consider the effectiveness of the capital expenditure in addressing the harm identified and the expected total cost (including pre-development costs) against at least two (2) alternative capital expenditures.

(b) Funding for grantees expending \$1,000,000 or more of a Health Care Workforce Development Grant for capital expenditures will not be distributed until the complete written justification for capital expenditure as detailed above is received and approved by OMES.

(c) If the capital expenditures amount to \$10,000,000 or more, the written justification will also have to be submitted as part of regular reporting.

540:55-3-3. Competitive bidding

(a) All projects, programs, services, or activities sponsored in whole or in part with ARPA funds will be purchased in accordance with the State Purchasing Director's Guide to Competitive Purchasing with ARPA and GEER II Funds, available at https://oklahoma.gov/content/dam/ok/en/omes/documents/ARPA_Guide.pdf, and in accordance with applicable state and federal law, including but not limited to, 2 C.F.R., §§ 200.310 through .316 (property standards), and 2 C.F.R., §§ 200.317 through .327 (procurement standards).

(b) All grantees that utilize competitive bidding procurement methods must provide HWTC with documentation of the process, including, but not limited to, copies of the bids received and justification of how a decision was reached to award a contract to a specific vendor.

540:55-3-4. Reporting

(a) All grantees will appropriately maintain accounting records for compiling and reporting accurate, compliant financial data in accordance with generally accepted accounting standards and principles.

(b) All grantees are required to submit Project and Expenditure Reports at the close of each month or quarter, in accordance with OMES' Subrecipient Monitoring Schedule. These reports must include, at a minimum, the status of the overall project, a listing of obligations and expenditures, any applicable program income, and a description of the project demographic distribution. A template for the reports will be sent to all grantees, and the complete report shall be submitted to HWTC within thirty (30) days of the end of the reporting period, or as otherwise directed by OMES. HWTC, in turn, will submit all requested monthly and quarterly data to OMES to report as needed to the U.S. Treasury.

(c) Pursuant to the State and Local Fiscal Recovery Funds ("SLFRF") Compliance and Reporting Guide, some grantees

with larger projects may be required to submit an annual Recovery Plan Performance Report ("Recovery Plan"). The Recovery Plan must detail how the grantee will ensure program outcomes are achieved in an effective, efficient, and equitable manner. The Recovery Plan, if required, must be submitted annually to HWTC and the U.S. Treasury; in addition, the Recovery Plan must be posted on the grantee's public-facing website.

540:55-3-5. Labor reporting for construction projects

(a) For projects with over \$10,000,000 in capital expenditures (based on total expected cost), the grantee shall submit labor reporting requirements, including, but not limited to:

- (1) A Project Employment and Impact Report; and
- (2) A Project Workforce Continuity Plan.
- (3) These reports must be updated on a quarterly basis and submitted to HWTC within thirty (30) days of the end of the reporting period.

(b) Projects funded entirely by ARPA dollars are not subject to the Davis-Bacon Act, Pub. L. No. 107-217 (Aug. 21, 2002), as amended; however, for projects that are funded in part by other federal dollars, grantees must determine whether their other funding source will require compliance with said act.

(c) Pursuant to the U.S. Treasury's Final Rule, and regardless of the expected cost for construction projects, grantees are expected to use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

540:55-3-6. Reimbursements

(a) **Prior authorization.** Grantees must receive written prior authorization from HWTC before making purchases exceeding a prior authorization threshold amount. This amount will be based upon the grantee's risk assessment, as completed by a third-party consultant, as well as the overall scope of the proposed project. Grantees shall be informed in writing of the prior authorization threshold amount. A grantee shall upload the quote and a brief justification to the grant software designated by HWTC, for review and prior authorization by the HWTC Grants Manager. Any purchase over the threshold amount that has not been prior authorized by the Grants Manager may not be reimbursed by the Health Care Workforce Development Grant program.

(b) **Invoices.** In order to obtain reimbursement, grantees shall electronically send monthly invoice packets to the HWTC Grants Manager. These packets must be received by the 5th day of each month.

- (1) Invoice packets must include the following:
 - (A) Signed receipts/invoices for all purchases;
 - (B) A brief justification of all expenses (1-2 sentences explaining how the purchase benefits the project); and
 - (C) Bidding documentation with justification for why the vendor was chosen.
- (2) Invoices shall not be submitted to HWTC for reimbursement before performance is completed by the vendor and accepted by the grantee, including physical receipt of

goods. A grantee must sign the invoice or receipt to verify that the item or service has been received.

(c) **Approval by Commission or Executive Director.** After a purchase is prior authorized, if applicable, by the HWTC Grants Manager and made by the grantee, the grantee must still obtain approval before receiving reimbursement.

(1) **Purchases less than \$50,000.** The Commission has delegated to HWTC's Executive Director the authority to approve reimbursement of purchases of goods and/or services that cost less than \$50,000. Requests for the Executive Director's approval shall be made electronically. A written copy of the Executive Director's approval or disapproval shall be electronically sent to a grantee within fifteen (15) business days of submission. A grantee may not request more than one (1) reimbursement approval from the Executive Director in any two-month (2-month) period.

(2) **Purchases of \$50,000 or more.** The Commission may, through formal Commission action, increase the maximum dollar value of reimbursements the Executive Director is authorized to approve, as identified in OAC 540:55-3-6(3)(a), above; any decision to provide such increased authorization to the Executive Director will be within the Commission's sole and absolute discretion and subject to the Commission's directives. Absent any increased authorization, requests to approve reimbursements equal to or more than \$50,000 must be submitted to the Commission electronically, for approval or disapproval at a regularly- or specially-scheduled public meeting. Grantees that wish to be reimbursed following a particular Commission meeting must submit their invoice packets to the HWTC Grants Manager no less than two (2) weeks prior to the meeting. Grantees will be provided with a copy of the Commission meeting schedule, and may search for the Commission's meetings at <https://www.sos.ok.gov/meetings/legacy/default.aspx>. Grantees will be provided electronic correspondence reflecting the Commission's approval or disapproval within two (2) business days of the public meeting.

(d) **One-time cash advance.** Grantees that do not have the operating capital to operate on a reimbursement basis, may request a one-time cash advance in accordance with OMES' Working Capital Policy.

540:55-3-7. Audit requirements

(a) The Grantee shall complete the Subrecipient Annual Report annually within forty-five (45) days after its fiscal year end, informing the State of Oklahoma whether a Single Audit is required for the prior fiscal year. If a Single Audit is required, the grantee shall submit a copy of the audit report to the State of Oklahoma within nine (9) months. A Single Audit is required if the grantee expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with Subpart F of Part 200 of Title 2 of the C.F.R.

(1) HWTC will review the grantee's audit and issue any management decisions thereon within six (6) months of acceptance of the audit report by the Federal Audit Clearinghouse. Prior to issuing the management decision,

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HWTC may request additional information or documentation from the grantee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs.

(2) After review of the audit, if it is determined that funds are owed to the State of Oklahoma, HWTC may issue a management decision letter to the grantee. Pursuant to 2 C.F.R., § 200.521, the management decision will include:

(A) A clear statement of whether or not the audit finding is sustained, the reasons for the decision, and the actions the grantee is expected to take (including, for example, repaying disallowed costs, making financial adjustments, or taking other actions);

(B) A description of the appeals process available to the grantee; and

(C) The reference numbers the auditor assigned to each audit finding.

(3) A grantee aggrieved by an HWTC management decision may initiate an appeal of that decision. In order to initiate an appeal, the grantee must complete and submit the appropriate form provided by HWTC and made available on its website, within twenty (20) calendar days of the date of the management decision letter. If the form is not timely received, the Commission or the hearing officer designated by the Commission will issue a letter stating that the appeal will not be heard.

(4) Appeals of management decisions shall be conducted in accordance with OAC 540:1-5-1.

(b) Even if a grantee is exempt from federal audit requirements for a particular fiscal year, it shall still make its records available for review or audit by appropriate officials of the U.S. Treasury, OMES, HWTC, and Government Accountability Office, as requested. Moreover, all "government entities," as such term is defined by law, shall comply with the applicable provisions of 74 O.S., § 212A relating to the Oklahoma State Auditor & Inspector's Office.

540:55-3-8. Compliance with federal requirements

Grantees must establish and maintain effective internal controls over the federal award that provide reasonable assurance that they are managing the awards in compliance with federal statutes, regulations, and the terms and conditions of the award. Some of the applicable federal compliance, reporting, and contract requirements include:

(1) American Rescue Plan Act, Pub. L. No. 117-2 (Mar. 11, 2021), as amended;

(2) U.S. Treasury Final Rule, Coronavirus State and Local Fiscal Recovery Funds, 87 Fed. Reg. 4338 (Jan. 27, 2022), and all other applicable federal rules, policies, guidance, procedures, and directives including reporting and compliance guidance, as amended;

(3) Uniform Guidance (Part 200 of Title 2 of the C.F.R.), including Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as amended; and

(4) Single Audit Act Amendments of 1996, Pub. L. No. 104-156 (July 5, 1996), as amended.

540:55-3-9. Grantee assurances

Grantees must agree to certain state- and federally-required assurances, including, but not limited to, the following:

(1) The grantee shall report on incurred expenses and/or losses, in a form and at a frequency prescribed by the State of Oklahoma and shall cooperate with the State of Oklahoma in creating and retaining appropriate documentation to demonstrate that the proposed uses meet the requirements of ARPA.

(2) Grantees shall timely complete Quarterly Performance Management Plans and submit them to HWTC. Quarterly Performance Management Plans must show measurable outcomes of the project. HWTC will submit the combined reports and results to the Commission on a quarterly basis.

(3) In accordance with federal guidelines, grantees must keep accurate records of all inventory, including all equipment purchases over five thousand dollars (\$5,000). Annual inventory reconciliations must be performed by both an agent of the grantee and an agent of HWTC (can be simultaneous).

(4) Grantees shall comply with all requests from the State of Oklahoma to schedule in-person site visits to observe and review progress of Capital (Real Property) building or renovation projects. Site visits will be scheduled at least once every three (3) months until completion of the project.

(5) The grantee shall expend all funds by October 2, 2026. To the extent that actual expenditures or demonstrated need is less than the total award amount, the grantee will return the balance of unspent funds to the State of Oklahoma. If the U.S. Treasury recoups funds from the State of Oklahoma based on a determination that these award funds were used in a manner not in compliance with ARPA, the State of Oklahoma may recover funds from the grantee by reducing future funding in state budgets.

(6) The grantee shall repay the award or portion of the award if: any funds received were issued in error; are based on incorrect representations; or any costs forming the basis of an award under this program have been or will be covered by other federal grants or awards or federally forgiven loans received by the grantee. The final determination of whether there has been a duplication of benefits and the amount to be repaid, if any, will be made by HWTC and/or OMES.

(7) The grantee shall maintain and make available to the State of Oklahoma and/or U.S. Treasury, upon request, all documents and financial records sufficient to establish compliance with ARPA. Records and supporting documentation must be maintained for a period of seven (7) years after all funds have been expended or returned to U.S. Treasury, whichever is later. However, if any litigation, claim, or audit begins before the end of that seven-year period, all records must be retained until all litigation, claims, or audit findings involving the records have been resolved and the final action has been taken. Moreover, all records relating to real property shall be retained until seven (7) years after final disposition of the property.

- (8) Records to support compliance with ARPA may include, but are not limited to, copies of the following:
 - (A) General ledger and subsidiary ledgers used to account for:
 - (i) The receipt of ARPA payments; and
 - (ii) The disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
 - (B) Budget records;
 - (C) Payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
 - (D) Receipts of purchases made related to addressing the public health emergency due to COVID-19;
 - (E) Contracts and subcontracts entered into using ARPA payments and all documents related to such contracts;
 - (F) Grant agreements and grant subaward agreements entered into using ARPA payments and all documents related to such awards;
 - (G) All documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
 - (H) All documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
 - (I) All internal and external email/electronic communications related to use of ARPA payments; and
 - (J) All investigative files and inquiry reports involving ARPA payments.

SUBCHAPTER 5. VIOLATIONS AND CORRECTIVE ACTIONS

540:55-5-1. Program violations

The State shall find that a violation of the Health Care Workforce Development Grant program policies and procedures occurred under certain circumstances, including, but not limited to, the following:

- (1) A grantee provided false or misleading information in proposed project applications and/or project reports;
- (2) The requirements of federal statute, federal regulations, Oklahoma statute, or rules of HWTC have not been met or have been violated;
- (3) There is a significant deviation from the grant agreement;

- (4) Significant corrective actions are necessary to protect the integrity of the project funds, and those corrective actions are not or cannot be put into effect, in the judgment of HWTC staff, within a reasonable timeframe; or
- (5) There has been a finding of fraud, waste, or mismanagement of any current or prior state- or federally-funded project.

540:55-5-2. Corrective and remedial actions

After having determined that a program violation has occurred, HWTC may take the following actions:

- (1) HWTC may adjust specific award conditions as needed, after providing notification consistent with the requirements in 2 C.F.R., § 200.208, including:
 - (A) Requiring payments as reimbursements rather than advance payments;
 - (B) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
 - (C) Requiring additional, more detailed financial reports;
 - (D) Requiring additional project monitoring;
 - (E) Requiring the grantee to obtain technical or management assistance; or
 - (F) Establishing additional prior approvals; or
- (2) If, after determining that noncompliance cannot be remedied by imposing additional conditions, HWTC may, in accordance with 2 C.F.R., § 200.339:
 - (A) Temporarily withhold cash payments pending correction of the deficiency by the grantee or more severe enforcement action by the U.S. Treasury or OMES;
 - (B) Disallow all or part of the cost of the activity or action not in compliance;
 - (C) Wholly or partly suspend or terminate the grant;
 - (D) Recommend the U.S. Treasury initiate suspension or debarment proceedings under Part 180 of Title 2 of the C.F.R.;
 - (E) Withhold further federal awards for the project or program; or
 - (F) Take other remedies that are legally available.

[OAR Docket #23-670; filed 6-29-23]

Permanent Final Adoptions

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

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

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

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

TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-426]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

5:2-1-2. Definitions [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 21, 2022

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The adopted revisions to Chapter 2 adds definitions for Actual physical presence, Common Carrier, and Electronic Abstract Plant to ensure licensees have an accurate understanding of the expectations tied to the terms.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

5:2-1-2. Definitions

In addition to the terms defined in the Oklahoma Abstractors Act, the definitions of the following words and terms shall

be applied when implementing the Act and rules adopted by the Board:

"Abstractor" means the holder of an abstract license, certificate of authority, or temporary certificate of authority.

"Abstract Plant" shall consist of a set of records in which an entry has been made of all documents or matters which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrances thereon, which are filed, recorded and currently available for reproduction in the offices of the county clerk and the court clerk in the county for which such abstract plant is maintained including any satellite offices for the county clerk or district court clerk. Such records shall consist of:

(A) a "land index" in which notations of or references to any documents that describe the property affected are included, according to the property described or in which copies or briefs of all such documents that describe the property affected are sorted and filed according to the property described which is compiled from the instruments of record affecting real property in the county and recorded in the county offices and not copied or reproduced from any county index:

(B) a "name index" compiled from the following:

- (i) records from the court clerk sorted or filed according to the names of the parties listed in the pending suits which shall include but not be limited to probates, divorces, dissolutions of marriage, guardianships, and civil suits affecting real property; and,
- (ii) records from the county clerk sorted or filed according to the names of the parties listed in the documents which shall include but not be limited to liens, tax warrants, statements of judgment, and any other documents which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrance thereon which are filed, recorded, and currently available for reproduction in the office of the county clerk. The index shall be compiled from instruments of record affecting real property in the office of the county clerk and not copied from any county index.

"Actual physical presence" means the place of business of a holder of a certificate of authority, located within the county in which the certificate of authority is authorized to engage in the business of abstracting by the Board. The place of business shall have an employee present to assist the public.

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The hours of operation shall be posted on the public entry door(s) and on its website, if any.

"**Billing information**" means a copy of an invoice reflecting all abstract related charges.

"**Common carrier**" means the business of abstracting is affected with a public interest and subject to the regulatory powers of the State. A holder of a certificate of authority must serve the public without unreasonable discrimination in the processing of orders, furnishing of abstracts, fees for services, and compliance with the Act.

"**Compile**" means to arrange in an orderly and logical manner all recorded instruments relating to a particular chain of title of real property.

"**Electronic Abstract**" means an Abstract of Title as defined in 1 Okla. Stat. §1-20, et seq. produced as electronic media or an original digital document, consisting of images or digital media that can be transmitted in an electronic format or converted to printed output. An Electronic Abstract must be produced in a Portable Document Format (PDF)-compatible application or other non-proprietary format. The Electronic Abstract and any holder of a certificate of authority that provides an Electronic Abstract must be in compliance with all other provisions of 1 Okla. Stat. §1-20, et seq.

"**Electronic Abstract Plant**" means an Abstract Plant in digital format, including records, land index, name index, in an electronic searchable database.

"**Employee**" means a person who is compensated, directly or indirectly, by a holder of a certificate of authority, permit, or temporary certificate of authority, who performs duties regulated by the Act.

"**Final title report**" means the document resulting from the final title search required to be conducted by a certificate of authority holder in the county where the property is located prior to the issuance of a title insurance policy pursuant to the rules of the Oklahoma Insurance Department and shall include all information as mandated by Section 11-5-3 of these rules.

"**Licensee**" means a person who holds an abstract license.

"**Supervision**" means all work of an employee must be supervised within the authorized activities of a certificate of authority holder or a permit holder, respectively.

(A) Supervision of an abstract licensee by a certificate of authority holder means the oversight of the licensee to search or remove from county offices county records, summarize or compile copies of such records, maintain an independent set of abstract books or indexes, or compile an abstract of title for certification.

(B) Supervision of an abstract licensee by a permit holder means the oversight of the licensee to build, construct or develop an abstract plant and activities directly related thereto pursuant to 5:11-7-3 of these rules.

(C) Supervision of a non-licensed employee means the oversight of any person who is employed by a holder of a permit or certificate of authority who performs the activities set forth in 5:11-3-1(b) of these rules.

"**Upfront commitment to pay**" may be:

(A) A written document whether by e-mail, facsimile, contract of sale, or other written instruction by a party to the transaction that agrees to pay the invoice upon delivery, unless the certificate holder:

(i) notifies the customer within two (2) full business days that other payment terms must be satisfied, or

(ii) the certificate holder has a uniform payment policy posted at its office.

(B) The acceptance of an order from a party to the transaction whether by e-mail, facsimile, contract of sale, or other written or oral instruction by a certificate holder, and the holder proceeds to complete the requested abstracting service.

[OAR Docket #23-426; filed 6-6-23]

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

[OAR Docket #23-427]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Application for Permit to Develop Abstract Plant 5:11-7-1. Application for permit to develop abstract plant [AMENDED]

AUTHORITY:

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

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The adopted revisions to Chapter 11 places modernization requirements on all abstract plants being built.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2023:

SUBCHAPTER 7. APPLICATION FOR PERMIT TO DEVELOP ABSTRACT PLANT

5:11-7-1. Application for permit to develop an abstract plant

- (a) **Form.** The application shall be on a form prescribed by the Board.
- (b) **Notice and review.** The chairman or designee shall review the application for compliance with applicable laws and rules. Additional information from the applicant or other persons may be requested by the reviewer as deemed appropriate. Within ten (10) days of receipt of the application, the Board shall:
 - (1) notify the court clerk, the county clerk, and all holders of a certificate of authority in the county wherein such business is to be conducted; and
 - (2) post notice of the receipt of the application for a permit on the official website of the Board and provide an address where written information relative to the application can be sent.
- (c) **Comment period.** Any person desiring to provide information pertaining to the application shall submit the information in writing to the Board within twenty (20) days of the notice provided for in subsection (b) of this section. Additional information may be received upon approval of the Board or the Chairman. Comments shall include specific facts and specific legal authority, if known, supporting the request for approval or disapproval of the application.
- (d) **Board action on application.** The application for a permit to develop an abstract plant shall be considered by the Board at the next meeting after completion of the review provided for in subparagraph (b) of this section.
 - (1) In the event an adverse comment is filed, the applicant and any person providing adverse comments shall be notified of the receipt of the adverse comment not more than ten (10) days from the date of receipt of such comment. Notice of the date, time, and place of the meeting at which the application and information will be considered by the Board shall be provided to all interested parties not less than ten (10) days before the date of the meeting at which the application will be considered is to be held.
 - (2) Presentation before the Board.
 - (A) At the meeting where the application is being considered the applicant shall be limited to thirty (30) minutes to present information in support of the application. All persons wanting to provide adverse comments regarding the application collectively shall be limited to thirty (30) minutes to present adverse comment or information. Additional time may be granted by the chairman upon good cause shown.
 - (B) The order of presentation of information regarding the application and opposition shall be established by the chairman.
 - (3) Criteria.
 - (A) The Board shall ~~require~~ consider the following ~~factors~~ in arriving at its decision:
 - (i) compliance with the Act and Rules;
 - (ii) payment of applicable fees;

- (iii) adequacy of county records bond
- (iv) the name of the company should not be deceptively similar to other certificate of authority or permit holders; ~~and~~
- (v) the applicant must show an actual physical presence in the county; ~~and~~
- (vi) the plant must be an electronic abstract plant

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

(4) Decision of the Board. After consideration and action by the board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant and any person submitting adverse comments.

[OAR Docket #23-427; filed 6-6-23]

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

[OAR Docket #23-467]

- RULEMAKING ACTION:**
PERMANENT final adoption
- RULES:**
25:15-1-2 through 25:15-1-4 [AMENDED]
- AUTHORITY:**
Oklahoma Aeronautics Commission; 3 O.S. Section 85
- SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**
January 6, 2023
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Superseded rules:
25:15-1-4 [AMENDED]
- Gubernatorial approval:**
December 20, 202
- Register publication:**
40 Ok Reg 501
- Docket number:**
22-978
- INCORPORATIONS BY REFERENCE:**
n/a
- GIST/ANALYSIS:**
The proposed permanent rules will define an airport sponsor matching share and update information regarding state level and sponsor level participation. The Commission's maximum amount for terminal building

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projects will be increased. The Commission's cost share level of participation on hangar construction projects will be increased and the not to exceed cap removed. Fuel system construction projects will be eligible for Commission funding and the state level of participation identified. The Commission may provide funds at a 100% level for funding directed to the Commission by the legislature for specifically identified site locations and infrastructure projects. Additional changes include an updated FAA Order number related to the National Priority Rating System and grammatical changes throughout.

CONTACT PERSON:

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

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:

25:15-1-2. Definitions

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

"Administrative official" means an official of the airport sponsor who is authorized to legally bind the airport sponsor.

"Airport Construction Program" means a list of airport construction projects approved by the Commission for implementation within a five-year programming horizon showing a description of the project, the cost of each phase of the project, when the project is expected to occur, and the sources of funding.

"Airport Development Worksheet" means a listing of the capital projects needed at an airport over a twenty-year planning horizon together with the estimated cost, construction type, objective code, and airport component for each project. Projects identified for a particular airport must be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan. An airport development worksheet is developed and maintained for each system plan airport that is not part of the National Plan of Integrated Airport Systems (NPIAS) cooperatively by the airport sponsor and the Commission staff.

"Airport layout plan/drawing" means the basic plan for the layout of an airport that shows, at a minimum, the present boundaries of the airport, the areas that the airport sponsor owns or controls for airport purposes, and any proposed areas that will be acquired by the airport sponsor in the future. It will include the location and nature of existing and proposed airport facilities such as runways, taxiways, aprons, terminal buildings, hangars, roads, and other vital airport infrastructure items. Also, it will provide the location of existing and proposed uses of property under control by the airport sponsor. The full airport layout plan-set is a combination of many pages of documents, including items such as instrument approach path details, terminal area maps, property maps, and the page that is identified as the airport layout drawing. Not every airport will have a full plan-set and may only have an airport layout drawing which will detail most of the above information on a single page drawing.

"Airport Sponsor" or **"Municipality"** is used interchangeably throughout this chapter. Either term means any incorporated city, village, or town of this state, any public institution of higher education, and any county or political subdivision or district of this state, or any public trust thereof, which is, or may be, authorized by law to acquire, establish, construct, maintain, improve, and operate airports, airstrips, and aeronautical facilities. To be eligible for the state grant program, the airport sponsor must be one of the governmental entities referenced in the preceding sentence and included in the Oklahoma Airport System Plan. Nothing herein precludes two or more of these entities from acting jointly as an airport sponsor. In the event a public trust is the airport sponsor, the beneficiary of that public trust must also be a record owner of the airport property.

"Airport Sponsor Matching Share" means any funds provided by the airport, municipality or public trust, or any other source of funding that is not FAA.

"Commission" means the Oklahoma Aeronautics Commission, the state agency responsible for administering airport grant programs for the State of Oklahoma and the Federal Aviation Administration.

"Emergency" means a condition that could not have been foreseen and which affects the safety of the airport sufficiently that the airport or runway may need to be closed if the situation is not remedied.

"FAA" means the Federal Aviation Administration, a unit of the U.S. Department of Transportation.

"Letter of Interest" means a letter expressing the desire of an airport sponsor to have one or more projects included in the Airport Construction Program.

"Non-Primary Entitlement (NPE) funds" are FAA Airport Improvement Program (AIP) funds set aside for general aviation airports listed in the National Plan of Integrated Airport Systems. These airports can each receive up to \$150,000 per year based on the FAA assessment of needs over a 5 year period.

"Notification Letter" means correspondence prepared by the Commission staff informing an airport sponsor that one or more of their projects have advanced to the current year of the Airport Construction Program. The letter sets forth the terms the Commission imposes on airport sponsors participating in the state grant program, describes the project, authorizes the airport sponsor to begin engineering work for the project and directs the sponsor to prepare a grant application once project bids have been received.

"Oklahoma Airport System Plan" means the plan, adopted by the Commission, which identifies the airports included in the State's airport system and identifies the service level, functional classification, design standard, and airport reference code for each system airport.

"Project Sketch" shown in color the area and location of proposed construction or rehabilitation work for the accompanying construction grant application.

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25:15-1-3. Planning

(a) Planning and Programming Process.

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

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

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

(b) Airport Construction Program Content.

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

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

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

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

(5) The Airport Construction Program shall include other priorities, policies, and procedures as adopted by the Commission.

(c) Airport Construction Program Projects.

(1) To be included in the Airport Construction Program a project must be eligible to receive airport grant or loan funding from OAC. To be eligible a project must be conducted on active public-use areas of an airport or to support those public-use areas of an airport. Types of projects considered eligible are listed below:

(A) Maintenance: this type of work is limited to pavement maintenance of runways, taxiways, and aprons and can include routine cleaning, filling, or sealing of cracks/joints, maintenance of pavement drainage systems, patching pavement, and remarking of the above mentioned pavement areas. Items not considered maintenance are applying herbicide

to prevent grass encroachment, mowing of airport grass, FOD sweeping, replacing light bulbs, replacing light fixtures due to damage from a manmade source, re-topping of trees that had been previously topped in an OAC project, and other similar type activities.

(B) Rehabilitation: this type of work is a more comprehensive restoration of an item to its original functionality. Items such as pavement sealcoats, overlays, replacement of an entire set of lighting fixtures would be considered rehabilitation.

(C) Reconstruction: this type of work is a complete restoration of an item to its original functionality once it has reached the end of its useful life. This results in a virtually new piece of pavement, electrical system, or building.

(D) New Construction/Installation: this type of work would construct new pavement such as a runway widening or extension, hangar taxiway area, or apron expansion, or construct new structures such as terminal building or hangar, or construct new drainage structures to support the removal of water from the airport. This work item would also include the installation of new navigational aids that weren't previously at an airport such as a precision approach path indicator, runway edge lighting, omnidirectional approach light system, weather observation system, or similar item.

(E) Planning/Design: this type of work includes the engineer design and associated support work with any of the eligible project types. This could also include planning projects such as master plans, airport layout plans, specialty planning studies, and obstruction/approach surveys.

(F) Off-airport: this type of work is typically for the support of on-airport operations. This work item could include items such as obstruction removal, land acquisition, drainage improvements, relocation of roads and utilities, installation of navigational aids, or similar projects.

(2) The following are three basic tests that must be met to determine if a project is justified for inclusion in the Airport Construction Program:

(A) The project advances OAC policy laid out in 3 O.S. § 85 and the adopted Oklahoma Airport System Plan. The basic goals and objectives in these policies include airport safety, security, and capacity, meeting FAA or OAC standards, preserving and improving airport infrastructure that is for the use and benefit of the public, airport planning, and other similar projects.

(B) OAC must determine if there is an actual need for the project at the airport within the five-year horizon.

(C) The project scope is appropriate. OAC must determine that all the elements of the project are necessary to obtain the project scope's overall goal. Any elements that do not meet this criteria must stand on their own separate merit and justification.

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(3) For hangar construction projects, special selection criteria and requirements will be implemented to include the following:

(A) Preference will be given to hangar projects which will support new businesses, expansion/enhancement of existing on-airport businesses, and new aircraft being brought to the state. Preference will also be given to hangar projects which help an airport sponsor increase their based aircraft for potential inclusion into the NPIAS or to attain classified status within the NPIAS.

(B) An airport sponsor must show a valid hangar waiting list for those potential occupants of the hangars to be constructed.

(C) Airport sponsors will need to provide a plan to charge fair market aeronautical rates for hangars that are constructed as a part of this program.

(4) For a project to be considered for inclusion in the Airport Construction Program, the airport sponsor must submit a letter of interest to the Commission detailing the basic scope and estimated cost of the project that they want to have included in the Airport Construction Program.

(d) **Airport Construction Program Development.**

(1) The Airport Construction Program lists projects for which expenditures are expected to begin within the five year programming horizon.

(2) On a two-year cycle, the Commission staff shall update the NPIAS needs database and the ADWS database (for Non-NPIAS airports). To update the Commission's database, sponsors will use FAA's Overall Development Objective (ODO) data sheet for each requested project.

(3) The Commission staff shall evaluate projects in the NPIAS and ADWS databases and recommend projects for inclusion in the Airport Construction Program based on:

(A) Airport system development priorities, policies, and procedures adopted by the Commission and/or the FAA.

(B) Multi-year on-going projects that are currently identified in the approved Airport Construction Program will be given higher priority during the development of the Airport Construction Program.

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

(D) The National Priority Rating System developed by FAA and included in FAA's Order ~~5100-395090.5~~ titled "~~Airports—Capital Improvement Plan~~ Formulation of the National Plan of Integrated Airport Systems (NPIAS) and the Airports Capital Improvement Plan (ACIP)".

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

(F) Other factors as may be relevant (for example, the services provided at the airport, the sponsor's

demonstrated ability to maintain and operate the airport, the sponsor's ability to address safety inspection deficiencies, etc.)

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

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

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

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

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

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

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

(b) **Notification to Proceed.**

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

(2) The notification letter shall:

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

(B) Authorize or direct the airport sponsor to:

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

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

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

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

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

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

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

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

- (1) The airport sponsor shall submit a complete grant or loan application for a capital project for:
 - (A) Reimbursement of the cost of planning and engineering; and/or
 - (B) Reimbursement for the cost of construction based on the bids received by the airport sponsor.
- (2) The airport sponsor's administrative official must sign the grant or loan application form(s). If the administration and/or operation of the airport is performed by a Trust, the Chairman of the Trust must also sign the grant or loan application.
- (3) The Commission shall consider all grant or loan applications in accordance with 25:15-1-3(c).
- (4) Reimbursement for the cost of engineering is contingent upon submission of the final set of plans and specifications to the Commission staff.
- (d) **Grant or Loan Application; Funding Information.**
 - (1) Each airport sponsor must state in its application that it has on hand funds to pay all estimated costs of the proposed project that are not borne by the Commission or any other state or federal agency. As part of this requirement, each airport sponsor is required to provide written verification in the grant or loan application (designated as Exhibit E) to the Commission that the airports sponsor's share of the project has been deposited in an account that will be used for defraying the costs of the project.
 - (2) If any of the funds for the project are to be furnished by another state or federal agency, the airport sponsor must provide evidence that the funds are available with the grant or loan application.
- (e) **Information Regarding State Level of Participation and Required Matches.**
 - (1) For state grants, the maximum level of participation for the Commission shall not exceed 95 percent. The airport sponsor is required to provide a minimum of 5 percent of the project funding for the airport sponsor matching share.
 - (2) For FAA grants for projects identified in the Commission's Airport Construction Program, the Commission may provide half of the match that is required from the airport sponsor.
 - (3) For FAA grants for projects identified in the Commission's Airport Construction Program, the Commission may provide supplemental state grant funding for project items. The maximum level of participation for the Commission in such supplemental funding shall not exceed 95 percent. The airport sponsor is required to provide a minimum of 5 percent of the supplemental project funding for the airport sponsor matching share.
 - (4) For non-primary entitlement (NPE) grants or special federal earmarks not identified in the Commission's Airport Construction Program, the Commission will not provide half the match that is required from the airport sponsor. If NPE grant funds are transferred from other airport sponsors to an airport sponsor for a project identified in the Commission's Airport Construction Program, the Commission may assist with half of any required match

from the receiving airport sponsor so long as it will save the Commission state funds.

(5) For terminal building projects, the Commission's maximum cost-share level shall be 50 percent and shall not exceed ~~\$500,000~~ \$1,000,000. The airport sponsor is required to provide a dollar-for-dollar airport sponsor matching share for every dollar the Commission provides. Remaining share to complete project could come from any available source.

(6) For hangar construction projects, the Commission may provide funding via grant or loan.

(A) For state grants the Commission's maximum cost-share level of participation shall ~~be not exceed 30~~ 40 percent and shall not exceed \$300,000. The airport sponsor is required to provide a minimum 5 percent for the airport sponsor matching share. Remaining share to complete project could come from any available source.

(B) For state loans the maximum cost-share level of participation shall ~~be not exceed 60~~ 70 percent and shall not exceed \$600,000. The airport sponsor is required to provide a minimum 5 percent for the airport sponsor matching share. Remaining share to complete project could come from any available source.

(7) For fuel system construction projects, the Commission's maximum cost-share level shall be 50 percent and shall not exceed \$300,000. The airport sponsor is required to provide a minimum of 5 percent for the airport sponsor matching share. Remaining share to complete project could come from any available source.

(8) For funding directed to the Commission as a part of the Preserving Rural Economic Prosperity (PREP) program or other similar state program created by the legislature for specifically identified site locations and infrastructure projects of a non-competitive nature within the Oklahoma Airport System the Commission may provide funds at a 100 percent level.

(f) **Grant Application; Project Information.** The airport sponsor will provide the following information:

(1) The airport sponsor shall submit an Airport Layout Drawing or project sketch (designated as Exhibit A) indicating the location of the proposed construction work with all grant applications.

(2) The airport sponsor shall submit final project plans and specifications with the grant application (designated as Exhibit B).

(3) The airport sponsor shall submit a project narrative with the grant application describing the items of airport development for which the airport sponsor is requesting assistance (designated as Exhibit B-1).

(4) The airport sponsor shall submit a line-item project cost list with the grant application that provides a detailed cost breakdown of the project (designated as Exhibit B-2). This list will be based on the bid awarded by the airport sponsor. The amounts on this list are considered not to be exceeded amounts without prior approval. Any expenditure over these line-item amounts will not be considered

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for reimbursement unless approval has been received as described in 25:15-1-4(h).

(5) The airport sponsor shall submit the engineering contract for the project scope and the project engineering fees with the grant application (designated as Exhibit B-3).

(6) The Sponsor will submit a certification stating compliance with FAA standards unless an approved Modification to Standards for state standards has been received from the appropriate funding agency.

(7) The airport sponsor shall submit the contract for on-site construction observations (designated Exhibit B-4).

(8) The airport sponsor shall provide a signed statement in the grant application that the airport sponsor is not currently in default to any state agency for any obligation related to the development, operation or maintenance of the airport (designated as Exhibit C).

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

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

(g) **Hangar Loan Application; Project Information.** The airport sponsor will provide the following information:

(1) The airport sponsor shall submit an Airport Layout Drawing or project sketch (designated as Exhibit A) indicating the location of the proposed construction work with all loan applications.

(2) The airport sponsor shall submit final project plans and specifications with the loan application (designated as Exhibit B).

(3) The airport sponsor shall submit a project narrative with the loan application describing the items of airport development for which the airport sponsor is requesting assistance (designated as Exhibit B-1).

(4) The airport sponsor shall submit a line-item project cost list with the loan application that provides a detailed cost breakdown of the project (designated as Exhibit B-2). This list will be based on the bid awarded by the airport sponsor. The amounts on this list are considered not to be exceeded amounts without prior approval. Any expenditure over these line-item amounts will not be considered for reimbursement unless approval has been received as described in 25:15-1-4(h).

(5) The airport sponsor shall submit the engineering contract for the project scope and the project engineering fees with the loan application (designated as Exhibit B-3).

(6) The Sponsor will submit a certification stating compliance with FAA standards unless an approved Modification to Standards for state standards has been received from the appropriate funding agency.

(7) The airport sponsor shall submit the contract for on-site construction observations (designated Exhibit B-4).

(8) The airport sponsor shall provide a signed statement in the loan application that the airport sponsor is not currently in default to any state agency for any obligation related to the development, operation or maintenance of the airport (designated as Exhibit C).

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

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

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

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

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

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

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

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

(2) For change orders and/or supplemental agreements involving a total increase to the Commission's overall share for the project not to exceed Ten Thousand Dollars (\$10,000) the Director may approve such an amendment to the grant application. ~~Such Changechange~~ orders and/or supplemental agreements approved by the Director shall be presented to the Commission at its next regular or special business meeting stating the reasons for the change order and/or supplemental agreement with such information as the Commission may require.

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

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

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

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

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

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

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

(C) Any agreement, contract, lease or other arrangement that the airport sponsor enters into shall include provisions that such services meet the demands of all users of the airport, that services shall be provided on a non-discriminatory basis, that charges for goods and services shall be fair and reasonable,

that services allow any user of the airport to perform any and all services to their own aircraft, and that essential facilities will be operated in a manner that these facilities shall be available to all users of the airport. In addition, if the airport sponsor provides any or all of these services, the airport sponsor agrees to the same provisions.

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

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

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

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

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

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

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

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

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

(9) The Commission shall not pay or be obligated to pay for any work on the project that has been incurred

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prior to the grant or loan application being submitted to and awarded by the Commission except for planning and/or engineering costs incurred pursuant to submitting a completed grant or loan application. In addition, any funds approved by the Commission shall only be used for project costs identified in the grant or loan application unless approval has been obtained as described in 25:15-1-4(g).

(10) The airport sponsor understands that fuel systems funded by the Commission must be operated by the public airport sponsor and not a third party entity or contractor.

(k) **Grant or Loan Agreement; Terms and Conditions.** Upon the approval by the Commission, the completed grant or loan application shall constitute an agreement between the Commission and the airport sponsor. Both the Commission and the airport sponsor are bound to all the requirements of the grant or loan agreement. In addition, all grants or loans of the Commission shall be subject to the following terms and conditions:

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

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

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

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

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

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

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

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

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

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

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

(9) All airport development using grant or loan funds shall be consistent with the Airport Layout Plan approved by the FAA. A copy of the approved Airport Layout Plan, with any modifications, will be filed with the Commission.

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

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

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

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

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

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

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

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

(A) For federal participation grants, a copy of a FAA Invoice Summary Worksheet and a Cost Distribution Worksheet based upon the line items in the executed grant or loan.

(B) For non-federal participation grants, an Invoice Summary Worksheet based upon line items in the executed grant or loan.

(C) Copies of all vendor invoices.

(D) A construction quantities report from the primary contractor signed by the Engineer-of-record.

(E) All test invoices.

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

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

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

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

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

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

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

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

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

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

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

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

(A) Modify the grant or loan application to bring it into compliance with the terms of the notification letter; or

(B) State the reason that the airport sponsor believes it is in compliance and request that the grant or loan application be forwarded to the Commission for action; or

(C) Agree that it is not in compliance and request that the grant or loan application be forwarded to the Commission as is.

(D) Request the grant or loan application not be forwarded to the Commission.

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

[OAR Docket #23-467; filed 6-8-23]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 20. SPECIMENS**

[OAR Docket #23-395]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:20-1-3. Collection, transfer, and retention of blood specimens [AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S., § 759

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 7, 2022

COMMENT PERIOD:

January 3, 2022 through February 3, 2023

PUBLIC HEARING:

February 3, 2023

ADOPTION:

February 21, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 23, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rule amendment establishes clarity for the criminal and civil justice system by providing forensic oversight and proper applicability of evidential blood testing facts.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

40:20-1-3. Collection, transfer, and retention of blood specimens

(a) **Collection of blood.** Collection of specimens of blood from living human subjects under the provisions of Title 47 and Title 3 Section 303 and Title 63 Section 4210A, Oklahoma

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Statutes shall be performed as set forth in this Section. The person, from whom blood is collected for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof, is referred to as the "Tested Person" for the purposes of this Section.

(1) **Collection of blood specimens - general conditions.**

(A) Blood specimens shall be collected by persons authorized by Title 47, Section 752 of the Oklahoma Statutes, and these rules, to withdraw blood.

(B) The collection of blood from a person with hemophilia or from a person who is taking anticoagulant medications does not invalidate an otherwise valid test.

(C) The expiration date of a glass vacuum tube relates to the manufacturer's federal labeling requirements for medical devices. Blood specimens collected directly in or immediately deposited into 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate that are expired does not invalidate an otherwise valid test.

(2) **Procedures, techniques, and precautions.**

(A) Puncture site preparation and skin cleansing shall be performed without the use of alcohol.

(B) All blood specimens shall be collected directly in or immediately deposited into 10 milliliter (mL) glass vacuum tubes labeled by the manufacturer as containing 100 milligrams (mg) of sodium fluoride and 20 milligrams (mg) of potassium oxalate. Such containers are hereby approved for the collection of blood for analysis of the presence or concentration of alcohol, other intoxicating substances, or a combination thereof.

(C) Each tube containing a blood specimen shall be placed into a sealed container. A sealed container must be accompanied with a Blood Test Officers affidavit or contain at least the following information:

(i) Full name of the subject from whom the blood specimen was obtained

(ii) Date, time, and location where the blood specimen was obtained

(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.

(b) **Handling and disposition of state's blood specimen.** A blood specimen collected at the request of a law enforcement officer, hereafter termed "State's Blood Specimen," shall be handled and processed as set forth hereinafter.

(1) Each State's Blood Specimen in its sealed container and employing other shipping or transport enclosures as required, shall be promptly dispatched or forwarded by the law enforcement agency to a central or branch forensic

laboratory of the Oklahoma State Bureau of Investigation, or to another official Forensic Alcohol Laboratory or Forensic Drug Laboratory approved by the Board, as appropriate, accompanied by a request for determination of the presence and/or concentration of alcohol and/or other intoxicating substance in such blood specimen, as appropriate. The selection of the approved laboratory shall be made by the law enforcement agency employing the arresting officer.

(2) The law enforcement agency may dispatch or forward the State's Blood Specimen to the approved laboratory of its choice by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(3) The storage and dispatch or forwarding of the State's Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, maintain the chain of custody, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(c) **Collection, transfers, and retention of retained blood specimens.** Whenever a State's blood specimen is collected under the provisions of Title 47 or 3 O.S., Section 303 or 63 O.S., Section 4210A, Oklahoma Statutes, at the direction of a law enforcement officer and or for the purpose of determining the concentration of alcohol or other intoxicating substance thereof, an additional and separate blood specimen, whenever possible, shall be collected at the same time and by the same qualified person withdrawing the State's blood specimen. The resulting additional specimen is hereafter termed "Retained Blood Specimen." Such Retained Blood Specimens shall be collected, retained, transferred, and analyzed as set forth hereinafter.

(1) **Collection of Retained Blood Specimens.**

(A) Whenever possible, the additional blood specimen shall be withdrawn from the tested person without performing additional venipunctures, and shall be collected incident to and as a part of the entire blood collection process.

(B) The Retained Blood Specimen shall be collected in a manner identical to the State's Blood Specimen and as set forth heretofore in this Section.

(C) The tube containing the Retained Blood Specimen shall be placed into a sealed container. A sealed container must be accompanied with a Blood Test Officers affidavit or contain at least the following information:

(i) Full name of the subject from whom the blood specimen was obtained

(ii) Date, time, and location where the blood specimen was obtained

(iii) Name of the law enforcement agency (and unit thereof, if needed for further identification) responsible for obtaining and processing the blood specimen

(iv) Signature, printed name and title of the qualified person who withdrew the blood specimen.

(2) Transfer of Retained Blood Specimens to an approved retention laboratory.

(A) Each Retained Blood Specimen, in a sealed container and employing other shipping or transport enclosures as required, shall be promptly transferred by the law enforcement agency to a Retention Laboratory approved by the Board of Tests for Alcohol and Drug Influence and designated for that purpose by the Board.

(B) Each Retained Blood Specimen so transferred shall be accompanied by substantially the following information, clearly associated with a given specimen:

- (i) Name, location, address, and telephone number of the law enforcement agency (and unit thereof if needed for further identification) transferring the blood specimen
- (ii) Date of transfer of the blood specimen from the law enforcement agency to the Approved Retention Laboratory
- (iii) Full name of the subject from whom the blood specimen was obtained
- (iv) Date, time and location of blood specimen collection
- (v) Case or identification number assigned to the case or subject by the law enforcement agency
- (vi) Signature, printed name, and title of the authorized person initiating the transfer of the specimen from the law enforcement agency to the Approved Retention Laboratory.

(C) The law enforcement agency may transfer or forward the Retained Blood Specimen to the Approved Retention Laboratory designated by the Board by use of the U. S. Postal Service, personal delivery, or by any other appropriate means.

(D) The transfer or forwarding of the Retained Blood Specimen shall be accomplished in such manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(E) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the law enforcement agency, or during the transfer process, or thereafter.

(3) Retention and storage of Retained Blood Specimens.

(A) Each Retained Blood Specimen, in a sealed envelope or other sealed container or enclosure, shall be kept and stored by the Approved Retention Laboratory designated by the Board for sixty (60) days from the date of collection, unless transferred prior thereto to a Board-approved Forensic Alcohol Laboratory or Forensic Drug Laboratory as hereinafter provided. After the expiration of sixty (60) days from the date of such collection, all such Retained Blood Specimens,

other than those transferred to an approved Laboratory as hereinafter provided, may be promptly and safely destroyed by the Approved Retention Laboratory.

(B) Retained Blood Specimens shall be stored and kept in accordance with policies, practices, or procedures established by the Approved Retention Laboratory responsible for obtaining and storing these specimens and not inconsistent with the Rules of the Board of Tests for Alcohol and Drug Influence. Storage shall be carried out in such a manner and by such means as to maintain the identity and integrity of specimens, to exclude tampering with and unauthorized access to or exchange or loss of specimens, and to provide the requisite security for evidentiary purposes.

(C) Neither the tested person, nor any agent or attorney of such person, shall have access to the Retained Blood Specimen while it is in the custody of the Approved Retention Laboratory.

(4) Transfer of Retained Blood Specimens to a forensic alcohol laboratory or forensic drug laboratory.

(A) Upon written direction by the tested person or such person's agent to the Approved Retention Laboratory that has custody of the Retained Blood Specimen obtained from such person, received in accordance with such Approved Retention Laboratory's policies, practices and procedures and within sixty (60) days from the date of collection of the Retained Blood Specimen, the Approved Retention Laboratory shall promptly transfer the Retained Blood Specimen obtained from such person to any Forensic Alcohol Laboratory or Forensic Drug Laboratory, as appropriate, which is approved by the Board of Tests for Alcohol and Drug Influence and was selected by such person or such person's agent.

(B) The Approved Retention Laboratory may transfer the Retained Blood Specimen to the Forensic Alcohol Laboratory or Forensic Drug Laboratory by use of the U. S. Postal Service, personal delivery, or by any other appropriate means; provided, that neither the tested person nor any agent or attorney of such person shall have access to the Retained Blood Specimen during the transfer process, or thereafter.

[OAR Docket #23-395; filed 6-5-23]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 25. DEVICES, EQUIPMENT, AND REFERENCE STANDARDS**

[OAR Docket #23-396]

RULEMAKING ACTION:
PERMANENT final adoption

Permanent Final Adoptions

RULES:

40:25-1-2. Approved evidential breath-alcohol measurement devices
[AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 7, 2022

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amended rule modifies language in the rules that could become the subject of adverse rulings from the Courts in Oklahoma when the Board adopts a new device for evidential breath alcohol testing in the state. The amended language creates a pathway for the state to adopt new devices without jeopardizing previously approved devices.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

40:25-1-2. Approved evidential breath-alcohol measurement devices

~~The Intoxilyzer 8000, an automated analyzer, is hereby approved for determining the presence or concentration of alcohol in subject's breath. Devices maintained by the Board or Board personnel pursuant to 47 O.S. §759 are hereby approved.~~

[OAR Docket #23-396; filed 6-5-23]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

[OAR Docket #23-397]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

40:30-1-3. Breath-alcohol analysis with Board approved devices
[AMENDED]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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GIST/ANALYSIS:

The amended rule modifies language in the rules that could become the subject of adverse rulings from the Courts in Oklahoma when the Board adopts a new device for evidential breath alcohol testing in the state. The amended language allows the state to adopt new devices and conduct maintenance on said devices.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

40:30-1-3. Breath-alcohol analysis with Board approved devices

(a) **Approved method.** Analysis of breath specimens for the determination of the alcohol content therein may be accomplished by any method, technique, or instrument approved by the Board in accordance with ~~OAC 40: 25-1-2~~ OAC 40:25-1-2.
(b) **Operating procedure(s).** Each such analysis shall include the following steps:

(1) Determination that the subject's mouth has no presence of any substantial loose material(s), foreign substance(s), or any such substance(s). Metal, porcelain, or hard plastic items need not be removed.

(2) Observation of the subject whose breath is to be tested sufficient to determine that, for a period of at least fifteen (15) minutes prior to the collection of the first breath specimen, and continuing through the second breath specimen, the subject shall not have ingested alcohol in any form or any other substance, vomited, or smoked. Such observation shall be carried out by the breath-alcohol analysis Operator or by any other qualified person.

(3) Analysis for alcohol of two (2) or more specimens of breath consisting substantially of expired alveolar air.

(4) A blank analysis preceding analysis of each breath specimen.

(5) Analysis of at least one control sample from a dry gas canister deployed by the agency in accordance with 40:25-1-3 to verify the calibration of the instrument at the time of the test. The results of each such control analysis must coincide with the corresponding vapor-alcohol concentration target value within plus or minus one-hundredths gram per two hundred and ten liters (± 0.01g/210L).

(6) The operator performing each such analysis shall properly complete a Breath-Alcohol Analysis Record and Report form prescribed and designated by the State Director of Tests for Alcohol and Drug Influence, and shall promptly forward one (1) copy thereof to the ~~Oklahoma Department of Public Safety~~ state driver licensing authority, and to other agencies and persons listed on the form.

(c) **Reporting results.** The results of each such breath-alcohol analysis shall be reported in terms of the concentration of alcohol in the subject's breath, in grams of alcohol per two hundred and ten liters of breath (g/210 L), truncated to two (2) decimal places. Results of duplicate breath alcohol analyses, on the same subject on the same occasion, which are within three-hundredths grams per two hundred and ten liters of breath (± 0.03g/210L) shall be deemed to be in acceptable agreement and mutually confirmatory and substantive. Results of analysis of all breath specimens shall be reported, but actions and interpretation of the results of such duplicate analyses shall be based upon the lowest such acceptable breath alcohol result obtained.

(d) **Maintenance.** Maintenance shall be performed ~~on the CMI Intoxilyzer 8000, equipped with an approved dry gas canister, on approved devices, equipped with an approved dry gas canister,~~ at such time as the regulator of the pressurized dry gas canister fails to provide a gas sample for analysis or by the manufacturers stated expiration date, whichever occurs first. Such maintenance shall be performed by Board personnel and maintenance documentation shall consist of a bench check or validation report, a certificate of calibration and operation, and a mock subject test.

[OAR Docket #23-397; filed 6-5-23]

**TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE
CHAPTER 50. IGNITION INTERLOCK DEVICES**

[OAR Docket #23-398]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Ignition Interlock Devices, Service Centers, Technicians [NEW]
- 40:50-1-1.1. Definitions [AMENDED]
- 40:50-1-1.2. Purpose [NEW]
- 40:50-1-2. Device certification process [AMENDED]
- 40:50-1-3. Standards and specifications [AMENDED]

- 40:50-1-3.1. Violation reset [AMENDED]
- 40:50-1-3.2. Reporting requirements [AMENDED]
- 40:50-1-3.3. Lockout override [NEW]
- 40:50-1-7. Service center licensing process [AMENDED]
- Subchapter 3. Impaired Driving Accountability Program (BOT IDAP) [NEW]
- 40:50-3-1.1. Definitions [NEW]
- 40:50-3-1.2. Purpose [NEW]
- 40:50-3-2. Application - eligibility - enrollment [NEW]
- 40:50-3-3. Program length - program participation criteria - calculation of active days [NEW]
- 40:50-3-4. Medical exemptions - employer exceptions - affordability accommodations [NEW]
- 40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022 [NEW]
- 40:50-3-5.1. Program completion criteria for participants enrolled prior to November 1, 2022 [NEW]
- 40:50-3-6. Appeal process [NEW]

AUTHORITY:

Board of Tests for Alcohol and Drug Influence; 47 O.S. §759

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. Ignition Interlock Devices, Service Centers, Technicians [NEW]
- 40:50-1-1.1. Definitions [AMENDED]
- 40:50-1-1.2. Purpose [NEW]
- 40:50-1-2. Device certification process [AMENDED]
- 40:50-1-3. Standards and specifications [AMENDED]
- 40:50-1-3.1. Violation reset [AMENDED]
- 40:50-1-3.2. Reporting requirements [AMENDED]
- 40:50-1-3.3. Lockout override [NEW]
- Subchapter 3. Impaired Driving Accountability Program (IDAP) [NEW]
- 40:50-3-1.1. Definitions [NEW]
- 40:50-3-1.2. Purpose [NEW]
- 40:50-3-2. Application - Eligibility - Enrollment [NEW]
- 40:50-3-3. Program length - Program participation criteria - Calculation of active days [NEW]
- 40:50-3-4. Medical exemptions - Employer exceptions - Affordability accommodations [NEW]
- 40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022 [NEW]
- 40:50-3-5.1. Program completion criteria for participants enrolled prior to November 1, 2022 [NEW]
- 40:50-3-6. Appeal process [NEW]

Gubernatorial approval:

November 1, 2022

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Incorporated standards:

ISO 9001:2015

Incorporating rules:

40:50-1-2

Permanent Final Adoptions

Availability:

8:00 a.m. to 4:00 p.m., Monday through Friday at Board of Tests for Alcohol and Drug Influence, 3600 N.E. Martin Luther King Ave. Bldg#9 Oklahoma City, OK 73111, 405-425-2460.

GIST/ANALYSIS:

The adopted rules create the necessary program rules for the BOT Impaired Driving Accountability Program statutorily assigned to the Board pursuant to Legislative Session 2022 Senate Bill 366. The permanent rules add definitions, amend device certification requirements, add program enrollment requirements, add program length requirements, add program participation requirements, add program completion requirements, add or amend program violations, add affordability accommodations requirements, add medical exemption requirements, add employer exception requirements, and add the appeal process.

CONTACT PERSON:

Joshua Smith, State Director of Tests, Board of Tests for Alcohol and Drug Influence, P.O. Box 36307, Oklahoma City, OK 73136-2307, 405-425-2460, Joshua.Smith@bot.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. IGNITION INTERLOCK DEVICES, SERVICE CENTERS, TECHNICIANS

40:50-1-1.1. Definitions

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

"**Alcohol**" means Ethyl Alcohol, also called ethanol.

"**Anti circumvention feature**" means any feature or circuitry incorporated into the device that is designed to prevent activity that would cause the device not to operate as intended.

"**Board**" means the Administrative Offices of the Oklahoma Board of Tests for Alcohol and Drug Influence created by O.S. 47:759.

"**Board en banc**" means the sitting members of the Board as defined by O.S. 47:759 (A).

"**Breath alcohol test**" means the analysis of a person's expired alveolar breath to determine the alcohol concentration.

"**Calibration**" means the process of testing and adjusting a device to ensure accuracy.

"**Camera**" means a separate device to capture photos as required in this Chapter.

"**Circumvention**" means to bypass the correct operation of an interlock device by starting the vehicle, by any means, without first providing a breath alcohol test or ~~passing~~ ~~providing a negative result~~ confirmatory test.

"**Confirmatory test**" means a breath alcohol test required in response to a circumvention.

"**Certification**" means a status granted by the Board that permits a manufacturer to distribute a device in the state of Oklahoma.

"**Data storage system**" means a recording of all events monitored by the device.

"**Director**" means the position of the State Director of the Board as defined in O.A.C. 40:1-1-3.

"**Fee**" means a non-refundable administrative fee.

"**Free restart**" means a function of a device that will allow a vehicle to be restarted under the requirements in this title, without having to complete another breath alcohol test.

"**Ignition interlock device**" means a mechanism, which may include a camera, that prevents a vehicle from starting when the breath alcohol concentration of a breath alcohol test meets or exceeds the startup set point. Also referred to as "device".

"**Installation Authority**" means the Oklahoma agency or entity by statute or order requiring or authorizing installation of a device.

"**Ignition Interlock Maintenance and Calibration Fee**" means the fee collected from the participant, at the time of the performing calibration and maintenance as required by this title. This fee is to be remitted to the Board of Tests.

"**License**" means the permission granted by the Board to engage in specific activities of the ignition interlock program.

"**Manufacturer**" means the actual producer of the device.

"**Manufacturer representative**" means the individual designated by the manufacturer to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board with respect to device certification.

"**Monitor**" means the agency, organization and/or person(s) designated by the Installation Authority to receive reports regarding ignition interlock program participants.

"**Negative result**" means a breath alcohol test result indicating the alcohol concentration is less than the specific point value for the purpose specified.

"**Operable vehicle**" means a motor vehicle with ability to drive forward under its own power and steer and can be legally driven on public roadways.

~~"**Penalty Fail**" means a breath alcohol test resulting in a positive result that meets or exceeds the specific point value for the purpose specified.~~

"**Permanent lockout**" means a condition wherein the device will not allow a breath alcohol test and therefore will not allow the vehicle to be started.

"**Positive result**" means a breath alcohol test result indicating the alcohol concentration meets or exceeds the specific point value for the purpose specified.

"**Power violation**" means failure to provide power to an Ignition Interlock device installed in a vehicle for a period of seventy-two (72) hours or more.

"**Proper Record Maintenance**" means the manufacturer's complete records on every participant for a period of five (5) years from the date of removal including, but not limited to, all data retrieved from the data storage system of a device. The Board, or its designee, shall have access to any and all records.

"**Reciprocity**" means the process by which the Board may defer to a foreign state's device standards and specifications when an interlock participant is required to meet an interlock requirement for more than one state simultaneously.

"**Reference sample device**" means any alcohol breath testing external control or device approved for use by the Board.

"Retest" means a breath alcohol test or tests required in accordance with O.A.C. 40:50-1-3(e).

"Retest violation" means failure to deliver a negative breath alcohol test result within the time frame prescribed by these rules.

"Startup set point" means an alcohol concentration at which, or above, the device would prevent the vehicle from starting.

"Startup test" means a breath alcohol test provided before the vehicle is started.

"Tampering" means any act or attempt to adjust, obscure, alter, interfere, disable, defeat or circumvent the installation or operation of the device and/or camera.

"Technical non-compliance" means the failure of the device to comply with one or more provisions of this title with regard to device performance that does not affect the device's ability to respond appropriately to a negative breath test or a breath alcohol test required by 40:50-1-3-(c), (e), or (g), or the ability of the device to satisfy the requirements of 40:50-1-3(b)(1) or 40:50-1-3(f).

"Vendor" means a licensed ignition interlock technician designated by the Manufacturer representative of a certified device to act on behalf of or represent the manufacturer in all matters under the jurisdiction or consideration of the Board, excluding matters related to device certification.

40:50-1-1.2. Purpose

The rules in this chapter relate to the administration and regulation of ignition interlock devices, service centers, and technicians pursuant to the provisions of Title 47 O.S., Sections 751-761 and 47 O.S. §6-212.5.

40:50-1-2. Device certification process

(a) No device may be used in the state of Oklahoma unless it has been approved by the Board in accordance with the requirements stated herein.

(b) A list of approved device models shall be maintained by the Board and available for public review at the administrative office of the Board during regular business hours or by accessing the Board website at www.ok.gov/bot.

(c) A manufacturer representative seeking certification of a device shall:

(1) Complete an application for certification of an ignition interlock device and remit the appropriate fee in accordance with procedures established by the Board.

(2) Provide proof, as deemed appropriate by the Board, the device for which certification is being sought in Oklahoma meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications (78 FR 26849).

(3) Provide a current manufacturer's ISO 9001:2015 certification issued by an accredited registrar within the scope requirements provided by the Board.

(34) Provide a certificate of insurance, issued by an insurance company authorized to transact business in Oklahoma, specifying:

(A) A product liability policy with a current effective date;

(B) The name and model number of the device model covered by the policy;

(C) Policy coverage of at least one million dollars (\$1,000,000) per occurrence and three million (\$3,000,000) in the aggregate;

(D) The manufacturer as the insured and the state of Oklahoma as an additional insured;

(E) Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device; and

(F) The manufacturer will notify the Board immediately upon notice of cancellation of the product liability policy.

(45) Provide a schedule of all fees that may be charged to a participant. A participant shall not be imposed or required to pay any unscheduled fee(s). Such submission of schedule of fees shall be on an approved form provided by the Board. Any modification to the schedule of fees shall be submitted to the Board at least thirty (30) days prior to implementation.

(56) Devices shall use fuel cell technology for breath alcohol testing and a camera in accordance with the requirements in this Chapter.

(67) Agree to ensure any service performed on a device installed pursuant to an Oklahoma Installation Authority shall be in compliance with all requirements in this title.

(78) Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service, repair, use, removal, interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by this title at no cost on behalf of the State of Oklahoma or any political subdivision.

(89) Shall authorize the Board of Tests to release records viewable by the agency to law enforcement representatives for investigative purposes on Board letterhead.

(910) Advise the Board whether the device for which certification is being sought in Oklahoma is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Oklahoma and if or when such action is or has been appealed in the other state and the outcome of the appeal.

(4011) Upon request of the Board, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti-circumvention features activated in a vehicle provided by the Board. Any service performed pursuant to this section, including but not limited to, installation, maintenance, calibration or removal shall be completed at no cost to the Board.

(412) Agree to only distribute Board approved solicitations related to the rules in this Chapter. Such requests for approval shall be submitted with a form provided and approved by the Board prior to distribution.

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(13) Agree to strictly comply with the affordability provisions of these rules.

- (d) The Board may conduct compliance testing on the device submitted for certification, at any time.
- (e) Certification shall be for only one device model.
- (f) Approved devices shall be recognizable, as such, upon visual inspection.

40:50-1-3. Standards and specifications

(a) The provisions in this subsection only apply to the use of a device pursuant to an Installation Authority.

(b) The device shall:

(1) Permit a free restart of the motor vehicle within two (2) minutes after the engine has shut off without requiring a further breath alcohol test.

(2) Have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities and pictures for the period of time elapsed from one maintenance and calibration to the next. All daily driving activity records in this data storage system shall be maintained by the manufacturer or the licensed service center and shall be available to the Installation Authority, Monitor and/or the Board upon request.

(3) Display tamper seals and a warning label that states: "Any person attempting to physically disable, disconnect or wire around this device or who intentionally fails to return the device upon request by the owner may be guilty of a misdemeanor under Oklahoma law (47 O.S. §11-902a)." If the device consists of separate pieces (e.g. a handset and separate base unit) a separate warning label shall be placed on each piece.

(4) ~~Effective November 1, 2022, incorporate~~ Incorporate a camera on all BOT IDAP participant initial new installations that is not located in the handset and meets the following requirements:

(A) Each camera shall be mounted to the vehicle so that it does not obstruct the driver's view and provides a clear unobstructed view of the driver.

(B) Has a sufficiently wide angle that it will be possible to determine whether the individual blowing into the device is seated in the driver's seat.

(C) The technician shall take a reference image of the participant in the driver's seat during the installation appointment.

(D) The camera shall operate in all lighting conditions and take an image of the driver with sufficient clarity and resolution to allow driver identification.

(E) The camera shall capture an image on each of the following events:

- (i) An attempted or successful breath alcohol test.
- (ii) Each time the vehicle is started.
- (iii) A circumvention.
- (iv) A retest violation.

(c) The startup set point value for the device shall be an alcohol concentration of 0.025 g/210L.

(d) The ~~penalty fail point~~ positive result value for the device shall be an alcohol concentration of 0.025g/210L.

(e) A retest feature is required while a vehicle's engine is in operation.

(1) The first retest shall be required at a randomly variable interval ranging from five (5) to fifteen (15) minutes after passing the ~~initial breath~~ startup test and starting the vehicle's engine. Subsequent retests shall be required at a randomly variable interval ranging from fifteen (15) to forty-five (45) minutes from the previously requested test for the duration of the travel.

(2) The device shall allow five (5) minutes for the retest to be completed.

(3) The retest set point value shall be an alcohol concentration of 0.025 g/210L.

(4) ~~A distinct~~ An audible and/or visual indicator shall come on to alert the driver that a retest is in progress. Once a retest is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a retest violation in the data storage system, and

(C) Disable the free restart.

(f) The device shall have an approved anti circumvention feature(s) activated at all times.

(g) The device shall require a confirmatory test in response to a circumvention.

(1) The device shall allow two (2) minutes for the confirmatory test to be completed.

(2) The confirmatory test set point value shall be an alcohol concentration of 0.025 g/210L.

(3) An audible and/or visual indicator shall come on to alert the driver that a confirmatory test is in progress. Once a confirmatory test is in progress, failure to deliver a negative result within the time frame allowed shall:

(A) Activate an audible and/or visual indicator inside the passenger compartment of the vehicle, until the engine is shutdown.

(B) Record a circumvention violation in the data storage system, and

(C) Disable the free restart.

(4) Once the confirmatory test is passed, the device shall enter the normal retest sequence as provided by these rules.

(h) The device shall have ~~A~~ a breath sample collection volume limit at or above 1.2 Liters unless an alternative configuration has been approved by the Board.

(i) In addition to the standards and specifications listed herein, the Board or its designee may impose additional requirements, as needed, depending upon design and functional changes in device technology and to ensure that the device functions properly and reliably.

40:50-1-3.1. Violation reset

(a) A violation reset shall be activated by any of the following:

(1) Three (3) ~~penalty fail~~ positive result startup tests, at startup, within a fifteen (15) minute time frame.

- (2) A circumvention.
- (3) A retest violation.
- (4) A power violation, once power is restored to the device.

(b) When a violation reset is activated, the device will initiate a unique audible and/or visual cue that will warn the driver that the device will enter a permanent lockout in five (5) days. This event will be uniquely recorded in the data storage system and will simultaneously start a countdown that culminates in the permanent lockout. A licensed ignition interlock technician shall remedy a permanent lockout in person unless the manufacturer has been approved for temporary lockout override issuance pursuant to O.A.C 40:50-1-3.3. However, the Director may approve standards and procedures for an override lockout. For the purposes of this section, override lockout means a method of overriding a lockout condition by providing a breath sample indicating a negative result.

- (c) Anytime a device is submitted pursuant to a violation reset the licensed ignition interlock technician shall perform a violation reset service consisting of, but not limited to:
- (1) Performing maintenance and calibration in accordance with this title, and
 - (2) Retrieving all data contained in the data storage system. Proper record maintenance shall be ensured as required in this title.

40:50-1-3.2. Reporting requirements

- (a) Reportable violations are as follows:
- (1) ~~Three (3) penalty fails positive result startup tests, at startup, within a fifteen (15) minute time frame.~~
 - (2) A circumvention.
 - (3) ~~Three (3) A retest violations violation constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.~~
 - (4) ~~Removal of the device.~~
 - (5) ~~Tampering.~~
 - (6) ~~Permanent lockout.~~
- (b) If required by the Installation Authority and/or Monitor, Reportable reportable violations shall be reported to the Installation Authority and/or Monitor, in the form and/or format designated by the Board Installation Authority and/or Monitor, within five business days, banking holidays excepted, after a maintenance and calibration service, violation reset service or removal of the device.
- (c) The manufacturer shall ensure proper record maintenance.
- (d) The manufacturer shall report to the Board, in the form and format designated by the Board:
- (1) Device installations.
 - (2) Device removals.
 - (3) ~~Any reportable violations.~~ Any violation reset.
 - (4) Maintenance and calibration performed on an ignition interlock device as required by these rules.

40:50-1-3.3. Lockout override

The Director is authorized to approve standards and procedures for a lockout override. For the purposes of this chapter, lockout override means a method of overriding a lockout condition by providing a breath sample indicating a negative result.

40:50-1-7. Service center licensing process

- (a) All service centers located in the state of Oklahoma must be licensed by the Board in accordance with the requirements stated herein.
- (b) A service center shall be located in a fixed facility which:
- (1) Is staffed at all times with at least one (1) ignition interlock technician duly licensed by the Board or prominently displays the days and times at which the ignition interlock technician is on duty at the location and ignition interlock services are available, and
 - (2) Properly and successfully accommodates installation, maintenance and calibration, removal and any other necessary services related to a specific device.
- (c) Each service center shall be ~~subject to inspected annually inspection~~ by a designated representative of the Board. ~~Additional inspections may be performed~~ as needed or as directed by the Board.
- (d) A vendor shall inform the Board of a licensed service center change of address within fifteen days of the change by accessing the Board website.
- (e) A vendor seeking licensure for a service center shall initiate a service center license application and remit the appropriate fee by accessing the Board website.
- (f) The applicant shall complete the service center license application.
- (g) Each application for licensure shall be for a single service center. Separate service center applications are required for additional service centers.
- (h) Prior to issuance of a license, an on-site evaluation may be required by the Board to ensure compliance with the requirements in this title.
- (i) The licensed service center shall prominently display a fee schedule reflecting any and all fees related to ignition interlock services.

SUBCHAPTER 3. IMPAIRED DRIVING ACCOUNTABILITY PROGRAM (BOT IDAP)

40:50-3-1.1. Definitions

Ignition Interlock Device definitions found in O.A.C. 40:50-1-1.1. shall also apply to BOT IDAP inclusive of the additional definitions specific to the program listed below. The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Active ignition interlock day" means any twenty-four (24) hour period in which the device is installed in a Participant's Program Vehicle, is not in permanent lockout, and is provided the required operational power.

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"BOT IDAP" means the Impaired Driver Accountability Program established in 47 O.S. §6-212.5.

"BOT IDAP certificate of completion" means the Director approved certificate issued by the Board to an IDAP participant confirming the person has met the criteria required for program completion.

"Program fee" means the non-refundable statutory fee pursuant to 47 O.S. §6-212.5 plus any merchant or convenience fee for online or electronic transactions.

"Program participation" means a minimum of fifteen (15) breath alcohol tests each thirty (30) calendar day period from the date of installation completed by the participant.

"Program vehicle" means the vehicle in which an ignition interlock device is installed on behalf of a participant as reflected by the Installation Verification Form.

"Compliance download service" means a unique data retrieval service conducted by a licensed or approved technician at a licensed or approved service center that requires no maintenance and calibration services.

40:50-3-1.2. Purpose

The rules in this chapter relate to the administration of BOT IDAP pursuant to the provisions of Title 47 O.S., Sections 751-761, 47 O.S. §6-205.1, and 47 O.S. §6-212.5.

40:50-3-2. Application - eligibility - enrollment

(a) A person seeking enrollment into BOT IDAP shall apply on a form approved by the Director and shall simultaneously submit the Service Oklahoma Order of Revocation at the time of application. Applicants whose driving privileges are otherwise ineligible shall not be enrolled in BOT IDAP and shall be directed to consult his/her driver licensing authority for assistance. Enrollment into BOT IDAP does not grant driving privileges and shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive. Any person subject to driver license revocation for an arrest occurring on or after November 1, 2022 may enroll pursuant to this section, if eligible. BOT IDAP is available to Class D licenses only.

(b) Fully enrolling in BOT IDAP consists of:

- (1) Payment of the program fee to the Board; and
- (2) Presentation of an Ignition Interlock Installation Verification Form reflecting an Oklahoma approved device is currently installed on the vehicle the participant will operate; and
- (3) Presentation of the signed "BOT IDAP Participant's Agreement"; and
- (4) The Participant shall be responsible for reporting the required program length to the Board.

(c) The commencement date of the participant's program shall be the day all of the following conditions are satisfied:

- (1) The Board receives all documents and fees meeting BOT IDAP enrollment criteria.
- (2) No earlier than the effective revocation date pursuant to the Notice and Order of Revocation/Disqualification issued by the state driver licensing authority.

(d) Multiple program periods shall run consecutively.

(e) Participants may enroll in more than one (1) BOT IDAP. A participant must complete the program in which they are currently enrolled before commencing any subsequent program period. In no instance will a participant's credit for time in one (1) BOT IDAP be credited toward any other BOT IDAP.

(f) The BOT IDAP participant agreement shall be signed by the participant and shall include the following information:

- (1) The participant's first and last name; and
- (2) Participant's driver license number; and
- (3) Participant's program length requirement as reflected on the Service Oklahoma Order of Revocation/Disqualification; and
- (4) The list of Ignition Interlock violations and criteria for program completion or failure as defined by the Board; and
- (5) An explanation of the consequences of violations of the Ignition Interlock program; and
- (6) The date upon which the BOT IDAP Participant Agreement was signed; and
- (7) Participant's signature.

(g) A confirmation of enrollment form approved by the Director shall be delivered to the participant via his/her preferred contact method upon fully enrolling. It is the participant's responsibility to provide his/her preferred contact method.

40:50-3-3. Program length - program participation criteria - calculation of active days

(a) **BOT IDAP program lengths.** Program lengths shall be no less than the required revocation period as reflected on the Notice and Order of Revocation/Disqualification issued by the state driver licensing authority. The program length shall also be subject to OAC 40:50-3-5 completion requirements.

(b) **Program participation criteria.** BOT IDAP participants shall not receive credit toward his/her program length for any thirty (30) calendar day cycle the participant fails to meet the program participation criteria as defined in this subchapter. A compliance download service as defined in 40:50-3-1.1 may be needed to fulfill these criteria.

(c) **Calculation of active ignition interlock days.** All BOT IDAP participants shall meet a cumulative number of active ignition interlock days exceeding or equal to the program length required. A compliance download service as defined in 40:50-3-1.1 may be needed to establish satisfaction of these criteria.

(d) The Director shall prescribe internal program review policies and procedures for all authorized Board personnel reviewing completion criteria.

40:50-3-4. Medical exemptions - employer exceptions - affordability accommodations

(a) **Medical exemptions.**

- (1) only persons qualifying pursuant to 47 O.S. § 6-205 may seek exemption and does not grant the individual driving privileges. Such individuals seeking medical exemption shall:

- (A) submit a pulmonologist's certification indicating the person has a documented medical condition preventing the person from providing a breath sample of at least one and two-tenths (1.2) liters; and
- (B) enroll in BOT IDAP with the exception of an Installation Verification Form; and
- (C) not operate, drive, or be in actual physical control of a motor vehicle; and
- (D) complete the required program length.
- (2) Participants denied medical exemption may appeal the denial in accordance with 40:50-3-6.
- (b) **Employer vehicle exceptions.**
 - (1) only persons subject to a first license revocation pursuant to 47 O.S. § 6-205 are eligible for employer exceptions.
 - (A) BOT IDAP participants must have a device installed upon any vehicle they may operate that is owned or leased, as reflected on the vehicle registration, by an employer of the person for use by the person, except when the employer requests the ignition interlock device not be installed. Rental vehicles do not qualify for employer exception.
 - (B) Such request shall be in writing and notarized on the official letterhead of the employer with a copy of the vehicle registration and submitted by the employer to the Board; provided, a request shall not be accepted by the Board under the following circumstances:
 - (i) When the person is self-employed or owns part or all of the company or corporation, or exercises control over some part of the business which owns or leases the vehicle; or
 - (ii) When the person is employed by a relative who is within the first degree of consanguinity or who resides in the same household.
 - (2) Participants granted an employer exception are not relieved of the requirement to install an ignition interlock device on a vehicle as reflected on an Installation Verification Form. Such authorization for exception shall only apply to BOT IDAP participants operating employer vehicles under the course and scope of employment. IDAP participants shall keep the approved exception on his or her person while operating the employer vehicle. It is the Participant's responsibility to obtain an additional restriction from the state driver licensing authority.
 - (3) Participants denied an employer exception may appeal the denial in accordance with 40:50-3-6.
- (c) **Affordability accommodations.**
 - (1) Participants applying for affordability status for the purpose of the ignition interlock program shall be deemed to qualify for such status by showing valid proof that the person applying for accommodations is actively receiving benefits from one of the following state or federal public assistance programs listed below:
 - (A) Temporary Assistance for Needy Families (TANF)
 - (B) Supplemental Nutritional Assistance Program (SNAP)

- (2) Participants meeting affordability requirements shall receive the following credit that shall be distributed into the participants account by the manufacturer not to exceed a frequency of \$25.00 per thirty (30) days.
 - (A) \$150.00 maximum credit for a first license revocation pursuant to 47 O.S. § 6-205.1(A)(1); or
 - (B) \$300.00 maximum credit for a second license revocation pursuant to 47 O.S. § 6-205.1(A)(2); or
 - (C) \$450.00 maximum credit for a third or subsequent license revocation pursuant to 47 O.S. § 6-205.1(A)(3).
- (3) A participant that does not remain compliant with respect to the BOT IDAP program or device lease fees forgoes his/her affordability eligibility. The manufacturer may inquire with the Board whether the person still meets the affordability accommodations and qualifies for the credit.
- (4) The participant shall provide the required documentation to the Board. Upon approval, the Board shall notify the manufacturer by providing notice to the designated manufacturer representative. No manufacturer is required to provide affordability accommodations to more than 10% of its active participants in the State of Oklahoma.
- (5) The Board shall provide information on the agency website informing interlock customers about the affordability program and how a participant can qualify.
- (6) Manufacturers shall not count coupons, rebates, refunds, discounts, or other financial inducements otherwise available to any customer as the credit required by these rules.
- (7) Participants denied affordability accommodations may appeal the denial in accordance with 40:50-3-6.

40:50-3-5. Program completion, violations, and failure criteria for participants enrolled on or after November 1, 2022

- (a) A BOT IDAP Certificate of Completion shall be issued to participants meeting the following criteria:
 - (1) The participant has met the active ignition interlock day requirements pursuant to O.A.C. 40:50-3-3; and
 - (2) The participant has met the participation requirements pursuant to O.A.C. 40:50-3.3; and
 - (3) The last ninety (90) active ignition interlock days must be free of program and reportable violations found in 40:50-1-3.2 pursuant to 47 O.S. §6-212.5 A(4) for license revocations pursuant to 47 O.S. § 6-205.1. For purposes of retest violations, three (3) or more retest violations occurring during the last ninety (90) active ignition interlock days shall constitute a reportable violation.
- (b) Upon reaching the tentative completion date provided to the participant in the confirmation of enrollment form, a participant is eligible to submit a request for an IDAP Certificate of Completion. A denial of IDAP Certificate of Completion notice shall be issued to participants whose requests do not meet criteria as defined in 40:50-3-5. Such notice shall contain the finding that caused the denial and a notice of right to appeal and shall be delivered to the participant via his/her preferred

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contact method. It is the participant's responsibility to provide his/her preferred contact method.

(c) Miscellaneous Program violations: An additional arrest for DUI/APC prior to completion of the Participant's BOT IDAP, at the date of discovery by the Board, shall be treated as a violation and shall have the same weight as reportable violations found in 40:50-1-3.2 when evaluating the requirements for an IDAP Certificate of Completion.

(d) Program failure: Participants that are deemed to have failed the program or voluntarily discontinue participation in the program shall receive no credit for time served beginning from enrollment. Participants that fail the program or choose to discontinue participating in the program are authorized to re-enroll in BOT IDAP. The following actions will result in program failure:

- (1) removal of the device from the Program Vehicle and failure to reinstall a device in a substitute Program Vehicle within sixty (60) days; or
- (2) medical exemption participants reported or found to be operating a motor vehicle during his/her required program length.

40:50-3-5.1. Program completion criteria for participants enrolled prior to November 1, 2022

Persons enrolled in IDAP prior to November 1, 2022 must submit an application for ignition interlock history and must meet or exceed his/her tentative program completion date as reflected on the application. The applicant is responsible for providing the program completion date. The applicant shall receive the completed history application via their preferred method of contact. The applicant shall be responsible for presenting required documentation to the Board.

40:50-3-6. Appeal process

(a) An appeal may be submitted to the Ignition Interlock Program Administrator for the following actions:

- (1) denial for an IDAP completion certificate issued under the requirements in this subchapter; or
- (2) a program failure; or
- (3) a denial of eligibility for affordability accommodations; or
- (4) a denial for medical exemption; or
- (5) a denial for employer exceptions.

(b) Such request shall be:

- (1) accompanied with all supporting documentation; and
- (2) must be received at the administrative offices of the Board within thirty (30) calendar days after the date of denial is issued.

(c) Upon proper submission, the Ignition Interlock Program Administrator shall issue an administrative order sustaining or overruling the denial within thirty (30) calendar days.

(d) An appeal of the Ignition Interlock Program Administrator's order may be submitted to the Director.

- (1) A request for appeal regarding the Ignition Interlock Program Administrator's order must be received at

the administrative offices of the Board within thirty (30) calendar days after the date of order sustaining the denial.

(2) The Director shall issue a final administrative order sustaining or overruling the denial within thirty (30) calendar days.

(e) An appeal of a final administrative order of the Director may be made in accordance with the requirements in the Oklahoma Administrative Procedures Act, 75 O.S. 250, et seq.

[OAR Docket #23-398; filed 6-5-23]

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE CHAPTER 10. LICENSED PROFESSIONAL COUNSELORS

[OAR Docket #23-450]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
86:10-1-2. [AMENDED]
- Subchapter 7. Application Procedures
86:10-7-2. [AMENDED]
- Subchapter 11. Supervised Experience Requirement
86:10-11-4. [AMENDED]
86:10-11-5. [AMENDED]
- Subchapter 17. Continuing Education Requirements
86:10-17-2. [AMENDED]
86:10-17-4.1. [AMENDED]
86:10-17-6.1. [AMENDED]
- Subchapter 21. License and Specialty Renewal
86:10-21-5. [AMENDED]
- Subchapter 27. Consumer Information
86:10-27-5. [New]
- Subchapter 29. Enforcement
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State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq]

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GIST/ANALYSIS:

The following permanent rules interpret the Oklahoma Professional Counselor Licensure Act, (59 O.S. 1991, Sections 1901 et seq.)

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

86:10-1-2. Definitions

When used in this Chapter, the following words and/or terms shall have the following meaning unless the context clearly requires otherwise:

"Act" means the Licensed Professional Counselors Act, 59 O.S. §§ 1901 et seq., as amended.

"Administrative Procedures Act" ("APA") means Article I and/or Article II of the Administrative Procedures Act, 75 O.S. §§ 250 et seq.

"Applicant" means a person who has made a formal application with the Board.

"Approved LPC Supervisor" ("Supervisor") means an individual who meets the qualifications to become an approved supervisor and is approved by the Board pursuant to Section 86:10-11-4 of this Chapter.

"Board" means the State Board of Behavioral Health Licensure.

"Complainant" means any person who files a Request for Inquiry against a LPC, Candidate, or a person who delivers licensed professional counseling services without a license.

"Complaint Committee" means one Board member who is a LPC, the Executive Director, the Assistant Attorney General and may include other appropriate individuals as determined by the Committee.

"Dual relationship" means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LPC's or LPC Candidate's professional obligation to a client.

"Direct Client Contact Hours" means the performance of therapeutic or clinical functions that includes diagnosis, assessment and treatment of mental, emotional and behavioral disorders based primarily on verbal communications and intervention with, and in the presence of, one or more clients.

"Employee" means in accordance with 26 U.S.C. § 3121 (d):

- (A) Any officer of a corporation; or
(B) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.

"Face-to-face learning" means the delivery of graduate coursework or continuing education through instruction that is designed to deliver education to learners who are in the direct

physical presence of the educator or designed to deliver education to learners through synchronous instructional delivery methods.

"Face-to-face supervision" means the Supervisor and the Candidate shall be in the physical presence of the other during individual or group supervision.

"Forensic services" means the application of knowledge, training and experience from the mental health field to the establishment of facts and/or the establishment of evidence in a court of law or ordered by a court of law.

"Formal Complaint" means a written statement of alleged violation(s) of the Act and/or Rules which is filed by the Assistant Attorney General. The Formal Complaint schedules an Individual Proceeding before the Board in accordance with 75 O.S. §309.

"Full time" means at least twenty (20) hours of on-the-job experience per week.

"Group supervision" means an assemblage of two (2) to six (6) Candidates.

"Home-study" or "technology-assisted distance learning" means the delivery of graduate coursework or continuing education through mailed correspondence or other distance learning technologies, which focuses on using synchronous or asynchronous instructional delivery methods. Home study or technology assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.

"Licensed Professional Counselor" ("LPC") means a person holding a current license issued pursuant to the provision of the Professional Counselor Licensure Act.

"Licensed Professional Counselor Candidate" ("Candidate") means a person whose application for licensure has been accepted and who is under supervision for licensure as provided in 59 O.S. §1906.

"Licensure Committee" means two LPC Board members, the Executive Director, and may include other appropriate individuals as determined by the Committee.

"OAC" means the Oklahoma Administrative Code.

"On-site supervisor" means a person who may not be an approved LPC supervisor but is licensed by the state of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LPC Candidate whose assigned job duties include acting as the immediate supervisor to the LPC Candidate and who is available to the candidate at all times when counseling services are being rendered by the LPC Candidate.

"Request for Inquiry" ("RFI") means a written or oral statement of complaint from any person alleging possible violation(s) of the Act and/or Rules.

"Respondent" means the person against whom an Individual Proceeding is initiated.

"Staff" means the personnel of the Board.

"Technology-assisted supervision" refers to supervision that occurs through video teleconferencing, over secure internet connections, wherein a Supervisor and a Candidate are in separate physical locations.

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SUBCHAPTER 7. APPLICATION PROCEDURES

86:10-7-2. Application materials and forms

- (a) Each application shall include the following documents:
- (1) Application form,
 - (2) Official transcript(s),
 - (3) Internship/Practicum Documentation Form,
 - (4) Completed criminal background check, and
 - (5) Fees.
- (b) The Application Form requires the following:
- (1) Identifying information;
 - (2) Possession of other credentials;
 - (3) Previous misconduct;
 - (4) Education; and
 - (5) Proposed professional practice.
- (c) The Internship/Practicum Documentation form requires the following:
- (1) Identifying information; and
 - (2) Time, place, location of practicum.
- (d) The Supervision Agreement requires identifying information of supervisee and supervisor as follows:
- (1) Name of candidate;
 - (2) Name of candidate's place of employment;
 - (3) Location supervised experience hours are being accrued;
 - (4) Candidate's contact information;
 - (5) Signature of Candidate;
 - (6) Name of Approved LPC Supervisor;
 - (7) Name of Approved LPC Supervisor's place of employment;
 - (8) LPC Approved Supervisor's contact information;
 - (9) Signature of LPC Approved Supervisor;
 - (10) Name of On-Site Supervisor;
 - (11) On-Site Supervisor's licensure information;
 - (12) Name of On-Site Supervisor's place of employment;
 - (13) On-Site Supervisor's contact information;
 - (14) Signature of On-Site Supervisor.
- ~~(e) The Licensure Verification Request Form requires the following information:~~
- ~~(1) Name of licensee;~~
 - ~~(2) Licensee license number; and~~
 - ~~(3) Licensee license type.~~
- ~~(f) The Out-of-State Licensure Verification Form requires the following information:~~
- ~~(1) Identifying information;~~
 - ~~(2) Type of credential held in other state;~~
 - ~~(3) License number;~~
 - ~~(4) Issue and expiration date of license;~~
 - ~~(5) Current standing of license;~~
 - ~~(6) Past complaints or sanctions;~~
 - ~~(7) Exam information;~~
 - ~~(8) Supervision information;~~
 - ~~(9) Graduate education;~~
 - ~~(10) Internship documentation; and~~
 - ~~(11) Signature and identifying information of person verifying from out-of-state.~~

~~(g) The Mailing Addresses Request/Order Form requires the following information:~~

- ~~(1) Type of licensure list requested;~~
- ~~(2) Format requested; and~~
- ~~(3) Identifying information of person making request.~~

~~(h) The Licensure Reactivation Request Form requires the following information:~~

- ~~(1) Licensure type;~~
- ~~(2) Identifying information;~~
- ~~(3) Employment information;~~
- ~~(4) Graduate education;~~
- ~~(5) License type and number; and~~
- ~~(6) Dates of inactivation and reactivation of license.~~

~~(i) The LPC Continuing Education Approval Application Form requires the following information:~~

- ~~(1) name of workshop;~~
- ~~(2) program context;~~
- ~~(3) program knowledge area;~~
- ~~(4) name of presenter;~~
- ~~(5) presenter qualifications;~~
- ~~(6) date of presentation;~~
- ~~(7) number of hours requested;~~
- ~~(8) sponsoring agency;~~
- ~~(9) name of contact;~~
- ~~(10) phone number of contact;~~
- ~~(11) signature and signature date of contact;~~
- ~~(12) program content in relation to counseling ethics;~~
- ~~(13) program content in relation to counseling supervision;~~
- ~~(14) number of hours requested for counseling ethics; and~~
- ~~(15) number of hour requested for counseling supervision.~~

~~(j) The Continuing Education Rosters for LPC Approved Supervisors requires the following information:~~

- ~~(1) name of licensee;~~
- ~~(2) signature and signature date of licensee;~~
- ~~(3) total clock hours of workshop(s);~~
- ~~(4) name of counseling supervision workshop;~~
- ~~(5) sponsoring agency of workshop(s); and~~
- ~~(6) date of workshop(s), and number of hours of each workshop.~~

~~(k) The Termination of Supervision Agreement requires the following information:~~

- ~~(1) name of candidate;~~
- ~~(2) current place of employment of candidate;~~
- ~~(3) address of current place of employment of candidate;~~
- ~~(4) phone number of candidate;~~
- ~~(5) email address of candidate;~~
- ~~(6) signature and signature date of candidate, (if available);~~
- ~~(7) name of supervisor;~~
- ~~(8) license number of supervisor;~~
- ~~(9) current place of employment of supervisor;~~
- ~~(10) phone number of supervisor;~~
- ~~(11) email address of supervisor;~~

- (12) signature and signature date of supervisor, (if available); and
- (13) effective date of termination of supervision agreement.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENT

86:10-11-4. Supervisor qualifications

(a) ~~Supervisor qualifications include:~~ In order to be approved as a supervisor for counselors seeking LPC licensure, an individual must:

- (1) be an Approved Clinical Supervisor (ACS) by the National Board for Certified Counselors familiar with Oklahoma LPC Act and Rules duly promulgated, or
- (2) be a ~~a~~ Licensed Professional Counselor who has practiced in positions relevant to those the LPC proposes to supervise for two (2) years beyond the date of issue of the Oklahoma license.
 - (2) ~~As of January 1, 2000:~~
 - (A) an LPC who has successfully completed a graduate course in counselor supervision of at least forty-five (45) contact hours or equivalent course of study acceptable to the Board. This equivalent course of study shall consist of workshops in counseling supervision in combination with directed study of counseling supervision literature. Fifteen (15) of the forty-five (45) contact hours shall be in a class or workshop format which includes four (4) supervisors-in-training; the other thirty (30) contact hours shall be reserved for directed study, and
 - (B) an LPC who has passed the Oklahoma Legal and Ethical Responsibilities Examination.
- (3) An agreement to be "on call" to the supervisee on a twenty-four (24) hour basis and to arrange for an alternate supervisor if not available.
- (4) After receipt of the LPC supervision agreement, LPC supervisor may be approved by the Board.
- (5) Approved LPC Supervisors are required to complete a minimum of three (3) clock hours of continuing education in counseling supervision each renewal period.
- (6) Approved Supervisor designation will not be renewed until the continuing education requirement is met for each missed renewal period.
- (7) If continuing education requirement is not met within five (5) years of expiration, approved supervisor status will be permanently expired and the LPC must re-apply and meet all requirements in this Subchapter, including the re-taking of 86:10-11-4(2)(A) or (B) to become an approved supervisor.
- (8) An active approved supervisor may request inactive status by submitting a request in writing to the Board. An inactive approved supervisor shall not provide any activities described in Subchapter 11 of this Chapter.
- (9) An inactive approved supervisor may reactivate by submitting the required counseling supervision continuing education due by the end of the current renewal period.

(10) An active approved supervisor status may be retired by informing the Board in writing. A retired approved supervisor status shall not be reinstated but does not prevent a person from applying for approved supervisor status at a future date.

(11) No re-application for a revoked approved supervisor status, as a result of administrative proceeding, shall be considered for a period of five (5) years following the revocation.

(b) Effective October 1, 2015, a supervisor may not supervise more than a total of twelve (12) candidates for licensure at a time. A supervisor who wants to supervise more than twelve (12) candidates must petition the Board for approval for each person above the maximum number. The petitions will be determined on a case-by-case basis depending on the circumstances of the request.

86:10-11-5. Duration of supervision

- (a) Three (3) years or three-thousand (3000) clock hours of full time, on-the-job experience, which is supervised by an approved LPC supervisor, shall be completed.
- (b) For each one-thousand (1000) clock hours of full time, on-the-job experience, three hundred fifty (350) hours shall be direct client contact hours.
- (c) "Full time" means at least twenty (20) hours per week.
- (d) Weekly, face-to-face supervision shall be accrued under an LPC at the ratio of forty-five (45) minutes of supervision for every twenty (20) hours of on-the-job experience.
- (e) "Group supervision" means an assemblage of counseling supervisees consisting of from two (2) to six (6) members and no more than one-half ($\frac{1}{2}$) of the required supervision hours may be received in group supervision. ~~Technology assisted supervision shall not account for more than 56.25 hours of the total requirement. Technology assisted supervision shall not account for more than 56.25 hours of the total requirement.~~
- (f) One (1) or two (2) years of supervised experience may be gained at the rate of one (1) year for each thirty (30) graduate semester credit hours or forty-five (45) graduate quarter credit hours in counseling-related course work beyond the master's degree. (Minimal educational requirements are a master's degree [at least forty-five (45) hours] or doctorate with the first forty-five (45) hours meeting the minimal educational requirements. As of January 1, 2000, minimal educational requirements are a master's degree [at least sixty (60) semester credit hours or ninety (90) quarter credit hours] or a doctorate with the first sixty (60) semester credit hours or ninety (90) quarter credit hours meeting the minimal educational requirements.)
- (g) Regardless of the number of hours earned beyond the master's degree, the LPC supervisee shall receive at least one (1) year or one-thousand (1000) clock hours of supervision in the ratio described in subchapter 11, section 86:10-11-5(b-d).
- (h) If an applicant completes the supervised experience requirement ~~before passing the licensure examination~~, the applicant shall continue to practice under LPC supervision as described in this subchapter, unless exempted by the Act, until licensed. Failure to do so constitutes a violation of the Act and

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may be subject to prosecution under the District Attorney and sanction by the Board.

(i) Applicants shall complete supervised experience requirements within sixty (60) months of the date of the approval of the first supervision agreement or the application shall be voided.

(j) Approved supervisors shall perform at least two (2) observations (live or tape) per each six (6) month evaluation period for each supervisee.

(k) Approved supervisors shall consult with on-site supervisor at least once during each six (6) month evaluation period for each supervisee.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

86:10-17-2. Number of hours required

(a) Licensees shall complete and furnish documentation to the Board of twenty (20) clock hours of continuing education per year. One (1) graduate academic semester credit hour is equal to fifteen (15) clock hours. One (1) graduate academic quarter credit hour is equal to ten (10) clock hours. Current LPC License Committee members shall receive clock hours of acceptable continuing education for attendance and participation in Board or Committee meetings.

(b) A minimum of three (3) clock hours of continuing education hours must be in counseling ethics from programs pre-approved by the Board or its designee. Continuing education in counseling ethics is acceptable as meeting the pre-approval requirements by the Board when the continuing education program:

(1) Addresses ethics issues, as the sole focus and specifically pertains to the practice of counseling, as defined in Title 59 of the Oklahoma Statutes, Section 1902(6), counseling treatment interventions, consulting, referral activities, or research activities as defined in Title 59 of the Oklahoma Statutes, Section 1902.

(2) Addresses regulations as promulgated in Subchapter 3 of this Chapter.

(3) Meets all requirements of sections 2-5 of OAC 86:10-17-3.

(4) ~~As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling ethics continuing education must be accrued in a face to face setting.~~

~~(5)~~ Current LPC Board members shall receive clock hours of acceptable continuing education for attendance and participation in Board or Committee meetings.

(c) Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision from programs pre-approved by the Board of its designee. Continuing education in Counseling Supervision is acceptable as meeting the pre-approval requirements by the Board when the continuing education program:

(1) Addresses issues specifically related to the practice of clinical supervision, as the sole focus, pursuant to regulations promulgated in Subchapter 11 of this Chapter.

(2) Contains content in one or more of the following knowledge areas:

(A) Ethical and legal considerations in the practice of clinical supervision;

(B) Theoretical models of clinical supervision;

(C) Clinical supervision intervention methods and modalities;

(D) Research in clinical supervision; and

(3) Meets all requirements of sections 2-5 of OAC 86:10-17-3 of this Chapter.

~~(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling supervision continuing education must be accrued in a face to face setting.~~

86:10-17-4.1. Continuing education accrual from home-study or technology-assisted distance learning courses

Continuing education may be accrued when the LPC completes home-study or technology-assisted distance learning programs that are approved by the Board. ~~No more than ten (10) hours of continuing education may be accrued per renewal period through home study or technology-assisted distance learning courses.~~ Presenter or program author must meet all requirements of OAC 86:10-17-3 of this Chapter. Home-study or technology-assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.

86:10-17-6.1. Submission of continuing education roster

~~LPCs shall submit a Continuing Education Roster (not individual verification of attendance documents) on an official Board form with the license renewal fee. Rosters may be obtained from the Board. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop(s), date of workshop(s), and the number of hours of each workshop. Only continuing education accrued in the preceding license renewal period shall be acceptable.~~

SUBCHAPTER 21. LICENSE AND SPECIALTY RENEWAL

86:10-21-5. Requirements for renewal

Requirements for renewal include:

(1) Compliance with the Act and rules.

(2) Documentation of the required continuing education.

(3) Payment of the renewal fee(s).

~~(4) Submission of Continuing Education on the Continuing Educations Roster for Renewal of LPC licensure form.~~

SUBCHAPTER 27. CONSUMER INFORMATION

86:10-27-5. Request for promulgation, amendment or repeal of a rule

(a) Any person may request the Board adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:

- (1) the name, address and telephone number of the person making the request;
(2) the name, address and telephone number of the agency or organization the person represents, if any;
(3) the number used to identify the rule if the request is to amend or repeal an existing rule; and
(4) the proposed language if the request is to amend an existing rule or adopt a new rule.

(b) It is the Board's policy to respond to such requests within 30 calendar days.

SUBCHAPTER 29. ENFORCEMENT

86:10-29-5. Cooperation with investigations

LPCs and Candidates shall cooperate when Board staff, Complaint Committee members, and/or investigators make inquiries concerning a RFI made against them. Failure to cooperate is grounds for further disciplinary action under the Act and/or Rules. In addition, LPCs and Candidates named in the complaint shall not contact, attempt to contact, or allow anyone else to contact the person(s) who filed the complaint or the person(s) who the LPC and Candidate named in the complaint believes may have filed the complaint.

[OAR Docket #23-450; filed 6-7-23]

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE
CHAPTER 15. LICENSED MARITAL AND FAMILY THERAPISTS

[OAR Docket #23-451]

RULEMAKING ACTION: PERMANENT final adoption

- RULES:
Subchapter 1. General Provisions
86:15-1-2. [AMENDED]
86:15-1-3. [AMENDED]
Subchapter 5. Application for Licensure
86:15-5-3. [AMENDED]
86:15-5-4. [AMENDED]
Subchapter 9. Supervised Experience Requirements
86:15-9-4. [AMENDED]
Subchapter 13. Issuance and Maintenance of License
86:15-13-3. [AMENDED]
86:15-13-4. [AMENDED]
Subchapter 15. Enforcement
86:15-15-5. [AMENDED]

AUTHORITY: State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq]

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The following permanent rules interpret the Oklahoma Marital and Family Therapist Licensure Act, (59 O.S. 1991, Sections 1901 et seq.)

CONTACT PERSON:

Eric Ashmore, Executive Director, State Board of Behavioral Health Licensure, 3815 N. Santa Fe., Suite 110, Oklahoma City, OK 73118, (405) 522-3696, Eric.Ashmore@bbhl.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

86:15-1-2. Consumer information

(a) Directory. The Board shall provide a directory of Licensed Marital and Family Therapists (LMFTs). The directory of LMFT's shall include but not be limited to the name, academic degree under which the license is held, preferred mailing address, telephone number and license number.

(b) Brochure. The Board shall prepare information of consumer interest which describes the regulatory functions of the Board and Board procedures to handle and resolve consumer complaints.

(c) Request for promulgation, amendment or repeal of a rule.

(1) Any person may request the Board adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:

- (A) the name, address and telephone number of the person making the request;
(B) the name, address and telephone number of the agency or organization the person represents, if any;
(C) the number used to identify the rule if the request is to amend or repeal an existing rule; and

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(D) the proposed language if the request is to amend an existing rule or adopt a new rule.

(2) It is the Board's policy to respond to such requests within 30 calendar days.

86:15-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"**Act**" means the Marital and Family Therapist Licensure Act, 59 O.S. §§ 1925.1 et seq., as amended.

"**Approved LMFT supervisor**" ("**Supervisor**") means an individual who meets the qualifications to become an approved supervisor and is approved by the Board as set forth in Section 86:15-9-3 of this Chapter.

"**Board**" means the State Board of Behavioral Health Licensure.

"**Complainant**" means any person who files a Request for Inquiry against a LMFT, Candidate, or a person who delivers marital and/or family therapy without a license.

"**Complaint Committee**" means one Board member who is a LMFT, the Executive Director, the Assistant Attorney General and may include other appropriate individuals as determined by the Committee.

"**Direct Client Contact Hours**" means the performance of therapeutic or clinical functions that includes diagnosis, assessment and treatment of mental, emotional and behavioral disorders based primarily on verbal communications and intervention with, and in the presence of, one or more clients.

"**Employee**" means in accordance with 26 U.S.C. § 3121 (d),:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.

"**Extra therapeutic relationship**" means a familial, social, financial, business, professional, close personal, sexual or other non therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LMFT's or LMFT Candidate's professional obligation to a client.

"**Face-to-Face learning**" means the delivery of graduate coursework or continuing education through instruction that is designed to deliver education to learners who are in the direct physical presence of the educator or designed to deliver education to learners through synchronous instructional delivery methods.

"**Face-to-face supervision**" means the Supervisor and the Candidate shall be in the physical presence of the other during individual or group supervision.

"**Forensic services**" means the application of knowledge, training and experience from the mental health field to the establishment of facts and/or the establishment of evidence in a court of law or ordered by a court of law.

"**Formal Complaint**" means a written statement of alleged violation(s) of the Act and/or Rules which is filed by the Assistant Attorney General. The Formal Complaint schedules

an Individual Proceeding before the Board in accordance with 75 O.S. §309.

"**Full time**" means at least twenty (20) hours of on-the-job experience per week.

"**Group supervision**" means an assemblage of three (3) to six (6) Candidates.

"**Home-study**" or "**technology-assisted distance learning**" refers to means the delivery of graduate coursework or continuing education through mailed correspondence or other distance learning technologies, which focuses on ~~synchronous or asynchronous instructional delivery methods. Home study or technology assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.~~

"**Licensed marital and family therapist**" or "**LMFT**" or "**Licensee**" means a person holding a current license issued pursuant to the provisions of the Marital and Family Therapist Licensure Act;

"**Licensed marital and family therapist candidate**" ("**Candidate**") means a person whose application for licensure has been accepted and who is under supervision for licensure as provided in 59 O.S. §1925.6;

"**Licensure Committee**" means two LMFT Board members, the Executive Director, and may include other appropriate individuals as determined by the Committee.

"**OAC**" means the Oklahoma Administrative Code.

"**On-site supervisor**" means a person who may not be an approved LMFT supervisor but is licensed in the State of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LMFT Candidate whose assigned job duties include acting as the immediate supervisor to the LMFT Candidate and who is available to the candidate at all times when counseling services are being rendered by the LMFT Candidate.

"**Request for Inquiry**" ("**RFI**") means a written or oral statement of complaint from any person alleging possible violation(s) of the Act and/or Rules.

"**Respondent**" means the person against whom an Individual Proceeding is initiated.

"**Staff**" means the personnel of the Board.

"**Technology-assisted supervision**" refers to supervision that occurs through video teleconferencing, over secure internet connections, wherein a Supervisor and a Candidate are in separate physical locations.

SUBCHAPTER 5. APPLICATION FOR LICENSURE

86:15-5-3. Academic and experience requirements

(a) **Fulfillment of Section 1925.6, subsection B of the LMFT Act.** Persons applying for licensure must have fulfilled the requirements listed in Section 1925.6, Subsection B of the LMFT Act.

(b) **Academic requirements.** Applicants must possess at least a masters degree in marital and family therapy or in a

mental health, behavioral science, or counseling related field from a college or university accredited by one of the following six regional accrediting associations recognized by the U.S. Department of Education: The New England Association of Schools and Colleges, The Middle States Association of Colleges and Schools, The North Central Association of Colleges and Schools, The Northwestern Association of Schools and Colleges; The Western Association of Schools and Colleges, or The Southern Association of Colleges and Schools which is content-equivalent to a graduate degree in marital and family therapy. or;

(c) **Degree requirements.** Applicants must possess at least a masters degree in marital and family therapy or in a mental health, behavioral science, or counseling related field from a degree program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

(d) **Coursework requirements.** In order to qualify as a "content-equivalent" degree, a graduate transcript must document the minimum number of graduate hours and knowledge areas listed below. Academic courses (3 semester hours or 4 quarter credit hours) must include a minimum of 45 class hours for each course.

(1) Theoretical Foundations of Marital and Family Systems - any course which deals primarily in areas such as family life cycle; theories of family development; marriage and/or the family; sociology of the family; families under stress; the contemporary family; family in a social context; the cross-cultural family; youth/adult/aging and the family; family subsystems; individual, interpersonal relationships (marital, parental, sibling). (3 courses: 9 semester or 12 quarter hours.)

(2) Assessment and Treatment in Marital and Family Therapy -any course which deals primarily in areas such as family therapy methodology; family assessment; treatment and intervention methods; overview of major clinical theories of marital and family therapy such as: communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational. (3 courses: 9 semester or 12 quarter hours.)

(3) Human Development - any course which deals primarily in areas such as human development; personality theory; human sexuality, psychopathology; at least one of which must be in psychopathology or abnormal human behavior. (3 courses: 9 semester or 12 quarter hours.)

(4) Ethics and Professional Studies - any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ethics; family law. (1 course: 3 semester or 4 quarter hours.)

(5) Research - any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy. (1 course: 3 semester or 4 quarter hours.)

(6) ~~Practicum/Internship (at least 300 clock hours.)~~ at least one (1) course of an organized practicum or internship with at least three hundred (300) clock hours in marital and family therapy with planned experiences providing classroom and field experience with clients under the supervision of college or university approved marital and family therapy professionals.

(e) **International degrees.** For applicants with international degrees, the Board shall review the applications of applicants for licensure under this Chapter who have received a post-secondary degree from an educational institution outside the United States. The Board shall determine whether the applicant's experience, command of the English language, and completed academic program meet the standards of an academic program of an accredited educational institution.

(f) **Experience requirement.**

(1) Applicants must complete two (2) calendar years of work in marital and family therapy following the receipt of the qualifying degree.

(2) These two years must be completed under a supervisor approved by the Board.

(g) **Examination.** Applicants must achieve a passing score on the LMFT examinations.

86:15-5-4. Additional forms

~~(a) Licensure Verification Request Form—name of licensee; licensee license number; and licensee license type.~~

~~(b) Out-of-State License Verification Form - identifying information; type of credential held in other state; license number; issue and expiration date of license; current standing of license; past complaints or sanctions; exam information; supervision information; graduate education; internship documentation; signature and identifying information of person verifying from out-of-state.~~

~~(c) Mailing Addresses Request/Order Form—type of licensure list requested; format requested; identifying information of person making request.~~

~~(d) Licensure Reactivation Request Form—licensure type; identifying information; employment information; graduate education; license type and number; dates of inactivation and reactivation of license.~~

~~(e) LMFT Continuing Education Approval Application Form—name of workshop; program context; program knowledge area; name of presenter; presenter qualifications; date of presentation; number of hours requested; sponsoring agency; name of contact; phone number of contact; signature and signature date of contact; program content in relation to mental health ethics; program content in relation to therapy supervision; number of hours requested for mental health ethics; number of hour requested for therapy supervision.~~

~~(f) The Termination of Supervision Agreement requires the following information:~~

- ~~(1) name of candidate;~~
- ~~(2) current place of employment of candidate;~~
- ~~(3) address of current place of employment of candidate;~~
- ~~(4) phone number of candidate;~~
- ~~(5) email address of candidate;~~

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- (6) signature and signature date of candidate, (if available);
- (7) name of supervisor;
- (8) license number of supervisor;
- (9) current place of employment of supervisor;
- (10) phone number of supervisor;
- (11) email address of supervisor;
- (12) signature and signature date of supervisor, (if available); and
- (13) effective date of termination of supervision agreement.

SUBCHAPTER 9. SUPERVISED EXPERIENCE REQUIREMENTS

86:15-9-4. Duration of supervised experience

- (a) Work experience under supervision must extend over a minimum of 24 months. This marital and family therapy related experience must include a minimum of 1000 hours of direct client contact. The candidate must have a minimum of 250 relational hours with two or more members of the relational system present in the session.
- (b) Supervision sessions:
 - (1) should be scheduled weekly and shall be no less than 6.25 hours of supervision for each 42 hours of direct client contact. No more than 42 hours of direct client contact can be counted in a four week period of time, or
 - (2) may be arranged on a different schedule upon:
 - (A) written request of the supervisor and supervisee in advance, and
 - (B) approval of the schedule by the Board.
- (c) Total number of face-to-face supervision hours must be at least 150. Supervision in group sessions shall equal no more than 75 hours of the total requirement. ~~Technology assisted supervision shall not account for more than 75 hours of the total requirement.~~
- (d) Approved LMFT Supervisors shall meet with LMFT candidate(s) in person at least once every six month evaluation period when performing technology-assisted supervision.
- (e) Supervisors shall perform at least two (2) observations, (live or tape) per each six (6) month evaluation period for each supervisee.
- (f) Approved supervisors shall consult with on-site supervisor at least once per supervisee during each reporting period.

SUBCHAPTER 13. ISSUANCE AND MAINTENANCE OF LICENSE

86:15-13-3. License renewal

- (a) **Responsibility.** Each LMFT is responsible for renewing his/her license before the expiration date.
- (b) **Initial licensing period.** The renewal date of the original license shall be two (2) years from the last day of the month in which the license was originally issued.

(c) **Annual renewal.** Subsequent renewals will be yearly, on or before January 1. License fees will be prorated on a quarterly basis for the first renewal.

(d) **Interim renewal.** The notice for the initial renewal shall solicit the required continuing education documentation and invoice the LMFT for the interim period between the original renewal date and the following December 31 so that subsequent renewals shall be on a calendar year basis. The renewal notice shall inform the licensee of the number of continuing education hours required by December 31. Fees and continuing education hours shall be prorated according to the schedule below.

- (1) For a license expiring during January, February or March the following shall apply:
 - (A) The renewal fee shall be \$100.00; and
 - (B) Continuing education of 20 hours shall be due by December 31.
- (2) For a license expiring during April, May or June the following shall apply:
 - (A) The renewal fee shall be \$75.00; and
 - (B) Continuing education of 15 hours shall be due by December 31.
- (3) For a license expiring during July, August or September the following shall apply:
 - (A) The renewal fee shall be \$50.00; and
 - (B) Continuing education of 10 hours shall be due by December 31.
- (4) For a license expiring during October or November, the following shall apply:
 - (A) The renewal fee shall be \$25.00; and
 - (B) Continuing education of 5 hours shall be due by December 31.
- (5) Licenses expiring in December are not prorated.
- (e) **Requirements for renewal.** Requirements for renewal are:
 - (1) Compliance with the Act and Board rules.
 - (2) Documentation of the required continuing education. (See 86:15-13-4 for information regarding C.E.).
 - (3) Payment of the renewal fee(s).
 - ~~(4) Submission of Continuing Education Roster, on official Board form.~~
- (f) **Display of renewal certificate.**
 - (1) License renewal verification cards shall be displayed on the original (or replaced) license certificate.
 - (2) A current license verification card shall be readily available on the LMFT's person at any time marital and therapy services are being provided.

86:15-13-4. Continuing education

- (a) **Purpose.** The purpose of the requirements in this Section is to establish the continuing education requirements necessary for license renewal.
- (b) **Number of hours required.**
 - (1) Licensees shall complete and furnish documentation to the Board of twenty (20) clock hours of acceptable continuing education per year. One college credit hour is equal to fifteen (15) clock hours.

- (2) A minimum of three (3) clock hours of continuing education hours must be in mental health ethics from programs ~~pre-approved~~ approved by the Board or its designee. Continuing education in mental health ethics is acceptable as meeting the ~~pre-approval~~ approved requirements by the Board when the continuing education program:
- (A) Addresses ethics issues specifically pertaining to the practice of therapy, as defined in Section 1925.2(7) of this Act;
 - (B) Addresses regulations as promulgated in Subchapter 3 of this Chapter; and
 - (C) Meets all requirements of subsections (b) through (e) of OAC 86:15-13-4 of this Chapter.
 - ~~(D) Beginning renewal year 2009, the three clock hours of mental health ethics continuing education must be accrued in a face-to-face setting.~~
 - ~~(E) Current LMFT Board members shall receive clock hours of acceptable continuing education in mental health ethics for attendance and participation in Board or Committee meetings.~~
- (3) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours of continuing education in therapy supervision specific to Oklahoma law provided by the Board or its designee. Continuing education in Therapy Supervision is acceptable as meeting the ~~pre-approval~~ approved requirements by the Board when the continuing education program:
- (A) Addresses issues specifically related to the practice of therapy supervision pursuant to regulations promulgated in Subchapter 9 of this Chapter; and
 - (B) Contains content in one or more of the following knowledge areas:
 - (i) Overview of a supervision model;
 - (ii) Supervisors' areas of focus and roles in supervision;
 - (iii) Supervisors' process and practical application;
 - (iv) Ethical dilemmas involved in therapy supervision;
 - (v) Methods of effectively addressing and preventing ethical dilemmas in therapy supervision;
 - (vi) Overview of AAMFT standards of supervision; or
 - (vii) Overview of Oklahoma LMFT Rules and Regulations regarding therapy supervision; and
 - (C) Meets all requirements of subsections (b) through (e) of OAC 86:15-13-4 of this Chapter.
- (c) **Acceptable continuing education.** Continuing education is acceptable to the Board when it:
- (1) approximates the content of any of the academic areas listed under Subchapter 5 of this Chapter and;
 - (2) is presented by a person who meets one of the following qualifications:
 - (A) is licensed or certified by therapy related professions;
 - (B) is a licensed or certified member of a non-therapy field (i.e. medicine, law) if the content of the presentation is therapy related and falls within the presenter's area of training;
 - (C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in OAC 86:15-5-3 of this Chapter;
 - (D) the person is presenting or has presented at a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field;
 - (E) is presenting in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and
- (3) takes place in the context of one of the following:
- (A) a college course, in-service training, institute, seminar, workshop, conference or a Board pre-approved technology-assisted distance learning or home-study course;
 - (B) a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field;
 - (C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services; or
 - (D) Board or Committee meetings, for current Board members.
- (d) **Continuing education accrual from teaching.** Continuing education may also be accrued when the LMFT teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to OAC 86:15-13-4(c) of this subchapter, provided that such teaching is not required as part of the LMFT's regular employment. Two hours of C.E. is credited for each hour taught.
- (e) **Continuing education accrual from technology-assisted distance learning or home-study courses.** Continuing education may be accrued when the LMFT completes technology-assisted distance learning or home-study programs that are approved by the Board. ~~No more than ten (10) hours of continuing education may be accrued per renewal period through technology-assisted distance learning or home study courses.~~
- (f) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.

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(g) **Documentation of attendance.** LMFT's shall retain verification of attendance documents for all C.E. hours claimed for a period of two (2) years. Acceptable C.E. verification of attendance documents are:

- (1) an official continuing education validation form furnished by the presenter, or,
- (2) a letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials, or,
- (3) an official college transcript showing courses or audit credit, or
- (4) For teaching a letter on sponsoring agency's letterhead giving the name of the program, location, dates, subject taught and total number of hours taught.

(h) **Submission of continuing education roster.** ~~LMFT's shall submit a Continuing Education Roster, on official Board forms, (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop, date of workshop, and the number of hours of each workshop. Only C.E. accrued in the preceding license renewal period is acceptable.~~

(i) **Audit of continuing education submissions.** In November of each year, the Board will randomly select from two (2) to twenty-five (25) percent of the number of LMFT's on active status the previous year for an audit of their claimed Continuing Education credits. These selected LMFT's must then provide the Board with verification of all credits claimed on their Continuing Education Roster on or before the renewal deadline. The Board may, at its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

(j) **Penalty for failure to submit continuing education.** Failure to fulfill the C.E. requirement by the renewal date renders the license in suspension. All rights granted by the license are null and void until the requirement is fulfilled and a late renewal fee is paid. The LMFT has 12 months from the date of suspension to become reinstated. If not reinstated, the license shall be revoked.

(k) **Submission of fraudulent continuing education.** The submission of fraudulent C.E. hours will be reviewed by the License Committee for disciplinary action and may result in suspension or revocation of license.

(l) **Responsibility.** The licensee is ultimately responsible for providing or arranging for sponsors to provide the information necessary for the Board to make a determination of the suitability of the program for continuing education requirements.

(m) **Continuing Education Rosters for LMFT Approved Supervisors.** (1) Effective January 1, 2020, approved LMFT Supervisors are required to complete a minimum of three (3) clock hours of continuing education in therapy supervision each renewal period. Approved Supervisor designation will not be renewed until the continuing education requirement for each missed renewal period is met.

~~(2) Every year, LMFT Approved Supervisors are required to submit three (3) hours of continuing education in therapy supervision on the LMFT Approved Supervisor Continuing Education Roster.~~

~~(3) The LMFT Approved Supervisor Continuing Education Roster shall include name of licensee, signature and signature date of licensee, total clock hours of workshop(s), name of therapy supervision workshop, sponsoring agency of workshop(s), date of workshop(s), and number of hours of each workshop.~~

~~(4) If continuing education requirement is not met within five~~

~~(5) years of expiration, approved supervisor status will be permanently expired and the LMFT must apply and meet the requirements in Subchapter 9, including the retaking of 86:15-9-3(a)(2)(B) to become an approved supervisor.~~

SUBCHAPTER 15. ENFORCEMENT

86:15-15-5. Cooperation with investigations

LMFTs and Candidates shall cooperate when Board staff, Complaint Committee members, and/or investigators make inquiries concerning a RFI made against them. Failure to cooperate is grounds for further disciplinary action under the Act and/or Rules. In addition, LMFTs and Candidates named in the complaint shall not contact, attempt to contact, or allow anyone else to contact the person(s) who filed the complaint or the person(s) who the LMFT and Candidate named in the complaint believes may have filed the complaint.

[OAR Docket #23-451; filed 6-7-23]

TITLE 86. STATE BOARD OF BEHAVIORAL HEALTH LICENSURE CHAPTER 20. LICENSED BEHAVIORAL PRACTITIONERS

[OAR Docket #23-452]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 86:20-1-2. [AMENDED]
- Subchapter 3. Forms
- 86:20-3-2. [AMENDED]
- Subchapter 13. Supervised Experience Requirement
- 86:20-13-2. [AMENDED]
- Subchapter 19. Continuing Education Requirements
- 86:20-19-2. [AMENDED]
- Subchapter 27. Consumer Information
- 86:20-27-4. [NEW]
- Subchapter 29. Enforcement
- 86:20-29-5. [AMENDED]

AUTHORITY:

State Board of Behavioral Health Licensure; 59 O.S. 2011; 59 O.S. 2001, Section 1901 et. seq]

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The following permanent rules interpret the Oklahoma Behavioral Practitioner Licensing Act, (59 O.S. 1991, Sections 1901 et seq.)

CONTACT PERSON:

Eric Ashmore, Executive Director, State Board of Behavioral Health Licensure, 3815 N. Santa Fe., Suite 110, Oklahoma City, OK 73118, (405) 522-3696, Eric.Ashmore@bbhl.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

86:20-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Act" means the Behavioral Practitioner Act, 59 O.S. §§ 1930 et seq., as amended.

"Administrative Procedures Act" ("APA") means Article I and/or Article II of the Administrative Procedures Act, 75 O.S. §§ 250 et seq.

"Board" means the State Board of Behavioral Health Licensure.

"Complainant" means any person who files a Request for Inquiry against a LBP, Candidate, or a person who delivers behavioral health services without a license.

"Complaint Committee" means one Board member who is a LBP, the Executive Director, the Assistant Attorney General and may include other appropriate individuals as determined by the Committee.

"Direct Client Contact Hours" means the performance of therapeutic or clinical functions that includes diagnosis, assessment and treatment of mental, emotional and behavioral disorders based primarily on verbal communications and intervention with, and in the presence of, one or more clients.

"Dual relationship" means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LBP's professional obligation to a client.

"Employee" means in accordance with 26 U.S.C. § 3121 (d),:

- (A) Any officer of a corporation; or
- (B) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.

"Face-to-Face learning" means the delivery of graduate coursework or continuing education through instruction that is designed to deliver education to learners who are in the direct physical presence of the educator or designed to deliver education to learners through synchronous instructional delivery methods.

"Face-to-face supervision" means the supervisor and the supervisee shall be in the physical presence of the other during supervision.

"Formal Complaint" means a written statement of alleged violation(s) of the Act and/or Rules which is filed by the Assistant Attorney General. The Formal Complaint schedules an Individual Proceeding before the Board in accordance with 75 O.S. §309.

"Full time practice" means working at least 20 hours per week.

"Group supervision" means an assemblage of two (2) to six (6) Candidates.

"Home-study" or **"technology-assisted distance learning"** means the delivery of graduate coursework or continuing education through mailed correspondence or other distance learning technologies, which focuses on using ~~synchronous or asynchronous instructional delivery methods. Home study or technology-assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.~~

"Hearing" means the process followed by the Board to provide Due Process to a licensee respondent in an individual proceeding.

"Individual Proceeding" means the formal process by which the Board takes administrative action against a person licensed or certified by the Board in accordance with the APA and the Act.

"Licensed behavioral practitioner" or **"LBP"** or **"Licensee"** means any person who offers professional behavioral health services to any person and is licensed pursuant to the provisions of the Licensed Behavioral Practitioner Act. The term shall not include those professions exempted by Section 1932 of this title;

"Licensed behavioral practitioner candidate" or **"LBP Candidate"** or **"Candidate"** means a person whose application for licensure has been accepted and who is under supervision for licensure as provided in Section 1935 of this title;

"Licensure Committee" means two LBP Board members, the Executive Director, and may include other appropriate individuals as determined by the Committee.

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"OAC" means the Oklahoma Administrative Code.

"On-site supervisor" means a person who may not be an approved LBP supervisor but is licensed by the state of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LBP Candidate whose assigned job duties include acting as the immediate supervisor to the LBP Candidate and who is available to the candidate at all times when behavioral health services are being rendered by the LBP Candidate.

"Request for Inquiry" ("RFI") means a written or oral statement of complaint from any person alleging possible violation(s) of the Act and/or Rules.

"Respondent" means the person against whom an individual proceeding is initiated.

"Staff" means the personnel of the Board.

"Technology-assisted supervision" refers to supervision that occurs through video teleconferencing, over secure internet connections, wherein a Supervisor and a Candidate are in separate physical locations.

SUBCHAPTER 3. FORMS

86:20-3-2. Description of forms

(a) The Application Form requires the following:

- (1) Identifying information of applicant;
- (2) Possession of other credentials;
- (3) Previous misconduct;
- (4) Education;
- (5) References; and
- (6) Proposed professional Practice.

(b) The Internship/Practicum Documentation Form requires the following:

- (1) Identifying information of applicant;
- (2) Place, time, duration and nature of supervised experience;
- (3) School arranging supervision and name of supervisor; and,
- (4) Signature and title of supervisor.

(c) The Supervision Agreement requires identifying information of supervisee and supervisor as follows:

- (1) Name of candidate;
- (2) Name of candidate's place of employment;
- (3) Location supervised experience hours are being accrued;
- (4) Candidate's contact information;
- (5) Signature of Candidate;
- (6) Name of Approved LBP Supervisor;
- (7) Name of Approved LBP Supervisor's place of employment;
- (8) LBP Approved Supervisor's contact information;
- (9) Signature of LBP Approved Supervisor;
- (10) Name of On-Site Supervisor;
- (11) On-Site Supervisor's licensure information;
- (12) Name of On-Site Supervisor's place of employment;

(13) On-Site Supervisor's contact information;

(14) Signature of On-Site Supervisor.

(d) The Evaluation of Supervised Experience Form requires the following:

- (1) Names of supervisee and supervisor;
- (2) Name and location of supervision site;
- (3) Duration of work experience and supervision;
- (4) Types of professional activities and clients seen;
- (5) Rating of quality of professional activities;
- (6) Supervisor and supervisee comments; and
- (7) Signatures of supervisee and supervisor.

(e) ~~The Continuing Education Roster requires the following:~~

- ~~(1) Licensee's name and license number;~~
- ~~(2) Total number of hours accrued and Licensee's signature and signature date of licensee;~~
- ~~(3) Listing of workshops, sponsor, content and date of continuing education experience.~~

(f) ~~The Licensure Verification Request Form requires the following information:~~

- ~~(1) Name of licensee;~~
- ~~(2) Licensee license number; and~~
- ~~(3) Licensee license type.~~

(g) The Out-of-State Licensure Verification Form requires the following information:

- (1) Identifying information;
- (2) Type of credential held in other state;
- (3) License number;
- (4) Issue and expiration date of license;
- (5) Current standing of license;
- (6) Past complaints or sanctions;
- (7) Exam information;
- (8) Supervision information;
- (9) Graduate education;
- (10) Internship documentation;
- (11) Signature and identifying information of person verifying from out-of-state.

(h) ~~The Mailing Addresses Request/Order Form requires the following information:~~

- ~~(1) Type of licensure list requested;~~
- ~~(2) Format requested;~~
- ~~(3) Identifying information of person making request.~~

(i) ~~The Licensure Reactivation Request Form requires the following information:~~

- ~~(1) Licensure type;~~
- ~~(2) Identifying information;~~
- ~~(3) Employment information;~~
- ~~(4) Graduate education;~~
- ~~(5) License type and number;~~
- ~~(6) Dates of inactivation and reactivation of license.~~

(j) The Termination of Supervision Agreement requires the following information:

- (1) name of candidate;
- (2) current place of employment of candidate;
- (3) address of current place of employment of candidate;
- (4) phone number of candidate;
- (5) email address of candidate;

- (6) signature and signature date of candidate, (if available);
- (7) name of supervisor;
- (8) license number of supervisor;
- (9) current place of employment of supervisor;
- (10) phone number of supervisor;
- (11) email address of supervisor;
- (12) signature and signature date of supervisor, (if available); and
- (13) effective date of termination of supervision agreement.

SUBCHAPTER 13. SUPERVISED EXPERIENCE REQUIREMENT

86:20-13-2. Duration of supervision

- (a) Each applicant shall complete three (3) years or three-thousand (3000) clock hours of full time, on-the-job experience, which is supervised by an approved LBP supervisor.
- (b) For each one thousand (1000) clock hours of full time, on-the-job experience, three hundred fifty (350) hours shall be direct client contact.
- (c) Weekly, face-to-face supervision shall be accrued at the ratio of forty-five (45) minutes of supervision for every twenty (20) hours of on-the-job experience.
- (d) No more than one-half ($\frac{1}{2}$) of the required supervision hours may be received in group supervision. ~~Technology assisted supervision shall not account for more than 56.25 hours of the total requirement.~~
- (e) One (1) or two (2) years of supervised experience may be gained at the rate of one (1) year for each thirty (30) graduate hours in behavioral health services-related course work beyond the minimum number of required graduate semester hours.
 - (1) Regardless of the number of hours earned beyond the minimum number of required graduate semester hours, the LBP Candidate shall receive at least one (1) year or one thousand (1000) clock hours of supervision in the ratio described in this rule.
 - (2) If an LBP Candidate completes the supervised experience requirement before passing the licensure examination, the LBP Candidate shall continue to practice under LBP supervision as described in this subchapter, unless exempted by the Act, until licensed.
 - (3) LBP Candidates shall complete supervised experience requirements within sixty (60) months of the date of the approval of the first supervision agreement or the license application shall be voided.
- (f) Approved supervisors shall perform at least two (2) observations (live or tape) per each six (6) month evaluation period for each supervisee.
- (g) Approved supervisors shall consult with supervisor at least once during each six (6) month evaluation period for each supervisee.

SUBCHAPTER 19. CONTINUING EDUCATION REQUIREMENTS

86:20-19-2. Submission of continuing education roster

~~LBP's shall submit a Continuing Education Roster to the Board, on an official Board form, of ten (10) clock hours of continuing education per year by December 31 of each year. One (1) academic hour is equal to fifteen (15) clock hours. Rosters may be obtained from the Board. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop(s), date of workshop(s), and the number of hours of each workshop. Only continuing education accrued in the preceding license renewal period shall be acceptable.~~

SUBCHAPTER 27. CONSUMER INFORMATION

86:20-27-4. Request for promulgation, amendment or repeal of a rule

- (a) Any person may request the Board adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:
 - (1) the name, address and telephone number of the person making the request;
 - (2) the name, address and telephone number of the agency or organization the person represents, if any;
 - (3) the number used to identify the rule if the request is to amend or repeal an existing rule; and
 - (4) the proposed language if the request is to amend an existing rule or adopt a new rule.
- (b) It is the Board's policy to respond to such requests within 30 calendar days.

SUBCHAPTER 29. ENFORCEMENT

86:20-29-5. Cooperation with investigations.

LBP's and Candidates shall cooperate when Board staff, Complaint Committee members, and/or investigators make inquiries concerning a RFI made against them. Failure to cooperate is grounds for further disciplinary action under the Act and/or Rules. In addition, LBP's and Candidates named in the complaint shall not contact, attempt to contact, or allow anyone else to contact the person(s) who filed the complaint or the person(s) who the LBP and Candidate named in the complaint believes may have filed the complaint.

[OAR Docket #23-452; filed 6-7-23]

Permanent Final Adoptions

TITLE 90. COUNCIL OF BOND OVERSIGHT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-465]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

90:1-1-1 [AMENDED]

Subchapter 3. General Operations of the Council

90:1-3-1 [AMENDED]

90:1-3-5 [AMENDED]

90:1-3-7 [AMENDED]

Subchapter 5. Procedures for Adoption, Amendment and Repeal of Rules

90:1-5-1 [AMENDED]

Subchapter 9. Severability and Interpretation

90:1-9-2 [AMENDED]

AUTHORITY:

Oklahoma Bond Oversight and Reform Act. 62 O.S., Section 695.1 through Section 695.11; Council of Bond Oversight.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendments replace references to the State Bond Advisor with the amended statutory title of Deputy Treasurer for Debt Management and corrects the permanent office address and phone number. These amendments address changes incorporated into the Oklahoma Bond Oversight and Reform Act. 62 O.S., Section 695.1 through Section 695.11.

CONTACT PERSON:

Alexandra Edwards, Deputy Treasurer for Debt Management, (405) 522-3096, alexandra.edwards@treasurer.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

90:1-1-1. Purpose and scope

The Council of Bond Oversight was created to implement the Oklahoma Bond Oversight and Reform Act found

at 62 O.S., Section 695.1 et seq. The Council is responsible for providing systematic oversight of debt issuances by State Governmental Entities. The rules of this Chapter establish the operations of the Council in order to facilitate the business of the Council and ~~State Bond Advisor~~ Deputy Treasurer for Debt Management and of such entities.

SUBCHAPTER 3. GENERAL OPERATIONS OF THE COUNCIL

90:1-3-1. Official office

The ~~Office~~ offices of the Council of Bond Oversight and the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management are located at ~~9220 N. Kelley Avenue, Oklahoma City, Oklahoma 73134~~ 2300 N. Lincoln Blvd., Suite 217, Oklahoma City, Oklahoma 73105. The telephone number is ~~(405) 602-3100~~ (405) 521-3191 and telecopier number is ~~(405) 848-3344~~. The office hours are from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

90:1-3-5. Agenda items

The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management prepares an agenda on behalf of the Council for each meeting of the Council. The agenda is filed and posted in accordance with the Open Meeting Act, supra. Members of the public may request the Council to place matters on the agenda for a meeting. The Council may adopt such procedures from time to time as it deems necessary for the orderly and efficient conduct of meetings.

90:1-3-7. Open records

The records of the Council are subject to the Open Records Act. All requests for the public records of the Council will be made through the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management who will be charged with making the public records of the Council available for inspection by or copying to the requesting party during normal hours. The Council will charge \$0.25 per page for each copy of a public record made upon written request. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management will decide if the request is for a record not otherwise made confidential under Oklahoma Law. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management is authorized to discuss this decision with the Office of the Attorney General of the State of Oklahoma as may become necessary. Except information that is confidential or commercially sensitive as described in 90:1-3-6, or specifically kept confidential under Oklahoma or federal law, all documents or other records of the Council will be open for public inspection and copying.

SUBCHAPTER 5. PROCEDURES FOR ADOPTION, AMENDMENT AND REPEAL OF RULES

90:1-5-1. Procedures for adoption, amendment and repeal of rules

- (a) The Council may adopt, amend or repeal a rule on its own initiative, and may adopt, amend or repeal a rule at the request or recommendation of the ~~State Bond Advisor~~Deputy Treasurer for Debt Management.
- (b) The Council may on its own motion, conduct hearings on proposed new rules, amendments or repeal of rules.
- (c) Any interested person may petition the Council, requesting the adoption, amendment, or repeal of a rule. All such petitions shall be in writing, and be filed with the principal office. The petition shall include the name and address of the petitioning party and shall state clearly and concisely all matters pertaining to the requested action and the reasons for the request.
- (d) The time and location of hearings shall be stated in the notice as required under the Open Meeting Act and shall be conducted in accordance with the Administrative Procedures Act.
- (e) Any person who is interested or affected by proposed actions may appear at the hearing. An appearance may be made individually, by an attorney, or by an authorized agent.
- (f) Prior to the adoption, amendment or repeal of a rule, the Council shall afford any interested person a reasonable opportunity to submit data, views and arguments either oral or written. If the rule under consideration affects the substantive rights of any person, the Council shall grant any person or entity a reasonable opportunity to participate in an oral hearing if requested by the person or entity.

SUBCHAPTER 9. SEVERABILITY AND INTERPRETATION

90:1-9-2. Interpretation of Title

This Title and procedures are adopted to simplify procedure, avoid delays, save expenses and facilitate implementation of the Oklahoma Bond Oversight and Reform Act and the Oklahoma Private Activity Bond Allocation Act by the Council of Bond Oversight and the ~~State Bond Advisor~~Deputy Treasurer for Debt Management. To that end, this Title will be given a fair and impartial construction. This Title shall be cumulative to the Oklahoma Administrative Procedures Act [75 O.S., Section 250 et seq.].

[OAR Docket #23-465; filed 6-8-23]

**TITLE 90. COUNCIL OF BOND OVERSIGHT
CHAPTER 15. ADMINISTRATION OF THE
OKLAHOMA PRIVATE ACTIVITY BOND
ALLOCATION ACT**

[OAR Docket #23-466]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions

- 90:15-1-1 [AMENDED]
- 90:15-1-3 [AMENDED]
- 90:15-1-5 [AMENDED]
- Subchapter 3. General Operations of the ~~State Bond Advisor~~Deputy Treasurer for Debt Management
- 90:15-3-1 [AMENDED]
- 90:15-3-2 [AMENDED]
- Subchapter 7. State Ceiling Pools and Allocations to Pools
- 90:15-7-1 [AMENDED]
- Subchapter 9. Application and Logging Procedures
- Part 1. Application
- 90:15-9-1 [AMENDED]
- 90:15-9-2 [AMENDED]
- 90:15-9-3 [AMENDED]
- 90:15-9-4 [AMENDED]
- 90:15-9-5 [AMENDED]
- Part 3. Register Logging
- 90:15-9-7 [AMENDED]
- Subchapter 13. Carryforward Applications
- 90:15-13-1 [AMENDED]
- Subchapter 15. Mortgage Credit Certificate Programs
- 90:15-15-1 [AMENDED]

AUTHORITY:
Oklahoma Bond Oversight and Reform Act. 62 O.S., Section 695.1 through Section 695.11. Council of Bond Oversight.

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INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The amendments replace references to the State Bond Advisor with the amended statutory title of Deputy Treasurer for Debt Management and corrects the permanent office address and phone number. Additionally, the proposed rule amendments modernize the methods by which the Private Activity State Ceiling Allocation Application will be made available for use and received by the Deputy Treasurer for Debt Management. These amendments address changes incorporated into the Oklahoma Bond Oversight and Reform Act. 62 O.S., Section 695.1 through Section 695.11 and the Oklahoma Private Activity Bond Allocation Act. 62 O.S. Section 695.19 through Section 695.26.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

Permanent Final Adoptions

90:15-1-1. Purpose and scope

The ~~State Bond Advisor Deputy Treasurer for Debt Management~~ is responsible for implementing the Oklahoma Private Activity Bond Allocation Act found at 62 O.S., Section 695.21 et seq. The ~~State Bond Advisor Deputy Treasurer for Debt Management~~ is engaged by the ~~State Treasurer who is authorized to employ the necessary staff to carry out the duties related to debt management and the~~ Council of Bond Oversight. This Chapter is issued pursuant to the rulemaking authority of the Council of Bond Oversight. In order to provide guidelines to local and state bond issuers which are subject to the Act and wish to issue Private Activity bonds or Mortgage Credit Certificates subject to annual volume ceilings pursuant to federal law, this Chapter establishes pools and registers, including the Consolidated Pool and the Carryforward register, from which certain types of private activity bonds or mortgage credit certificates may be issued, allocation procedures, time frames, and information required on application forms provided by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~ for such entities in order to facilitate the business of the ~~State Bond Advisor Deputy Treasurer for Debt Management~~ and such entities.

90:15-1-3. Additional definitions

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

"Accepted allocation" means an allocation made and not rejected by the applicant within ten (10) days.

"Act" shall refer to the Oklahoma Private Activity Bond Allocation Act [62 O.S., Section 695.21 et seq. as amended].

"Allocation" means a portion of the state's volume ceiling. An issuer receives an allocation upon receipt of a written confirmation of an allocation by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~.

"Beneficiary" means the person, firm or other entity on whose behalf obligations are issued and used.

"Chronological order" for purposes of administering the Act, means the order in which applications are received, as evidenced by the date and time stamp recorded on each application by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~. All completed applications received prior to or at 8:00 a.m. on the first business day of each year shall all be recorded as having been received at the same time.

"Completed application" means a completed Private Activity State Ceiling Allocation Application, provided by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~, and all required attachments and supporting information, as determined by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~.

"Identical beneficial use" means obligations issued for the acquisition, construction or rehabilitation of the same facilities serving the same geographic area or population.

"Issuer's agents or representatives" means legal counsel, underwriters or financial advisors employed by an issuer to sell bonds or assist with filing or administering mortgage credit certificate programs.

"Open Records Act" means the Oklahoma Open Records Act, 51 O.S. Section 24A.1. et seq.

"Partial confirmation" means a confirmation in an amount less than a requested allocation.

"Permanent status on a register" means an application, as determined by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~, that is complete and meets the requirements, where appropriate, of 90:15-9-2 through 90:15-9-4.

"Pools", unless otherwise noted, refer to the various pools created by the Act.

"Project", unless otherwise noted, means a bond, the proceeds of which are used for discrete purposes and/or a single facility.

"Provisional status on a register" means the date and time of receipt of an application prior to a determination of completeness, or where appropriate, a determination of demand pursuant to 90:15-9-2 through 90:15-9-4.

"Register" means a record of entries made of applications according to the chronological order of applications. Confirmations shall be issued based on an application's chronological order on a register, provided only applications classified as permanent shall establish chronological order. Registers shall be established for each of the pools created by the Act, as well as carryforward applications. Registers will be used to track the status of applications from the time of application through the issuance of any confirmations, and receipt of final confirmations.

90:15-1-5. Interpretation of Chapter

This Chapter and procedures are adopted to simplify procedure, avoid delays, save expenses, and facilitate implementation of the Oklahoma Private Activity Bond Allocation Act by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~. To that end, this Chapter will be given a fair and impartial construction. This Chapter shall be cumulative to the Oklahoma Administrative Procedures Act. [75 O.S., Section 250 et seq.]

SUBCHAPTER 3. GENERAL OPERATIONS OF THE STATE BOND ADVISOR DEPUTY TREASURER FOR DEBT MANAGEMENT

90:15-3-1. Official office

The Office of the ~~State Treasurer State Bond Advisor~~ is located at ~~2300 N. Lincoln Blvd., Suite 217, Oklahoma City, Oklahoma 73105, 5900 N. Classen Court, Oklahoma City, Oklahoma 73118.~~ The telephone number is ~~(405) 521-3191, (405) 602-3100 and the facsimile number is (405) 848-3314.~~ The official office hours are from 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, except legal holidays.

90:15-3-2. Records

(a) **Open Records.** All requests for the public records of the Council will be made through the ~~State Bond Advisor Office of the State Treasurer which~~ will be charged with making the public records of the Council available for inspection by

or copying to the requesting party during normal hours. The Council will charge \$0.25 per page for each copy of a public record made upon written request, except as provided in (b) of this section. ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ will decide if the request is for a record not otherwise made ~~exempt confidential~~ under the Open Records Act and other Oklahoma Law. ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ is authorized to discuss this decision with the Office of the Attorney General of the State of Oklahoma as may become necessary. Except information that is confidential or commercially sensitive as described above, or specifically ~~exempt kept confidential~~ under Oklahoma or federal law, all documents or other records of the Council will be open for public inspection and copying.

(b) **Confirmation records.** ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ will keep continuous and cumulative records to track bond issuances and/or mortgage credit certificate elections that use a portion of the state's annual volume ceiling. ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ shall not award any new confirmations, if such confirmations would cause the state's volume ceiling to be exceeded. Records will include:

- (1) final certification of actual bond issuances and mortgage credit certificate elections subject to confirmations;
- (2) confirmations of allocations of the volume ceiling for bonds or mortgage credit certificates which have not been closed or elections filed (i.e. confirmations pending final certifications); and;
- (3) confirmations of carryforward assignments to issuers.

(c) **Fee for confirmation records.** State or local issuers may obtain a copy of these records upon written request and payment of a \$15 fee. Fees collected shall be deposited to the General Revenue Fund.

SUBCHAPTER 7. STATE CEILING POOLS AND ALLOCATIONS TO POOLS

90:15-7-1. General scope and applicability; calculation of deadlines and time periods

(a) For the period of January 1st to September 1st at 5:00 p.m. of each calendar year, the Act establishes various pools from which allocations can be made. The provisions of this Subchapter apply to this time period. Each pool represents a categorical set-aside of the state ceiling for one or more types of private activity bonds or mortgage credit certificates.

(b) ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ shall accept applications for allocation of private activity cap beginning at 8:00 a.m. on the first business day of each calendar year. All applications received on or before 8:00 a.m. on the first business day of each calendar year shall be logged as having been received at the same time. As a convenience to applicants, ~~the State Bond Advisor Deputy Treasurer for Debt Management~~ may review applications prior to 8:00 a.m. on the first business day of each year to ensure that such applications are complete. However, no such application will

be logged or recorded as having been received until 8:00 a.m. on the first business day of the applicable year.

(c) If any prescribed dates of this Chapter or the Act fall upon non-official business days, then the official business day that such action will take place will be the last official business day before a deadline and/or the first official business day following a new time period prescribed by this Chapter.

(d) If federal law fails to extend any of the tax-exempt programs related to the private activity bond cap allocation, the amounts that would be allocated to the respective pools may be used for other qualified private activity bonds on a first-come, first-served basis. All other provisions of this Chapter and the Act will be applicable.

SUBCHAPTER 9. APPLICATION AND LOGGING PROCEDURES

PART 1. APPLICATION

90:15-9-1. Application submission

(a) Unless otherwise noted, the provisions of this Subchapter are applicable to the various pools created by the Act. Each calendar year, a state or local issuer must make an application for a confirmation of the state ceiling on the Private Activity State Ceiling Allocation Application form provided by the State Bond Advisor available on the Council website, requiring the following:

- (1) The name and mailing address of the issuer, the beneficiary and jurisdiction thereof, the name of the presiding officer of the issuer and the respective pool from which an allocation is requested;
- (2) The name and mailing address or other definitive description of the location of the project or bonds and the purpose for which an allocation of the state ceiling is requested, the name and mailing address of both the initial owner or operator of the project, where applicable, and an appropriate person from whom information regarding the project or bonds can be obtained, and the name and address of the person to whom the confirmation should be sent;
- (3) The amount of the state ceiling which the issuer is requesting;
- (4) A statement of bond counsel for the issuer that the proposed issue requires, pursuant to Section 103, Section 146 or such other applicable sections of the Internal Revenue Code, an allocation of a portion of the state ceiling;
- (5) Where applicable, the intention to exchange single family mortgage bond authority for mortgage credit certificates [62 O.S., Section 695.25, as amended]; ~~and~~
- (6) For applications against the Student Loan Pool, documentation supporting demand, as described in 90:15-9-3; and
- (7) Single-family mortgage and mortgage credit certificate applications must provide documentation supporting demand as described in 90:15-9-2.

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(b) No applications are grandfathered from a prior calendar year. Except for supplemental, appeal, and carryforward applications, an applicant may submit only one application of the same beneficiary for the identical beneficial use. For example, a single applicant may submit only one qualified small issue application on behalf of an identified company, although other applications may be submitted for other companies. A single applicant may submit only one application for the same project, such as an identified exempt facility project, although other applications may be submitted for different exempt facility projects. Single family mortgage and mortgage credit certificate program applications from the same applicant or serving the same geographic area shall be considered identical for purposes of this section.

(1) Applications will be accepted by mail, ~~courier, fax, or hand delivery during official office hours. For issuers electing to file an application by facsimile, an original application must be filed by the end of the third business day following the facsimile transmission, or via email to the Deputy Treasurer for Debt Management.~~

(2) Applications will be date and time stamped at the time of receipt and provisionally placed on one or more pool registers pursuant to this Subchapter and the Act. ~~For applications submitted by facsimile, in the event that an original application has not been received by the end of the third business day following facsimile transmission, the State Bond Advisor may reject the issuance of allocation.~~—In the case of applications determined to be complete by the State Bond Advisor Deputy Treasurer for Debt Management, pursuant to (b)(4), (b)(5) and (b)(6) of this section, the provisionally logged time and date of receipt shall be recorded as the permanent date and time of receipt, provided the determination of complete and demand, where appropriate, are solely based on the content of applications and attachments first submitted by an applicant; i.e. contents of application provisionally logged. Two (2) or more applications received at the same time ~~by mail or otherwise~~, shall be date and time stamped identically. In the case of identically date and time stamped applications achieving permanent status, such applications will be logged identically on appropriate registers.

(3) One additional information submission is permitted as a basis for reversing an office determination that an application is incomplete. If such submission of additional information is sufficient to cause a determination of the application to be complete, the permanent chronological order will be determined according to the date of the additional information submission rather than the original application date.

(4) Hand delivered applications for all registers, including the Consolidated Pool and Carryforward register, will be provisionally date and time stamped when received. If a person hand delivers two or more applications at the same time the person may establish the chronological order of such applications for purposes of time and date stamping. Otherwise, multiple applications received at the

same time will be time stamped identically and allocations will be made in accordance with (b)(2) of this section.

(5) ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ may reject incomplete applications based on the adequacy of information submitted on the Private Activity State Ceiling Allocation Application form referenced in (a) of this section and required attachments:

(A) Attachment I for qualified small issue and exempt facility bond applicants is a resolution of the issuer that constitutes official action as defined by the Federal Tax Code. All other qualified private activity bond applicants must include a resolution of the issuer approving the issuance of the bonds.

(B) Attachment II requires a final resolution of the beneficiary of the issuer evidencing its approval of the issuance of the issuer's obligations not a TEFRA public hearing and certification if the issuer is a municipal or county public trust. If an issuer is a public trust having the state as its beneficiary then a TEFRA certification signed by the Governor of the state evidencing his/her approval of the issuance of the issuer's obligations is required.

(6) Notwithstanding other Subchapters and sections of this Chapter, the state ceiling allocation request amount logged on any pool register, including the Consolidated Pool and Carryforward register, shall not exceed the lesser of the requested allocation, the maximum allocation available to an applicant from a pool or register, including the Consolidated Pool and Carryforward register, or as limited by state or federal law.

90:15-9-2. Review of single family bond and mortgage credit certificate programs applications

(a) ~~The State Bond Advisor Deputy Treasurer for Debt Management~~ may reject single family mortgage bond or mortgage credit certificate program applications that fail to demonstrate a reasonable expectation to use a state ceiling confirmation for its intended purposes. The general criteria and standards for making this determination, as set forth in this section, shall be interpreted and applied to allow sufficient flexibility in the ultimate exercise of the ~~State Bond Advisor's Deputy Treasurer for Debt Management's~~ determination.

(b) A determination of demand for mortgage revenue bond or credit certificate programs shall be based on such factors as:

(1) the dollar volume of prior mortgage revenue bond supported mortgages originated in the geographic area subject to an application over the ~~twenty-four (24)~~24 month period preceding the date of application;

(2) the dollar volume of conventional mortgages originated where borrowers received a mortgage credit certificate as well as the dollar volume of mortgage credit certificates committed over the ~~twenty-four (24)~~24 period preceding the date of application in the geographic area subject to an application;

(3) the dollar volume of all single-family mortgages originated in the geographic area subject to an application;

- (4) the number of renters in an applicant's service area likely to financially qualify for single-family home ownership under the terms of the mortgage revenue bond and credit certificate programs;
- (5) the impact of competing, subsidized home ownership programs on demand such as programs of the Farmers Home Administration or outstanding mortgage revenue bond or credit certificate programs in the geographic area subject to an application; and
- (6) evidence of lender participation in a proposed single family mortgage revenue bond or mortgage credit certificate program.

(c) After taking into consideration some or all of these factors and the availability of prior allocations for the applicant's purposes, the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall determine if there is a reasonable expectation to use a confirmation of the volume ceiling for its intended purpose during the period in which loans or mortgage credit certificates may be issued pursuant to an application or federal law.

90:15-9-3. Review of student loan bond applications

(a) The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may reject a student loan bond application that fails to show a reasonable expectation to use a confirmation of the state ceiling for its intended purpose. The general criteria and standards for making this determination, as set forth in this section, shall be interpreted and applied to allow sufficient flexibility in the ultimate exercise of the ~~State Bond Advisor's~~ Deputy Treasurer for Debt Management's determination. In making this determination the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall consider:

- (1) historical student loan bond lending activity over the ~~twenty-four (24)~~ 24 months preceding the date of application by the applicant and/or other student loan bond issuers in the applicant's service area;
- (2) incremental demand caused by increased student enrollment, tuition or eligibility changes made to federally guaranteed and subsidized student loan programs; and other evidence of demand; and
- (3) demonstration of administrative arrangements for originating loans to students.

90:15-9-4. Rejection of applications following insufficient demand determination; appeals

(a) The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall have five (5) days in which to send a denial following a determination of insufficient demand for single-family mortgage revenue bond, mortgage credit certificate, or student loan bond applications. The notice will contain the reason(s) for such determination. Such applications shall be removed from the appropriate pool(s) for purposes of establishing chronological order.

(b) The ~~Bond Advisor~~ Deputy Treasurer for Debt Management shall determine the extent to which demand is demonstrated for single family mortgage bonds, mortgage credit

certificate programs and student loan bonds, which amount may be less than a requested confirmation. In such cases, a confirmation notice will be sent to the applicant for the demand amount so determined and a denial notice for the difference of the request. The portion of the request that is denied may be appealed by making an additional information submission or an appeal application.

(c) An applicant may appeal such denials by submitting a new application to the Council of Bond Oversight, through the ~~State Bond Advisor's~~ State Treasurer's Office, along with an explanation justifying why the ~~State Bond Advisor's~~ Deputy Treasurer for Debt Management's denial should not be sustained. Such appeal applications will be stamped with the date and time of receipt and provisionally placed on the appropriate pool register(s). The appeal will be placed on the agenda for the next Council of Bond Oversight meeting in a manner consistent with the requirements for preparation of such agendas.

(d) By affirmative action of the Council of Bond Oversight, an application denied by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may be accepted and the Council may order the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management to issue a confirmation, subject to availability of state ceiling in the appropriate pool(s). For chronological ordering purposes, such appeal applications shall be converted to permanent status on pool(s) registers, including the Consolidated Pool and Carryforward register, at the time of Council of Bond Oversight approval based upon the date and time of receipt of the appeal application. Any allocations made from the date of an appeal application to the date of Council of Bond Oversight approval shall not be rescinded.

90:15-9-5. Applications accepted to permanent status; issuance of confirmations; Final Certification

(a) Upon a determination of receipt of a completed application by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management and demand, where appropriate, the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management will transfer applications on pool register(s) from provisional to permanent status. In the case of applications determined to be complete by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management, pursuant to 90:15-9-1(b)(5), the provisionally logged time and date of receipt shall be recorded as the permanent date and time of receipt, provided the determination of completeness and demand, where appropriate, are solely based on the content of applications and attachments first submitted by an applicant.

(b) Confirmations of the state ceiling shall be issued by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management based on the chronological order of applications classified as permanent on registers established for each pool including the Consolidated Pool and the Carryforward register. Within five ~~(5)~~ business days of classification of an application as permanent, the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall send an applicant a confirmation of a requested allocation of the state ceiling, provided the amount of state ceiling requested is available from a pool or register,

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or give notice of a denial of a confirmation and the reasons therefor.

(c) Applications determined to be incomplete shall not be logged for chronological ordering purposes until an application is considered complete. Within five (5) business days of a determination by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management that an application is incomplete, the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall give notice to an applicant of such a determination and the reasons therefore. If an applicant submits additional information addressing the causes of an incomplete application determination within five (5) business days following receipt of such information, the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall give notice to the applicant:

- (1) accepting the application as complete and transferring the application to permanent status, or
- (2) give notice of the continued rejection of an application and the reasons therefore.

(d) If there is not sufficient uncommitted state ceiling capacity in a pool to issue a confirmation in the full amount of a requested application, except as limited by 90:15-9-1(b)(6), the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall issue a partial confirmation to the extent uncommitted state ceiling capacity from a pool is available. In such cases, the difference between the amount of a partial confirmation and requested allocation of the state ceiling shall retain its chronological status on a pool register in the event additional state ceiling capacity on a register becomes available.

(e) An applicant to which a partial confirmation is issued, may reject such confirmation within ten (10) business days of issuance. Such rejections must be made in writing to the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management. A notification by an applicant rejecting a partial confirmation shall act to maintain an applicant's chronological status on a pool register(s) in the full amount of the state ceiling request, except as limited by 90:15-9-1(b)(6). Future confirmations to applicants that have rejected a partial confirmation within ten days will only be made only when confirmations in excess of one dollar (\$1.00) of the original allocation can be made. A confirmation, including a partial confirmation, may be rejected by an issuer after ten (10) days, however, the confirmation amount will be removed from the appropriate pool register(s). Confirmation will be issued pursuant to specific applications only. Confirmations cannot be transferred from one applicant to another and/or to a different project(s) or program.

(f) All confirmations issued by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management from pools, including the Consolidated Pool, shall be effective for the earlier of 120 days from the date of issuance of the confirmation by the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management, or until 9:00 a.m. on December 20th of each calendar year. Within this time period, issuers to whom confirmations have been issued shall file the Final Certification of Private Activity Bond Issuance or Mortgage Credit Certificate (MCC) Program Election form ~~provided by the State Bond Advisor~~ available on the Council website, with the ~~State Bond Advisor~~ Deputy Treasurer for Debt Management evidencing use of a confirmation through issuance of bonds or the filing of mortgage credit

certificate elections. The Final Certification shall require the following:

- (1) Name of government issuer;
 - (2) Project name;
 - (3) Type of qualified private activity bond or mortgage credit certificate election;
 - (4) Amount of state ceiling or carryforward used; and
 - (5) Date of bond issuance or mortgage credit certificate election filed or carryforward election filed.
- (g) If an issuer fails to file the Final Certification form within the required time period, the confirmation:
- (1) ceases to be effective;
 - (2) the amount of state ceiling allocated pursuant to the confirmation with respect to an application shall be removed from the appropriate pool register(s); and
 - (3) the confirmation amount shall be returned to the pools/registers from which it was derived for purposes of reallocation, except that state ceiling amounts recaptured in this manner after September 1st and prior to 9:00 a.m. on December 20th shall revolve to the Consolidated Pool and thereafter to the end of the calendar year to the Carryforward register.

PART 3. REGISTER LOGGING

90:15-9-7. Assignment of applications to pool registers

- (a) A register shall be established for each pool created by the Act.
- (b) Each applicant must indicate the pool or pools from which it is requesting an allocation and the application must include a statement from the applicant's bond counsel that the project or program is eligible for an allocation from the requested pool or pools.
- (c) The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management shall make no independent determination of an applicant's eligibility under federal or state law. The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management may consult with the Office of the Oklahoma Attorney General concerning an applicant's eligibility.
- (d) Each application for an allocation of the state ceiling shall be placed on appropriate register(s).
- (e) An application for an allocation from any pool may not exceed the amount available in that pool. However, where permitted by law, a project or program application may be recorded on more than one pool register.

SUBCHAPTER 13. CARRYFORWARD APPLICATIONS

90:15-13-1. General

The ~~State Bond Advisor~~ Deputy Treasurer for Debt Management will accept applications for eligible carryforward bonds or mortgage credit certificate programs in accordance with the dates designated in the Act. Except as provided in this Subchapter, applicable provisions of Part 1 of Subchapter

9 shall apply to carryforward applications. The amount of state ceiling available for purposes of issuing carryforward confirmations shall be the amount of uncommitted state ceiling as of the expiration of the Consolidated Pool as determined by the Act. A Carryforward register shall be maintained by the ~~State Bond Advisor Deputy Treasurer for Debt Management~~. Confirmations shall be issued based on the chronological order of permanent status applications. Issuers to whom a confirmation is made shall file, within ~~fifteen (15) 15~~ days of the date of a confirmation, with the ~~State Bond Advisor Deputy Treasurer for Debt Management~~, a copy of the applicable federal carryforward form filed by an issuer with the Internal Revenue Service along with a completed Final Certification of Private Activity Bond Issuance or Mortgage Credit Certificate (MCC) Program Election form as referred to at 90:15-9-5(e).

SUBCHAPTER 15. MORTGAGE CREDIT CERTIFICATE PROGRAMS

90:15-15-1. Recordkeeping

Issuers of mortgage credit certificates shall file with the ~~State Bond Advisor Deputy Treasurer for Debt Management~~ a record of all issuances of certificates. Such record shall indicate the amount of certificate authority used. Such issuers shall file a statement with the ~~State Bond Advisor Deputy Treasurer for Debt Management~~ on or after December 31st of each calendar year but no later than January 5th of the following calendar year, and such statement shall indicate the amount of mortgage credit certificate authority available pursuant to an allocation of the state ceiling from a current or prior calendar year and the uncommitted balance of mortgage credit certificate authority available from each such allocation. This Subchapter is applicable to mortgage credit certificate programs effective prior and subsequent to the effective date of this Chapter.

[OAR Docket #23-466; filed 6-8-23]

**TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 1. GENERAL COURSE AND METHOD OF OPERATION**

[OAR Docket #23-446]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Course and Method of Operation [REVOKED]
- 135:1-1-1.2. Official office [REVOKED]
- 135:1-1-8. Interagency Coordinating Council for Early Childhood Intervention [REVOKED]
- 135:1-1-10. Juvenile Justice and Delinquency Prevention Program [REVOKED]
- Subchapter 3. Additional Powers and Duties [REVOKED]
- 135:1-3-1. Powers and duties of the Commission [REVOKED]

AUTHORITY:

The Commission on Children and Youth; 10 O.S. Sec. 601.4(9).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules being revoked are obsolete and no longer functions of the Commission.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL COURSE AND METHOD OF OPERATION [REVOKED]

135:1-1-1.2. Official office [REVOKED]

~~The office of the Oklahoma Commission on Children and Youth is located at 500 North Broadway, Suite 300, Oklahoma City 73102. The telephone number is (405) 606-4900 and the facsimile number is (405) 524-0417. The office hours are from 8:00 a.m. to 5:00 p.m., central standard time, Monday through Friday, except legal holidays.~~

135:1-1-8. Interagency Coordinating Council for Early Childhood Intervention [REVOKED]

~~The Interagency Coordinating Council for Early Childhood Intervention was established through 70 O.S. § 13-121 et seq. to establish and monitor a policy to provide for early intervention services to infants and toddlers with disabilities and their families in accordance with federal law.~~

135:1-1-10. Juvenile Justice and Delinquency Prevention Program [REVOKED]

~~The Juvenile Justice and Delinquency Prevention Program was established by Executive Order 89-03 to administer funds received through the federal Office of Juvenile Justice~~

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and Delinquency Prevention with the advice and assistance of the State Advisory Group.

SUBCHAPTER 3. ADDITIONAL POWERS AND DUTIES [REVOKED]

135:1-3-1. Powers and duties of the Commission [REVOKED]

~~In addition to the responsibilities exercised through the offices described in Subchapter 1, the Commission shall have the powers and duties set out in 10 O.S. § 601.3 and 601.4, and the Commission shall:~~

- ~~(1) Prepare a list of three names of attorneys with a minimum of three (3) years experience and who are admitted to practice law in Oklahoma. This list will be submitted to the Oklahoma Public Welfare Commission and an attorney will be selected as Advocate General.~~
- ~~(2) Exercise all incidental powers as necessary and proper for the performance of the duties and responsibilities of the Commission.~~

[OAR Docket #23-446; filed 6-7-23]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH

CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #23-447]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 23. Interagency Child Abuse Prevention Task Force [REVOKED]

135:10-23-1. Creation [REVOKED]

135:10-23-2. Appointment of members [REVOKED]

135:10-23-3. Rescinding an appointment [REVOKED]

Subchapter 24. Certification of Children's Shelters Operated by the Oklahoma

Department of Human Services [REVOKED]

135:10-24-1. Origin and authority [REVOKED]

135:10-24-2. Duties and responsibilities [REVOKED]

135:10-24-3. Certification process [REVOKED]

AUTHORITY:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 2, 2023

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August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The rules being revoked are obsolete and no longer functions of the Commission.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 23. INTERAGENCY CHILD ABUSE PREVENTION TASK FORCE [REVOKED]

135:10-23-1. Creation [REVOKED]

~~The Interagency Child Abuse Prevention Task Force is established pursuant to 63 O.S. § 1-227.4.~~

135:10-23-2. Appointment of members [REVOKED]

~~The Commission shall appoint the members of the Interagency Child Abuse Prevention Task Force. Members shall be appointed for a two year term and until a successor is appointed. State agency representatives shall be nominated by the agency's director. Other entities listed at 63 O.S. § 1-227.4 shall submit to the Commission no more than three nominations with resumes. The Oklahoma State Department of Health shall submit to the Commission no more than three nominations with resumes for all other positions. The Commission may reject any and all nominations. If the Commission rejects the nominations submitted, then the nominating entity shall provide new nominations for the Commission's consideration. Members may be renominated and reappointed for unlimited successive terms.~~

135:10-23-3. Rescinding an appointment [REVOKED]

~~(a) The Commission may rescind an appointment at any time in its sole discretion and upon its own initiative.~~

~~(b) A nominating entity may submit a written request to the Commission to rescind the appointment of the person representing it on the Task Force. The written request shall include the reasons for the request. A committee appointed by the Chair of the Commission shall make inquiry into the request and make a recommendation to the full Commission within 90 days of receipt of the request.~~

SUBCHAPTER 24. CERTIFICATION OF CHILDREN'S SHELTERS OPERATED BY THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES [REVOKED]

135:10-24-1. Origin and authority [REVOKED]

(a) ~~The legislature established the Oklahoma Commission on Children and Youth responsibilities for developing a certification program for the children's shelters managed and operated by the Oklahoma Department of Human Services in 10 O.S. §601.3(4).~~

(b) ~~The Commission on Children and Youth shall have the authority:~~

- ~~(1) To establish a system of certification in accordance with the Oklahoma Child Care Facilities Licensing Act;~~
- ~~(2) To issue certifications based upon compliance with minimum requirements;~~
- ~~(3) To revoke certification based upon failure to meet minimum requirements.~~

135:10-24-2. Duties and responsibilities [REVOKED]

~~The Commission on Children and Youth shall designate OCCY staff to perform the following duties:~~

- ~~(1) Provide continuing technical assistance and consultation to the shelters to obtain and maintain compliance with minimum requirements;~~
- ~~(2) Take corrective action based upon non-compliance with minimum requirements;~~
- ~~(3) Monitor shelter programs to maintain compliance with minimum requirements;~~
- ~~(4) Issue certifications based upon compliance with minimum requirements;~~
- ~~(5) Facilitate and perform training for shelter administration and staff;~~
- ~~(6) Maintain official certification records.~~

135:10-24-3. Certification process [REVOKED]

(a) ~~**Definitions.**~~

- ~~(1) **Commission** means the Oklahoma Commission on Children and Youth.~~
- ~~(2) **Manager or Operator** means the representative of the Department of Human Services who has been given authority to act on behalf of the state-operated children's shelter.~~
- ~~(3) **State-operated children's shelter** means the Laura Dester Shelter, the Pauline E. Mayer Shelter, the Pauline E. Mayer Annex, or any other shelter operated by the Oklahoma Department of Human Services.~~

(b) ~~**Types of issuances.**~~

- ~~(1) **Six-month temporary certification.** State-operated children's shelters may be granted a six-month temporary certification if documentation does not show compliance with all critical certification requirements.~~
- ~~(2) **Certification.** State-operated children's shelters may be granted an operating certification that is valid for twelve months from the date of its issuance when certification staff determines that the shelter is operating~~

~~in a compliance with its own policy and procedures and in compliance with current Oklahoma Department of Human Services Licensing Requirements for Residential Child Care Facilities and any additional Commission requirements.~~

(e) ~~**Case Management.**~~

(1) ~~**Periodic visits.**~~

~~(A) Certification staff annually shall conduct one unannounced visit to each state-operated children's shelter to document compliance with all certification requirements and at least two announced visits to monitor compliance with certification requirements.~~

~~(B) During each unannounced compliance visit, certification staff shall:~~

- ~~(i) Observe the entire facility, including outdoor play space and vehicles used for transportation, if available, and~~
- ~~(ii) Check resident files and staff files, insurance verifications, and fire and health inspections within the preceding twelve months for compliance with certification requirements.~~

~~(C) During each announced monitoring visit, certification staff shall:~~

- ~~(i) Provide technical assistance to facility personnel to meet and maintain certification requirements;~~
- ~~(ii) Consult with facility personnel to meet and maintain certification requirements and improve the quality of care at the facility.~~

~~(2) **Forms.** The OCCY Certification staff shall use standardized certification forms available for public inspection and copy at www.okkids.org.~~

~~(3) **Reports.** The OCCY Certification staff annually shall issue two monitoring reports and one compliance report.~~

~~(4) **Oklahoma Department of Human Services, Office of Client Advocacy Reports (OCA).** The OCCY Certification staff shall review all referrals to OCA that concern the state-operated children's shelters and all investigation reports issued by the OCA to ensure compliance by the state-operated children's shelters with certification requirements.~~

(d) ~~**Non-compliance with requirements.**~~

~~(1) **Documentation of non-compliance.** The licensing staff shall document clearly and concisely on the monitoring reports and the compliance report areas of non-compliance and the discussion with the operator.~~

~~(A) A plan of correction, including an agreed-upon time period for correction of the non-compliance, shall be documented on the monitoring report for each area of non-compliance.~~

~~(B) Immediate correction shall be required when the non-compliance has a direct impact on the health, safety, or well-being of a child or children in care.~~

~~(C) The certification staff shall request that the operator sign the monitoring reports and the compliance report, explaining that the operator's signature indicates acknowledgment of information recorded.~~

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- (D) If the person in charge refuses to sign, the refusal shall be documented on the report.
- (E) The operator shall be given a copy of the completed report.
- (2) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, the certification staff shall request an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.
- (3) **Case management responses to non-compliant facilities.** The responses in this subsection may be used when there is repeated, numerous, or serious non-compliance with certification requirements.
- (A) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining certification requirements.
- (B) **Follow-up phone call.** Phone calls are documented on OCCU standardized forms.
- (C) **Non-compliance letter.** A non-compliance letter may be written to the operator. The certification staff shall send a copy of the report and the non-compliance letter to the operator's supervisor.
- (D) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with certification requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaff after school or a lack of early morning supervision, the return visit shall be made at that approximate time.
- (E) **Use of witnesses.** The certification staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious areas of non-compliance or if denial or revocation of the license is being considered. The witness may be an OCCY employee or representative from the health or fire department. The witness shall sign the monitoring report in the space provided.
- (F) **Increased monitoring visits.** Certification staff may increase the frequency of monitoring when there have been numerous, repeated or serious areas of non-compliance or when the need for additional technical assistance is indicated.
- (G) **Notice to comply.** The certification staff shall provide the facility with a notice to comply, and the facility shall document the plan of correction. Immediate correction may be required if the area of non-compliance places the health, safety, or well being of a child or children in care at risk.
- (i) If the plan submitted by the operator is unacceptable to the certification staff, the staff shall negotiate and document a revised plan.
- (ii) If the operator does not submit a response within a reasonable time period, the certification staff shall contact the operator and document the conversation. If concerns exist or the operator is uncooperative, the certification staff shall send a letter stating that failure to respond may result in denial or revocation of certification.
- (H) **Office conference.** The certification staff may schedule an office conference with the operator of the facility. Areas of non-compliance and progress toward meeting the plan(s) of correction shall be reviewed and technical assistance shall be offered. The conference shall be documented.
- (I) **Consent agreement.** OCCY and the operator of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of certification denial or revocation.
- (J) **Revocation.** The certification staff may recommend that the certification be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.
- (4) **Case management responses when children are at risk.** If the certification staff documents a situation where children may be at imminent risk of harm, or if the Office of Juvenile System Oversight is investigating a complaint that children may be at imminent risk of harm, the certification staff may consider the following options:
- (A) The operator shall be asked to immediately correct the situation where children may be at risk of harm.
- (B) The operator may agree to enter into a consent agreement whereby the facility shall agree to specific conditions.
- (C) The certification staff may recommend that the certification be denied or revoked when the operator fails to take necessary steps to eliminate the situation giving rise to the imminent risk of harm.
- (e) **Denial or revocation process.**
- (1) Certification staff shall submit recommendation to deny or revoke facility certifications to the OCCY Director or the OCCY Director designee.
- (2) Facility operators shall submit responses to recommendations to deny or to revoke facility certifications to the OCCY Director or the OCCY Director designee.
- (3) The OCCY Director or the OCCY Director designee shall be the final decision maker regarding recommendations to deny or to revoke facility certifications.
- (4) Facility operator may appeal certification denial or certification revocation final decisions to the Commission.
- (f) **Complaint procedure.** All complaints received by OCCY concerning the state operated children's shelters shall be referred to the OCCY Office of Juvenile System Oversight.
- (g) **Public inspection of certification files.**
- (1) **Legal basis.** The Oklahoma Commission on Children and Youth (OCCY) is subject to the Oklahoma Open Records Act. Section 24A.1 et. seq. of Title 51 of the inspection unless they are required by law to be kept confidential.

~~(2) **Certification records.** All OCCY records of facilities required to be certified under Section 601.3 of Title 10 of the Oklahoma Statutes that are considered public records shall be open and available for public inspection during reasonable hours.~~

~~(3) **Location of case records.** Certification records shall be located in the OCCY office and shall be inspected at that location. Certification records shall be inspected in the presence of certification staff. The OCCY office is located at 500 N. Broadway Ave., Suite 300, Oklahoma City, Oklahoma.~~

~~(4) **Preparation of case files for inspection.** The certification staff carefully shall review the entire record and shall remove confidential information.~~

~~(5) **Release of confidential information.** Confidential information shall only be released as provided by statute.~~

[OAR Docket #23-447; filed 6-7-23]

**TITLE 145. OKLAHOMA DEPARTMENT OF EMERGENCY MANAGEMENT
CHAPTER 15. OKLAHOMA 9-1-1 MANAGEMENT AUTHORITY**

[OAR Docket #23-435]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Disbursement of 9-1-1 Telephone Fees

145:15-7-3. Eligible use list of approved expenditures for landline and wireless 9-1-1 fee revenue [NEW]

AUTHORITY:

Oklahoma 9-1-1 Management Authority; 63 O.S., §§ 2864(18) and 2868

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 22, 2022

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 7. Disbursement of 9-1-1 Telephone Fees

145:15-7-3. Eligible use list of approved expenditures for landline and wireless 9-1-1 fee revenue [NEW]

Gubernatorial approval:

August 9, 2022

Register publication:

40 Ok Reg 8

Docket Number:

22-713

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Public agencies may only use funds collected pursuant to the Oklahoma 9-1-1 Management Authority Act for "services, equipment and operations related to 9-1-1 emergency telephone services." 63 O.S., § 2868(A). The 9-1-1 Management Authority is the entity that is authorized to "[e]stablish an eligible use list for 9-1-1 funds." 63 O.S., § 2864(18). The new rule establishes an eligible use list, and in so doing, helps to ensure that public funds are spent appropriately and only for the reasons enumerated in Oklahoma law.

CONTACT PERSON:

Lance Terry, Statewide 9-1-1 Coordinator, Oklahoma 9-1-1 Management Authority, 405-521-3193, Lance.Terry@oem.ok.gov. For legal questions, contact Maria Maule, Assistant Attorney General, (405) 522-0055, Maria.Maule@oag.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 7. DISBURSEMENT OF 9-1-1 TELEPHONE FEES

145:15-7-3. Eligible use list of approved expenditures for landline and wireless 9-1-1 fee revenue

Public agencies or public safety answering points ("PSAPs") who receive wireline and wireless 9-1-1 fee revenue from local telephone exchanges and the Oklahoma Tax Commission may only spend such funding on the eligible uses listed below:

(1) Enhanced 9-1-1 services.

(A) Enhanced 9-1-1 Phase II wireless technology, NG9-1-1, or successor 9-1-1 technology (defined as: technology and maintenance needed to transmit voice, data, and text from the 9-1-1 caller to the 9-1-1 center call-taker);

(B) Mapping display for call answering positions that are ANI/ALI equipped;

(C) 9-1-1 GIS services;

(D) TTY required for compliance with the Americans with Disabilities Act ("ADA");

(E) 9-1-1 information technology services;

(F) 9-1-1 Management Information System ("MIS") for reporting purposes;

(G) Cyber security of the 9-1-1 system; or

(H) Clock synchronizer and maintenance for 9-1-1 purpose.

(2) Administration.

(A) Human resources services;

(B) Legal costs;

(C) Financial services, including 9-1-1 financial audits;

(D) 9-1-1 public education coordination;

(E) Voice and radio/data recorder and maintenance;

(F) 9-1-1 Coordinator duties;

(G) 9-1-1 Coordinator or 9-1-1 office computers, software, and furniture; or

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- (H) Expenses needed to gather location information.
- (3) **Operations.**
- (A) PSAP and 9-1-1 administrative telephone lines/connections;
- (B) E9-1-1/NG9-1-1 reserve accounts;
- (C) 9-1-1 call receiver salaries and benefits;
- (D) Computer Aided Dispatch ("CAD") by the Public Safety Telecommunicator to manage the 9-1-1 call (excluding legal, fire, EMS, jail, and other ancillary software solutions);
- (E) Hardware/software licensing specifically for display of the field units in the 9-1-1 center, which does not include field responder licensing and hardware;
- (F) Interfaces from CAD or 9-1-1 to external services, such as radio, NCIC, records management systems ("RMS"), and mobile computer systems;
- (G) Radio consoles within the 9-1-1 center, including licensing, and the radio or connectivity needed to broadcast the 9-1-1 information to the field (excluding radio systems, repeaters, subscriber units, portable/mobile radios used in the field, or any other communication median beyond the dispatch center);
- (H) Call taker protocols; or
- (I) Office supplies needed for the delivery of 9-1-1 services.
- (4) **Facility.**
- (A) PSAP and 9-1-1 facility lease/purchase costs;
- (B) E9-1-1 building repair and maintenance, including major systems replacement or repair;
- (C) E9-1-1 property and liability insurance;
- (D) Auxiliary generator and generator maintenance to provide 9-1-1 eligible equipment;
- (E) Console furniture for 9-1-1 call receiving equipment and maintenance; or
- (F) Uninterruptible power supply ("UPS") for PSAP enhanced 9-1-1 equipment and maintenance.
- (5) **Training.**
- (A) Coordinator professional development;
- (B) 9-1-1 Public Safety Telecommunicator professional development and operational training;
- (C) Cyber security training related to 9-1-1;
- (D) Social media security training related to 9-1-1;
- or
- (E) 9-1-1 professional subscriptions and memberships.

[OAR Docket #23-435; filed 6-6-23]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE CHAPTER 80. OKLAHOMA ENERGY PROGRAM [REVOKED]

[OAR Docket #23-399]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Institutional Conservation Programs [REVOKED]
- 150:80-1-1. Purpose [REVOKED]
- 150:80-1-2. Authority [REVOKED]
- 150:80-1-3. Scope [REVOKED]
- 150:80-1-4. Definitions [REVOKED]
- 150:80-1-5. Fund distribution [REVOKED]
- 150:80-1-6. Application process [REVOKED]
- 150:80-1-7. Selection [REVOKED]
- 150:80-1-8. Review and appeals process [REVOKED]
- 150:80-1-9. Grantee responsibilities [REVOKED]
- 150:80-1-10. Program violations [REVOKED]
- 150:80-1-11. Corrective and remedial action [REVOKED]
- Subchapter 3. State Energy Conservation Programs [REVOKED]
- 150:80-3-1. Purpose [REVOKED]
- 150:80-3-2. Authority [REVOKED]
- 150:80-3-3. Scope [REVOKED]
- 150:80-3-4. Definitions [REVOKED]
- 150:80-3-5. Incorporated by reference [REVOKED]
- 150:80-3-6. Funds distribution [REVOKED]
- 150:80-3-7. Application process [REVOKED]
- 150:80-3-8. Selection [REVOKED]
- 150:80-3-9. Review and appeals process [REVOKED]
- 150:80-3-10. Grantee responsibilities [REVOKED]
- 150:80-3-11. Program violations [REVOKED]
- 150:80-3-12. Corrective and remedial action [REVOKED]

AUTHORITY:

The legislation establishing the Oklahoma Department of Commerce 74 O.S. § 5001 et seq.; Executive Order 2020-3

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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February 10, 2023

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August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

These amendments rules are designed to reduce the number of unnecessary rules in the Oklahoma Administrative Code pursuant to Executive Order 2020-3.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. INSTITUTIONAL CONSERVATION PROGRAMS [REVOKED]

150:80-1-1. Purpose [REVOKED]

The purpose of the Institutional Conservation Program is to reduce energy use and energy costs and to promote energy conservation and energy efficiency in public and private non-profit institutions. The Institutional Conservation Program is to establish cost shared energy conservation programs to fund technical assistance services in public and private non profit schools, hospitals, and buildings owned by units of local governments and public care institutions and to fund the purchase and installation of energy conservation measures in these institutions.

150:80-1-2. Authority [REVOKED]

(a) This program is authorized under Title III of the Energy Policy and Conservation Act as amended at 42 U.S.C. Sections 6371 et seq. This program is subject to Department of Energy Assistance Regulations at 10 C.F.R. Part 600 which are cross referenced in 10 C.F.R. Part 455. Those statutes and regulations are hereby annexed.
 (b) The legal authority to implement this program is vested in the Oklahoma Department of Commerce pursuant to 74 O.S. 1991, Sections 5003.6, 5017, 5017.1 and 5032.

150:80-1-3. Scope [REVOKED]

The Institutional Conservation Program ("ICP") provides financial and technical assistance to eligible entities to reduce energy use and costs in institutional buildings. The program offers a cost shared energy conservation grant program to fund detailed energy audits, called technical assistance programs ("TAs") and to fund the purchase and installation of energy conservation measures ("ECMs"). The program is to assist interested parties in improving energy efficiency, reducing energy costs, and leveraging available resources.

150:80-1-4. Definitions [REVOKED]

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

"Building" means any structure, including a group of closely situated structural units that are centrally metered or served by a central utility plant, or an eligible portion thereof, the construction of which was completed on or before May 1, 1989, which includes a heating or cooling system, or both.

"Complex" means a closely situated group of buildings on a contiguous site such as a school or college campus or multi building hospital.

"Contractors Implementation Manual" means the book delivered with the grant award to successful applicants.

"Coordinating agency" means a State or public or non-profit organization legally constituted within a State which provides either administrative control or services for a group of institutions within a State and which acts on behalf of such institutions with respect to their participation in the program.

"Department" means the Oklahoma Department of Commerce.

"DOE" means the Department of Energy.

"Energy audit" means a determination of the energy consumption characteristics of a building which:

- (A) identifies the type, size, and rate of energy consumption of such buildings and the major energy using systems of such buildings;
- (B) determines appropriate energy conservation maintenance and operating procedures;
- (C) indicates the need, if any, for the acquisition and installation of energy conservation measures; and,
- (D) if paid for with financial assistance funds under the ICP, complies with 10 C.F.R. 450.43.

"Energy conservation maintenance and operating procedures" means modifications in the maintenance and operations of a building and any installation therein which are designed to reduce the energy consumption in such building and which require no significant expenditure of funds, including, but not limited to:

- (A) effective operation and maintenance of ventilation systems and control of infiltration conditions;
- (B) changes in the operation and maintenance of heating and cooling systems;
- (C) changes in the operation and maintenance of lighting systems;
- (D) changes in the operation and maintenance of water systems;
- (E) changes in the maintenance and operating procedures of the building's mechanical systems; and,
- (F) such other actions relating to operation and maintenance procedures as the State may determine useful or necessary. In general, energy conservation maintenance and operating procedures involve cleaning, repairing or adjusting existing equipment rather than acquiring new equipment.

"Energy conservation measures" means an installation or modification of an installation in a building which is primarily intended to maintain (in the case of load management systems) or reduce energy consumption and reduce energy costs, or allow the use of an alternative energy source.

"Grant program cycle" means period of time specified by DOE which relates to the fiscal year or years for which monies are appropriated for grants under 10 C.F.R. Part 455 during which one complete cycle of DOE grant activity occurs including fund allocations to the States; applications receipt, review, approval, or disapproval; and award of grants by DOE but which does not include the grantee's performance period.

"Grantee" means the entity or organization named in the Notice of Financial Assistance Award as the recipient of the grant.

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"Hospital" means a public or nonprofit institution which is a general hospital, tuberculosis hospital, or any other type of hospital other than a hospital furnishing primarily domiciliary care and which is duly authorized to provide hospital services under the laws of the State in which it is situated.

"Hospital facilities" means building housing a hospital and related facilities including laboratories, laundries, outpatient departments, nurses' residence and training facilities, and central service facilities operated in connection with a hospital. It also includes buildings containing educational or training facilities for health profession personnel operated as an integral part of a hospital.

"Non-federal funds" means financing sources obtained or arranged for by a State as a result of the State program(s) pursuant to 10 C.F.R. 455.20(j), to be used to pay for energy conservation measures for institutions eligible under this section, and includes petroleum violation escrow funds except for those funds required to be treated as if they were federal funds by statute, court order, or settlement agreement.

"Program assistance" means a program or activity managed or performed by the State and designed to provide support to eligible institutions to help ensure the effectiveness of energy conservation programs carried out consistent with this part.

"PVE Funds" means Petroleum Violation Escrow funds.

"Public care institutions" means a public or nonprofit institution which owns (1) a facility or long term care, rehabilitation facility, or public health center, as described in section 1824 of the Public Health Services Act (42 U.S.C. Section 300a-3); or (2) a residential child care center which is an institution, other than a foster home, operated by a public or nonprofit institution. It is primarily intended to provide full time residential care, with an average length of stay of at least 30 days, for at least 10 minor persons who are in the care of such institutions as a result of a finding of abandonment or neglect or of being persons in need of treatment or supervision.

"Public or nonprofit institution" means an Institution owned or operated by a State, a political subdivision of a State, or an agency or instrumentality or either, or a school or hospital which is, or would be exempt from income tax under the Internal Revenue Code section 501(c)(3) or 501(c)(4) of Title 26 of the United States Code.

"School" means a public or nonprofit institution which:

- (A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;
- (B) provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis; and,
- (C) provides not less than a one year program of training to prepare students for gainful employment in a recognized occupation; or
- (D) is a local educational agency.

"School facilities" means buildings housing classrooms, laboratories, dormitories, administrative facilities, athletic facilities, or related facilities operated in connection with a school.

"State Plan" means the annual document under which the Institutional Conservation Program is implemented by the State in accordance with federal law.

"Technical assistance" means:

- (A) the conduct of specialized studies to identify and specify energy savings or energy costs savings that are likely to be realized as a result of the modification of maintenance and operating procedures in a building, the acquisition and installation of one or more specified energy conservation measures in a building, or both and
- (B) the planning or administration of such specialized studies.

"Unit of local government" means the government of a county, municipality, or township which is a unit of general purpose government below the State level.

150:80-1-5. Fund distribution [REVOKED]

(a) All program funds will be distributed to eligible applicants in accordance with the State Plan. The funds distribution formula expressed in the State Plan will be based on Federal program requirements and appropriate State program requirements. The program funds are competitive and shall be awarded to eligible applicants through an application process developed annually by the Department.

(b) The State Plan will specify program criteria and requirements which establish a cost shared grant program to fund Technical Assistance and Energy Conservation Measures in eligible institutions.

(c) The State Plan will specify amount of funds to be allocated for each funding category based upon annual allocation of funds authorized by DOE.

(d) The State Plan will specify grant maximums for each funding category based upon annual allocation of funds received from DOE. Grant maximums will apply to all applications submitted in the program year cycle.

(e) The Department reserves the right within its discretionary authority to adjust funding amounts to less than that which was originally proposed by an eligible applicant based on the most efficient and equitable utilization of the funds.

(f) The Department occasionally receives Petroleum Violation Escrow (PVE) funds to supplement the Institutional Conservation Program. These funds are to be treated as federal appropriated funds, unless otherwise stated in the State Plan.

(g) The Department is authorized to establish cost shared energy conservation grant programs to fund Technical Assistance (TAs) in public and private non-profit schools, hospitals, buildings owned by units of local government and public care institutions and to fund the purchase and installation of Energy Conservation Measures (ECMs) in schools and hospitals.

150:80-1-6. Application process [REVOKED]

(a) For purposes of selecting grantees, eligible entities will be required to submit an application for financial assistance in a form prescribed by the Department. All applications will be required to contain sufficient information and documentation that allows the Department to independently review and

rate each project. It shall be the responsibility of the applicant to comply with terms and format described in the application packet.

(b) The Department shall make available upon request by potential applicant current and appropriate application forms and guidelines. The guidelines will include, but not be limited to submission dates and time frames, threshold criteria, eligible activities, work program requirements, budget information, specific data requirements, and other pertinent instructions to assist the applicant complete the application.

(c) The Department will establish deadlines for application submission annually. Eligible entities will be provided a Notice of Available Funds by direct mailing and by publication in the Oklahoma Register.

150:80-1-7. Selection [REVOKED]

(a) For purpose of selecting projects eligible for funding, the Department will subject all proposals to specific minimum threshold requirements and selection factors. Threshold requirements and selection factors shall be set out annually in the State Plan, the application guidelines, and in the application packet prepared by the Department.

(b) Threshold requirements shall include as a minimum, the following:

- (1) Applicant for financial assistance must meet general requirements of being a school, hospital, or building owned by a Unit of Local Government or Public Care Institution;
- (2) Applicant must meet specific cost shared requirements of the program;
- (3) Applicant must have submitted a completed application in accordance with program guidelines;
- (4) Applicant must have documented energy savings that meet specific requirements of the State Plan.

(c) Incomplete or inappropriately completed applications shall be returned to applicant without further consideration. Applications are to provide sufficient information and documentation that allows reviewer the opportunity to draw empirical conclusions on quality of energy savings or energy conservation potential based on an energy audit or its equivalent.

(1) Applications will be selected and ranked on a building by building basis or measure by measure basis; type of energy resource saved; quality of technical assistance report; and other factors determined by the Department, such as the greatest degree to which funding assistance would be utilized to directly decrease use of non renewable fuel sources. Preference points will be provided to applications that have completed an energy audit or its equivalent without use of federal funds.

(2) The Department will set aside specific criteria for hardship applications in the state Plan.

150:80-1-8. Review and appeals process [REVOKED]

(a) The Department will consider appeals of funding decisions only when project rating and ranking is at issue. Only

the applicant may appeal a funding decision. Applicant may review their application and rating scores at any time after ratings and rankings have been released by the Department.

(b) Applicant failing threshold review do not have the right to an administrative appeal under the General Rules of Practice and Procedures of the Department.

(c) Requests for appeal shall be made within thirty days after applicant has been notified the application was not funded.

150:80-1-9. Grantee responsibilities [REVOKED]

(a) Grantee shall be responsible for taking action necessary to enforce terms of grant agreement against any private or public participant that fails to comply with provisions of grant agreement or any contract or document resulting from it, and to recover on behalf of the Department any costs that may arise as the result of a breach of the funding agreement.

(b) Grantee shall comply with all applicable laws, rules, and guidelines both federal and state, and general program guidance provided in Contractors Implementation Manual which is hereby incorporated.

150:80-1-10. Program violations [REVOKED]

The Department will consider a violation of program policies and procedures to have occurred, under any of the following circumstances:

- (1) When there is non compliance or substantial non-compliance with provisions stated in the terms and condition of contract.
- (2) When there has been provision of false information in proposed project application and/or project reports.
- (3) When requirements of the Department have not been met or have been violated.
- (4) When there is significant deviation from the grant agreement.
- (5) When significant corrective actions are necessary to protect the integrity of the projects funds, and those corrective actions are not or cannot be effected by the grantee, in the judgment of the Department within a reasonable time.
- (6) When there has been a finding of fraud; waste or mismanagement of any current or prior State of Federally funded project.
- (7) When one or more of the project activities have not begun within six months after a grant award unless significant justification for the delays is fully documented in a timely manner, and in such form and terms as requested by the Department.

150:80-1-11. Corrective and remedial action [REVOKED]

(a) The Department reserves the right under circumstances of possible program violations to request from the applicant or grantee, singularly or in combination, information regarding the administrative, planning, budgeting, management and evaluation functions, and other actions deemed necessary to clearly define the cause or causes of program violation(s). Under any of the stated program violations during the application

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for financial assistance or grant implementation stage, the Department may take one or more of the following actions:

- (1) Condition the grant
 - (2) Withhold funds
 - (3) Reduce the total amount of the grant award
 - (4) Require a return of unexpended funds
 - (5) Cancel a grant agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation
 - (6) Deny future program applications and participation for a period not to exceed two program cycles.
- (b) Prior to taking corrective and remedial actions, a notice of show cause hearing shall be issued by the Department to the applicant or grantee. The applicant or grantee shall have 10 working days to appear and show cause as to why corrective and remedial actions should not be taken.

SUBCHAPTER 3. STATE ENERGY CONSERVATION PROGRAMS [REVOKED]

150:80-3-1. Purpose [REVOKED]

The purpose of this part to promote conservation of energy and reduce the rate of growth of energy demand for the State of Oklahoma through the development and implementation of comprehensive state energy conservation programs and provide financial and technical assistance in support of such programs. Further, to initiate programs that conserve and improve efficiency in the use of energy and encourages the use of renewable resources, tailored to meet local opportunities.

150:80-3-2. Authority [REVOKED]

- (a) This program is authorized under Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. Sections 6321 et seq., Title III Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. Sections 6321 et seq., and Department of Energy Organization Act 42 U.S.C. Sections 7101 et seq.
- (b) The legal authority to implement this program is vested in the Oklahoma Department of Commerce pursuant to 74 O.S.1991, Sections 5003.6, 5017, 5017.1 and 5032.

150:80-3-3. Scope [REVOKED]

The program shall provide financial assistance to units of local government, private and non profit entities, and qualified individuals and firms that implement energy conservation projects which cause a reduction in energy consumption and demand for the State of Oklahoma. Each project shall have been determined to be energy efficient, practical, economical, and tailored to meet a local requirement or respond to local opportunities.

150:80-3-4. Definitions [REVOKED]

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

"**BTU**" means British Thermal Unit.

"**British Thermal Unit**" means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and one atmospheric pressure.

"**Building**" means any structure which includes provision for a heating and cooling system, or both, or a hot water system.

"**Commercial Buildings**" means any building other than a residential building, including any building constructed for industrial or public purposes.

"**Commercially available**" means available for purchase by the general public or target audience in the State

"**DOE**" means the Department of Energy.

"**Energy Audit**" means a survey of a building or buildings that is conducted in accordance with 10 C.F.R. 420.7(d) and Subpart B of 10 C.F.R., Part 450 and which

- (A) identifies the type, size, energy use level and the major energy using systems of such building or buildings;
- (B) determines appropriate energy conservation maintenance and operating procedures; and
- (C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

"**Energy Conservation**" means efficient energy use or the utilization of renewable energy resources which results in energy savings based upon a net reduction in the use of nonrenewable energy resources.

"**Environmental residual**" means any pollutant or pollution causing factor which results from any activity.

"**Exempted building**" means:

- (A) any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 BTU's per hour) per square foot of floor area for all purposes;
- (B) any building with neither a heating nor cooling system;
- (C) any mobile home; or
- (D) any building owned or leased in whole or in part by the United States.

"**Exterior envelope physical characteristics**" means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

"**Heating, ventilating and air conditioning**" means a system that provides heating, ventilation and/or air conditioning within or associated with a building.

"**HVAC**" means heating, ventilating and air conditioning.

"**Industrial plant**" means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

"**Institution of higher education**" means the same as such term is defined in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. Section 1141(a)).

"**OMB**" means the Office of Management and Budget of the U.S. government.

"**Petroleum Violation Escrow Funds**" For purposes of exempting petroleum violations escrow funds from the matching requirements of 10 C.F.R. 420.3(e) and 420.12(b), petroleum violations escrow funds means any funds distributed to

the States by the Department of Energy or any court and identified as Alleged Crude Oil Violation funds, together with any interest earned thereon by the State, but excludes any funds designated as 'excess funds' under section 3003(d) of the Petroleum Overcharged Distribution and Restitution Act, subtitle A of title III of the Omnibus Budget Reconciliation Act of 1986, and the funds distributed under the 'Warner Amendment,' section 155 of P.L. 97-377.

"Plan" means a State energy conservation plan including required program measures in accordance with 10 C.F.R. Part 420.6.

"Program measure" means one or more State actions, in a particular area, designed to effect energy conservation, excluding actions in areas specifically covered by national energy conservation programs.

"Public building" means any building which is open to the public during normal business hours; except exempted buildings.

150:80-3-5. Incorporated by reference [REVOKED]

National standards for development of the State Plan are hereby incorporated by reference into these rules. These standards are described in Title III, Part C and D, of the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 et seq; Department of Energy Organization Act 42 U.S.C. Sections 7101 et seq. Department of Energy Assistance Regulations, 10 C.F.R. Part 600, and the State Energy Conservation Program, 10 C.F.R., Part 420.

150:80-3-6. Funds distribution [REVOKED]

(a) Program funds will be distributed to eligible entities in accordance with the State Plan. Funds will be distributed based on Federal program requirements and appropriate State program requirements. Program funds are to provide financial assistance to units of local governments, private and non-profit entities, and qualified individuals and firms that implement energy conservation projects which cause a reduction in energy consumption and demand for the State of Oklahoma. Funds will be distributed to projects that have been determined by the Department to be energy efficient, practical, economical, and tailored to meet a local requirement or respond to local opportunities.

(b) Program funds must be used to provide energy consumers a variety of energy related programs. The Department assumes responsibility for the development of programs which satisfy DOE funding requirements. Basic programs may include but are not limited to public education and outreach, public information and technical assistance, coordination of energy conservation programs, conduct energy conservation activities to residential, industry, commercial, educational institutions, and to conduct demonstration projects.

(c) The Department will allocate program funds in accordance with applicable program requirements of DOE and which accomplishes quantitative and qualitative energy savings goals or both as stated in the State plan.

(d) The program may not use funds authorized under this part for construction, such as mass transit systems and exclusive bus lanes or constructing or repairing buildings or structures; or to purchase land, a building, or structure, or any interest therein; or to subsidize fares for public transportation; or to subsidize utility rate demonstrations or state tax credits for energy conservation; or to conduct or purchase equipment to conduct research, development and demonstration conservation techniques and technologies not commercially available.

(e) Grant amounts authorized under this part will be determined based upon merits of a program measure and availability of funds.

(f) The Department reserves the right within its discretionary authority to adjust funding amounts to less than that which was originally proposed based on the most efficient and equitable utilization of available funds.

(g) The Department has occasionally received Petroleum Violation Escrow (PVE) funds to supplement the State Plan. These funds are in addition to federal appropriated dollars under which the program operates. These additional available funds will be used in the same manner as federal appropriated funds unless otherwise stated in the State Plan.

(h) Funds received under this part are subject to DOE regulations. All funds, whatever their source, assigned to this program will be subject to cost principles set out in OMB Circular A 21, OMB Circular A 87, OMB Circular A 122, and which are cited in DOE Financial Assistance Rules at 10 C.F.R., 600.422.

(1) Program funds are to be used to implement energy conservation programs which promote energy conservation and efficiency and reduces the rate of growth of energy demand within the boundaries of the State of Oklahoma.

(2) The State is to submit an annual plan to DOE which describes energy conservation and efficiency goals and shows how proposed program activities will address and achieve the energy savings stated in the goals.

150:80-3-7. Application process [REVOKED]

(a) For purposes of selecting grantees, eligible entities will be required to submit an application for financial assistance in a manner prescribed by the Department. Applicants will be required to provide sufficient information and documentation that is described in application guidelines or other instruments used to solicit applications for funding. The application shall clearly quantify and qualify energy conservation and efficiency activities that reduce the growth of energy demand for the State.

(b) The Department shall make available to potential applicants, upon request, all necessary instructions, forms and guidelines that will permit them to prepare a application suitable for funding under this part.

(c) The Department shall establish deadlines for each notice of availability of funds or other notice of solicitations in a manner which provides for the greatest response from eligible entities.

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150:80-3-8. Selection [REVOKED]

(a) For purpose of selecting projects eligible for funding the Department will subject all proposals to specific minimum threshold requirements and selection factors. The threshold requirements and selection factors shall be set out in public solicitation notices.

(b) The Department will specify threshold requirements or other selection factors in the solicitation notice but may include as a minimum:

- (1) Quantifiable and qualifiable energy savings
- (2) Energy efficiency rating of applied technology
- (3) Approved energy conservation application techniques
- (4) Technology transfer activities
- (5) Cost sharing requirements
- (6) Completed application

(c) Applications for program funds will be reviewed and evaluated by the Department in accordance with the following:

- (1) Applicant shall provide sufficient information for reviewer to draw empirical conclusions on the quality of energy savings based on energy conservation potential identified in an energy audit or its equivalent.
- (2) Preference will be provided to applications that have completed an energy audit without federal funds.
- (3) Building by building basis or measure by measure basis, whichever provides the most economic benefits.
- (4) Type of energy resource used or saved.
- (5) Quality of application.
- (6) Greatest degree funding assistance would be utilized to directly decrease use of non renewable fuel resource.
- (7) Extent other funds are used to supplement proposed project costs.
- (8) Other factors determined by the Department and identified in the application packet.

150:80-3-9. Review and appeals process [REVOKED]

(a) The Department will consider appeals of its funding decision only when project rating and ranking is at issue. Only the applicant may appeal. Applicants failing the program's threshold review process do not have the right to an administrative appeal under the General Rules of Practice and Procedures of the Oklahoma Department of Commerce

(b) The applicant may review their application and rated scores anytime after the review and evaluation period.

(c) Requests for appeal shall be made within thirty days after the applicant has been notified that the application was not funded.

(d) An application which would have been funded but for a technical error in rating or ranking will be funded as soon as sufficient funds become available, provided the proposed project remains viable and eligible.

150:80-3-10. Grantee responsibilities [REVOKED]

(a) Grantee shall comply with all applicable laws, rules, and guidelines identified in the funding agreement and in the Contractor's Implementation Manual which is hereby incorporated.

(b) Grantee shall comply with any mutually acceptable special conditions which may be attached to the base funding agreements.

(c) Grantee shall be responsible for taking all action necessary to enforce terms of the funding agreement against all private or public participants that fail to comply with applicable provisions of the funding agreement or any binding agreements resulting from it. Grantee shall be responsible for the recovery of any costs that may arise as the result of a breach of the agreement.

150:80-3-11. Program violations [REVOKED]

The Department will consider a violation of program policies and procedures to have occurred, under any of the following circumstances:

(1) When there is noncompliance or substantial non-compliance with provisions stated in terms and conditions of grant agreement.

(2) When there has been provision of false information in proposed project application or project reports.

(3) When program requirements have not been met or have been considered to have been violated by the Department.

(4) When there is significant deviation from the grant agreement based upon a monitoring visit by the Department.

(5) When significant corrective actions are necessary to protect the integrity of the projects funds, and those corrective actions are not or cannot be effected by the applicant or grantee, in the judgment of the Department within a reasonable time.

(6) When a finding of fraud; waste or mismanagement of any current or prior State or Federally funded project.

(7) When one or more of the project activities have not begun within six months after grant award unless justification for the delay or delays is fully documented in terms requested by the Department.

150:80-3-12. Corrective and remedial action [REVOKED]

(a) The Department reserves the right under circumstances of possible program violations to request information from the grantee regarding administration, planning, budgeting, management and evaluation functions; any activities undertaken that were not in conformance with the approved program or that were in non-compliance with terms and conditions of the funding agreement. In the event corrective or remedial action is necessary the Department may take the following courses of action:

- (1) Condition the grant.
- (2) Reduce the total amount of the grant award.
- (3) Withhold funds.

- ~~(4) Require a return of any unexpended funds; require repayment of funds expended.~~
- ~~(5) Cancel a funding agreement and recover all funds expended in an ineligible manner prior to the date of notice of cancellation.~~
- ~~(6) Deny future program applications and participation for a period not to exceed two program cycles.~~
- ~~(b) Prior to taking any corrective and/or remedial actions, a notice of show cause hearing shall be issued by the Department to the grantee. Grantee shall have ten (10) working days to appear and show cause as to why corrective or remedial action should not be taken.~~

[OAR Docket #23-399; filed 6-5-23]

**TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 120. WORKFORCE INVESTMENT ACT [REVOKED]**

[OAR Docket #23-400]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [REVOKED]
 - 150:120-1-1. Purpose [REVOKED]
 - 150:120-1-2. Definitions [REVOKED]
 - 150:120-1-3. Addresses for appeals [REVOKED]
- Subchapter 3. Denial or Termination of a Training Provider [REVOKED]
 - 150:120-3-1. Reporting - termination [REVOKED]
 - 150:120-3-2. Notice to training provider [REVOKED]
 - 150:120-3-3. Appeal [REVOKED]
 - 150:120-3-4. Hearing [REVOKED]
 - 150:120-3-5. District court appeal [REVOKED]
 - 150:120-3-6. Administrative record [REVOKED]
- Subchapter 5. Denial of Request for Designation as a Local Workforce Investment Area [REVOKED]
 - 150:120-5-1. Appeal [REVOKED]
 - 150:120-5-2. Appeal time [REVOKED]
 - 150:120-5-3. Hearing [REVOKED]
 - 150:120-5-4. Decision [REVOKED]
 - 150:120-5-5. Appeal of decision [REVOKED]
- Subchapter 7. Monitoring [REVOKED]
 - 150:120-7-1. Monitoring [REVOKED]
 - 150:120-7-2. Monitoring report [REVOKED]
 - 150:120-7-3. Monitoring resolution [REVOKED]
 - 150:120-7-4. Final monitoring determination [REVOKED]
 - 150:120-7-5. Appeal [REVOKED]
 - 150:120-7-6. Hearing [REVOKED]
- Subchapter 9. Audits [REVOKED]
 - 150:120-9-1. Audit requirements [REVOKED]
 - 150:120-9-2. Delinquent audit [REVOKED]
 - 150:120-9-3. Audit resolution [REVOKED]
 - 150:120-9-4. Audit review and request for information [REVOKED]
 - 150:120-9-5. Initial determination [REVOKED]
 - 150:120-9-6. Final determination [REVOKED]
 - 150:120-9-7. Appeal [REVOKED]
 - 150:120-9-8. Hearing [REVOKED]
- Subchapter 11. Grievance Procedure [REVOKED]
 - Part 1. General provisions [REVOKED]
 - 150:120-11-1. Grievances [REVOKED]
 - Part 3. Grievances filed directly with ODOC [REVOKED]
 - 150:120-11-10. Filing [REVOKED]
 - 150:120-11-11. Time limit for filing a grievance with ODOC [REVOKED]
 - 150:120-11-12. Contents of a grievance [REVOKED]
 - 150:120-11-13. Referral of a grievance filed with ODOC [REVOKED]

- Part 5. Appeals to ODOC from Grievance Decisions of a Local Area [REVOKED]
 - 150:120-11-20. Filing grievance with local area [REVOKED]
 - 150:120-11-21. Appeals with ODOC [REVOKED]
 - 150:120-11-22. Time limit for filing an appeal with ODOC [REVOKED]
- Part 7. Informal and Formal Resolutions of Grievances [REVOKED]
 - 150:120-11-30. Informal resolution [REVOKED]
 - 150:120-11-31. Hearing [REVOKED]
 - 150:120-11-32. Remedies [REVOKED]
 - 150:120-11-33. Appeal to Secretary or investigation by Secretary [REVOKED]
 - 150:120-11-34. Decision of the Secretary [REVOKED]

AUTHORITY:

The legislation establishing the Oklahoma Department of Commerce 74 O.S. § 5001 et seq.; Executive Order 2020-3.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 28, 2022

COMMENT PERIOD:

January 3, 2022, through February 4, 2023

PUBLIC HEARING:

February 10, 2023, at 10:00 a.m. on, at The Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma in Gallery 1-2

ADOPTION:

February 10, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

February 10, 2023

APPROVED BY GOVERNOR'S DECLARATION:

Approved by joint resolution on May 31, 2023 by SJR 22.

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

This action is to reduce the number of unnecessary rules pursuant to the Executive Order 2020-3.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

150:120-1-1. Purpose [REVOKED]

~~The Governor of the State of Oklahoma appointed the Governor's Council for Workforce and Economic Development (State Council) in compliance with the Section 111 of the Workforce Investment Act. The State Council assists the Governor in developing the Strategic State Workforce Investment Plan (State Plan) for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner Peyser Act pursuant to Section 112 of WIA. In the State Plan, the Governor designated the Oklahoma Department of Commerce (ODOC) as the WIA Title I Grant Recipient. The purpose of~~

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these rules is to facilitate the implementation of the WIA, U.S. Department of Labor regulations, and State Plan.

150:120-1-2. Definitions [REVOKED]

In addition to definitions found at WIA section 101 and 20 CFR 660.300, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Audit Division" means the ODOC division responsible for conducting audit resolutions.

"Chief Local Elected Official" or **"CLEO"** means (a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement designed in WIA section 117(c)(1)(B).

"Department" or **"DOL"** means the U.S. Department of Labor, including its agencies and organizational units.

"Executive Director" means the Executive Director of the Oklahoma Department of Commerce.

"Fiscal Agent" means an entity chosen by the CLEO to serve as grant subrecipient of the WIA grant funds. Such designation does not relieve the CLEO or the Governor of the liability for any misuse of grant funds.

"Local Area" means a local workforce investment area designated pursuant to WIA section 116.

"Local Board" means a Local Workforce Investment Board established pursuant to WIA section 117, to set policy for the local area workforce investment system.

"Secretary" means the Secretary of the U.S. Department of Labor.

"State Council" means the Governor's Council for Workforce and Economic Development established pursuant to WIA section 111.

150:120-1-3. Addresses for appeals [REVOKED]

When a rule in this Chapter allows for an appeal, the following addresses are to be used:

- (1) Secretary, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 201200.
- (2) Regional Administrator, Regional Office, U.S. Department of Labor, 525 S. Griffin Street Dallas, Texas 75202.
- (3) Executive Director, Oklahoma Department of Commerce, 900 North Stiles, Oklahoma City, OK 73104 3234.
- (4) Audit Division, Oklahoma Department of Commerce, 900 North Stiles, Oklahoma City, OK 73104 3234.

SUBCHAPTER 3. DENIAL OR TERMINATION OF A TRAINING PROVIDER [REVOKED]

150:120-3-1. Reporting - termination [REVOKED]

Pursuant to WIA section 122 (i) the Governor designated the Oklahoma Department of Commerce (ODOC) to make the

determinations required by WIA section 122 (e)(2) and (f) unless this requirement is waived by the U.S. Department of Labor.

(1) Each Local Board shall submit the list of training providers, including their performance information and program cost information as described in WIA section 122 (b) or (c), to the Director if requested. If the Director determines within thirty (30) days after the date of submission that the provider does not meet the performance levels in WIA section 122 (e)(6), the Director may remove the training provider from the list for the program. This does not apply to an agency submitting an application under WIA section 122 (b)(1).

(2) If the Director, after consultation with the Local Board, determines that an eligible training provider, or an individual providing information on behalf of an individual training provider, violated WIA section 122 (f) (1) and (2), the Director shall terminate the eligibility of the training provider.

150:120-3-2. Notice to the training provider [REVOKED]

The Executive Director or his or her designee shall send a certified letter to the training provider at the training provider's address of record with the local board.

150:120-3-3. Appeal [REVOKED]

The training provider has twenty (20) days from the date the decision is mailed to appeal the determination to ODOC's Executive Director. If a timely appeal is not received, the decision shall become final and no further appeal shall be allowed.

150:120-3-4. Hearing [REVOKED]

If a timely appeal is received, the Executive Director or his or her designee will conduct a hearing pursuant to its rules at 150:111-1 through 150:111-17.

150:120-3-5. District court appeal [REVOKED]

If the training provider's appeal is denied by the Executive Director, it may file an appeal to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.

150:120-3-6. Administrative record [REVOKED]

ODOC will provide the administrative record to the district court as provided for in ODOC's rule at 150:111-15.

SUBCHAPTER 5. DENIAL OF REQUEST FOR DESIGNATION AS A LOCAL WORKFORCE INVESTMENT AREA [REVOKED]

150:120-5-1. Appeal [REVOKED]

A unit of general local government (including a combination of such units) or a grant recipient that is denied designation

as a workforce investment area may file an appeal. The designation process will continue while the appeal is in progress and will be modified should the initial denial of designation be overturned.

150:120-5-2. Appeal time [REVOKED]

The appeal must be filed with the State Council within twenty (20) days from the date of receipt of the denial of designation. The Governor's designation is final if a timely appeal is not filed and no further appeal shall be allowed.

150:120-5-3. Hearing [REVOKED]

Upon receipt of a timely appeal, the State Council will refer the case to the Executive Director or his or her designee for hearing. A hearing will then be conducted by the Executive Director pursuant to its rules at 150:111-1 through 150:111-17. Within (30) days from the date the appeal is received from the State Council the Executive Director will issue its findings of fact to the Governor, State Council, and Chief Local Elected Official. A copy of the administrative record will be sent to the Governor.

150:120-5-4. Decision [REVOKED]

The Governor will issue his decision within thirty (30) days from the date he receives the Executive Director's findings of fact.

150:120-5-5. Appeal of decision [REVOKED]

If the Governor denies the designation after the above described appeal process is complete, the entity may file an appeal to the Secretary. The appeal must be filed not later than thirty (30) thirty days after receipt of written notification of the Governor's decision and must comply with the requirements set forth in the WIA statutes and regulations.

SUBCHAPTER 7. MONITORING [REVOKED]

150:120-7-1. Monitoring [REVOKED]

(a) ODOC will annually monitor each grant recipient pursuant to the requirements set forth in WIA section 184 (a)(4) and 20 CFR section 667.410.

(b) ODOC's grant recipients must monitor their subrecipients or service providers. Monitoring shall be conducted as outlined in the "Governor's Oversight and Monitoring Plan".

150:120-7-2. Monitoring report [REVOKED]

(a) A monitoring report will be issued by the Executive Director or his or her designee to the grant recipient after each monitoring review. Copies of this report will be addressed to the Audit Division Director of ODOC. If evidence of possible violations is discovered, they will be detailed in the report. The report shall be based, in part, on the requirements

of WIA, the regulations promulgated thereunder, administrative requirements, applicable cost principles, grant agreements, and state policies.

(b) Monitoring reports and resolutions generated by a grant recipient must be submitted to ODOC on an annual basis and at least sixty (60) days prior to expiration of the service provider or subrecipient's contract with its subrecipient.

150:120-7-3. Monitoring resolution [REVOKED]

(a) The Executive Director or his or her designee is responsible for monitoring resolution.

(b) Resolution of a monitoring finding is required when there are disallowed/questioned costs, and administrative findings or deficiencies.

(c) The grant recipient has thirty (30) days from the date of the monitoring report to submit its response to the designated portions of the monitoring report to the Executive Director or his or her designee. The response must contain all additional information, documents, or arguments the grant recipient wants the Executive Director or his or her designee to consider in making the initial monitoring determination. An entity submitting a response to the monitoring report may request in writing an additional thirty (30) day time period. The Executive Director or his or her designee will determine if additional time will be allowed and advise the entity in writing of his or her decision. The Executive Director or his or her designee may request additional information from the entity submitting a response, if clarification is needed. The Executive Director or his or her designee may schedule or the grant recipient may request, an informal resolution conference in order to discuss the findings in the monitoring report. The request for the informal resolution conference should be submitted to the Executive Director or his or her designee prior to the first thirty (30) day deadline.

(d) The Executive Director or his or her designee shall issue an initial monitoring determination within sixty (60) days from the date the response is received. The grant recipient has thirty (30) days from the date of the initial monitoring determination to submit its response to the initial monitoring determination to the Director.

(e) The Executive Director or his or her designee shall issue a final monitoring determination in compliance with 150:120-7-4.

(f) All monitoring findings must be resolved within six (6) months after the initial monitoring report is issued.

(g) The Executive Director or his or her designee will maintain a monitoring resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

(h) After follow up procedures are completed, if the grant recipient is found in non compliance, the Executive Director or his or her designee will send a notice in the form of a certified letter of impending sanctions. The notice will indicate the violation, the corrective action to be taken, the impending sanction, and the process by which the grant recipient may appeal the sanction.

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150:120-7-4. Final monitoring determination [REVOKED]

(a) A final determination on the issues raised in the initial monitoring report will be issued within thirty (30) days from the date the response to the initial monitoring determination is received. This time may be extended an additional thirty (30) days if an informal resolution conference is requested.

(b) If all issues have not been resolved, a final determination shall be sent to the local area by certified mail. A final determination will:

- (1) enumerate the efforts that were made to resolve the issues in the initial monitoring report;
- (2) list the issues upon which the parties do not agree;
- (3) list any changes to the factual findings and conclusions set forth in the monitoring report;
- (4) establish a debt, if appropriate;
- (5) require corrective action, when needed;
- (6) determine liability, method of restitution of funds and sanctions; and
- (7) advise recipient of appeal rights.

150:120-7-5. Appeal [REVOKED]

(a) If the grant recipient is not satisfied with the findings issued in the final determination, it has fifteen (15) days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Executive Director.

150:120-7-6. Hearing [REVOKED]

(a) The Executive Director will conduct a hearing within thirty (30) days from the receipt of the appeal by the Executive Director unless the parties and the Executive Director agree to waive this requirement in order to allow additional time to resolve the matter, or the Executive Director, or his or her designee, can waive the requirement upon application by one of the parties or unilaterally. The hearing will be conducted pursuant to the Executive Director's rules at 150:1-11-1 through 150:1-11-17.

(b) The Executive Director will issue a decision within thirty (30) days from the date the hearing record is closed.

(c) The decision of the Executive Director will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.

(d) ODOC will provide the administrative record to the district court as provided for in ODOC's rule at 150:1-11-15.

(e) At the hearing, the grant recipient bear the burden of proof to show that the WIA funds granted or paid to the grant recipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program. The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.

(f) Any fee charged to the grant recipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Executive Director or District Court cannot be charged to grant or contract funds received from ODOC. This includes fees charged by an accountant, expert witness, attorney, or other representative.

SUBCHAPTER 9. AUDITS [REVOKED]

150:120-9-1. Audit requirements [REVOKED]

The subrecipient shall comply with ODOC's audit policy at OAR 150:1-21.

150:120-9-2. Delinquent audit [REVOKED]

If the audit has not been received within one (1) year after the end of the grant recipient's fiscal year, the Audit Division Director will send a certified letter to the subrecipient advising it that it has fifteen days to provide its reasons for failing to comply with the requirements set forth in Rule 150:120-5-1. If no response is received within fifteen (15) days, or the response, received is not adequate, the Executive Director, or his or her designee, will send a certified letter to the subrecipient advising it that its current funding and eligibility for future contracts are suspended.

150:120-9-3. Audit resolution [REVOKED]

(a) Resolution of an audit is required when there are disallowed/questioned costs, administrative findings or deficiencies.

(b) All audits must be resolved within six (6) months after receipt of the audit report by the Commission.

(c) The Audit Division shall maintain an audit resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

150:120-9-4. Audit review and request for information [REVOKED]

(a) The Audit Division shall review the audit including all financial statements, schedules, notes, disallowed/questioned costs, administrative findings, and management letters and responses thereto. Financial statements shall be verified by the Audit Division.

(b) If there are no disallowed/questioned costs or administrative findings to be resolved, the audit review is closed and the grant recipient shall be notified of the closure in writing.

(c) If the audit review contains findings, disallowed/questioned costs or discrepancies in the financial schedules, a letter requesting additional information and/or a response shall be sent to the subrecipient by certified mail.

(d) Audit resolution information is due within twenty (20) days from the date the written request is made to the subrecipient.

(e) The Audit Division will review the information submitted by the subrecipient and may ask for additional information.

An initial determination will be issued if the audit findings have not been resolved to the satisfaction of the Audit Division.

(f) If the disallowed/questioned costs or administrative findings are resolved, the audit review is closed and the subrecipient shall be notified in writing.

150:120-9-5. Initial determination [REVOKED]

(a) The Audit Division shall issue an initial determination on the audit findings for those portions of the audit where there are agreement and disagreement with the subrecipient's resolution, including the allowability of questioned costs or activities. Such initial determination will be based on the requirements of the WIA, regulations promulgated thereunder, administrative requirements, applicable cost principles, grants, contracts, or other agreements with subrecipient.

(b) The initial determination shall be issued within sixty (60) days from the receipt of the audit.

(c) The subrecipient shall have thirty (30) days from the date of the determination to submit its response to the Audit Division.

(d) The subrecipient may request an informal resolution conference in order to meet with members of the Audit Division staff to discuss the initial determination and the information subsequently submitted by the recipient. This request must be made in writing when the subrecipient submits its response to the initial determination.

(e) The Audit Division shall issue its final determination within thirty (30) days from the receipt of the subrecipient's response to the initial determination. This time may be extended for up to thirty (30) days if an informal resolution conference is requested.

150:120-9-6. Final determination [REVOKED]

If the disallowed/questioned costs, administrative findings or deficiencies are not resolved, the Commission shall provide the subrecipient with a written final determination by certified mail. A final determination under this section shall:

- (1) Indicate the efforts to informally resolve matters contained in the initial determination have been unsuccessful;
- (2) List those matters upon which parties continue to disagree;
- (3) List any modifications to the factual findings and conclusions set forth in the initial determination;
- (4) Establish a debt, if appropriate;
- (5) Require corrective action, when needed;
- (6) Determine liability, method of restitution of funds and sanctions; and
- (7) Advise recipient of appeal rights.

150:120-9-7. Appeal [REVOKED]

(a) If the subrecipient is not satisfied with the findings issued in the final determination, it has fifteen days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Executive Director.

150:120-9-8. Hearing [REVOKED]

(a) The Executive Director will conduct a hearing within thirty (30) days from the receipt of the appeal by the Executive Director unless the parties and the Executive Director agree to waive this requirement in order to allow additional time to resolve the matter. The hearing will be conducted pursuant to ODOC's rules at 150:111-1 through 150:111-17.

(b) The Executive Director will issue a decision within thirty (30) days from the date the hearing record is closed.

(c) The decision of the Executive Director will be final and binding unless an appeal is filed to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.

(d) ODOC will provide the administrative record to the district court as provided for in ODOC's rule at 150:111-15.

(e) At the hearing, the grant recipient bear the burden of proof to show that the WIA funds granted or paid to the grant recipient were spent in compliance with the statutes, regulations, state policies, uniform administrative requirements, and OMB Circulars that govern these funds and their program. The entities must also prove the WIA costs the entities claim are allowable were determined in accordance with generally accepted accounting principles and adequately documented in compliance with the statutes, regulations, uniform administrative requirements and OMB Circulars that govern these funds and their program.

(f) Any fee charged to the grant recipient for assistance in resolving the monitoring report or to prepare and present an appeal to the Executive Director or District Court cannot be charged to grant or contract funds received from ODOC. This includes fees charged by an accountant, expert witness, attorney, or other representative.

SUBCHAPTER 11. GRIEVANCE PROCEDURE [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

150:120-11-1. Grievances [REVOKED]

(a) A grievance filed with the Oklahoma Department of Commerce (ODOC) by a participant or affected party alleging a violation(s) of Title I of WIA is governed by the procedure set forth herein.

(b) An appeal to ODOC from a grievance decision issued at the local level regarding alleged violation(s) of Title I of WIA is governed by the procedure set forth herein.

(c) This procedure does not apply to grievances alleging discrimination or Title I of WIA, Subtitle C, Job Corps.

PART 3. GRIEVANCES FILED DIRECTLY WITH ODOC [REVOKED]

150:120-11-10. Filing [REVOKED]

A participant or affected party may file a grievance with the Executive Director.

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150:120-11-11. Time limit for filing a grievance with ODOC [REVOKED]

If an individual elects to file his or her grievance with ODOC, the grievance must be filed within 20 days from the date of the violation(s) which is the basis of the grievance.

150:120-11-12. Contents of a grievance [REVOKED]

Each grievance shall be in writing and should:

- (1) Be signed by the grievant or his authorized representative;
- (2) Contain the grievant's name and address (or specify another means of contacting him or her);
- (3) Identify the individual against whom the grievance is filed, if applicable;
- (4) List the date(s) on which the acts which are the basis of the grievance occurred, or if continuing, when such acts began and describe the continuing nature;
- (5) List the names and addresses of persons who may have knowledge of the facts of the grievance;
- (6) Describe the grievant's allegations in sufficient detail to allow the Executive Director to determine whether:
 - (A) The Executive Director has jurisdiction over the grievance;
 - (B) The grievance was timely filed; and
 - (C) The grievance has apparent merit, i.e., whether the allegations if true, would violate any Title I of WIA.

150:120-11-13. Referral of a grievance filed with ODOC [REVOKED]

The Executive Director may refer a grievance, originally filed with ODOC, to the local area if there is a likelihood that it could be resolved at that level. If the referred grievance is not resolved within ten (10) days from the date of receipt by the local area, the Executive Director or his or her designee, will attempt to resolve the issue informally.

PART 5. APPEALS TO ODOC FROM GRIEVANCE DECISIONS OF A LOCAL AREA [REVOKED]

150:120-11-20. Filing grievance with local area [REVOKED]

A participant or affected party may file a grievance with the local area. It will be resolved according to the procedures of the local area, established pursuant to 20 C.F.R. 667.600 (e).

150:120-11-21. Appeals with ODOC [REVOKED]

An appeal may be filed with the Executive Director from a grievance decision issued at the local area level if:

- (1) No decision is reached within 60 days from the date the grievance is received at the local area level; or
- (2) Either party is dissatisfied with the local area hearing decision.

150:120-11-22. Time limit for filing an appeal with ODOC [REVOKED]

(a) If the local area does not render a decision within sixty (60) days from the date of receipt of the grievance, an appeal must be filed with the Executive Director within 30 days from the expiration of the sixty (60) day time period.

(b) If the local area renders a decision that a party is dissatisfied with, the appeal must be filed with the Executive Director within 30 days of the date the local area mails the decision to the party by certified mail.

PART 7. INFORMAL AND FORMAL RESOLUTIONS OF GRIEVANCES [REVOKED]

150:120-11-30. Informal resolution [REVOKED]

The Executive Director or his or her designee will attempt to resolve any grievance or appeal informally by meeting with the parties in person or discussing the grievance with the parties by telephone. If the grievance is not resolved informally within fifteen (15) days from the receipt of the grievance or appeal, the Executive Director will proceed with the Hearing process.

150:120-11-31. Hearing [REVOKED]

The Executive Director will conduct the hearing pursuant to its rules at 150:111-1 through 150:111-17. The hearing process will be completed within sixty (60) days from the date the grievance was received by the Executive Director unless the parties and the Executive Director agree to waive this requirement in order to allow additional time to resolve the matter, or the Executive Director can waive the requirement upon application by one of the parties.

150:120-11-32. Remedies [REVOKED]

The remedies that may be imposed under this grievance procedure are enumerated in WIA section 181(c).

150:120-11-33. Appeal to Secretary or investigation by Secretary [REVOKED]

The Secretary will investigate an allegation of a violation as set forth above if:

- (1) a decision relating to such violation has not been reached within sixty (60) days after the date of filing of the grievance and either party appeals to the Secretary; or
- (2) a decision relating to such violation has been reached within sixty (60) days and the party to which such decision is adverse appeals such decision to the Secretary.

150:120-11-34. Decision of the Secretary [REVOKED]

The Secretary will make a final determination relating to an appeal no later than 120 days after receiving such appeal.

[OAR Docket #23-400; filed 6-5-23]

TITLE 150. OKLAHOMA DEPARTMENT OF COMMERCE
CHAPTER 170. OKLAHOMA STRATEGIC INDUSTRIAL DEVELOPMENT ENHANCEMENT TAX CREDIT

[OAR Docket #23-401]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 150:170-1-1. Purpose and scope [NEW]
- 150:170-1-2. Definition [NEW]
- 150:170-1-3. Application process [NEW]
- 150:170-1-4. Population determination [NEW]

AUTHORITY:

The legislation establishing the Oklahoma Department of Commerce 74 O.S. §§ 5001 et seq.; 68 O.S. § 2357.105

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

November 28, 2022

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February 10, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

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August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of these rules is to implement the Oklahoma Strategic Industrial Development Enhancement Tax Credit established in 68 O.S. § 2357.105.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

150:170-1-1. Purpose and scope

The purpose of these rules is to implement the Oklahoma Strategic Industrial Development Enhancement Tax Credit Act program at the Oklahoma Department of Commerce.

150:170-1-2. Definitions

In addition to those terms defined elsewhere in this chapter, and the terms defined in 68 O.S. § 2357.105, the following words and terms when used in this subchapter shall have the

following meaning unless the context clearly indicates otherwise.

"Economic development organization" means an organization acting to promote economic development and can act as a project sponsor. These include but are not limited to, Chambers of Commerce, Regional Economic Development entities, and Main Street organizations. All economic development organizations must be organized under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C..

"Economic development zone" means any zone, including Enterprise Zones, state and federal Opportunity Zones, identified for economic development.

"Eligible entity" means an incorporated business entity that is located in the state with a qualifying project in a qualifying project location that receives an allocation of tax credits for qualified economic development and qualified initial infrastructure expenditures. The business entity must be incorporated in any state but must be located in the state to satisfy this definition.

"Qualified industrial park" means an industrial park in counties with less than 100,000 people which is owned, managed, or operated by cities, independent entities, or economic development authorities. A city or economic development authority that owns, manages, or operates the industrial park may also apply on behalf of the industrial park as the project sponsor.

150:170-1-3. Application process

(a) For the purpose of evaluating the applications, the Department will require all entities interested in the Oklahoma Strategic Industrial Development Enhancement Tax Credit to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the project proposal.

(1) The Department will make available upon request application forms and application guidelines.

(2) The forms and guidelines will provide threshold criteria information that will assist applicants in their application preparation.

(3) The guidelines and forms set forth shall apply to all applications and awards made in the program year corresponding with the application and application guidelines packet.

(b) After the Department's evaluation and review of the application are completed, the Department shall provide an approval letter for eligible expenditures and qualifying projects prior to the commencement of the project.

(c) After the Department's evaluation and review of eligible expenditures and qualifying project status is completed, the Department shall forward certification of verification to the Oklahoma Tax Commission for the issuance of the project tax credit amount that may be claimed or assigned. The certificate of verification shall satisfy all requirements of the Oklahoma Tax Commission pertaining to the eligibility of the eligible taxpayer claiming the credit.

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(d) The Department shall forward a complete copy of the submitted application to the Oklahoma Tax Commission upon request.

(e) Applications shall be reviewed quarterly and tax credits shall be allocated to qualifying applicants that have the highest net benefit to the state. Entities submitting incomplete applications shall have fifteen (15) business days to cure its application before it is rejected for other applications that have been submitted.

150:170-1-4. Population determination

For the purpose of determining the population of counties with less than 100,000 people, the 2020 Decennial Census shall be used.

[OAR Docket #23-401; filed 6-5-23]

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

[OAR Docket #23-453]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Educator Preparation Program Accreditation

218:10-5-1 [AMENDED]

218:10-5-2 [REVOKED]

218:10-5-3 [AMENDED]

218:10-5-4 [AMENDED]

Subchapter 7. Educator Assessment Regulations

218:10-7-1 [AMENDED]

AUTHORITY:

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

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n/a

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n/a

GIST/ANALYSIS:

The Educator Preparation Program Accreditation amendments reflect changes in statute and policy. The amendments to Educator Assessment Regulations reflect changes in statute.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:

SUBCHAPTER 5. EDUCATOR PREPARATION PROGRAM ACCREDITATION

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

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

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

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

(1) A competency-based educator preparation program built around the standards for Oklahoma educator preparation programs (See 218:10-5-3 and 218:10-5-4);

(2) Self-studies as outlined in the standards for state accreditation;

(3) On-site accreditation review team visits to the campuses of the institutions of higher education;

(4) Analysis of data related to student success rates on the general education, professional education, and subject matter assessments;

(5) Analysis of student satisfaction data;

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

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

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

- (A) Description of evidence demonstrating the capacity to prepare educators and/or other school professionals.
 - (B) Evidence that graduates/completers are eligible for an educator license issued by the state.
 - (C) A list of all programs offered for the preparation of P-12 educators and/or other school professionals.
 - (D) An accreditation plan for programs by site of operation including number of completers.
 - (E) A list of all of the EPP clinical educators (faculty).
 - (F) Information on applicable EPP characteristics, such as governance, regional accreditation, and Carnegie classification.
 - (G) Evidence of parity in resources, facilities, and finances in comparison to another professional field based preparation program of the EPP's choice.
 - (H) Copies of EPP-created assessments and scoring guides for unit-wide evaluation of candidate performance, not including proprietary assessments such as licensure examinations.
- (e) The OEQA is a performance-based partner with the OSRHE and CAEP. All educator preparation programs shall be expected to meet all CAEP unit and program accreditation standards, State Department of Education competencies, OSRHE teacher education policies as well as all additional standards established by the CEQA.
- (1) **Self-study.** The self-study shall be utilized by the CEQA for state accreditation, OSRHE program review, and CAEP accreditation as stipulated in OS 70 sections 6-180.
 - (2) **Records to be kept on file at the institution.** The following items and records shall be kept on file at the institution with the director/dean of teacher education.
 - (A) Copy of the self-study;
 - (B) Copy of annual report to the CEQA;
 - (C) Syllabi for courses in the areas of specialization, general education, and professional education will be kept on file with the institution; and
 - (D) Full faculty resumes will be on file for review. All levels of teaching personnel will be indicated.
 - (E) Copies of program review reports.
 - (F) Candidate CEOE scores.
 - (3) **OEQA personnel will establish an accreditation visit schedule that will adhere to CAEP/State accreditation timelines.**
 - (4) **Selection of accreditation review team.** Selection of the accreditation review team will be coordinated by the OEQA staff after the visitation dates are set. Selection of the accreditation review team shall be based on the following:
 - (A) All team members must have been trained by CAEP staff and/or their designee in the application of CAEP standards and on the process for evaluating programs for the CEQA.
 - (B) Accreditation team for first accreditation. The membership of a first accreditation review team shall be as follows:
 - (i) Three to six CAEP site visitors (for institutions seeking national accreditation)
 - (ii) State site visitors appointed by the OEQA including: One P-12 site visitor (when available); one site visitor from higher education who is a member of an educator preparation unit. For accreditation of private institutions the site visitor shall be from a private institution; for public institutions this site visitor shall be from a public institution; One site visitor from the OEQA serving as State Consultant; One additional at-large site visitor;
 - (iii) For any institution requesting accreditation of a career technology program(s) an additional site visitor may be recommended by the State Director of Career and Technology Education.
 - (iv) The OEQA may invite observers representing the Oklahoma State Regents for Higher Education, Oklahoma State Department of Education, Oklahoma Department for Career and Technology Education, professional organizations, and the community-at-large.
 - (v) Observers shall be actively involved in the data collection process, participate in the accreditation review team meetings, and assist the accreditation review team to understand state nuances. They may assist with writing the state team report ~~but shall not be required to write any sections of the team report.~~ They shall not be a voting member of the team.
 - (vi) Observers are expected to participate in the entire visit and all assigned meetings and activities.
 - (vii) The chair of the accreditation review team has the authority to dismiss any observer from the accreditation visit who does not participate in the entire site review and assigned activities.
 - (viii) The OEQA shall collaborate with the director of educator preparation at the institution requesting state accreditation regarding the team representation.
 - (ix) State site visitors will number no less than two.
 - (C) Accreditation team for continuing accreditation. The membership of a continuing accreditation review team shall be as follows:
 - (i) CAEP site visitors as determined by CAEP (for CAEP accredited institutions);
 - (ii) State site visitors which will number no less than two.
 - (iii) The OEQA shall collaborate with the director of educator preparation at the institution being reviewed regarding the state team representation;
 - (iv) The OEQA may invite observers representing Oklahoma State Regents for Higher Education,

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State Department of Education, and the community-at-large. If a Career and Technology program is offered at the institution the State Director of Career and Technology Education may nominate a site visitor for any institution requesting accreditation of career and technology program(s);

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

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

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

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

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

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

(A) The accreditation process will include

(i) Successful completion of application (for first and initial accreditation)

(ii) Submission of Self-Study Report containing evidence of meeting accreditation standards and state requirements

(iii) Response to the Formative Feedback Report

(iv) On-site visit

(B) The completed accreditation review team report will be presented to the CEQA and CAEP (as applicable).

(C) Visiting team members will be reimbursed for expenses incurred according to state guidelines. Reimbursement forms must be completed by team members on the last day of the visit.

(6) Preparation of the team report. The accreditation review team work will culminate in preparation of a report outlining the findings of the team following CAEP guidelines. The report will reflect the team consensus on the review.

(A) At the exit report, representatives of the accreditation review team will present a summary of its evaluation of the program. The summary will include an evaluation of the completeness, quality, and strength of evidence for each standard and state requirement.

(B) The completed CAEP and OEQA reports will follow the CAEP timelines for submission; and

(C) The summary evaluation will be presented to the CEQA for determination of final state accreditation decision. For CAEP accredited institutions, final accreditation decisions will be made after CAEP has forwarded its accreditation decision to the CEQA.

(7) Final action. Final action on the reports and institutional accreditation will proceed according to CAEP/state guidelines and policies.

(A) Final action by the CEQA may include the following:

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

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

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

(iv) **Revocation (for Continuing) or Denial (for Initial)** of accreditation occurs if an EPP does not meet two (2) or more of the accreditation standards. In a case where accreditation is revoked, the EPP can begin the application process after one (1) calendar year from the date of the final decision. All students who have been admitted to the program must be notified by mail, within 30 days of receipt of the CAEP or CEQA decision, as

to the revocation of accreditation of the unit and programs. Within 30 days of receipt of the CEQA decision, the institution provides to the OEQA the names, admission dates, and majors of all students admitted to their program at the time of the decision. Institutions that lose their state accreditation may recommend candidates for certification for one year from the end of the semester in which accreditation is revoked.

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

(8) Appeals Board.

(A) The appeals process for National Accreditation will follow the guidelines and criteria contained in the CAEP Appeals Policy;

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

(C) Membership of CEQA Appeals Board shall be:

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

(9) Appeal of an accreditation adverse action.

(A) An educator preparation program may formally appeal an adverse action (denial or revocation of accreditation) CEQA by indicating its intent in writing within 15 days of receipt of its accreditation letter and action report. The program shall submit its petition within 30 days after its letter of intent.

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

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

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

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

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

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

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

(11) Cost of review.

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

(B) If the CEQA Appeals Board finds in favor of the institution, the CEQA will be liable for expenses of the AB and second accreditation review team. All expenses will be reimbursed according to state travel reimbursement guidelines.

218:10-5-2. Program Review Advisory Board [REVOKED]

~~The Program Review Advisory Board (PRAB) shall provide consultation related to program reviews. The PRAB shall make final reviews and recommendations on all program reports submitted for state review under the Specialized Professional Association (SPA) process and make recommendations on program status for all non CAEP institutions and for program areas not associated with a CAEP recognized learned society. Program reviews will take place in conjunction with the college's/university's accreditation cycle, occurring according to the established CAEP/or OEQA timeline as applicable.~~

- ~~(1) Members of the Program Review Advisory Board (PRAB) shall be approved by the CEQA.~~
- ~~(2) The Program Review Advisory Board (PRAB) members shall serve an initial term of two years.~~
- ~~(3) Two or more of the Program Review Advisory Board (PRAB) members may be reappointed to additional terms to allow for continuity.~~
- ~~(4) Members shall have completed training on the program review process.~~
- ~~(5) Discretion and ethical judgment shall be used in making recommendations.~~

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~~(6) The Program Review Advisory Board (PRAB) may be comprised of trained reviewers in specific subject areas from the following groups:~~

- ~~(A) Practicing P-12 classroom teachers~~
- ~~(B) Practicing P-12 administrators~~
- ~~(C) Higher education faculty members~~

~~(7) The Director of Educational Quality or designee may chair the Program Review Advisory Board (PRAB) committee.~~

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

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

(1) Membership on the educator preparation governing unit shall be defined by written policy to include:

- (A) A majority of the members who have a minimum of three years teaching experience in public schools;
- (B) A majority of the members in the governance unit who are currently teacher education faculty members;
- (C) Some faculty members who shall represent the arts and sciences;
- (D) A designated director of educator preparation defined as the institution's official representative for educator preparation. The authority and responsibilities of this individual shall be clearly defined in written policies; and
- (E) A clearly defined process whereby faculty members and administrators become members and the terms of office.

(2) The responsibilities of the educator preparation governing unit shall be defined by written policy to include:

- (A) Responsibilities of the officers of the unit;
- (B) Responsibilities of the unit's standing committees; and
- (C) Responsibilities in the following areas as they are related to educator preparation:
 - (i) Admission/retention in educator preparation;
 - (ii) Field experience and student teaching (admission and placement);
 - (iii) Development of courses and program curricula; and program review, evaluation and planning.

(3) Program review, evaluation and revision responsibilities include:

(A) The governance unit shall conduct at least one systematic review, evaluation, and when appropriate, revision of all educator preparation programs within each accreditation period;

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

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

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

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

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

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

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

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

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

(2) The conceptual framework shall consist of:

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

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

- (1) The institution shall establish a process which seeks information and program input from educator preparation faculty; faculty from arts and sciences and other programs and disciplines which are appropriate; candidates within the educator preparation program; teachers, administrators, parents, guardians or custodians of students; and business and community leaders.
- (2) The institution shall establish procedures to inform the public regarding the educator preparation program and to solicit and receive public input.
- (3) The self-study shall be accessible to any interested party under the Oklahoma Open Records Act.
- (4) The submitted institutional plan must be approved by the institution's governing board.
- (5) Annual reviews and reports indicating program changes.

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

- (1) Programs require teacher candidates to have speaking and listening skills at a novice high level in a language other than English or the knowledge and skills necessary to address the needs of Emergent Bilingual (English Learner) students in the P-12 classroom and are proficient in the strategies required for successful delivery of P-12 instruction in that area. The assessment for such competency may occur at any point in the teacher candidate's program through specified course work, approved by the Office of Educational Quality and Accountability (OEQA), and as may be required by the institution.
- (2) General studies requirements for candidates include the arts, communication, history, literature, mathematics, philosophy, sciences, English, government, and the social sciences.
- (3) Programs establish cohort or colleague groups within the institution to assist teacher candidates in achieving competencies, better adapting to the school environment and furthering professional growth.
- (4) Candidates complete a well-planned sequence of courses and/or experiences in pedagogical studies that ensures student competency in the Oklahoma State Department of Education Full Subject Matter Competencies for Teacher Licensure and Certification.
- (5) The guidelines and standards for program reviews representing specialty organizations and national learned society standards are used in developing programs in each content area.
- (6) Secondary and elementary/secondary teacher candidates have undergraduate majors or their equivalents, in a subject area.
- (7) Teacher candidates in early childhood, elementary, and special education have subject area concentrations, which allow qualification as a generalist. To qualify as a generalist, candidates must document competency in mathematics, science, language arts, and social studies

as identified in the CAEP professional learned societies' standards and State Department of Education Full Subject Matter Competencies for early childhood, elementary and special education.

- (8) Teacher candidate coursework includes the study of substance abuse symptoms identification and prevention; mental illness symptoms identification and mental health issues; classroom management skills; trauma-informed responsive instruction; classroom safety and discipline issues and multi-tiered systems of support.
- (9) Teacher candidate coursework or training includes the use of digital and other instructional technologies to effectively maximize student learning.
- (10) Early childhood, elementary education and special education candidates; training includes research-based instructional strategies for instruction, assessment and intervention for literacy development for all students, including advanced readers, typically developing readers and struggling readers who are coping with a range of challenges, including, but not limited to, English learners and learners with handicapping conditions and learning disabilities (including dyslexia).
- (11) Teacher candidates must complete ~~the equivalent of twelve (12) weeks of student teaching~~ and have a minimum of 60 hours of diverse field experiences prior to their student teaching internship. Teacher candidates must complete the equivalent of twelve (12) weeks of student teaching under the direct supervision of a mentor teacher serving as the teacher of record and has a minimum of three years of teaching experience in the area for which they are certified.
- (12) Teacher candidates are provided with advisement services to assist them in taking course work designed to maximize their opportunities for certification and employment. At a minimum, teacher candidates are provided information on the latest supply and demand information concerning teacher employment, state salary structure, and teaching shortage areas.
- (13) Substantive collaboration and classroom interaction with students accompany theoretical curriculum, thus allowing teacher candidates the opportunity to apply theory to actual classroom situations.
- (14) Instruction integrates pedagogical competencies or skills with experiences in the school setting.
- (15) Teacher candidates are provided with opportunities to have parental, family and community involvement within their pre-service programs.
- (16) The unit establishes and publishes a set of criteria/competencies for exit from each professional education program. These criteria/competencies reflect the Oklahoma Department of Education General Teacher Competencies and/or subject matter competencies outlined in the CAEP national (professional) learned societies' standards.
- (17) The unit establishes and publishes the criteria/competencies for exit and satisfactory completion adhering to all rules and regulations established by the Oklahoma State Department of Education.

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

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

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

(h) The following policies are to be used to evaluate individual program areas at each institution: The institution shall submit program reviews for each required program area based upon the CAEP and/or State policies, guidelines and accreditation schedule. An educator preparation provider that has secured specialty area accreditation from a specialized accrediting agency that is recognized by the U.S. Department of Education or CHEA can choose to have any such accredited program(s) exempted from review.

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

218:10-5-4. Standards for Oklahoma educator preparation programs

(a) Effective September 1, 2016 standards as defined by CAEP shall apply to undergraduate and graduate programs.

(1) Standard One: Content and pedagogical knowledge. ~~The educator preparation program ensures that candidates develop a deep understanding of the critical concepts and principles of their discipline and, by completion, are able to use discipline specific practices flexibly to advance the learning of all students toward attainment of college and career readiness standards.~~

(2) Standard Two: Clinical partnerships and practice. ~~The educator preparation program ensures that effective partnerships and high quality clinical practice are central to preparation so that candidates develop the knowledge, skills, and professional dispositions necessary to demonstrate positive impact on all P-12 students' learning and development.~~

(3) Standard Three: Candidate ~~quality, recruitment, and selectivity~~ progression, and support. ~~The educator preparation program demonstrates that the quality of candidates is a continuing and purposeful part of its responsibility from recruitment, at admission, through the progression of courses and clinical experiences and to decisions that completers are prepared to teach effectively and are recommended for certification. The educator~~

~~preparation program demonstrates that development of candidate quality is the goal of educator preparation in all phases of the program. This process is ultimately determined by a program's meeting of Standard 4.~~

(4) Standard Four: Program impact. ~~The educator preparation program demonstrates the impact of its completers on P-12 student learning and development, classroom instruction, schools, and the satisfaction of its completers with the relevance and effectiveness of their preparation.~~

(5) Standard Five: Quality assurance system and continuous improvement. ~~Educator preparation program quality assurance and continuous improvement. The educator preparation program maintains a quality assurance system comprised of valid data from multiple measures, including evidence of candidates' and completers' positive impact on P-12 student learning and development. The educator preparation program supports continuous improvement that is sustained and evidence based and that evaluates the effectiveness of its completers. The educator preparation program uses the results of inquiry and data collection to establish priorities, enhance program elements and capacity and test innovations to improve completers' impact on P-12 student learning and development.~~

(b) Effective September 1, 2019, accreditation standards as defined by CAEP shall apply to advanced programs.

(1) Standard A.1: Content and Pedagogical Knowledge. ~~The educator preparation program ensures that candidates for professional specialties develop a deep understanding of the critical concepts and principles of their field of preparation and, by completion, are able to use professional specialty practices flexibly to advance the learning of all P-12 students toward attainment of college and career readiness standards~~

(2) Standard A.2: Clinical Partnership and Practice. ~~The educator preparation program ensures that effective partnerships and high quality clinical practice are central to preparation so that candidates develop the knowledge, skills, and professional dispositions appropriate for their professional specialty field.~~

(3) Standard A.3: Candidate Quality and Selectivity. ~~The educator preparation program demonstrates that the quality of advanced program candidates is a continuing and purposeful part of its responsibility so that completers are prepared to perform effectively and can be recommended for certification where applicable.~~

(4) Standard A.4: Program Impact-Satisfaction with Preparation. ~~The educator preparation program documents the satisfaction of its completers from advanced preparation programs and their employers with the relevance and effectiveness of their preparation~~

(5) Standard A.5: Provider Quality Assurance and Continuous Improvement. ~~The educator preparation program maintains a quality assurance system comprised of valid data from multiple measures, including evidence of candidates and completers positive impact on P-12 student learning and development. The provider~~

~~supports continuous improvement that is sustained and evidence based, and that evaluates the effectiveness of its completers. The provider uses the results of inquiry and data collection to establish priorities, enhance program elements and capacity, and test innovations to improve completers impact on P-12 student learning and development.~~

(c) Annual report. Each Oklahoma educator preparation unit shall submit an annual report to the OEQA. This report will satisfy the requirements for the CEQA, OSRHE, State Department of Education, and CAEP/AACTE. The following information will be included in the report:

- (1) Changes that occurred in implementation of the standards outlined in the Institution Plan as a result of local and statewide evaluations/assessments, public hearings or other reasons;
- (2) Progress made in addressing the stipulations/areas for improvement, if any, identified by the most recent on-site visit by the on-site accreditation review team. When the CEQA has determined that an education unit is not making progress toward the removal of the area for improvement on a state requirement, the institution will be notified that the unit is required to submit a plan and timeline for addressing the areas for improvement. If at the end of six (6) months the CEQA determines the education unit has not submitted sufficient data documenting adequate progress toward the removal of the areas of improvement, a state-level Target Visit will be warranted within 18 months. After such Target Visit the CEQA will have the option of granting continuing accreditation or revoking accreditation. This progress will be annually reviewed by the OEQA.
- (3) Quantitative data related to the unit's programs as required in the AACTE/CAEP Annual Report. These data shall reflect information pertaining to supply and demand for teacher candidates;
- (4) Program changes being implemented for OEQA and CAEP continued accreditation;
- (5) Report on resources devoted to technology;
- (6) Report on professional development activities of faculty;
- (7) Report on the number of hours each faculty member taught or were in direct contact with students in public schools;
- (8) Report on the number of graduate students admitted conditionally and the success rates.
- (9) Report on the results of the assessment of teaching skills in the area of reading instruction as administered to candidates in elementary, early childhood education, and special education.
- (10) Report on the participation in the alternative placement programs offered by the institution.
- (11) Report on the procedures used to inform the public regarding the institution's teacher education program and the manner through which public input is solicited and received.

(12) Annually, the OEQA shall provide feedback to any institution if their annual report indicates that progress is not being made in addressing areas for improvement.

(13) Complete copies of the annual reports for public institutions will be distributed to OSRHE and summary data for all institutions will be distributed to constituents based on reporting requirements outlined in 70 O.S., Section 6-186.

(14) The OEQA will produce a report describing the accreditation status of each institution. This report will devote a section to each institution separately and include a summary of CAEP and OEQA review findings. 218:10-7-1.

SUBCHAPTER 7. EDUCATOR ASSESSMENT REGULATIONS

218:10-7-1. Educator assessment regulations

- (a) **Examinees - initial licensure and certification.**
 - (1) Any individual who applies for a teaching license/certification must successfully complete the competency examination as defined by the OEQA. The competency examination is made up of ~~three~~two components: ~~The Oklahoma General Education Test (OGET) or an approved assessment of general knowledge,~~ the Oklahoma Subject Area Test (OSAT) and ~~the Oklahoma Professional Teaching Exam (OPTe) or an approved performance assessment measuring professional knowledge and skills.~~
 - ~~(2) Any individual who completes a School Counselor preparation program approved by OEQA, and who is not a certified teacher, must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test for School Counselor.~~
 - ~~(3) See Appendix A for competency exam requirements by certification area and test codes.~~
- (b) **Examinees - additional certification.**
 - (1) Individuals wishing to add a certification area to an existing teaching credential must successfully complete the Oklahoma Subject Area Test for the field of the desired certification.
 - (2) Individuals wishing to add a teaching certification area to an existing license or standard certificate in Speech Language Pathologist, School Nurse, School Psychometrist and/or School Psychologist must successfully complete the Oklahoma Subject Area Test and an approved performance assessment measuring professional knowledge and skills for the field of the desired certification.
 - (3) See Appendix A for competency exam requirements by certification area and test codes
- (c) **Examinees - alternative placement program.**
 - (1) Individuals seeking a teaching license via the Alternative Placement Program must successfully complete the Oklahoma General Education Test and the Oklahoma Subject Area Test. A licensed teacher via the Alternative Placement Program, excluding School Counselors, seeking a standard certificate must successfully complete ~~the~~

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~~Oklahoma Professional Teaching Exam~~ or an approved performance assessment measuring professional knowledge and skills.

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

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

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

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

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

[OAR Docket #23-453; filed 6-7-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #23-468]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Election Personnel
Part 1. County Election Board Members and Employees
230:10-3-12. Compensation of the Assistant Secretary [REVOKED]
230:10-3-14. Compensation of the Chief Clerk [REVOKED]
Subchapter 7. General Administration of the County Election Board Office
Part 5. Maintaining the Office
230:10-7-45. Retention of Precinct Registries and affidavits [AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 3, 2023

COMMENT PERIOD:

March 1, 2023 through March 31, 2023.

PUBLIC HEARING:

None held or requested

ADOPTION:

March 31, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 31, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22.

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The two proposed revocations in Subchapter 3 are related to the change in the formula for compensation of the Assistant Secretary in state statute (See 26 O.S. Section 2-117(D)) and the elimination of the Chief Clerk position. Amendments to Subchapter 7 will make the retention period for precinct registries in the County Election Board offices coincide with the statutory requirement of 24 months. See 26 O.S. Section 7-117.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 3. ELECTION PERSONNEL

PART 1. COUNTY ELECTION BOARD MEMBERS AND EMPLOYEES

230:10-3-12. Compensation of the Assistant Secretary [REVOKED]

~~The Assistant Secretary of the County Election Board shall be compensated at the appropriate rate for all hours worked in excess of his or her regular work hours in compliance with the requirements of the federal Fair Labor Standards Act. Compensation and any related benefits for such overtime hours shall be paid by the county. See 230:10-7-125 through 230:10-7-133.~~

230:10-3-14. Compensation of the Chief Clerk [REVOKED]

~~(a) The Chief Clerk of the County Election Board shall be compensated at the appropriate rate for all hours worked in excess of his or her regular work hours in compliance with the requirements of the federal Fair Labor Standards Act. Compensation and any related benefits for such overtime hours shall be paid by the county. See 230:10-7-125 through 230:10-7-133.~~

~~(b) The salary of the highest paid first or chief deputy in the county, excluding the undersheriff, shall be converted to an hourly rate for the purpose of determining the salary of the Chief Clerk. The following formula shall be used to determine the hourly rate.~~

~~(1) **Determining hourly rate paid to the highest salaried first deputy.**~~

~~(A) Multiply the number of hours in the highest paid deputy's regular work week by 52 to determine the maximum number of work hours per year.~~

~~(B) Divide the maximum number of work hours per year by 12 to determine the maximum regular work hours per month.~~

~~(C) Divide the gross monthly salary paid to the deputy by the number of hours per month determined in step B. This is the deputy's hourly rate.~~

~~(2) **Determining the Chief Clerk's minimum salary.**~~

~~(A) Multiply the number of hours in the Chief Clerk's regular work week by 52 to determine the maximum number of work hours per year.~~

~~(B) Divide the number of work hours per year by 12 to determine the maximum regular work hours per month.~~

~~(C) Multiply the maximum regular work hours per month by the hourly rate determined in (1)(C) of this subsection to determine the monthly salary for the Chief Clerk based on the hourly rate paid to the highest salaried first deputy.~~

~~(D) Multiply the scheduled salary for the Secretary of the County Election Board by 0.9. (90%).~~

~~(E) Divide the amount determined in (D) by 12. This is the amount of the monthly salary for the Chief Clerk based on 90% of the Secretary's salary.~~

~~(F) The minimum salary of the County Election Board Chief Clerk is the lower amount of (C) or (E).~~

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD OFFICE

PART 5. MAINTAINING THE OFFICE

230:10-7-45. Retention of Precinct Registries and affidavits

~~(a) All Precinct Registries shall be retained for 60 months after the date of the election. These items shall be stored together in a container bearing the date of the election and the date on which they may be destroyed.~~

~~(b) All original, paper Precinct Registries shall be retained for at least 24 months following the date of the election. After 24 months, the County Election Board Secretary is authorized to scan all original Precinct Registries. After scanning the Precinct Registries and verifying that the scanned copies are both legible and complete, the original Precinct Registries may be destroyed and the digital copies shall be retained for the remaining 36 months of the 60 month retention period. See 26 O.S. Section 7-117. These items shall be stored together in a container bearing the date of the election and the date on which they may be destroyed.~~

~~(e) All used ATI Session Logs, Absentee Voter Affidavits, Spoiled Ballot Affidavits, Voter Assistance Forms, and Provisional Ballot Refusal forms shall be retained for 24 months~~

after the date of the election. These forms may be stored together, organized by precinct, in a container labeled with the election date and the date on which they may be destroyed.

[OAR Docket #23-468; filed 6-8-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION

[OAR Docket #23-470]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Voter Outreach

Part 3. Distribution Of Voter Registration Application Forms

230:15-3-23. Voter registration application forms available to individuals

[AMENDED]

Subchapter 5. Application for Voter Registration

Part 21. Voter Registration Application by Mail

230:15-5-84. Information required on voter registration application

[AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

GIST/ANALYSIS:

Amendments in Subchapter 3 address the ongoing development of an online voter registration system. Amendments in Subchapter 5 include modifications to the list of eligibility requirements for voter registration applications in order to comply with State and Federal law. This also includes modified language as to the methods by which such applications may be submitted. Other amendments concern procedures to process and accept various applications for new or updated registrations and how to handle applications from individuals who fail to indicate political affiliation. These rules interpret 26 O.S., Section 4-112.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 3. VOTER OUTREACH

PART 3. DISTRIBUTION OF VOTER REGISTRATION APPLICATION FORMS

230:15-3-23. Voter registration application forms available to individuals

(a) The printed Oklahoma Voter Registration Application form generally shall be available to any individual applicant for voter registration or for change of voter registration in the following locations.

(1) **Motor license agencies.** Any individual applicant for voter registration or for change of voter registration may obtain an Oklahoma Voter Registration Application form at any motor license agency in Oklahoma. See 230:15-5-100 and 230:15-5-103.

(2) **Voter registration agencies.** Any individual applicant for voter registration or for change of voter registration may obtain an Oklahoma Voter Registration Application form at any voter registration agency identified in 230:15-5-122 and 230:15-5-123. See 230:15-5-124.

(3) **Public libraries.** Any individual applicant for voter registration or for change of voter registration may obtain an Oklahoma Voter Registration Application in any public library in Oklahoma. Public library personnel shall have no responsibility either to offer applications to library patrons or to collect completed applications. ~~Applications obtained at a public library shall be mailed to the State Election Board by the applicant.~~

(4) **United States Post Offices.** Any individual applicant for voter registration or for change of voter registration may obtain an Oklahoma Voter Registration Application form at any United States Post Office in Oklahoma. United States Postal Service employees shall have no responsibility either to offer applications to post office patrons or to collect completed applications. Applications obtained in a United States Post Office shall be mailed to the State Election Board by the applicant.

(b) The federal voter registration application form is widely available online. State Election Board and County Election Board personnel shall refer persons who want a copy of the federal voter registration application form to the United States Election Assistance Commission's website, although they may print a copy upon request. The federal voter registration application form is available online at www.eac.gov. It may be filled out online, but it must be downloaded, printed, signed personally by the applicant as described in 230:15-5-84(c), and mailed or delivered to the State Election Board, to a County Election Board, or to a motor license agency or designated voter registration agency to be processed. A federal voter registration application form cannot be submitted online, by electronic mail, by fax, or by any other electronic means in Oklahoma.

(c) The Oklahoma Voter Registration Application form is available online at www.elections.ok.gov. ~~The voter registration application form may be filled out online but must be downloaded, printed, signed personally by the applicant as~~

~~described in 230:15-5-84(c), and mailed or delivered to the State Election Board or to a County Election Board office to be processed. The Oklahoma Voter Registration Application cannot be submitted online, by electronic mail, by fax, or by any other electronic means unless specifically authorized by federal or state law; the State Election Board website.~~

SUBCHAPTER 5. APPLICATION FOR VOTER REGISTRATION

PART 21. VOTER REGISTRATION APPLICATION BY MAIL

230:15-5-84. Information required on voter registration application

(a) A person who is eligible to register to vote and who applies for voter registration shall be required to provide the information listed in (b) of this Section on a voter registration application form. Voter registration applications that contain all the required information shall be valid applications and shall be approved by the Secretary of the County Election Board and the applicant shall become a registered voter in the county. ~~An application that does not contain the required information, except as provided in (c) and (d) of this Section, shall not be a valid application and shall be rejected.~~

(b) A valid voter registration application shall contain the following information.

- (1) Applicant's full name.
- (2) Applicant's date of birth.
- (3) Applicant's county of residence. (See exception provided in ~~(d)~~(e) of this Section.)
- (4) Applicant's residence address. (See ~~(e)~~(f) of this Section.)
- (5) Applicant's mailing address. (See ~~(f)~~(g) of this Section.)
- (6) Applicant's political affiliation. (See exception provided in ~~(e)~~(d) of this Section.)
- (7) Applicant's Oklahoma driver license number, state identification card number, or the last four digits of applicant's Social Security number, or a check mark in the appropriate box to indicate that the applicant does not have an Oklahoma driver license, state identification card, or Social Security number. If the applicant submitted an older version of the Oklahoma Voter Registration Application form that does not include the check box to indicate that he or she does not have these identification numbers, the application shall not be considered valid if one of these numbers is not included. See 230:15-9-18.
- (8) Applicant's original signature or applicant's original mark, as defined in subsection (c) of this Section.
- (9) Name and address of person who helped applicant complete application if applicant is unable to complete it unassisted.
- (10) Check marks in both of the "yes" boxes that accompany questions concerning applicant's age and citizenship status as required by federal law. [42 USC 15483(b)(4)(A)]

If an applicant has checked boxes that accompany these questions, the application shall not be considered valid. (On older versions of the Oklahoma Voter Registration Application form, these questions appeared in the information and instruction portion of the form.) If an applicant did not answer these two questions but did sign and date the oath, the application shall be accepted if it is otherwise valid. Versions of the Oklahoma Voter Registration Application that do not include these eligibility questions are not considered valid application forms. If the applicant does not answer these two questions regarding age and citizenship, the application shall be rejected.

(11) An oath requiring the applicant to swear or affirm his or her eligibility for voter registration and that all information provided on the form is true.

(c) ~~A voter registration application shall be signed by the applicant in writing pursuant to the requirements of 26 O.S. Section 4-112. [26:4-112(A)] The applicant shall personally subscribe his or her name to or make his or her mark on the application, and no agent, representative or employee of the applicant may sign or mark on the applicant's behalf. [26:4-112(A)] The signature or mark must be the original, handwritten signature, autograph or mark of the applicant. [26:4-112(A)] No facsimile, reproduction, typewritten or other substitute signature, autograph or mark will be valid. [26:4-112(A)] A signature created electronically and applied to a voter registration application by remote pen technology or by any other electronic means shall not be a valid signature on a voter registration application form unless otherwise provided by federal or state law. The signature requirements described in this subsection are applicable to both the Oklahoma Voter Registration Application form and to the federal voter registration application form.~~

(d) An application for new voter registration that is valid in all other respects shall not be rejected because the applicant has made one of the errors listed below when indicating failed to indicate a political affiliation. Applicants who do not indicate a recognized political party or political organization on their registration application shall be designated as Independents. See 26:4-112. County Election Board personnel shall be authorized to designate an applicant as an Independent if one of the errors listed below appears on an otherwise valid voter registration application form. A voter designated Independent by County Election Board personnel for one of the following reasons shall be entitled to declare a political affiliation at any time, even during the period beginning April 1 and ending August 31, inclusive, in even numbered years when changes of political affiliation otherwise are prohibited. Such declarations of political affiliation shall be subject to the voter registration application deadline preceding an election. See 230:15-5-86.

(1) ~~The applicant left the space on the application form for political affiliation blank.~~

(2) ~~The applicant indicated more than one political affiliation and the applicant's intention cannot be determined.~~

(3) ~~The applicant wrote the name of a political party or political organization not currently recognized in Oklahoma. See 230:15-5-77 and 230:15-5-79.~~

(e) An applicant for voter registration shall indicate the name of the county in which he or she resides on the application form. However, if an applicant fails to indicate his or her county of residence, the Secretary of the County Election Board shall not reject the application solely for this reason if the residence address provided by the applicant in fact is located within the county.

(f) An applicant for voter registration must provide his or her address of residence. If the applicant has a street address (a street name and number, an apartment or suite number, if applicable, and zip code), that is the applicant's address of residence. [26:4-112] If the applicant does not have a street address, a physical description of the location of the residence that can be used to pinpoint the residence on a map must be provided. The applicant may provide a 911 address or may provide the legal description (a Section-Township-Range description, including the appropriate quarter section or quarter-quarter section designation). Neither a rural route address nor a post office box address is acceptable as an address of residence for voter registration purposes. A voter registration application that does not include an address of residence sufficient to locate the residence on a map shall be rejected by the Secretary of the County Election Board.

(g) A mailing address must include the city, state, and zip code. An emergency notification address, or 911 address, a rural route and box number, a post office box, or a street address all constitute valid mailing addresses for voter registration purposes. [26:4-112] If an applicant's mailing address is the same as the applicant's residence address, the space for mailing address may be left blank.

[OAR Docket #23-470; filed 6-8-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 15. VOTER REGISTRATION

[OAR Docket #23-469]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Voter Outreach

Part 3. Distribution of Voter Registration Application Forms

230:15-3-24. Voter registration application forms available in quantity for organized voter registration programs [AMENDED]

230:15-3-26. Requests for more than ~~4,000~~500 Oklahoma Voter Registration Application forms [AMENDED]

Subchapter 11. Voter Registration List Maintenance

Part 1. Cancellation of Voter Registration

230:15-11-4. Processing cancellations of registration [AMENDED]

Part 3. Voter Registration Address Confirmation

230:15-11-19. Voter registration address confirmation mailing [AMENDED]

230:15-11-27. Reinstatement of inactive voters [AMENDED]

230:15-11-29. Identification and notification of voters who may have changed addresses of residence [AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

Permanent Final Adoptions

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n/a

GIST/ANALYSIS:

Amendments to 230:15-3-24 and 230:15-3-26 simply reduce the number of copies of the Oklahoma Voter Registration Applications that will be provided and the threshold by which someone must request permission to print the forms. Proposed amendments to subchapter 11 are necessary changes pursuant to HB 3365 from the 2022 legislative session which amended 26 O.S. Section 4-120 (what notice is required for the cancellation of voter registration) and Sections 4-120.2 and 7-115.1 (amending what voters must receive and complete an address confirmation form).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 3. VOTER OUTREACH

PART 3. DISTRIBUTION OF VOTER REGISTRATION APPLICATION FORMS

230:15-3-24. Voter registration application forms available in quantity for organized voter registration programs

(a) The Oklahoma Voter Registration Application form shall be made available in quantity to any organization, entity or individual for use in organized voter registration programs. Quantities of the form may be obtained from any County Election Board as outlined in (b) of this Section or from the State Election Board as outlined in (c) of this Section.

(b) Any organization, entity or individual may obtain quantities of the Oklahoma Voter Registration Application form from the Secretary of any County Election Board as outlined in this subsection. However, the Secretary may refuse a request for forms if, in the Secretary's judgment, filling it would reduce the County Election Board's supply of forms below the level needed to meet its own requirements. Serial requests from the same organization, entity or individual made within

a thirty-day period shall be made in writing and shall state that all previously received forms have been distributed.

(1) A maximum of 250 Oklahoma Voter Registration Application forms may be obtained from the County Election Board in a county having up to 10,000 registered voters.

(2) A maximum of 500 Oklahoma Voter Registration Application forms may be obtained from the County Election Board in a county having 10,001 ~~or more registered voters but fewer than 50,000 registered voters.~~

(3) ~~A maximum of 1,000 Oklahoma Voter Registration Application forms may be obtained from the County Election Board in a county having 50,001 or more registered voters.~~

(c) Any organization, entity or individual may obtain up to ~~1,000~~500 copies of the Oklahoma Voter Registration Application form from the Secretary of the State Election Board by making a written request. Serial requests from the same organization, entity or individual made within a thirty-day period shall be made in writing and shall state that all previously received forms have been distributed.

230:15-3-26. Requests for more than ~~1,000~~500 Oklahoma Voter Registration Application forms

(a) Any organization, entity or individual anticipating the need for more than ~~1,000~~500 Oklahoma Voter Registration Application forms shall request permission from the Secretary of the State Election Board to print the forms. Such requests shall be made in writing and shall include the following information: name, address and telephone number of the organization, entity or individual requesting permission to print the Oklahoma Voter Registration Application form; the quantity of forms to be printed; a brief description of plans for use or distribution of the forms; date of request; signature.

(b) When a request for permission to print the Oklahoma Voter Registration Application form is approved by the Secretary or Assistant Secretary of the State Election Board, the State Election Board staff shall provide a PDF or other electronic file of the Oklahoma Voter Registration Application form to the organization, entity or individual who made the request.

(c) The Secretary or Assistant Secretary of the State Election Board may revoke permission to print the Oklahoma Voter Registration Application form from any organization, entity or individual at any time.

(d) Any individual or organization may download and print the Oklahoma Voter Registration Application form from the State Election Board's website and may duplicate the form and may distribute the duplicate copies.

SUBCHAPTER 11. VOTER REGISTRATION LIST MAINTENANCE

PART 1. CANCELLATION OF VOTER REGISTRATION

230:15-11-4. Processing cancellations of registration

(a) Upon receipt of proper notice, and upon positive identification of the voter, the Secretary of the County Election Board shall cancel a voter's registration. Cancellations shall be processed immediately after the receipt of proper notice. Proper notice shall include the following:

- (1) Potential Deletion Report. See 230:15-11-5.
- (2) Request to Cancel Registration of Deceased Voter form submitted by any person authorized by law to make such a request. See 230:15-11-6 and 230:15-11-6.1.
- (3) Judgment of Incapacitation Report form. See 230:15-11-7.
- (4) Potential Duplicate Registration Report. See 230:15-11-9.
- (5) Notice of registration in another state.
- (6) Notice of state or federal felony conviction. See 230:15-11-8.
- (7) ~~Written request from voter for cancellation of registration. Such a written request from a voter either shall be notarized or shall be witnessed by two persons who provide their names and addresses on the request. See 230:15-11-3, notice from the voter pursuant to 26 O.S. Section 4-120.1 or any other reasons listed in 26 O.S. Section 4-120.~~
- (8) True Duplicates Deleted Report. See 230:15-11-10.
- (9) Address confirmation return card returned by the voter indicating that the voter has moved out of the county. See 230:15-11-24.
- (10) A certified copy of a death certificate.

(b) Cancellations of registration shall be processed according to the following procedure:

- (1) Delete the voter's registration information from MESA.
- (2) Remove the voter's registration form from the Central File, note the date and reason for cancelling the registration, and place the registration form in the Cancellation File. Also remove any documentation from the Additional Information File and attach it to the original registration form in the Cancellation File. Retain as outlined in 230:10-7-40.
- (3) Retain the notice document used to cancel a registration for 24 months after the cancellation.

PART 3. VOTER REGISTRATION ADDRESS CONFIRMATION

230:15-11-19. Voter registration address confirmation mailing

(a) ~~No later than June 1, 1997, and every two years thereafter, of each odd-numbered year, the Secretary of the State Election Board shall cause an address confirmation notice to be prepared and mailed to active registered voters who meet one or more of the following requirements: set forth in 26 O.S. Section 4-120.2.~~

- (1) ~~Voters listed on the Statewide Potential Duplicates Report.~~

~~(2) Voters for whom a first class mailing from a County Election Board was returned undelivered by the post office during the previous 24 months. For the purpose of the address confirmation notice selection, a first class mailing shall include only voter identification cards generated by MESA and rejection notices for applications for change of voter registration.~~

~~(3) Voters who have neither voted in any election conducted by a County Election Board nor initiated any voter registration change since the second previous General Election.~~

~~(4) Voters who have surrendered their Oklahoma driver licenses to the Department of Public Safety after receiving a driver license in another state during the preceding 24 months.~~

~~(5) Voters identified by interstate voter registration data comparison as possibly being registered to vote both in Oklahoma and in one or more other states.~~

~~(6) Voters identified by National Change of Address (NCOA) data, as authorized by 26 O.S., Section 4-118.1, who may have changed residence address but not updated voter registration.~~

~~(7) Voters identified through official death records from the Social Security Administration whose registrations have not been cancelled.~~

~~(8) Voters who have submitted a change of address for an Oklahoma driver license or a state identification through the Department of Public Safety website or at a motor license agency that indicates they have moved to another county in Oklahoma and who have not registered again in the new county.~~

(b) Address confirmation notices shall be sent by first-class, forwardable mail and shall include a pre-addressed, postage-paid return card. The address confirmation notice materials shall be prepared and mailed under the supervision of the Secretary of the State Election Board. All costs associated with preparing and mailing confirmation notices and with receiving return cards and distributing them to the various County Election Boards shall be paid by the State Election Board.

(c) Address confirmation return ~~card~~ cards shall be received by the State Election Board. Accumulated return cards shall be sorted and distributed to the County Election Boards on a regular basis. The County Election Board shall stamp on each return card the date it is received from the State Election Board.

(d) The Secretary of the State Election Board may authorize the mail service vendor selected to print, prepare, and mail the address confirmation notices to utilize National Change of Address (NCOA) data for mailing address correction and forwarding purposes. As a result of the address correction and forwarding services, the address to which an individual voter's confirmation notice is forwarded will be provided to the State Election Board by the mail service vendor or by the USPS by digital means. The forwarding address will be imported into MESA by the State Election Board. The County Election Board Secretary shall cause the Confirmation Notice Automated Forwards List report (vr2595) to be requested 60 days

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after address confirmation notices are mailed and to be retained for 24 months.

(e) The State Election Board may receive data from the USPS by electronic means for all address confirmation notice cards that are undeliverable as addressed. The cards themselves may be destroyed through postal service procedures. The returned data will be imported into MESA and into individual voter records by the State Election Board. The County Election Board Secretary shall cause the Confirmation Notice Automated Returns List report (vr2590) to be requested 60 days after address confirmation notices are mailed and to be retained for 24 months.

230:15-11-27. Reinstatement of inactive voters

Inactive voters shall be reinstated as active voters under the following conditions.

(1) **Address confirmation return card.** An inactive voter may be reinstated as an active voter by returning the address confirmation return card to confirm or change address within the county. Return cards received from the voter more than 60 days after address confirmation notices are mailed shall be processed according to the same procedures outlined in 230:15-11-22 and 230:15-11-23. Return cards received from the voter more than 60 days after the address confirmation notices are mailed that indicate a change of address outside the county shall be processed as outlined in 230:15-11-24.

(2) **Voter registration applications.** Inactive voters who submit a valid application for voter registration shall be reinstated as active voters.

(3) **Voting.** During in-person absentee voting or at the voter's precinct or when applying for an absentee ballot, inactive voters shall be required to complete an address confirmation form prescribed by the Secretary of the State Election Board before being issued a ballot. [26-7-115.1]. Inactive voters who vote in any election conducted by the County Election Board shall be reinstated as active voters.

~~(A) **Voting at polling place.** Inactive voters who vote at their polling places are reinstated as active voters. Precinct Registries shall include the words "Confirm Address" in the signature line beside the names of inactive voters. Inactive voters who appear at the precinct polling place to vote confirm their addresses by signing the Precinct Registry. See 230:35-5-113.1.~~

~~(B) **Voting at in-person absentee polling place.** Inactive voters who vote by in-person absentee ballot are reinstated as active voters. Inactive in-person absentee voters confirm their addresses by signing the Application for In-Person Absentee Ballots form. See 230:30-7-11.~~

~~(C) **Voting by mail absentee ballot.** Inactive voters who vote by mail absentee ballot are reinstated as active voters when their voted ballots are received by the County Election Board. Inactive mail absentee voters confirm their addresses by signing the Application for Absentee Ballots form. See 230:30-9-3.~~

~~(D) **Voting by nursing home or veteran center absentee ballot.** Inactive voters who vote by nursing home or veteran center absentee ballot are reinstated as active voters after their voted ballots are returned to the County Election Board by the nursing home Absentee Voting Board. Inactive nursing home or veteran center absentee voters confirm their addresses by signing the Application for Absentee Ballots form. See 230:30-7-9.~~

230:15-11-29. Identification and notification of voters who may have changed addresses of residence

(a) The Secretary of the State Election Board shall have the authority to compare the Oklahoma voter registration database with change of address records provided by the United States Postal Service through the National Change of Address system, the Oklahoma Department of Public Safety, the Oklahoma Department of Human Services, or other state or federal agencies to identify voters who may have changed their residence addresses.

(b) If the Secretary of the State Election Board determines that a voter's residence address may have changed, the Secretary shall have the authority to cause the voter to be notified in writing that voter registration information must be updated in the event of a change of residence. Such notification may include any forms prescribed by the Secretary of the State Election Board that are necessary for the voter to update his or her voter registration information.

(c) During in-person absentee voting or at the voter's precinct or when applying for an absentee ballot, any voter identified by the Secretary of the State Election Board as possibly having changed his or her residence based on National Change of Address data shall be required to complete an address confirmation form before being issued a ballot. [26-7-115.1].

(d) A voter with an invalid address as defined in subsection B of 26 O.S. Section 4-113 or who has had a voter identification card returned to the county election board by the United States Postal Service as undeliverable must complete an address confirmation form before being issued a ballot as described in 26 O.S. Section 7-115.1.

[OAR Docket #23-469; filed 6-8-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 25. BALLOT PRINTING

[OAR Docket #23-472]

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PERMANENT final adoption

RULES:

Subchapter 13. Placing Parties, Candidates, Propositions on Ballot
230:25-13-12. Judicial candidates [AMENDED]

AUTHORITY:

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n/a

GIST/ANALYSIS:

The amendments to this rule are meant to clarify the process for establishing the order in which judicial candidates appear on the General Election ballot. The current rule cross-references a rule that describes how the drawing is conducted for political party or Independent candidates, which is not applicable to the judicial candidates.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 13. PLACING PARTIES, CANDIDATES, PROPOSITIONS ON BALLOT

230:25-13-12. Judicial candidates

(a) *If two persons file for the same judicial office, their names shall appear on the ballot only at the time of the General Election.* [26:11-110] The order in which the candidates' names appear on the ballot at the General Election is determined by a drawing conducted as outlined in 230:25-11-1(b). *If, at the time of the Primary Election, more than two persons have filed for the same judicial office, their names shall appear on the ballot at the time of the Primary Election.* [26:11-111] The order in which the candidates' names appear on the Primary Election ballot is determined by the drawing described in 230:25-11-1(b).

(b) *If no candidate for the office of an associate district judge, or district judge, if the nominating district is coextensive with the entire judicial district, receives a majority of the votes cast for that office at the Primary Election, the two candidates who receive the highest number of votes will have their names placed on the ballot for the General Election. In the case of district judges, if the nominating district is not coextensive with the whole judicial district or electoral division of a judicial district, the two candidates who receive the highest number of votes at the Primary Election will have their names placed on*

the ballot for the General Election, whether or not one received a majority of votes cast for that office at the Primary Election. [26:11-112] The name of the judicial candidate who received the highest number of votes in the Primary Election shall appear first on the General Election ballot. In the event of a tie for who received the highest number of votes in the Primary Election, the order in which the candidates' names will appear on the General Election ballot is determined by the drawing described in 230:25-11-1(b) no later than July 31 of that year. (c) *If one candidate for the office of an associate district judge receives a majority of all votes cast for that office at the Primary Election and, in the case of district judges, if the nominating district is coextensive with the whole judicial district or electoral division of a judicial district, the candidate who received the majority of all votes cast at the Primary Election shall be deemed to have been elected to that office, and that office shall not be listed on the ballot for the General Election.* [26:11-113] ~~The order in which the candidates' names will appear on the General Election ballot is determined by the drawing described in 230:25-13-1-2.~~

(d) Judicial retention candidates shall appear on the ballot at the General Election. Such candidates shall appear in order by district number and by office number.

[OAR Docket #23-472; filed 6-8-23]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 25. BALLOT PRINTING**

[OAR Docket #23-471]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 21. Printer Certification for Digital Ballot Printing
230:25-21-4. On-site certification review [AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 25, 2022

COMMENT PERIOD:

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PUBLIC HEARING:

None held or requested

ADOPTION:

April 28, 2022

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

May 2, 2022

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22.

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Amendments to this rule, which establishes a process for commercial printers to be certified by the State Election Board to print digital ballots for the current voting system, eliminate the requirement that an on-site review be

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conducted by a member of the State Election Board's ballot generation staff. Following several years of conducting certifications of various commercial printers in Oklahoma and in surrounding states, the ballot experts on the State Election Board staff have concluded that site visits are not always necessary. While eliminating a site visit as a mandatory part of printer certification, the Secretary of the State Election Board may authorize the visit if either the ballot printing staff or the Secretary decides it is necessary. This will also allow for reimbursement by the printer to the State for the cost of any necessary travel-related expenses. Ballot printing contracts are required under 26 O.S., Section 6-120.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 21. PRINTER CERTIFICATION FOR DIGITAL BALLOT PRINTING

230:25-21-4. On-site certification review

(a) Following a printer's successful completion of the first part of the certification process, the Secretary of the State Election Board may direct the ballot printing staff shall to conduct a certification review on site at the printer's printing facility. The printer shall be required to produce an additional quantity of ballots from .pdf files provided by the State Election Board with the State Election Board ballot printing staff observing the process. The ballots shall be produced as follows:

- (1) A specified quantity of 14-inch ballots (11-inch ballot with a 3-inch stub).
- (2) A specified quantity of 17-inch ballots (14-inch ballots with a 3-inch stub).
- (3) A specified quantity of 19-inch ballots (17-inch ballots with a 2-inch stub).

(b) The State Election Board staff will evaluate the ballots according to the following criteria.

- (1) The ballots meet all requirements included in the ballot printing specifications.
- (2) The ballots meet all component specifications, including but not limited to, ballot length, printing text area restrictions, and front-to-back registration.
- (3) The ballots meet post-production specifications, including but not limited to, trim lines, stub, perforation, stitching, shrink-wrapping, packaging, and shipping of ballots.

(c) The Upon return to the State Election Board offices with the ballots produced during the on-site certification review, the ballots shall be marked and processed through a voting device and through a high-speed scanner controlled by the voting device system software. The results then shall be tabulated and all necessary reports shall be printed and examined.

- (1) If the ballots cannot be read by the voting device or by the high-scanner or if the tabulated results are not as expected, the printer shall ~~be determined to have failed the second part of~~ the certification process. A printer

~~who that fails the second part of the certification process may repeat the process one time ask to repeat all or part of the process. The process may be repeated at the discretion of the Secretary of the State Election Board.~~

If the printer ~~also~~ fails the second time, the printer shall be disqualified from bidding on ballot printing contracts for the State Election Board or a County Election Board.

(2) If the ballots are read by the voting device and the high-speed scanner and if the tabulated results are as expected, the printer shall be determined to have passed the second part of the certification process. At this point, the printer shall be certified to print ballots for the ~~eS-cam~~ voting device system currently used in Oklahoma and to bid on ballot printing contracts for the State Election Board and for a County Election Board.

(d) Travel arrangements for ballot generation staff members making on-site reviews of potential ballot printers shall be made through regular state employee travel procedures. The printer seeking certification shall reimburse the State Election Board for the cost of such travel and travel-related expenses.

[OAR Docket #23-471; filed 6-8-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #23-473]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 230:30-1-2. Definitions [AMENDED]
- Subchapter 5. Applications for Absentee Ballots
- 230:30-5-9. Rejected applications [AMENDED]
- 230:30-5-13. Application for absentee ballots may be submitted electronically [AMENDED]
- Subchapter 7. Absentee Voting Boards
- 230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
- 230:30-7-11.1. Preparation of polling place and voting device for in-person absentee voting [AMENDED]
- Subchapter 9. Processing Applications
- 230:30-9-3. Processing applications for absentee ballots [AMENDED]
- 230:30-9-5. Processing applications from uniformed services and overseas voters [AMENDED]
- 230:30-9-6. Processing requests from emergency incapacitated voters [AMENDED]
- 230:30-9-8. Processing first responder/emergency worker emergency absentee applications, issuing ballots, and receiving voted ballots [AMENDED]
- Subchapter 13. Federal Write-In Absentee Ballot
- 230:30-13-1. Voters permitted to use federal write-in absentee ballots [REVOKED]
- 230:30-13-2. Receiving and processing federal write-in absentee ballots [AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 3, 2023

COMMENT PERIOD:

March 1, 2023 through March 31, 2023.

PUBLIC HEARING:

None held or requested

ADOPTION: March 31, 2023
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: March 31, 2023
LEGISLATIVE APPROVAL: Approved May 31, 2023 by SJR 22.
FINAL ADOPTION: May 31, 2023
EFFECTIVE: August 11, 2023
SUPERSEDED EMERGENCY ACTIONS: n/a
INCORPORATIONS BY REFERENCE: n/a
GIST/ANALYSIS:

Amendments to the rules in this Chapter, which provide information and procedures for county election boards to: administer absentee voting, receive and process absentee ballot applications, issue ballots, count voted absentee ballots, and retain absentee balloting materials. These amendments or revocations are being made in order to comply with state and federal law. Some recent legislation in Oklahoma has altered some of the dates, deadlines, and requirements regarding absentee voting. For example, the proposed amendments to 230:30-5-13 and 230:30-9-3 are necessary following the passage of HB 3364 from last session. Additionally, the proposed amendment to 230:30-5-9 is as a result of HB 2663 which amended 26 O.S. Section 14-103. Finally, the proposed amendments to 230:30-7-6, 230:30-9-6 and 230:30-9-8 were needed as a result of SB 714. The proposed amendment to 230:30-9-5 is needed for circumstances when absentee ballot applications for uniformed services and overseas voters are received from individuals not yet registered, it is clear they must meet the registration deadline for the next election pursuant to 26 O.S. Section 4-110.1. The changes made in Subchapter 13 are needed to conform with 26 O.S. Section 14-142.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

230:30-1-2. Definitions

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

"Federal election" means a regular or special election involving candidates for federal offices.

"Member of the merchant marine" means a person employed as an officer or crew member of a vessel as identified in 42 52 U.S.C. 1973ff 6 20310.

"MESA" means the Modern Election Support Application software used by County Election Board personnel for voter registration, absentee voting, and election administration and maintenance.

"Nursing home" means a nursing facility as defined in Title 62 63 O.S. 2001, Section 1-1902.

"PDF" means portable document format, a type of computer file used for document exchange.

"Proof of identity" means a form of personal identification that meets the requirements listed in 26 O.S., Section 7-114, as amended by State Question 746.

"Uniformed services" means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard, the merchant marine, the commissioned corps of the Public Health Service, the commissioned corps of the National Oceanic and Atmospheric Administration, and the Oklahoma National Guard.

"Veteran center" means a facility established as outlined in Title 72 O.S., Section 221 et seq of the Oklahoma Statutes.

SUBCHAPTER 5. APPLICATIONS FOR ABSENTEE BALLOTS

230:30-5-9. Rejected applications

(a) Reasons for rejection. An application for absentee ballots shall be rejected if any one of the following conditions, or combination of the following conditions, occurs.

- (1) The applicant is not a registered voter in the county.
(2) The application is not properly signed, except as provided in (d) of this Section.
(3) The applicant is not eligible to vote in the election for which ballots are requested.
(4) The application does not contain sufficient information to determine which ballots to send.
(5) The application is received later than 5 p.m. on Wednesday preceding the election after the deadline prescribed in 26 O.S. Section 14-103.
(6) The application is illegible.

(b) Processing rejected application. In the event that a voter's application for absentee ballots must be rejected, the application shall be entered into MESA and the reason for the rejection shall be noted on the screen. MESA will create a Notice of Rejection of Absentee Ballot Application for the voter which will detail the reason the application was rejected. If an Application for In-Person Absentee Ballots has been rejected, the application shall not be entered into MESA and, therefore, no Notice of Rejection will be created.

(c) Form of rejection. In the event that a voter's application for regular mail absentee ballots must be rejected for any reason, the Secretary shall print the Notice of Rejection of Absentee Ballot Application created by MESA and mail it to the voter. [26:14-133] If there is sufficient time for the voter to return a corrected application, a new application form shall be enclosed with the notice. In the event that an emergency incapacitated voter's application for absentee ballots must be rejected, the Secretary shall so advise the voter's agent and shall provide the agent with a Notice of Rejection of Absentee Ballot Application form, which shall be completed by the Secretary.

(d) Exception to signature requirements for some absentee ballot applications. Generally, absentee ballot applications must be signed by the applicant. However, some exceptions to this requirement shall be granted to some applicants who submit their applications through certain electronic methods.

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(1) Applications submitted by uniformed services and overseas voters on the Federal Post Card Application that are received by electronic mail may be accepted and processed without a physical, hand-written signature.

(2) Applications submitted with the online absentee ballot application on the State Election Board website may be signed digitally and a physical, handwritten signature is not required.

230:30-5-13. Application for absentee ballots may be submitted electronically

(a) Any registered voter may apply for absentee ballots for any election for which he or she is eligible and may submit the application to the County Election Board in the county of his or her residence by United States mail, by electronic mail, by fax, or by other means of electronic communication designated by the Secretary of the State Election Board as provided by Title 26 O.S. 2014 Supp., Section 14-105.

(b) The Secretary of the State Election Board may establish an online absentee ballot application tool for the purpose of applying for and submitting applications for absentee ballots. Such an online application tool shall meet the following criteria.

(1) The online absentee ballot application tool shall require the applicant to provide the following information, which is necessary to confirm an applicant's status as a registered voter and to determine that the voter is eligible to receive ballots for an election, and to determine where the absentee ballots should be sent. See 26 O.S. Section 14-105.

(A) Voter's name

(B) Date of birth

(C) An identification number as required by 26 O.S. Section 14-105

(D) Address of voter registration

(~~E~~) Address ballots should be sent

(~~F~~) Other information deemed necessary by the Secretary of the State Election Board

(2) The application tool shall allow the voter to designate whether the application is for a single election or for all elections in which the voter may be eligible in a calendar year or for any other term permitted by law.

(3) The application tool shall allow an applicant to specify, if applicable, that he or she is physically incapacitated or confined to a nursing home.

(4) The application tool should direct an applicant who is a member of one of the uniformed services of the United States or an overseas citizen and therefore covered by the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to the Federal Voting Assistance Program website to complete a federal post-card application (FPCA) form.

(5) The online absentee ballot application tool should prepare a form containing all the required information and specifications named in (1) through (3) of this subsection.

(6) The online absentee ballot application tool may allow the applicant to sign the application digitally and

submit it directly to the appropriate County Election Board through the online absentee ballot application tool.

(7) The website landing page for the online absentee ballot application tool shall display information about the statutory deadline for absentee applications preceding an election.

(8) The online application tool also shall meet any other criteria deemed necessary by the Secretary to ensure security and privacy of voter information and to prevent fraudulent use.

(c) Any organization, entity, or individual interested in promoting voter participation through absentee voting may link to the online absentee ballot application tool on the State Election Board's website.

(d) No online ballot application shall be accepted by the State Election Board or any County Election Board from any organization, entity or individual that creates its own absentee ballot application tool unless:

(1) The information described in (a) of this Section is required by its application tool;

(2) It provides to applicants the ability to sign the application digitally;

(3) It produces a written ballot request; and

(4) The written request is transmitted by facsimile or electronic ~~email~~ mail by the applicant to the State Election Board or the appropriate County Election Board.

SUBCHAPTER 7. ABSENTEE VOTING BOARDS

230:30-7-6. Scheduling Absentee Voting Boards for an election

(a) Notification of Absentee Voting Board members. At least ten days before the election, the Secretary of the County Election Board shall notify the members of one or more Absentee Voting Boards of the day or days the services of the Absentee Voting Board will be required. The Secretary also shall request the members of the Absentee Voting Board to meet on Tuesday before the election to make plans for their work.

(b) Scheduling the nursing home Absentee Voting Board. On Tuesday before the election, the Secretary shall work with the Absentee Voting Board to schedule visits to each affected nursing home or veteran center. Visits must be scheduled ~~on Thursday, Friday, Saturday or Monday immediately preceding for any day following the deadline to request an absentee ballot as provided in 26 O.S. Section 14-103, but prior to the date of the election.~~ [26:14-115(1)] Visits shall be planned to all nursing homes or veteran centers in as few days as possible, preferably in a single day. The Secretary shall consult the administrator of each affected nursing home or veteran center to schedule a time that will be convenient for the Absentee Voting Board to visit.

(c) Scheduling the in-person Absentee Voting Board. An Absentee Voting Board is required to be on duty at the in-person absentee polling place ~~from 8 a.m. to 6 p.m. on Thursday and Friday immediately preceding all elections and also from 9 a.m. to 2 p.m. on Saturday immediately preceding state~~

~~and federal elections. [26:14-115.4] during the dates and time described in subsection A of 26 O.S. Section 4-115.4.~~

(d) Scheduling an in-person Absentee Voting Board for a second in-person absentee polling place. If the county meets the statutory requirements for a remote in-person absentee polling place, in addition to the in-person absentee polling place located at the County Election Board office, a second in-person Absentee Voting Board shall be scheduled. The Absentee Voting Board assigned to the remote early in-person absentee polling place shall be on duty on the same days and hours outlined in (c) of this Section.

(e) Notifying Sheriff of in-person absentee voting. The Secretary shall notify the County Sheriff of the dates for in-person absentee voting for an election and shall arrange for the Sheriff to provide security for the memory pack and the voted ballots as outlined in 230:30-7-11.3. In the event a secondary in-person absentee polling place is designated in the County, the Secretary also shall notify the Sheriff of the location and arrange for the Sheriff to provide security for the election results storage device and voted ballots from that location. See 230:30-7-11.3.

230:30-7-11.1. Preparation of polling place and voting device for in-person absentee voting

(a) **Receiving supplies and setting up polling place on first day.** On each in-person absentee voting day, the Absentee Voting Board members meet in the County Election Board office at the time set by the County Election Board Secretary to receive their supplies for the day. The Absentee Voting Board members then go together to the in-person absentee polling place. A table and chairs, one or more voting devices, voting booths, and a computer with access to the Internet and the MESA software or the Central File should already be in place at the in-person absentee polling place when the Absentee Voting Board members arrive. The Absentee Voting Board members unpack the supplies and prepare each voting device as outlined in (b) of this Section. The Absentee Voting Board members must be ready to receive applications from in-person absentee voters at 8 a.m.

(b) **Preparing voting device on first day.** The Absentee Voting Board shall turn on the voting device and prepare it to accept ballots as outlined in the voting device instructions section of the Precinct Official Notebook.

(c) **Receiving supplies and setting up polling place on ~~second and third subsequent~~ days.** ~~On the second and third subsequent~~ days of in-person absentee voting, the members of the Absentee Voting Board meet at the County Election Board office at the time specified by the Secretary to receive their supplies for the day. The Absentee Voting Board members also must receive the election results storage device for each voting device from the Sheriff no later than 7:45 a.m. [25:14-115.4] The Absentee Voting Board members then follow the instructions in the voting device instruction section of the Precinct Official Notebook and in (d) of this Section to prepare each voting device.

(d) **Preparing voting device on ~~second and third subsequent~~ days.** ~~On the second and/or third subsequent~~ days of in-person absentee voting, the Absentee Voting Board receives

the election results storage device from the Sheriff and prepares the voting device as follows. Follow the procedure provided by the Secretary of the County Election Board to open the polls on each voting device designated for in-person absentee voting.

(e) **Supplies and voting devices for additional in-person absentee polling places.** In the event that in-person absentee polling places have been designated in the county in addition to the polling place located at the County Election Board office, all necessary supplies and materials may be delivered to the additional locations by County Election Board personnel and the in-person Absentee Voting Board members shall meet at the polling place location no later than thirty minutes prior to the start of voting to prepare the polling location and be ready to receive applications from voters at the appropriate time.

SUBCHAPTER 9. PROCESSING APPLICATIONS

230:30-9-3. Processing applications for absentee ballots

Applications from all absentee voters, except uniformed services voters and overseas voters, shall be processed according to the following procedures:

(1) Indicate in the "For County Election Board Use" space the date on which the application is received at the County Election Board office.

(2) Enter the application information into MESA. When applications from absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons, emergency incapacitated voters, and veteran center voters are entered into MESA, the system automatically verifies the applicant's registration. If an applicant is not registered, see 230:30-9-4. Requirements for matching of name, birth date, and identification number established pursuant to 26 O.S. Section 14-105 shall apply to all types of applications for absentee ballots under this Chapter.

(3) If a voter requests absentee ballots for a school district or municipality other than the one to which he or she is assigned, mark the appropriate field on the MESA screen. MESA will generate a notice that tells the voter that he or she is assigned to a different school district or municipality than the one for which ballots were requested and that ballots for the assigned district or municipality will be issued. If a voter is not assigned to a school district, the school district field will be empty. In this situation only, enter the appropriate code for the school district indicated by the voter on the absentee ballot application in the school district field. If a voter does not reside in a municipality, the municipality field will contain the word "None." If, however, a voter's municipal assignment cannot be determined, the municipal field will be blank. In this situation only, enter the code for the municipality indicated by the voter on the absentee ballot application.

(4) If the application must be rejected for any reason, enter the reason for the rejection in the appropriate place on the screen. MESA will produce a Notice of Rejection of Absentee Ballot Application letter for the voter.

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However, in the event that an Application for In-Person Absentee Ballots has been rejected, it shall not be entered into MESA.

(5) Designate the election or elections for which the voter is requesting ballots in the appropriate place on the screen.

(6) Write the applicant's voter identification number and registration status (active or inactive) on the application form. File the application form in the appropriate absentee voting materials file. If the applicant is a restricted records status voter, file the application in the restricted records status file.

(7) If the application is from an in-person absentee voter and ballots were issued by the Absentee Voting Board, enter the date the application was processed by the Absentee Voting Board in the appropriate space on the screen to give the voter credit for voting. See 230:30-7-12. If the application was rejected, no entry shall be made in MESA. A rejected Application for In-Person Absentee Ballots shall be retained with other rejected applications.

(8) If ballots are available, immediately prepare the appropriate absentee voter packet with the correct ballots for the voter and mail it. See 230:30-9-1 and 230:30-9-2. If the letter "I" appears in the upper-right corner of the absentee mailing label, the voter is either an inactive voter or a voter unassigned to a school district due to insufficient address information. Enclose an Oklahoma Voter Registration Application form and an Absentee Voter Address Information Requested sheet with the absentee voter packet and ballots.

230:30-9-5. Processing applications from uniformed services and overseas voters

(a) **Applications from uniformed services and overseas voters.** Applications for absentee ballots received from uniformed services voters and overseas voters are processed differently than applications from other absentee voters. Uniformed services voters and overseas voters are not required to be registered to vote in the county in order to apply to vote by absentee ballot. However, when an application for absentee ballots is received from a person who is not a registered voter in the county, information from the Federal Post Card Application form will be used to register that person in the county provided that the applicant's residence address is located within the county and contains all the required information in order to be registered. Provided, the application for a person not yet registered must meet the deadline to register for the next election pursuant to 26 O.S. Section 4-110.1. All applications received from uniformed services voters and overseas voters are considered to be applications for all elections in which the voter is eligible to vote, except as outlined in (c) of this Section. Applications from these voters shall be processed according to the procedures outlined in (b) of this Section.

(b) **Applications received by mail, by fax, or by electronic mail.** Uniformed services voters and overseas voters may submit applications for absentee ballots, usually the Federal Post Card Application (FPCA) form, to the County Election Board by mail, by fax, or by electronic mail. Upon receipt of

an application for absentee ballots from a uniformed services or overseas voter, the Secretary of the County Election Board shall cause the application to be processed according to the following procedure.

(1) If the application was received by electronic mail, take these steps.

(A) Print a copy of the electronic mail message and a copy of the attached FPCA form.

(B) Reply to the electronic mail message to notify the voter that the application was received.

(2) Indicate on the application form the date on which it was received at the County Election Board office.

(3) Indicate on the application form whether it was received by mail, by fax, or by electronic mail.

(4) Enter the application information into MESA.

(A) If the voter's address is not located within the county, the application information shall not be entered. The printed application form shall be forwarded immediately to the correct County Election Board. The date the application was received in the first county shall be the received date for the application.

(B) If the voter's address is located within the county, but the voter is not currently registered in the county, follow the appropriate software instructions to enter the application information in MESA to create both a new voter registration record and an absentee ballot application record for this individual.

(C) If the voter's address is located within the county and the voter is a currently registered voter in the county, follow the appropriate software instructions to enter the application information in MESA to create an absentee ballot application record.

(5) If the voter provided an expiration date or stated anywhere on the FPCA that ballots are requested for only a specific election, enter the expiration date or specific election date in MESA. If the voter did not provide an expiration date or a specific election date, the system will default to the appropriate date that includes the next two federal general elections.

(6) Determine the voter's preferred method of receiving absentee ballots.

(A) If the voter ranks "Email/Online" or "Mail" as first choice, check the "Mail" or "Online" box in MESA.

(B) If a voter ranks "Fax" as first choice, look at the voter's second choice and check the appropriate box in MESA. (Oklahoma no longer delivers absentee ballots by fax to uniformed services and overseas voters.)

(7) Write on the application form the voter identification number assigned by MESA.

(8) If ballots are available, immediately follow the appropriate steps.

(A) If the voter prefers to receive absentee ballots by mail, prepare a uniformed services/overseas voter packet with the correct ballots for the voter and mail it.

(B) If the voter prefers to receive absentee ballots online, see 230:30-9-5.2.

(9) If the absentee ballot application information was used to create a new voter registration record for the voter, print a file copy of the absentee ballot application information from MESA. File the copy in the appropriate absentee application file. File the voter's original FPCA in the Central File. See 230:15-9-18(b).

(c) **Validity of applications received from uniformed services and overseas voters.** Applications for absentee ballots from uniformed services voters and overseas voters shall be considered valid through the next two federal General Elections as outlined in 230:30-5-8.2, unless the voter indicates that the request is for a specific election date or an earlier expiration date on the FPCA form. If ballots mailed to a uniformed services or overseas voter's address are returned undelivered to the County Election Board, the County Election Board Secretary shall be authorized to consider the application invalid and shall be authorized to delete the application from MESA. The Secretary shall indicate on the outside of the returned absentee ballot outer envelope that the voter's absentee ballot application has been cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months.

(d) **Updating existing FPCA.** Upon receipt of an FPCA or other communication from a uniformed services voter or an overseas voter that includes an electronic mail address to be used for absentee voting purposes, the Secretary shall determine whether the voter has a currently valid application on file. If so, the Secretary shall update the voter's application information in MESA and shall remove the existing application form from the file and replace it with the newly received form. [26:14-118(B)] The Secretary shall note on the removed form the reason for the removal and shall retain it for 24 months.

230:30-9-6. Processing requests from emergency incapacitated voters

(a) **Requirements for requests.** The request for absentee ballots from an emergency incapacitated voter shall be in writing and shall be signed by the voter, *or signed by a witness at the voter's direction, if the voter is unable to sign.* [26:14-115.1] The request *must be accompanied by a sworn statement by a duly licensed physician.* [26:14-115.1] The statement must attest to the fact that the voter is unable to vote in person at his or her precinct on the day of the election because of a physical disability, which may include confinement for childbirth, and that the voter became incapacitated after ~~5 p.m. on Tuesday preceding the election~~ the deadline to request an absentee ballot as provided in 26 O.S. Section 14-103. [26:14-115.1]

(b) **Form may be used.** The Request for Emergency Incapacitated Absentee Ballot and Sworn Statement by Physician form may be used to make the request for ballots. However, use of this form is not required.

(c) **Voter's agent.** An emergency incapacitated voter may designate an agent to represent him or her for purposes of absentee voting. The agent may be anyone of the voter's choosing at least 16 years of age, provided that person is not employed by nor related within the third degree by consanguinity or

affinity to any person whose name appears on the ballot. The voter's agent must transmit the request to the Secretary of the County Election Board.

(d) **Person may be agent for only one voter.** No person may be the agent for more than one voter at any election.

(e) **Processing the request.** Upon receipt of the voter's request and accompanying sworn statement, the application information shall be entered into MESA. See 230:30-9-3. If the voter is an inactive voter, give the voter's agent an Oklahoma Voter Registration Application form and an Absentee Voter Address Information Requested sheet.

(f) **Issuing ballots and materials.** The Secretary shall indicate on the application form the ballots that shall be issued to the voter. The Secretary then shall issue to the voter's agent the appropriate ballots and a pink incapacitated voter packet.

(g) **Returning ballots.** The voter's agent must return the ballots, sealed in the appropriate envelopes, to the Secretary of the County Election Board no later than 7 p.m. on the day of the election. Upon receipt of the ballots, the Secretary shall record the date in the voter's application information in MESA. If the voter is inactive, the voter's agent may return the completed Oklahoma Voter Registration Application form with the voted ballots or the voter may mail the form at a later time.

230:30-9-8. Processing first responder/emergency worker emergency absentee applications, issuing ballots, and receiving voted ballots

(a) **Who may apply.** First responders and emergency workers who are deployed to assist with rescue, recovery, and/or relief efforts in the wake of a declared natural disaster or a declared state of emergency within ten days ~~of an election~~ after the deadline to request an absentee ballot as provided in 26 O.S. Section 14-103 may apply for an emergency absentee ballot. Such requests from first responders and emergency workers may be received and processed up to and even on election day, as long as the voted ballot is received by the County Election Board no later than 7 p.m. on election day.

(b) **Processing emergency absentee ballot applications and issuing ballots.** When a first responder or emergency worker is deployed within ten days ~~of an election~~ after the deadline to request an absentee ballot as provided in 26 O.S. Section 14-103 to assist with rescue, recovery, and/or relief efforts in the wake of a declared natural disaster or a declared state of emergency and requests an emergency absentee ballot, the Secretary of the County Election Board shall ensure the following procedure is observed.

(1) Give the voter a copy of the Application for Emergency Absentee Ballot - First Responders and Emergency Workers form. The form may be emailed or faxed to the voter or a copy may be printed in your office and given to the voter.

(2) Tell the voter to fill out the form and to provide all the requested information. The form must be signed and dated by the voter. Ask to see the voter's proof of identity. See 230:35-3-140 and 230:35-3-141.

(3) Upon receipt of the voter's completed and signed application, enter the application in MESA.

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(4) Issue the appropriate absentee ballot or ballots and a standard/yellow absentee ballot packet and instructions to the voter. Make a notation on the outer envelope that this is an emergency absentee ballot.

(5) Tell the voter to fill out the affidavit envelope and to have his/her signature on the affidavit notarized. County Election Board personnel may not notarize the affidavit.

(6) Tell the voter that his or her voted ballot must be received by the County Election Board by 7 p.m. on the day of the election in order to be counted.

(c) **Returning voted emergency absentee ballots to the County Election Board.** First responders and emergency workers who apply for emergency absentee ballots as outlined in (a) and (b) of this Section have the options listed below for returning their voted absentee ballots to the County Election Board. The absentee ballot affidavit must be signed and notarized and must be sealed inside the appropriate absentee envelopes.

(1) The voter may return the voted ballot to the County Election Board office in person. If the voter returns his or her emergency absentee ballot in person, ask to see the voter's proof of identity.

(2) The voter may return the voted ballot by United States mail (including by USPS Express Mail™).

(3) The voter may return the voted ballot by a private delivery services (such as FedEx™) that provides delivery documentation.

(d) **Receiving voter emergency absentee ballots.** Upon receipt of an emergency absentee ballot in-person from the voter or by mail, follow the steps outlined below.

(1) Make the following notation on the outer envelope. "Emergency Absentee Ballot from First Responder/Emergency Worker received on (DATE) at (TIME)." Also note whether the ballot was received in person from the voter, by mail, or by private delivery service.

(2) Give the emergency voter credit for voting in MESA.

(3) Place the voted ballot, sealed inside the appropriate envelopes, in the absentee ballot box.

SUBCHAPTER 13. FEDERAL WRITE-IN ABSENTEE BALLOT

230:30-13-1. Voters permitted to use federal write-in absentee ballots [REVOKED]

~~Absent uniformed services voters, those who are on active duty and absent from their voting residence, and overseas voters, those who are living outside the territorial limits of the United States, shall be permitted to use the federal write in absentee ballot in Primary, Runoff Primary, Presidential Preferential Primary, and General Elections for statewide and federal offices. These absent uniformed services voters and overseas voters may use the federal write in absentee ballot whether or not they have applied for regular absentee ballots.~~

230:30-13-2. Receiving and processing federal write-in absentee ballots

Upon receipt of a federal write-in absentee ballot, the Secretary shall indicate the received date on the front of the envelope and then shall place the envelope in the absentee ballot box. When the County Election Board meets to open outer envelopes and examine affidavits as described in 230:30-11-2, the Secretary also shall take the following steps.

(1) After opening the outer envelope, attach the Voter's Declaration/Affirmation form to the secrecy envelope with a paper clip.

(2) Determine whether the voter is a uniformed services voter or an overseas voter by examining ~~item 1a on~~ the Voter's Declaration/Affirmation form.

(A) If the ballot is from an overseas voter, verify that the voter is located outside the United States by examining the information in item 4a "My Current Address (Where I live now)." This address should be located outside the United States. If this address is located within the United States and the voter is an overseas voter, the federal write-in absentee ballot cannot be counted.

(B) If the ballot is from a uniformed services voter, the ballot can be counted even if it was submitted from an address located within the United States.

(3) Examine item 3 "My Voting Residence Address" to determine the voter's correct precinct. Note the precinct number on the Voter's Declaration/Affirmation.

(4) Check the absentee information in MESA to determine whether the voter submitted an application for regular mail absentee ballots.

(A) If the voter submitted an application for regular mail absentee ballots, determine whether those ballots have been received.

(i) If the voter's regular absentee ballots have been received, the federal write-in absentee ballot shall not be counted. Note the reason the ballot cannot be counted on the Voter's Declaration/Affirmation and set it and the unopened secrecy envelope aside in a secure place.

(ii) If the voter's regular absentee ballots have not been received by 7 p.m. on election day, the federal write-in absentee ballot shall be counted.

(B) If the voter did not submit an application for regular mail absentee ballots, enter in MESA the information from the voter's affirmation as if it were a Federal Post Card Application. See 230:30-9-5. The federal write-in absentee ballot shall be counted.

(5) A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received pursuant to the provisions of 26 O.S. Section 14-103. The covered voter must inform the appropriate election official that the voter is a covered voter by one of the methods set forth in 26 O.S. Section 14-142(E).

- (6) In the event that a voter's federal write-in absentee ballot cannot be counted, the Secretary shall notify the voter in writing of the reason the ballot was rejected.
- (67) If a federal write-in absentee ballot is counted for a voter who had previously applied for regular absentee ballots, enter the date the federal write-in absentee ballot was received in the voter's absentee information in MESA.
- (78) Follow the instructions in 230:30-19-6 to count a federal write-in absentee ballot.

[OAR Docket #23-473; filed 6-8-23]

**TITLE 230. STATE ELECTION BOARD
CHAPTER 35. ELECTION CONDUCT**

[OAR Docket #23-474]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [AMENDED]
- 230:35-1-2. Definitions [AMENDED]
- Subchapter 5. Instructions for Precinct Election Officials [AMENDED]
- Part 11. Processing the Voter
- 230:35-5-57. Routine for Inspector [AMENDED]
- 230:35-5-58. Additional duties of Inspector [AMENDED]
- Part 25. Special Services
- 230:35-5-127. Spoiled ballots [AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Proposed amendments in Subchapter 1 provide definitions of new election terms and terms from various election statutes that have no specific definitions. "Spoiled ballots" is defined as referenced in Title 26 O.S., Section 7-122. Additionally, because there are numerous references throughout Title 230 to OEMS (an older version of election management software), and MESA (the current version of election management software), this amended definition helps to clarify that any reference to either of those versions is also a reference to the current software utilized by the State and County Election Boards. Proposed amendments in Subchapter 5, concern instructions for Precinct Officials regarding how to handle abandoned, discarded, and spoiled ballots.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

230:35-1-2. Definitions

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

"Abandoned ballot" means a ballot inserted into the voting device at a polling place by a voter who leaves the voting enclosure before the device has processed the ballot which is returned by the device to notify the voter of an error that prevents counting one or more races on said ballot.

"Discarded ballot" means a ballot, either marked or unmarked, left behind within the voting enclosure by the voter to whom it was issued.

"Election enclosure" means the area in which the voting process occurs at a polling place on a day of in-person early absentee voting or on election day and generally includes the place where Precinct Officials, voting booths and voting devices are located as well as the area in which voters wait in line to identify themselves to Precinct Officials and receive their ballots.

"Federal election" means a regular or special election involving candidates for federal offices.

"MESA" means the Modern Election Support Application software used by County Election Board personnel for voter registration, absentee voting, and election administration and maintenance. Any reference in this Title to MESA or OEMS is a reference to the current version of election management software utilized by State and County Election Board personnel, as applicable.

"Proof of identity" means a form of personal identification that meets the requirements listed in 26 O.S., Section 7-114, as amended by State Question 746.

"Spoiled ballot" means a ballot in which a voter has notified Precinct Officials that an accidental mark or mistake was made and the voter needs a new ballot. Additionally, a spoiled ballot is one that the voting device has rejected for various reasons, including circumstances where marks were made inside the voting targets for more than the allowed number of candidates in a race or on a question or proposition, or the ballot was defaced or damaged in such a manner that it could not be properly scanned by the voting device. In such circumstances, the voting device returns such ballots to the voter for correction or replacement.

SUBCHAPTER 5. INSTRUCTIONS FOR PRECINCT ELECTION OFFICIALS

PART 11. PROCESSING THE VOTER

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230:35-5-57. Routine for Inspector

The Inspector follows these routine steps to process voters. Refer to the Election Day Reference and Problem Solver in the Precinct Official Notebook for instructions in non-routine situations.

- (1) Give the voter a ballpoint pen.
- (2) Direct the voter to a vacant voting booth and ask the voter to read the Attention Voter poster in the voting booth.
- (3) Tell the voter that after marking the ballots in the privacy of the voting booth, he should place the voted ballot inside a secrecy folder, if used, and return to the voting device. [26:7-120]
- (4) When the voter returns to the voting device, tell the voter to feed the ballot into the voting device. Either end of the ballot may be fed first and the ballot may face up or down.
- (5) Retrieve the ballpoint pen and secrecy folder, if used, from the voter.
- (6) If the voting device returns a ballot, the voter may be able to resolve the problem himself by following the instructions on the voting device console screen and pressing the appropriate buttons. However, the Inspector should always be prepared to answer questions and to assist the voter if necessary.
- (7) If the voting device console screen displays an error code and a message indicating that the ballot has already been counted, follow the instructions in the Election Day Reference and Problem Solver in the Precinct Official Notebook to resolve the problem.
- (8) In the event a voter inserts a ballot into the voting device, immediately leaves the voting enclosure, and the device rejects and returns the ballot, the Inspector shall leave the abandoned ballot in the device and press the Cast Ballot button on the device console to accept the ballot unchanged.

230:35-5-58. Additional duties of Inspector

In addition to Inspector's duties when processing voters, the Inspector also performs the following tasks on election day.

- (1) Inspect voting booths and other areas of the voting enclosure periodically for discarded ballots. If you find marked or unmarked ballots discarded in a voting booth or other location within the voting enclosure, show them to the Judge and Clerk, and then feed them into the voting device.
- (2) ~~If you find marked ballots, show them to the Judge and Clerk and attach them to the Inspector's Notes to Secretary sheet. Explain on the sheet that the ballot was found discarded in a voting booth or other location within the voting enclosure. Fold the discarded ballot in half and give it to the Clerk for placement in the bag for discarded and spoiled ballots.~~
- (3) Inspect voting booths and other areas within the voting enclosure periodically for campaign literature and remove any that you find.
- (4) Call the County Election Board office immediately if the ballot supply seems low.

- (5) Check the public counter on the voting device console screen periodically through the day. Call the County Election Board office immediately if the public counter reaches 3000. Follow the instructions given by the County Election Board staff.

PART 25. SPECIAL SERVICES

230:35-5-127. Spoiled ballots

(a) ~~A spoiled ballot is a ballot that the voter marks incorrectly, or a ballot that is defaced or damaged by the voter. Before spoiling a ballot returned by the voting device, the Inspector must follow the appropriate instructions in the Election Day Reference and Problem Solver in the Precinct Official Notebook to determine whether the ballot already has been counted. The reason the ballot was returned by the device will be displayed on the screen and an error code will appear in the lower right corner while the ballot remains in the throat of the voting device. Do not remove the ballot before noting both the on-screen message and the error code. If it has not been counted, spoil the ballot and tell the Clerk to issue a new ballot to the voter.~~

(b) When a ballot is spoiled ~~because the voter either has made an error marking it or has damaged or defaced it in some way, such as making a mark in a security bar code, the Clerk uses~~ follows this procedure.

- (1) Ask the voter to fold the spoiled ballot in half. If more than one ballot was issued to the voter, tell the voter to put all correctly marked ballots in the voting device.
- (2) Take the folded, spoiled ballot from the voter, tear it into small pieces, and ~~discard it~~ put the pieces inside the bag labeled Spoiled and Discarded Ballots. [26:7-132]
- (3) Write the ballot code in the "Ballot Spoiled" column beside the voter's signature.
- (4) Tell the voter to read the oath printed on the ~~gold~~ Spoiled Ballot Affidavit and to sign the form. [26:7-122]
- (4) ~~Write the ballot code in the "Ballot Spoiled" column beside the voter's signature.~~
- (5) Issue a new ballot to replace the spoiled ballot. [26:7-122]
- (6) Tell the voter to go back to the voting booth, mark the new ballot and put the new ballot in the voting device.

[OAR Docket #23-474; filed 6-8-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 35. ELECTION CONDUCT

[OAR Docket #23-475]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. HAVA Requirements
Part 9. Complaints
230:35-9-21. Purpose [AMENDED]
230:35-9-22. Complaints [AMENDED]
230:35-9-23. Receiving complaints [AMENDED]

230:35-9-24. Investigation of complaint [REVOKED]
230:35-9-25. Hearing [AMENDED]
230:35-9-26. Resolution of complaint [AMENDED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

February 3, 2023

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ADOPTION:

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Amendments to this subchapter update the complaint process for reviewing and hearing alleged violations of Title III of the Help America Vote Act. The changes will still follow the procedure set forth in Title IV of HAVA, however, the hope is to avoid misuse of the hearing process for individuals who attempt to utilize it as a forum to present false allegations or testimony surrounding all aspects of the election system in Oklahoma or other systems around the country. Allegations of violations of Title III of HAVA are a serious matter, and the agency desires to keep this forum for the purpose in which it was intended - to hear and resolve bona fide complaints.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 9. HAVA REQUIREMENTS

PART 9. COMPLAINTS

230:35-9-21. Purpose

The purpose of the rules in this subchapter is to establish a procedure to receive, ~~investigate~~ review and resolve complaints of alleged violations of the provisions and requirements of Title III of the Help America Vote Act of 2002 (HAVA). This procedure is required by Title IV of HAVA.

230:35-9-22. Complaints

(a) Any person who believes that a violation of Title III of HAVA has occurred, is occurring, or is about to occur, may file a complaint with the Secretary of the State Election Board. Any such complaint shall be in writing, shall be notarized, and

shall be signed and sworn by the complainant. A complaint shall include at least the following information.

- (1) Complainant's name and mailing address
- (2) The nature of the complaint and specific facts describing the alleged violation
- (3) ~~The nature of the solution sought~~ specific citation of Title III of HAVA under which the complaint is being brought
- (4) A request for a hearing on the record, if desired. (A hearing shall be required only if requested in the complaint, and only if the complaint includes allegations that, if true would constitute a bona fide violation of Title III of HAVA-) and
- (5) Any additional information pertinent to the complaint, including the nature of the solution sought.

~~(b) The Secretary of the State Election Board shall provide, upon request, a form to be used to make a written complaint. Use of the form is not required. Any written complaint containing the information outlined in (a) of this Section shall be accepted.~~

230:35-9-23. Receiving complaints

Upon receipt of a written complaint alleging a violation of Title III of HAVA, the Secretary of the State Election Board shall cause the following steps to be performed.

- (1) The original complaint shall be marked with a "received" stamp that includes the date.
- (2) A State Election Board staff member shall assign a unique case number to the complaint.
- (3) The Secretary of the State Election Board shall review the complaint ~~If the complaint includes a request for a hearing on the record, the Secretary shall set a date and time for the hearing and shall, and if necessary, issue an Order for Hearing.~~
- (4) Specific procedures for the hearing may be determined in consultation with the office of the Attorney General.

230:35-9-24. Investigation of complaint [REVOKED]

~~The Secretary of the State Election Board shall review the complaint and shall assign one or more members of the State Election Board staff to investigate the allegations contained in the complaint. Specific investigatory procedures shall be determined in consultation with the office of the Attorney General.~~

230:35-9-25. Hearing

In the event that the complainant requests a hearing on the record, the Secretary of the State Election Board shall serve as the hearing officer. ~~In the absence of the Secretary the Assistant Secretary of the State Election Board shall~~ The Secretary may assign one or more members of the State Election Board staff to serve as hearing officer in place of the Secretary. The Secretary shall hear any testimony and shall review any evidence offered by the complainant. Provided, if the Complainant fails to meet the requirements set forth in 230:35-9-22,

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or after review of the complaint and proposed evidence, the Secretary concludes that the specific allegations, even if true, would not constitute a violation of Title III of HAVA, the Secretary may dismiss such Complaint without the need for conducting a hearing. The Secretary shall notify the Attorney General and the District Attorney in the county where the hearing is conducted if the hearing officer determines that false allegations were made or false evidence or testimony was provided as part of the complaint or at the hearing.

230:35-9-26. Resolution of complaint

Unless the complainant consents to a longer period for making such a determination, Not not more than 90 days following the receipt of a complaint, the Secretary of the State Election Board shall make a final determination with respect to the complaint. If the Secretary finds that there has been no violation of Title III of HAVA, the Secretary shall dismiss the complaint and publish the results of the procedures. In the event the Secretary finds that a violation of title III of HAVA has occurred, the Secretary shall provide a remedy. ~~The Secretary shall publish the results of the investigation and the final determination.~~ Further, any alleged violation that has previously been resolved or dismissed under these procedures, either by the complainant or another person who wishes to raise the same facts and violations of Title III of HAVA are barred from having another hearing on the matter, and will be notified of such in writing.

[OAR Docket #23-475; filed 6-8-23]

TITLE 230. STATE ELECTION BOARD CHAPTER 40. TYPES OF ELECTIONS

[OAR Docket #23-476]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Municipal Elections

Part 9. Procedures

230:40-5-33. Precincts in municipal elections [NEW]

Subchapter 7. School Elections

Part 9. Procedures

230:40-7-35. Precincts in school elections [AMENDED]

230:40-7-35.1. Procedure for closing the polling place for a split precinct in which 100 or fewer voters are registered in school district or technology center district [REVOKED]

AUTHORITY:

Rulemaking authority is granted by Title 26 O.S., Section 2-107, to the Secretary of the State Election Board.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Amendments in Subchapter 7 address the removal of the procedures for a school district or technology center school districts to close split precincts or polling places where there are 100 or fewer registered voters. The new rule in Subchapter 5 addresses the closing of split precincts for municipalities where no persons reside within that portion of the precinct contained within the limits of the municipality. This situation is not currently addressed in the Administrative Code. The added language both mirrors the process established for school districts and coincides with the statutory authority in 26 O.S. Section 13-103.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 5. MUNICIPAL ELECTIONS

PART 9. PROCEDURES

230:40-5-33. Precincts in municipal elections

(a) Precincts totally or partially contained within the limits of a municipality. All precincts totally or partially contained within the limits of a municipality shall be open for all elections held by such municipality; provided, however, that a municipality may authorize any precinct which is only partially contained within the limits of the municipality not to be opened by certifying to the county election board in its resolution calling for an election that no persons reside within that portion of the precinct contained within the limits of the municipality. [26:13-103]

(b) Closing a split precinct in which no persons reside. Prior to preparing the resolution, municipal officials should contact the Secretary of the County Election Board to verify that no registered voters are assigned to precincts located within the limits of the municipality. In addition, before including the certification required to close the precinct in the resolution, a municipal official should visit the area in question to verify that no persons reside there. When a split precinct is closed as provided in this subsection, the precinct shall not be included in the municipality's election; the municipality shall incur no expenses related to the closed precinct; neither regular nor absentee ballots shall be printed for the precinct; and the services of neither the nursing home nor in-person Absentee Voting Board shall be required by the municipality for the precinct.

SUBCHAPTER 7. SCHOOL ELECTIONS

PART 9. PROCEDURES

230:40-7-35. Precincts in school elections

(a) **Precincts in school and technology center district elections.** All precincts totally or partially contained within the geographical boundaries of a school district or a technology center district shall be open for all elections held by the district except as provided in (b) ~~or (c)~~ of this section.

(b) **Closing a split precinct in which no one lives in the district resides.** A school district or technology center district may close a split precinct by certifying in the resolution that no one resides in the part of the precinct located within the district's boundaries. [26:13A-101(B)] Prior to preparing the resolution, district officials should contact the Secretary of the County Election Board to verify that no registered voters in the precinct are assigned by MESA to the district and that no voters who are unassigned to a school district in the precinct are believed to be located within the district's boundary. In addition, before including the certification required to close the precinct in the resolution, a district official should visit the area in question to verify that no one resides there. When a split precinct is closed as provided in this subsection, the precinct shall not be included in the district's election; the district shall incur no expenses related to the precinct polling place; neither regular nor absentee ballots shall be printed for the precinct; and the services of neither the nursing home nor in-person Absentee Voting Board shall be required by the district for the precinct.

~~(c) Closing the polling place for a split precinct with 100 or fewer voters. A school district or technology center school district may close the polling place for a split precinct in which there are 100 or fewer registered voters in the district only under the circumstances outlined in 230:40-7-35.1 and by following the procedure outlined in that Section. [26:13A-101(C)] When a polling place for a split precinct is closed as outlined in 230:40-7-35.1, the precinct shall remain in the district's election but the district shall not incur any costs or share in Precinct Official compensation, Precinct Registry fees, or polling place rent for the precinct polling place for the election. Regular ballots shall not be printed for the precinct. However, absentee ballots shall be printed for the precinct and the services of the in-person Absentee Voting Board and a nursing home Absentee Voting Board, if necessary, shall be required.~~

~~(d) Closing a split precinct or a polling place for a split precinct located in an affected county. If the split precinct to be closed as outlined in (b) of this section is located in an affected county, the Secretary of the control (parent) County Election Board shall close and remove the precinct in MESA during election setup and shall notify the Secretary of the affected County Election Board that the precinct will be closed and removed from the district's election. If the polling place for a split precinct to be closed as outlined in (c) of this section and in 230:40-7-35.1 is located in an affected county, the request to close the polling place for the precinct shall be submitted to the Secretary of the control (parent) County~~

~~Election Board with the resolution calling the election. The control (parent) county Secretary immediately shall forward the request to close the polling place for the split precinct to the Secretary of the affected County Election Board. The Secretary of the affected County Election Board shall follow the procedure outlined in 230:40-7-35.1 and shall notify both the district officials and the control (parent) County Election Board Secretary of the approval or denial of the request. If the request is approved, the Secretary of the control (parent) County Election Board shall close the polling place for the split precinct in MESA.~~

~~(e) Closing split precinct or a polling place for a split precinct prohibited on state election dates. A school district shall not be permitted to close a precinct or a polling place for a split precinct for any reason in a regular or special election held on the date of the state Primary Election, Runoff Primary Election, General Election, or Presidential Preferential Primary Election or a special state or county election.~~

230:40-7-35.1. Procedure for closing the polling place for a split precinct in which 100 or fewer voters are registered in school district or technology center district [REVOKED]

~~(a) A request to close a the polling place for a split precinct with 100 or fewer voters registered in the school district or technology center district shall be made in writing and shall be submitted to the Secretary of the control (parent) County Election Board with the resolution calling the election. A request to close a polling place for a split precinct in the Annual School Election shall be submitted no later than 15 days before the candidate filing period for Board of Education candidates. A request to close a polling place for a split precinct in the Annual School Runoff Election shall be submitted no later than 45 days prior to the election. A request to close such a polling place for a split precinct in a special election shall be submitted no later than 60 days before the special election date. District officials may use a form prescribed by the Secretary of the State Election Board to make the request but use of the form is not required. A letter containing substantially the same information shall be sufficient.~~

~~(b) Upon receiving a request to close a polling place for a split precinct in which 100 or fewer voters are registered at addresses within the district's boundaries and when all voters in the precinct are assigned to a school district in the Street Guide, the Secretary of the County Election Board shall follow these steps to approve or disapprove the request.~~

~~(1) Determine the number of registered voters in the precinct who are assigned in the Street Guide to this school or technology center district.~~

~~(A) If more than 100 voters already are assigned to the district, the polling place for the split precinct cannot be closed for the election. Notify the district superintendent that the request cannot be approved for this reason.~~

~~(B) If fewer than 100 voters are assigned to the district, proceed to the next step.~~

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(2) Determine whether the voters in the district are eligible to vote in any other election being held on the same date.

(A) If voters in the district are eligible to vote in another election on the same date, the request to close the polling place for a split precinct shall be denied.

(B) If voters in the district are not eligible to vote in another election on the same date, the request to close the polling place for a split precinct shall be approved.

(c) Upon receiving a request to close a polling place for a split precinct in which 100 or fewer voters are registered at addresses within the district's boundaries and when some voters in the precinct are not assigned to a school district in the Street Guide, the Secretary of the County Election Board shall follow these steps to approve or disapprove the request:

(1) Follow the steps outlined in (b) (1) and (2) of this Section, then proceed with the following steps.

(2) Send a copy of the Registered Voter Mailing List or of a Precinct Registry for the precinct and a copy of the precinct map showing the district's boundary to the district superintendent.

(3) The superintendent shall be required to examine the residence addresses of voters in the precinct who are not assigned to a school district. The superintendent shall mark the list to indicate which voters, if any, are believed to be registered at addresses located within the boundaries of the district. The superintendent shall return the marked list to the Secretary of the County Election Board within five business days.

(4) Upon receiving the list of unassigned voters back from the superintendent, the Secretary shall count the voters marked by the superintendent. Add the number of voters marked on the list to the number of voters assigned to the school district by MESA.

(A) If the total number is 100 or less, the polling place for the split precinct may be closed for the election.

(B) If the total number is more than 100, the request must be denied and the polling place for the split precinct must remain open for the district's election.

(C) Even if the number is 100 or less, the polling place for the split precinct must remain open for the district's election if voters in the district are eligible to vote in another election in the precinct on the same date.

(5) The Secretary shall notify district officials whether the polling place for the split precinct will be closed or must remain open.

(6) The Secretary shall prepare and mail to each voter identified in the district a notice that the polling place for the split precinct will be closed for the district's election. A yellow application for absentee ballots shall be enclosed with the notice, as well as information about in-person absentee voting for the election. These notices shall be mailed to voters not less than 30 days prior to the election.

(7) The Secretary shall monitor voter registration activity in the precinct. If a new voter is assigned in the Street Guide to the school or technology center district in the split

precinct, the Secretary shall mail the notice and information described in (6) of this subsection to the new voter immediately.

[OAR Docket #23-476; filed 6-8-23]

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

[OAR Docket #23-449]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

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

Subchapter 7. Participating Lenders

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

Subchapter 9. Bonds

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

AUTHORITY:

Board of Trustees of OHFA; Amended Trust Indenture of OHFA and Bylaws of OHFA; 60 O.S. § 176; 75 O.S. § 250.3(3.)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

August 1, 2022

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Approved May 31, 2023 by SJR 22

FINAL ADOPTION

May 31, 2023

EFFECTIVE:

January 1, 2024

SUPERSEDED EMERGENCY RULES:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

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

CONTACT PERSON:

Valentia Doolin, Single Family Program Director, Oklahoma Housing Finance Agency, Post Office Box 26720, Oklahoma City, Oklahoma 73126-0720, (405) 419-8156, valentia.doolin@ohfa.org.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE JANUARY 1, 2024;

SUBCHAPTER 1. GENERAL PROVISIONS

330:15-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S., Section 250, et seq. OHFA shall, from time to time as approved by OHFA Trustees, in furtherance of its efforts to provide safe, sanitary and decent housing, implement programs to assist qualified persons in Oklahoma to obtain financing for single family, owner-occupied residences. Such programs may be financed from the proceeds of revenue bonds, notes, mortgage backed securities or other obligations sold by OHFA either on a taxable or tax-exempt basis, or from other sources of money available to OHFA. Implementation of such programs and the issuance of any debt obligations to provide financing therefor which are intended to be tax-exempt shall be subject to provisions of the United States Internal Revenue Code of 1986, as amended and supplemented (referred to herein as the "Code"), and any rules or regulations promulgated or adopted by reference thereunder and the Title 60 Oklahoma Statutes, 2011, Sections 175.1 through 175.54 and 176 through 180.4, as amended and supplemented, and such other provisions of Oklahoma and federal law and the provisions of the Trust Indenture creating the OHFA as may be applicable to such programs and the financing thereof. Programs shall be of general applicability to eligible borrowers throughout Oklahoma insofar as possible, provided that from time to time OHFA may implement programs to benefit one or more localized areas within the state depending on a showing of need therefor. The structure and details of any specific program shall be determined as needed by the Trustees and/or Staff of OHFA on a case-by-case basis.

SUBCHAPTER 7. PARTICIPATING LENDERS

330:15-7-2. Qualifications of Participating Lenders in each program

The qualification requirements for Participating Lenders in each program shall be set as the Trustees and/or Staff may determine to be necessary under the market conditions prevalent at the time the program is being developed and as may be determined by the Trustees and/or Staff in their discretion at the time of finalization of each program in question. By way of illustration, and not as a limitation, such qualifications for Participating Lenders may include one or more of the following:

- (1) Minimum net worth;
- (2) Minimum total assets;
- (3) Qualified to issue mortgage backed securities of FNMA, GNMA, FHLMC or other similar issues of mortgage-backed securities;
- (4) Qualified to originate and service mortgage loans for FHA, FNMA, FHLMC, RD, and/or VA;
- (5) No defaults in performance under prior programs of OHFA;
- (6) No suits pending against it;

- (7) Maximum mortgage loan portfolio default rate on mortgage loans serviced by it;
- (8) Maintain all necessary licenses required to do business in the State~~A physical place of business within the boundaries of the State accessible to members of the public during normal business hours;~~ and
- (9) Such other criteria as the Trustees and/or Staff may deem in their discretion to be pertinent.

SUBCHAPTER 9. BONDS

330:15-9-9. Trustee action to be taken

Programs shall be developed and implemented only upon the following minimum action of the Trustees:

- (1) The adoption of an initial resolution authorizing the development of a program:
 - (A) Specifying the maximum size of the program;
 - (B) Directing the staff to seek CAP allocation from the State (when applicable);
 - (C) Directing staff to take such preliminary action as may be required in law to select professional services providers; and
 - (D) Directing staff to take such action as may be necessary to determine the necessity for a program and the size thereof.
- (2) The adoption of resolutions selecting professional services providers; and
- (3) The adoption of a final resolution approving all Program Documents, agreements, and procedures, and authorizing the sale of the bonds and the implementation of the program and specifying the interest rates for the bonds and taking such other action as may be necessary to implement the Program.

[OAR Docket #23-449; filed 6-7-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 1. FUNCTION AND STRUCTURE OF THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

[OAR Docket #23-411]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Civil Rights and Nondiscrimination

Part 1. Administration Methods

- 340:1-11-1 [AMENDED]
- 340:1-11-1.1 [AMENDED]
- 340:1-11-3 [REVOKED]
- 340:1-11-4 [AMENDED]
- 340:1-11-5 [REVOKED]
- 340:1-11-6 [REVOKED]
- 340:1-11-7 [REVOKED]
- 340:1-11-12 [AMENDED]

Part 2. Supplemental Nutrition Assistance Program Discrimination Complaint and Non-Compliance System

Permanent Final Adoptions

340:1-11-20 [AMENDED]

340:1-11-21 [REVOKED]

340:1-11-22 [REVOKED]

340:1-11-24 [REVOKED]

340:1-11-26 [REVOKED]

340:1-11-27 [REVOKED]

Part 3. The Americans with Disabilities Act Request and Complaint System

340:1-11-40 [AMENDED]

340:1-11-41 [AMENDED]

340:1-11-43 [AMENDED]

340:1-11-44 [REVOKED]

340:1-11-50 [REVOKED]

340:1-11-54 [REVOKED]

(Reference WF 23-1A)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 74 O.S. §840-1.3; 74 O.S. §840-1.9; 74 O.S. §840-6.2; 74 O.S. § 840-6.6; OAC 260:25-3-72; OAC 340:1-11-43; and OAC 340:50-1-5.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments and revocations to Chapter 1, Subchapter 11 amend the rule to: (1) combine relevant sections; (2) provide clarity on both discrimination and Americans with Disabilities Act (ADA) processes; and (3) to remove references to the Oklahoma Merit Protection Commission (MPC) and the Oklahoma Human Services (OKDHS) Employee Grievance Program both of which no longer exist.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 11. CIVIL RIGHTS AND NONDISCRIMINATION

PART 1. ADMINISTRATION METHODS

340:1-11-1. Statement of compliance and practices prohibited

(a) The Oklahoma Department of Human Services (DHS)(OKDHS) administers its programs and business, per:

- (1) Title VI and Title VII of the Civil Rights Acts of 1964;
- (2) Section 504 of the Rehabilitation Act of 1973;
- (3) the Age Discrimination Act of 1975;
- (4) the Age Discrimination in Employment Act;
- (5) the Americans With Disabilities Act of 1990;
- (6) the Americans With Disabilities Act Amendments Act;
- (7) the Equal Pay Act;
- (8) the Pregnancy Discrimination Act;
- (9) the Genetic Information Non-Discrimination Act;
- and
- (10) the Oklahoma Anti-Discrimination Act; ~~and~~
- ~~(11) the Oklahoma Merit Rules for Employment.~~

(b) The OKDHS Director does not discriminate and does not allow OKDHS staff, or OKDHS contractors, vendors, or sub-grantees to discriminate.

(c) The OKDHS Director does not issue and does not allow the issuance of rules, regulations, directives, or other public communications that have the effect of subjecting individuals to discrimination.

340:1-11-1.1. Definitions

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

"**ADA**" means the Americans With Disabilities Act of 1990, ~~as amended at per~~ Sections 12101-12117 of Title 42 of the United States Code (42 U.S.C. §§ 12101-12117), (SUPP. V.1994) Public Law 101-336.

"**Discrimination**" means differential treatment, such as conduct, actions, or decisions, based on race, color, national origin, sex, religion, age, disability, genetic information, or political opinion or affiliation unless authorized by law.

"**Essential job functions**" means the fundamental job duties of an individual position. The term does not include marginal functions of the position. Evidence of the essential job functions are:

- (A) the employer's judgment of the essential job functions;
- (B) a written job description prepared before advertising or interviewing employees or applicants for the position;
- (C) the amount of time spent performing the job functions; and
- (D) identified as critical on the employee's performance evaluation.

"**Harassment**" means unwelcome or offensive behavior based on membership in a protected class that is so severe ~~and/or~~ pervasive in nature that it alters the conditions of the victim's working environment.

"**Protected Activity**" means:

- (A) filing a discrimination complaint or a request for reasonable accommodation;
- (B) participating in an investigation or administrative or court hearing regarding a complaint of discrimination; or
- (C) opposing an alleged discriminatory act in a lawful manner.

"Protected Class" means a group of people or an identifying characteristic of people prohibited by law from being used as a basis or motivation for employment actions or program or service delivery or eligibility. Protected classes include race, color, national origin, religion, sex, age, disability, political opinion or affiliation, and genetic information.

340:1-11-3. Practices prohibited [REVOKED]

- ~~(a) The Oklahoma Department of Human Services (DHS) Director does not discriminate and does not allow DHS staff, or DHS contractors, vendors, or sub-grantees to discriminate.~~
- ~~(b) The DHS Director does not issue and does not allow the issuance of rules, regulations, directives, or other public communications that have the effect of subjecting individuals to discrimination.~~

340:1-11-4. Administration responsibilities, administration of programs, dissemination of policy, and awareness training

- (a) The Oklahoma Department of Human Services ~~(DHS)~~(OKDHS) Director assumes full responsibility for compliance, per Oklahoma Administrative Code (OAC) 340:1-11-1.
- (b) The ~~DHS~~OKDHS Director designates a staff member who is knowledgeable of civil rights laws.
- (c) The ~~DHS~~OKDHS Director assigns full compliance responsibility to all ~~DHS~~OKDHS administrators, managers, and supervisors. The administrators, managers, and supervisors maintain essential records and files, per OAC 340:1-11-1.
- (d) Administrators, managers, and supervisors avail themselves of the Office for Civil Rights (OCR) administrator's technical assistance and training. Administrators, managers, and supervisors comply with the Methods of Administration designed and prepared by the OCR administrator.
- (e) The OCR administrator is responsible for:
 - (1) developing rules, regulations, and compliance programs, per OAC 340:1-11-1, and disseminating those requirements to:
 - (A) staff;
 - (B) clients;
 - (C) contractors, vendors, and sub-grantees;
 - (D) the general public; and
 - (E) customary referral services; and
 - (2) developing the Methods of Administration;
 - (3) keeping the ~~DHS~~OKDHS Director, administrators, managers, and supervisors informed of nondiscrimination requirements and responsibilities, per OAC 340:1-11-1;
 - (4) monitoring and evaluating ~~DHS~~OKDHS nondiscrimination activities, identifying the need for remedial

- action and appropriate follow-up review, and submitting reports, as required to the ~~DHS~~OKDHS Director, the Department of Health and Human Services-Office for Civil Rights (DHHS-OCR), and the Food and Nutrition Service (FNS);
- (5) providing training and technical assistance, and serving as a resource for ~~DHS~~OKDHS staff regarding nondiscrimination responsibilities;
- (6) assigning OCR personnel to perform compliance reviews and to investigate discrimination complaints;
- (7) ~~preparing the annual DHS Affirmative Action Plan;~~
- ~~(8) conducting directing and coordinating~~ Americans with Disabilities Amendments Act compliance inspections of ~~DHS~~OKDHS facilities and recommending remedial action to the ~~DHS~~ Director and to the facility, ~~when as necessary when complaints are received;~~
- (98) receiving Request Review Committee appeal decisions;
- ~~(409)~~ overseeing investigations of discrimination complaints ~~received by the Office for Civil Rights~~OCR receives;
- ~~(410)~~ acting as the liaison between the ~~DHS~~OKDHS Director, DHHS-OCR, FNS, minority and community organizations, and groups advocating for persons with disabilities in all matters concerning nondiscrimination in the ~~DHS~~OKDHS delivery of services; and
- ~~(4211)~~ testifying in matters concerning civil rights before entities, such as boards, commissions, or legislative panels.

- (f) Prior to implementation of any new programs or methods for providing existing services, the OCR administrator, upon request, conducts a study and prepares a report that shows the impact on minority groups and persons with disabilities, and the accessibility of the services, as proposed, to minority clients or clients with disabilities, both present and prospective.
- (g) OKDHS informs staff, clients, applicants, contractors, vendors, sub-grantees, and the general public that programs and services are provided on a nondiscriminatory basis.
- (h) The OCR administrator ensures OKDHS staff is provided on-going training designed to ensure awareness of diversity issues and of appropriate responses to minorities and persons with disabilities. Training includes:
 - (1) legal interpretations of anti-discrimination laws;
 - (2) compliance review objectives; and
 - (3) cultural and disability awareness.

340:1-11-5. Administration of programs [REVOKED]

~~Prior to implementation of any new programs or methods for providing existing services, the Civil Rights Administrator, upon request, conducts a study and prepares a report that shows the impact on minority groups and persons with disabilities, and the accessibility of the services, as proposed, to minority clients or clients with disabilities, both present and prospective.~~

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340:1-11-6. Dissemination of policy [REVOKED]

~~The Oklahoma Department of Human Services informs staff, clients, applicants, contractors, vendors, sub grantees, and the general public that programs and services are provided on a nondiscriminatory basis.~~

340:1-11-7. Awareness training [REVOKED]

~~The Office for Civil Rights administrator ensures Oklahoma Department of Human Services (DHS) staff are provided on-going training designed to ensure awareness of diversity issues and of appropriate responses to minorities and persons with disabilities. Training includes:~~

- ~~(1) legal interpretations of anti-discrimination laws;~~
- ~~(2) compliance review objectives; and~~
- ~~(3) cultural and disability awareness.~~

340:1-11-12. Complaint policy and procedures, retaliation, and confidentiality

(a) Any person or group who believes they were subjected to discrimination in an Oklahoma Department of Human Services (~~DHS~~)OKDHS) program subject to Oklahoma Administrative Code (OAC) 340:1-11-1 may make a complaint of discrimination in person, by representation, by phone, or by written communication. The complainant has a right to file a complaint of the alleged discriminatory action(s) with ~~DHS~~OKDHS, the Food and Nutrition Service (FNS), or with the Department of Health and Human Services-Office for Civil Rights (DHHS-OCR).

(b) For Supplemental Nutrition Assistance Program or service-delivery complaints, refer to OAC 340:1-11-20.

(c) Employees or applicants for employment have the right to file a complaint of alleged discriminatory employment action(s) with any or all of the entities listed in (1) ~~through~~(4)(3) of this subsection. The complainant may file with:

- (1) ~~DHS~~OKDHS within 180-calendar days. When the complaint is filed directly with ~~DHS~~OKDHS, at the State Office, a local county office, or at a facility, representatives of that office or facility explain both the federal and state complaint systems and advise the complainant of his or her right to file in either, or both, systems;
- (2) the Oklahoma Attorney General's Office for Civil Rights Enforcement within 180-calendar days; or
- (3) the Equal Employment Opportunity Commission within 300-calendar days;
- (4) ~~the Oklahoma Merit Protection Commission (MPC) within 20 calendar days of the discriminatory action; or~~
- (5) ~~the DHS Employee Grievance Program within 20 calendar days of the discriminatory action.~~

(d) Any person who expresses an interest in filing a complaint or files a complaint is protected from retaliation.

(e) ~~DHS~~OKDHS conducts a prompt and thorough complaint investigation. The Office for Civil Rights (OCR) administrator determines if discrimination occurred. When discrimination occurred, ~~DHS~~OKDHS takes all necessary action to correct the discriminatory practice(s). The complainant is timely advised of ~~DHS~~OKDHS findings regarding his or her

complaint and is advised of the right to appeal to DHHS-OCR, or FNS, or MPC, when not satisfied with the ~~DHS~~OKDHS decision. Records are maintained that include the nature of the complaint, the investigation details, and the ~~DHS~~OKDHS actions taken.

(f) When the complaint is initially filed with DHHS-OCR, that office may investigate the complaint utilizing its own resources.

(g) The complainant's identity is kept confidential, except to the extent necessary to conduct the investigation, hearing, or judicial proceeding. Violations of confidentiality are subject to corrective discipline.

(h) Any applicant or recipient who expresses an interest in filing a complaint or files a complaint may do so without fear of reprisal, intimidation, coercion, or threats. No person is adversely affected because they made a charge, testified, assisted, or participated in any manner in an investigation, review, proceeding, or hearing per this Section.

(i) Information concerning any complaint is only given to persons who have a need to know as determined by the Oklahoma Human Services OKDHS Director or the OCR administrator. Violations of confidentiality are subject to discipline per OKDHS: 2-1-7 Discipline.

PART 2. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM DISCRIMINATION COMPLAINT AND NON-COMPLIANCE SYSTEM

340:1-11-20. Purpose and scope

(a) The purpose of this Section is to establish a uniform system for processing discrimination complaints from clients who participate in, or apply for the Supplemental Nutrition Assistance Program (SNAP).

(b) This policy is applicable to Oklahoma Department of Human Services (~~DHS~~)OKDHS) employees and to any person who may require ~~DHS~~OKDHS assistance or services.

(1) A copy of the United States Department of Agriculture's "And Justice for All" poster AD-475B, is posted in a conspicuous place in the lobby of each ~~DHS~~OKDHS office where applications for SNAP may be received.

(2) Copies of Form 14CR001E, Discrimination Complaint Form-Client or Vendor, are available in each ~~DHS~~OKDHS office and facility for use by any person upon request.

(c) The Office for Civil Rights (OCR) is the delegated authority to accept, investigate, and seek resolution of complaints of discrimination to SNAP applicants or participants. All written or verbal complaints alleging discrimination are forwarded to OCR within five-business days by the OKDHS employee who received the complaint.

(d) Discrimination is prohibited in all aspects of the delivery of SNAP benefits. Prohibited actions include, but are not limited to:

(1) denial or unreasonable delay of a household's application for any services or benefits based on protected class membership;

- (2) distinction in the quality, quantity, or manner in which the benefits are provided;
- (3) segregation or separate treatment of persons in any manner related to the receipt of program benefits; and
- (4) selection of the site for certification and issuance offices that have the effect of excluding persons.

(e) OKDHS does not condone rudeness or disrespectful behavior toward program applicants, recipients, or the general public.

(f) OKDHS conducts continuing civil rights training for employees involved with SNAP, including workers, hearing officials, performance reporting system reviewers, and receptionists. Training topics include (1) through (6) of this subsection.

- (1) Nondiscrimination requirements relating to eligibility criteria.
- (2) Certification procedures.
- (3) Household rights and responsibilities.
- (4) Complaint procedures.
- (5) Protected classes.
- (6) Theories of discrimination.

340:1-11-21. Complaints of discrimination in the Supplemental Nutrition Assistance Program (SNAP) [REVOKED]

The Office for Civil Rights (OCR) is the delegated authority to accept, investigate, and seek resolution of complaints of discrimination to SNAP applicants or participants. All written or verbal complaints alleging discrimination are forwarded to OCR within five business days by the Oklahoma Department of Human Services employee who received the complaint.

340:1-11-22. Discrimination and non-compliance in the Supplemental Nutrition Assistance Program (SNAP) [REVOKED]

(a) Discrimination is prohibited in all aspects of the delivery of SNAP benefits. Prohibited actions include, but are not limited to:

- (1) denial or unreasonable delay of a household's application for any services or benefits based on protected class membership;
- (2) distinction in the quality, quantity, or manner in which the benefits are provided;
- (3) segregation or separate treatment of persons in any manner related to the receipt of program benefits;
- (4) and selection of the site for certification and issuance offices that have the effect of excluding persons.

(b) The Oklahoma Department of Human Services does not condone rudeness or disrespectful behavior toward program applicants, recipients, or the general public.

340:1-11-24. Retaliation [REVOKED]

Any applicant or recipient who expresses an interest in filing a complaint or files a complaint may do so without fear of reprisal, intimidation, coercion, or threats. No person is adversely affected because they made a charge, testified, assisted, or participated in any manner in an investigation, review, proceeding, or hearing per this Section.

340:1-11-26. Confidentiality [REVOKED]

~~Information concerning any complaint is only given to persons who have a need to know as determined by the Oklahoma Department of Human Services (DHS) Director or the Office for Civil Rights administrator. Violations of confidentiality are subject to discipline per DHS rules concerning conduct and standards.~~

340:1-11-27. Civil Rights training [REVOKED]

~~The Oklahoma Department of Human Services conducts continuing civil rights training for employees involved with the Supplemental Nutrition Assistance Program, including workers, hearing officials, performance reporting system reviewers, and receptionists. Training topics include:~~

- (1) ~~nondiscrimination requirements relating to eligibility criteria;~~
- (2) ~~certification procedures;~~
- (3) ~~household rights and responsibilities;~~
- (4) ~~complaint procedures;~~
- (5) ~~protected classes; and~~
- (6) ~~theories of discrimination.~~

PART 3. THE AMERICANS WITH DISABILITIES ACT REQUEST AND COMPLAINT SYSTEM

340:1-11-40. Purpose and scope

(a) The purpose of this Section is to establish a uniform system for processing:

- (1) requests for reasonable accommodation per the Americans with Disabilities Act Amendments Act (ADAAA) from employees, job applicants, or clients; and
- (2) appeals from employees, applicants, or clients regarding a request for reasonable accommodation.

(b) Oklahoma Department of Human Services (DHS) (OKDHS) employees, DHS (OKDHS) applicants for DHS (OKDHS) employment, and clients served by DHS (OKDHS) have the right to request a reasonable accommodation when a disability causes:

- (1) an employee to be unable to perform an essential function of the position;
- (2) an applicant for employment to need assistance to apply or interview; or
- (3) a client to be unable to access a DHS (OKDHS) service or program.

(c) Discrimination, including retaliation, against persons exercising rights under the accommodation request procedure is prohibited. Form 14CR003, The Request for Reasonable Accommodation, is available online and in each office and facility upon request.

(d) Examples of reasonable accommodations are found at: www.askJAN.org.

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340:1-11-41. Reasonable accommodations and undue hardship for Oklahoma Department of Human Services (DHS)(OKDHS) employees

(a) ~~DHSOKDHS~~ employee requests for reasonable accommodations are resolved at the lowest level possible, on a case-by-case basis, after the Office for Civil Rights (OCR) accepts Form 14CR003E, Request for Reasonable Accommodation, is accepted by the Office for Civil Rights (OCR) and OCR has opened opens a case. OCR considers Americans with Disabilities Act (ADA) protocol for reasonable accommodation requests, when:

- (1) the employee has a disability;
- (2) the employee is qualified; and
- (3) an effective and reasonable accommodation is available and does not create an undue hardship.

(b) When feasible, an employee makes a request for a reasonable accommodation in writing by submitting Form 14CR003E to the local ADA coordinator. The employee attaches a definitive, narrative medical statement from a medical professional that confirms the employee is disabled per the Americans with Disabilities Act Amendments Act (ADAAA) and specifies the reasonable accommodation(s) needed ~~in order~~ to perform the essential functions of the position.

(c) The ADA coordinator in OKDHS local county offices is the Adult and Family Services field manager or the Child Welfare Services (CWS) district director in stand-alone CWS offices. In other offices and facilities the ADA coordinator is the person administratively responsible for that location. The local ADA coordinator is familiar with the information contained on the "Requests for Reasonable Accommodation" page located on the OCR page of the OKDHS InfoNet. The local ADA coordinator signs Form 14CR003E, retains a copy, and forwards the original and the medical documentation to the deputy director, division or program director, or designee, who signs the form and retains a copy. Original Form 14CR003E and the medical documentation are immediately forwarded to the ~~DHSOKDHS~~ OCR to open a case and approve the medical statement. Signatures under this subsection of the form serve only to acknowledge the request and do not indicate agreement to provide the accommodation requested or any other accommodation.

(d) When the Form 14CR003E is fully-signed and ~~was~~ forwarded to OCR, and OCR approves the medical statement and opens a case, the local ~~DHSOKDHS~~ office initiates the mandated interactive-process by meeting with the requesting employee one or more times in an attempt to clarify the need for accommodation and to determine what, if any, accommodation is provided. The interactive process may take up to 30-calendar days. At the end of the interactive process the employee is notified in writing of the decision, whether an accommodation is to be provided, and a copy of the notice is sent to OCR. When a decision is not made by the 30th day after OCR opens the case, OCR refers the request to the Request Review Committee (RRC) for a decision.

(e) Upon receipt of the fully-signed Form 14CR003E and an approved, definitive, narrative medical statement, OCR

opens a file and notifies the requesting employee that the local ~~DHSOKDHS~~ office approves or denies the request and of his or her right to appeal the decision. OCR monitors the interactive process and serves as a resource to all parties.

(f) Accommodations that would result in an undue hardship to ~~DHSOKDHS~~ do not have to be provided. Before making such a determination OCR consults with the regional director, division or program director, or designee.

(g) Appeals to the RRC are routed through the ~~DHSOKDHS~~ OCR administrator.

(h) Employees who request a reasonable accommodation have the right to file a written appeal with the RRC when:

- (1) his or her request is denied;
- (2) a decision is not made by the 30th day of the interactive process; or
- (3) the accommodation provided is not effective.

(i) OKDHS is not required to provide a reasonable accommodation when doing so would place an undue hardship on OKDHS in terms of effort or expense.

(1) For an employment-related accommodation the factors in (A) through (J) of this paragraph are considered with regard to employment.

- (A) The nature and cost of the accommodation.
- (B) The overall financial resources of the facility or facilities involved in providing the accommodation.
- (C) The number of persons employed at the facility.
- (D) The effect on expenses and resources, or the impact otherwise of the accommodation upon the facility's operation.
- (E) OKDHS financial resources.
- (F) The overall size of OKDHS with respect to the number of its employees.
- (G) The number, type, and location of OKDHS facilities.
- (H) The type of OKDHS operation or operations, including the composition, structure, and functions of the OKDHS work force.
- (I) Geographic separateness.
- (J) The administrative or fiscal relationship of the facility or facilities in question to OKDHS.

(2) For a program-related accommodation, the factors in (A) through (D) of this paragraph are considered.

- (A) The OKDHS resources available for use in the funding and operation of the service, program, or activity.
- (B) When the accommodation would fundamentally alter the nature of the service, program, or activity.
- (C) If the accommodation is consistent with providing services in the most integrated setting appropriate to the needs of individuals with disabilities.
- (D) If an alternative and accessible site is available for the provision of services.

340:1-11-43. Office for Civil Rights (OCR) responsibilities

(a) OCR, as designated by the Oklahoma Department of Human Services (OKDHS) Director, is responsible for coordination, oversight, and implementation of the reasonable accommodation request and appeal process.

(1) OCR continuously evaluates each program, office, and facility to ensure compliance with all current rules, practices, and Americans With Disabilities Act Amendments Act procedures.

(2) OCR receives notification of all accommodation requests and dispositions. After opening a case, OCR monitors each request to ensure the requests are processed in a timely manner and contacts the responsible regional director, division or program director, or designee when an accommodation request is not resolved by the end of the 30-calendar day, interactive process.

(3) OCR maintains a record of all requests for reasonable accommodation, as well as and summary information on the numbers, natures, and outcomes of requests filed separately and apart from individual employee personnel files and client case records.

(4) Statistical information concerning request activity is released or reported to interested persons. The Oklahoma Open Records Act governs access to individual records and only those persons with a right of access as provided in the Oklahoma Open Records Act may review an individual request file. DHSOKDHS maintains open record requests per federal and state laws governing record retention and destruction.

(b) All OKDHS employees are responsible for assisting any client who may be in need of reasonable accommodation by referring the client to the local Americans with Disabilities coordinator.

(c) The local ADA coordinator may assist a client in completing Form 14CR003E, Request for Reasonable Accommodation, and then forwards the original form to OCR. The OCR coordinator determines if the request can be resolved locally, and if not, the request is forwarded to the regional director, division or program director, or designee for resolution.

340:1-11-44. Request for accommodation by a client [REVOKED]

(a) All Oklahoma Department of Human Services (DHS) employees are responsible for assisting any client who may be in need of reasonable accommodation by referring the client to the local Americans with Disabilities (ADA) coordinator.

(b) The local ADA coordinator may assist a client in completing Form 14CR003E, Request for Reasonable Accommodation, and then forwards the original form to OCR. The OCR coordinator determines if the request can be resolved locally, and if not, the request is forwarded to the regional director, division or program director, or designee for resolution.

340:1-11-50. Review by the Request Review Committee (RRC) [REVOKED]

(a) The RRC reviews:

(1) requests that exceed the 30-calendar day time frame after the case is opened by the Office for Civil Rights (OCR) and referred by OCR or the deputy director, division or program director, or designee division administrator; and

(2) appeals of decisions of the local Americans With Disabilities Act coordinator, deputy director, division or program director, or designee.

(b) The RRC prepares a written response to the accommodation request within 10 business days following the meeting held to review the request.

(c) The RRC consists of representatives from each of the following:

(1) Support Services;

(2) Adult and Family Services;

(3) Human Resources Management (HRM);

(4) Child Welfare Services;

(5) Support Services Architecture and Engineering; and

(6) Developmental Disabilities Services.

(d) In addition, three Oklahoma Department of Human Services employees with disabilities serve as members. Ex-officio representatives are called upon from Legal Services and Human Resources Management Risk and Safety Management. The OCR administrator or designee is a non-voting RRC member, with administrative responsibilities.

(e) Written requests for review or appeal, along with the appropriate documentation, are sent to: Request Review Committee, Office for Civil Rights, PO Box 25352, Oklahoma City, Oklahoma 73125.

(f) The RRC meets monthly or as necessary to review accommodations or appeal requests. The OCR administrator convenes the RRC when a request or appeal is received.

340:1-11-54. Undue hardship and reasonable accommodation [REVOKED]

The Oklahoma Department of Human Services (DHS) is not required to provide a reasonable accommodation when doing so would place an undue hardship on DHS in terms of effort or expense.

(1) For an employment-related accommodation the following factors are considered with regard to employment and include the:

(A) nature and cost of the accommodation;

(B) overall financial resources of the facility or facilities involved in providing the accommodation;

(C) number of persons employed at the facility;

(D) effect on expenses and resources, or the impact otherwise of the accommodation upon the facility's operation;

(E) DHS financial resources;

(F) overall size of DHS with respect to the number of its employees;

(G) number, type, and location of DHS facilities;

(H) type of DHS operation or operations, including the composition, structure, and functions of the DHS work force;

(I) geographic separateness; and

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- ~~(J) administrative or fiscal relationship of the facility or facilities in question to DHS.~~
- ~~(2) For a program related accommodation, the following factors are considered:~~
- ~~(A) the DHS resources available for use in the funding and operation of the service, program, or activity;~~
- ~~(B) when the accommodation would fundamentally alter the nature of the service, program, or activity;~~
- ~~(C) if the accommodation is consistent with providing services in the most integrated setting appropriate to the needs of individuals with disabilities; and~~
- ~~(D) if an alternative and accessible site is available for the provision of services.~~

[OAR Docket #23-411; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #23-412]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Human Resource Management
Part 1. General Provisions
340:2-1-1 through 340:2-1-3 [REVOKED]
Part 3. Internal Human Resources
340:2-1-28 through 340:2-1-29 [REVOKED]
340:2-1-31 through 340:2-1-32 [REVOKED]
340:2-1-34 [REVOKED]
Part 5. Administrative Procedures
340:2-1-59 [NEW]
Part 7. Recruitment, Selection, and Placement Policy and Procedures
340:2-1-76 [REVOKED]
340:2-1-77 through 340:2-1-79 [REVOKED]
340:2-1-80 through 340:2-1-83 [REVOKED]
340:2-1-85 [REVOKED]
340:2-1-87 through 340:2-1-89 [REVOKED]
340:2-1-93 [REVOKED]

(Reference WF 23-2A and WF 22-02)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and 56 O.S. § 162 (C)(1) and (2).

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n/a

GIST/ANALYSIS:

The revocations to Chapter 2, Subchapter 1 prevent possible conflicts between Oklahoma Administrative Code (OAC) 260:130 guidance issued by Office of Management and Enterprise Services (OMES), Human Capital Management (HCM) and similar guidance issued by Oklahoma Human Services (OKDHS) rules in OAC 340:2, Subchapter 1 per Section 34.301 of Title 62 of the Oklahoma Statutes (62 O.S. § 34.301) of the Civil Service and Human Capital Modernization Act. The proposed amendment to Chapter 2 Subchapter 1 issues a rule to implement guidelines in regard to conducting background checks and utilizing OKDHS records to determine an individual's eligibility for employment or continued employment with OKDHS.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION

PART 1. GENERAL PROVISIONS

340:2-1-1. Purpose [REVOKED]

~~The purpose of this Subchapter is to describe the Oklahoma Department of Human Services (OKDHS) rules governing the appointment of employees including reinstatements, interagency transfers, direct hires, and applicants, as permitted by the Oklahoma Personnel Act.~~

340:2-1-2. Appointing authority [REVOKED]

~~The Oklahoma Human Services (OKDHS) Director has the power and duty to employ OKDHS personnel. As the OKDHS executive and administrative officer, the Director has final responsibility for all administrative decisions affecting OKDHS personnel actions. Authority to appoint employees in the unclassified service is found in Section 26.17 of Title 56 and Section 840-5.5 of Title 74.~~

340:2-1-3. Oklahoma Merit System of Personnel Administration (Merit System) [REVOKED]

~~The Office of Management and Enterprise Services, Human Capital Management Division (HCM) and the Oklahoma Merit Protection Commission (MPC) are charged with the responsibility for the development, implementation, and administration of the Merit System, per Section 840-1.6A of Title of the Oklahoma Statutes. Oklahoma Human Services (OKDHS) appoints and employs persons in the classified service in accordance with the Merit System of Personnel Administration Rules (Merit Rules). Merit Rules apply to employees in the~~

classified service and some provisions apply to unclassified and exempt employees. OKDHS cooperates fully with both HCM and MPC in fulfilling the responsibilities assigned to merit agencies in the administration of the Merit System.

**PART 3. INTERNAL HUMAN RESOURCES
[REVOKED]**

**340:2-1-28. Probationary period, classified service
[REVOKED]**

Probationary period upon initial appointment. The probationary period is a working, test period during which an employee is required to demonstrate fitness for the job family and level to which appointed. The probationary period for an appointed employee is one year or until the probationary period is waived after the employee has served a minimum of six months. The decision to grant a probationary employee permanent status is based on supervisory documentation, written evaluations, recommendations, or other pertinent information. The probationary period may not be extended beyond one year, but may be adjusted, per Oklahoma Administrative Code 260:25-11-36. When a probationary employee is absent from work in excess of 30 calendar days, the probationary period is adjusted by the number of days he or she is absent. An employee may be discharged at any time during the probationary period.

- (1) The probationary period is a working, test period during which a classified employee is required to demonstrate fitness for the job family and level to which appointed. The decision to grant a probationary employee permanent status is based on supervisory documentation, written evaluations, recommendations, or other pertinent information.
- (2) Any adjustment of the probationary period must be reviewed and approved by the division director or his or her designee. When permanent status is granted, the Office of Management and Enterprise Services (OMES) Human Capital Management (HCM) Division and the employee receive confirmation from Human Resource Management.
- (3) Employee benefits are available to probationary employees.
- (4) A probationary employee's change in shift assignment or a significant change of duties in excess of 30 calendar days requires prior OMES HCM approval.
- (5) A probationary employee of the Oklahoma Department of Human Services (DHS) is not:
 - (A) eligible for promotion or demotion;
 - (B) eligible to apply for DHS job announcements;
 - (C) transferred from the locality where originally appointed;
 - (D) changed from part time to full time; or
 - (E) transferred to a position in another job family.
- (6) a probationary OKDHS employee may apply for a job through the HCM application system. If a job offer is subsequently made, the offer is to a new appointment and the employee is required to:

- (A) resign from the position held at the time of acceptance; and
- (B) begin a new one year probationary in the new position.

340:2-1-29. Appointments [REVOKED]

(a) **Types of appointments.** All appointments of employment within Oklahoma Human Services (OKDHS) are made to the classified service or the unclassified service. Appointments are made, per the Oklahoma Personnel Act, applicable portions of the Oklahoma Administrative Code (OAC), and OKDHS policy.

(1) **Classified service.** Classified service refers to employees and positions subject to the Oklahoma Merit System of Personnel Administration (Merit System).

(2) **Unclassified service.** Unclassified service refers to employees and positions not subject to the Merit System, except in very limited circumstances. Employment in the unclassified service is considered employment at will.

(b) **Reinstatement.** A former state employee who had permanent status in the classified service may be eligible to apply in response to OKDHS job announcements and be considered for reinstatement, per OKDHS rules and OAC. To determine an applicant's reinstatement eligibility, Human Resource Management (HRM) obtains verification from the Office of Management and Enterprise Services Human Capital Management Division at the time of application.

(1) A permanent employee who leaves classified service is eligible for reinstatement, per OAC 260:25-9-102.

(2) Prior to enter on duty, the reinstated employee must acknowledge that serving a probationary period is a condition of the job offer.

(c) **Direct hire authority for hard to fill appointments.** Appointments in the classified service made under the direct hire authority for hard to fill positions serve a probationary period even when a probationary period was served for a previous appointment with any Oklahoma state merit agency, per OAC 260:25-11-30(a) and (c).

(d) **Temporary appointments.** When OKDHS requires the service of employees on a temporary basis, a person may be appointed into the unclassified service without regard to other provisions governing appointments. No person is appointed under this provision for more than a total of 999 hours in a 12-month period from the date of initial hire with any or all state agencies. Temporary appointments do not confer any privileges or rights of appeal, position, transfer, or reinstatement. Nor do any temporary appointments confer any other rights to any classified position under the Merit System. Local administrators and supervisors are responsible for ensuring that temporary employees do not average 30 or more hours per week without approval, per the Affordable Care and Patient Protection Act (ACA), and do not work more than 999 hours within a 12-month period from the date of initial hire, per Section 840-5.5 of Title 74 of the Oklahoma Statutes. Temporary employees exceeding these limits may become benefits eligible.

(e) **Dual appointments.** When an OKDHS employee seeks additional employment with another state agency, he or she

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must receive approval from the HRM director, who is responsible for addressing and resolving potential Fair Labor Standards Act or ACA employee benefits issues.

340:2-1-31. Classification plan [REVOKED]

The classification plan is composed of job specifications and job family descriptors (JFD) used by the Oklahoma Human Services that detail the purpose, duties and responsibilities, knowledge, skills, and required for abilities, and the minimum education or experience required for each job position. Jobs may be grouped together into JFDs that may have multiple levels within the same JFD. The Human Resource Management, Classification and Compensation unit maintains the job specification and classification plan for each JFD classified and unclassified job title. The unit also makes revisions to existing JFDs or develops descriptions for new JFDs or other classifications. The Office of Management and Enterprise Services, Human Capital Management Division has the final approval for revisions or creations of classified JFDs.

340:2-1-32. Salary Administration Plan and Oklahoma Human Services OKDHS Compensation Guidelines (OKDHSCG) [REVOKED]

Salary Administration Plan (SAP). The SAP is based on the standard that employees performing similar work receive similar pay and that variation in the requirements is reflected equitably in the pay band.

- (1) **Computation of salary payments.** OKDHS employees are paid per applicable salary schedules.
- (2) **Salary.** The salary for positions in the classified service is the salary identified in the SAP, except as provided in Oklahoma Administrative Code (OAC) 260:25 7 1 through 260:25 7 27. The salary for positions in the unclassified service is normally a comparable salary. Requests to establish salary above the established hiring rate may be processed per the special entrant rate or salary exception request process as described in the OKDHSCG. The salary of a new employee is effective on the employee's first working day.

340:2-1-34. Employment verifications and references [REVOKED]

(a) **Employment verification inquiries.** Oklahoma Department of Human Services (DHS) responses to employment verification inquiries, such as credit references, work status inquiries, and employment references on employees or former employees are made either by Financial Services (FS) or Human Resource Management (HRM), except as noted in (b) of this Section.

- (1) FS or HRM provides only the employee's or former employee's correct name, dates of employment, and the current or last job family descriptor and level held.
- (2) an employee's or former employee's address, Social Security number, or other information is not provided.
- (3) Only salary confirmation information is provided.

(4) additional information may be released only upon receipt of a written authorization from the employee or former employee.

(b) **References.** Professional references cannot impart any confidential information and must be void of personal opinion and content of a defamatory, retaliatory, or discriminatory nature.

- (1) **Internal requests.** Supervisors and managers must respond to reference requests initiated within DHS. The response is in writing either by memo or email.
- (2) **External requests.** Managers and supervisors do not respond to verbal requests for references. A release for information signed by the employee must be received.
- (c) **Personal references.** Employees or former employees frequently ask administrators, managers, supervisors, or co workers for personal references. Individuals providing references are cautioned they may be liable and subject to discipline for providing incorrect, inappropriate, or exaggerated references or information.

PART 5. ADMINISTRATIVE PROCEDURES

340:2-1-59. Conducting background checks and utilizing Oklahoma Human Services (OKDHS) records of abuse, neglect, and exploitation for OKDHS investigations

(a) **Authorization.**
(1) Per Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. §162(C)(1) and Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. §162(C)(2), the Director has determined an individual seeking any position of employment or who is currently employed by Oklahoma Human Services (OKDHS) may be subjected to a background check. Any results of a background check are considered when determining an individual's pending or continued employment with OKDHS.

(2) Per 56 O.S. § 162(C)(2), the Director has determined a search of OKDHS records, as defined in subsection (d), may be conducted on any individual employed with or who may be potentially employed with the following programs:

- (A) Child Welfare Services (CWS);
- (B) Developmental Disabilities Services (DDS);
- (C) Adult and Family Services;
- (D) Community Living, Aging, and Protective Services (CAP);
- (E) Child Care Services;
- (F) Office of the Inspector General (OIG); or
- (G) Office of Client Advocacy.

(b) **Definitions.** The following words and terms, when used in this Section, have the following meanings, unless the context clearly indicates otherwise:

(1) "Background check" means searching available public record databases for purposes of assessing whether to initiate or continue an individual's employment with OKDHS.

(2) "Investigation" means reviews of both potential and current employees for any acts that are in violation of a statute, rule, or policy related to a vulnerable population or acts that could be associated with criminal activity or potentially disqualify an individual from becoming an OKDHS employee or continuing employment with OKDHS.

(3) "Record" or "records" means any OKDHS record, whether or not containing confidential information, related to a determination by OKDHS, whether substantiated or unsubstantiated, that an employee or potential employee subjected any member of a vulnerable population to abuse, neglect, or exploitation.

(4) "Vulnerable population" means any individual or group, whether comprised of children or adults, that OKDHS is responsible for protecting, ensuring the welfare of, guarding, or investigating allegations of abuse, neglect, or exploitation.

(c) **Background checks.** A background check includes, but is not limited to, searching and reviewing:

(1) the Oklahoma State Courts Network and Oklahoma District Court records;

(2) the Restricted Registry maintained by OKDHS;

(3) the Department of Corrections files pursuant to the Sex Offender Registration Act and the Violent Offender Registry;

(4) all applicable out-of-state child abuse and neglect registries if the potential or current employee has not lived continuously in Oklahoma for the past five years;

(5) the Community Services Worker Registry maintained by OKDHS; and

(6) a fingerprint-based national criminal history record check.

(d) **Access to, review of, and utilization of OKDHS records.**

(1) Any record is to be accessed and used solely for the purpose of:

(A) assisting in the investigative efforts of the OKDHS OIG;

(B) assessing whether an employee is authorized or permitted to work or interact with a vulnerable population in the course and scope of their employment;
or

(C) determining whether an individual begins or, for purposes of disciplinary action, continues employment with OKDHS.

(2) Subject to an assessment of relevancy, any records involving the potential or current employee, including records associated with members of the potential or current employee's household or immediate family, may be accessed, reviewed, and utilized pursuant to this Section.

(3) Any and all records, including any work product and other documentation created in the course and scope of an individual's employment with OKDHS, may be accessed, reviewed, and utilized pursuant to this Section.

(4) Records relating to any complaint about the potential or current employee's actions or inaction may be accessed, reviewed, and utilized pursuant to this Section.

(5) The relevancy of records is considered on a case-by-case basis and is jointly determined by both Human Resource Management (HRM) and the program responsible for maintaining the record with consultation, as needed, involving OIG and OKDHS Legal Services (LS).

(6) Relevant acts contained in any record include, but are not limited to:

(A) being the alleged perpetrator of abuse, neglect, or exploitation involving a vulnerable population, including complaints of failing to supervise or protect;

(B) failing to cooperate in an investigation conducted by OKDHS or other law enforcement agencies;

(C) failing to follow laws, rules, and regulations that pertain to the conduct of an investigation related to a vulnerable population; or

(D) failing to report suspected abuse, neglect, or exploitation of a vulnerable population.

(7) Dissemination of the records outside of the program responsible for maintaining the records is limited to only the individuals who are directly involved in conducting the investigation or background check, including any consultation with LS. Records do not need to be redacted for purposes of the investigation or background checks, but are, to the extent possible, labeled as confidential when disseminated outside of the program responsible for maintaining the records. Records are not saved in any personnel file and all copies sent to HRM for purposes of the employment investigation or background check are securely destroyed, per OKDHS:2-21-57.

(e) **Records remain confidential pursuant to applicable law.** The use of any records pursuant to this Section does not invalidate or in any way compromise other legal protection or regulation of those records including, but not limited to, the confidentiality of records involving CWS, CAP, or DDS.

PART 7. RECRUITMENT, SELECTION, AND PLACEMENT POLICY AND PROCEDURES

340:2-1-76. Appointments and changes in employee classification not subject to vacancy posting provisions [REVOKED]

~~The local administrator submits a request to Human Resource Management (HRM) to announce personnel vacancies. Appointments and changes in employee job family descriptor (JFD) and level or position not subject to the vacancy notice posting provisions are:~~

~~(1) temporary appointments;~~

~~(2) detail to special duty or other temporary assignments that do not affect an employee's base JFD and level or classification;~~

~~(3) intra agency lateral transfer of a permanent employee from one position to another position in the same JFD and level or another JFD in the same pay band;~~

~~(4) voluntary and involuntary demotion to a vacant position;~~

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- ~~(5) direct reclassification made when a new JFD is adopted that better describes an incumbent's job;~~
- ~~(6) position reallocation;~~
- ~~(7) career progression promotions;~~
- ~~(8) positions limited to the prescribed length of time of the course of training or extension study;~~
- ~~(9) positions where the Oklahoma Department of Human Services (DHS) has elected to establish separate policies or to test pilot rules within specific organizational units, and where such policies are publicized prior to implementation;~~
- ~~(10) positions converted from the classified to the unclassified service, or from the unclassified to the classified service by appointment, reinstatement, or position reallocation of an incumbent per Merit System of Personnel Administration Rules (Merit Rules) and DHS policy;~~
- ~~(11) transfer of an employee, position, or both, from one work organization to another; and~~
- ~~(12) positions in the unclassified service. The DHS Director or designee may waive the vacancy posting provisions of this policy for positions in the unclassified service.~~

340:2-1-77. Vacancy posting procedures [REVOKED]

- ~~(a) **Classified service vacancy announcements.** All vacant positions in the classified service are posted per the rules in this Section prior to the filling of such vacancies except as provided in Oklahoma Administrative Code (OAC) 340:2-1-76.~~
- ~~(b) **Unclassified service vacancy announcements.** Announcements in the unclassified service may be posted for application. The Oklahoma Human Services (OKDHS) Director or designee may waive the vacancy posting provisions of this rule for positions in the unclassified service. The process outlined in this Section may be used or, at the discretion of the appointing authority, applications may be solicited through other recruiting methods.~~
- ~~(c) **Notification of cancellation.** A vacancy posting may be canceled at any time. When the cancellation occurs, Human Resource Management notifies all applicants.~~

340:2-1-78. Method of application [REVOKED]

- ~~(a) **Classified employment application.** Persons seeking initial appointment in the classified service must apply online. Applicants must meet the minimum education and experience qualifications for the positions and, if required, complete a supplemental questionnaire.~~
- ~~(b) **Permanent, classified or former permanent classified employees eligible for reinstatement.** Persons seeking interagency and reinstatement appointments must apply online. Applicants must meet the minimum education and experience qualifications for the position.~~
- ~~(c) **Unclassified service.** The Oklahoma Human Services may post positions in the unclassified service. When an unclassified position is posted, persons seeking an unclassified appointment must apply online.~~

340:2-1-79. Eligibility to compete for classified service positions [REVOKED]

- ~~(a) Eligible applicants must possess the required minimum education and experience for the job family descriptor (JFD) and level and any announced selective qualifications within 30 calendar days of the closing date of an announcement.~~
- ~~(b) When the vacancy posting indicates Oklahoma Human Services (OKDHS) employees only, then an applicant must be:
 - ~~(1) current permanent, classified OKDHS employee;~~
 - ~~(2) current unclassified, OKDHS employee with reinstatement eligibility to the classified service; or~~
 - ~~(3) former permanent, classified OKDHS employee with reinstatement eligibility to the classified service.~~~~
- ~~(c) When the vacancy posting indicates all sources (eList), a public announcement is made that allows any person to be recruited and compete.~~
- ~~(d) When the vacancy posting is for a JFD approved by the Office of Management and Enterprise Services Human Capital Management Division (HCM) under the Model Project agreement, indicating all sources, then any applicant meeting the education and experience requirements may apply online.~~
- ~~(e) When the vacancy posting indicates all sources, after complying with Oklahoma Administrative Code 340:2-1-84(b), the selecting official may consider applicants from an HCM eList.~~

340:2-1-80. Eligibility to compete for positions in the unclassified service [REVOKED]

- ~~(a) If the vacancy posting indicates Oklahoma Human Services (OKDHS) employees only, applicants must be current, temporary, or former employees of OKDHS.~~
- ~~(b) If the vacancy posting does not indicate OKDHS employees only, any person may be recruited and compete.~~

340:2-1-81. Issuing eLists [REVOKED]

- ~~(a) Human Resource Management (HRM) prepares the list of applicants for the announced position. Applicants are screened to determine eligibility.~~
- ~~(b) When the position is in the classified service and announced as a classified position, applicants may be considered from all sources. The local administrator may request that HRM issue an Office of Management and Enterprise Services Human Capital Management (HCM) Division eList for the announced job family descriptor and level, and authorized announced alternate hiring level, as applicable. The selecting official:
 - ~~(1) must use the internal list of applicants; and~~
 - ~~(2) may use the regular HCM eList that includes the:
 - ~~(A) Priority Reemployment eList; and~~
 - ~~(B) Free List, Optional Program for Hiring Applicants with Disabilities.~~~~~~

340:2-1-82. Job-related selection criteria [REVOKED]

- ~~(a) At the time a decision is made to fill a position, the supervisor of the position is responsible for reviewing and determining job-related selection criteria based on the duties of the~~

position. These job related selection criteria are used to develop interview questions and any other selection procedures, such as skill assessments, simulations, or case studies. Human Resource Management is available to assist with development of interview questions.

(b) The selecting official is normally in the program's upper organizational structure for the position being filled.

(c) The selecting official must consider (1) through (3) of this subsection when selecting applicants for interview and making the selection decision. Job related information is:

- (1) the application for employment;
- (2) the employee's most recent performance evaluation, when available. Selection advisory committees may review earlier performance evaluations only when done consistently for all applicants; and
- (3) work histories, if when available, job related references, and other job related documents may be considered when done consistently for all applicants.

(d) The selecting official is responsible for validating an applicant's work experience and education history, and determining if the applicant meets the minimum qualifications for the position.

(e) A felony conviction, by itself, is not sufficient cause to prevent an applicant from being considered for employment with the State of Oklahoma. The underlying crime and its circumstances; however, may be taken into account when determining whether it is appropriate to make a conditional offer of employment. per the Governor's Executive Order 2016-03. Before making a conditional job offer to an applicant with a felony conviction, written approval in the form of a memo or email must be obtained from the senior administrator or the executive officer to whom the senior administrator reports. This approval is included in the official personnel file.

340:2-1-83. Selection advisory committee for classified positions [REVOKED]

(a) A committee is established by the selecting official or designee to provide assistance in the consideration, interview, and selection process of applicants for any classified supervisory, managerial, or Fair Labor Standards Act (FLSA) exempt position. Upon request, the requirement for a committee may be waived. A waiver request, including justification, must be submitted to the Human Resource Management director for consideration. When there is only one applicant, a committee is not required. The selecting official is responsible for ensuring the interview time, date, and location are timely conveyed to applicants selected for interviews.

(b) Initial interview committees must have at least three members, one of whom must be from a program unrelated to of the vacant position.

(c) The selecting official does not serve as a member of any initial committee.

(d) A selection advisory committee is not required for entry level and nonsupervisory positions. When a local administrator elects to use a committee for such positions, there is no minimum member requirement and the requirement for one

member to be from an unrelated program is waived. The selecting official may delegate responsibility for conducting interviews or include individual staff members in the interview process for entry level and nonsupervisory positions as an alternative to use of a committee.

(e) A selection advisory committee may be utilized when filling an unclassified position, although it is not a requirement.

(f) Oklahoma Department of Human Services (DHS) employees must complete an approved training course related to job interviews and the selection process prior to serving on a selection advisory committee.

(g) A former DHS employee or a community partner may be asked to serve on a selection advisory committee. These individuals are not required to complete an approved training course related to job interviews and the selection process, but cannot chair the committee.

340:2-1-85. Final selection [REVOKED]

(a) The selecting official may fill the position, cancel the announcement, or reannounce the position. The local administrator is responsible for obtaining reviews or approvals from higher management levels, ensuring compliance with the Oklahoma Department of Human Services (DHS) rules and Merit System of Personnel Administration rules governing the selection process and forwarding the completed list of applicants immediately to Human Resource Management upon the employee's acceptance of a conditional job offer.

(b) The selecting official is responsible for ensuring the salary approved for the selection is in compliance with Oklahoma Administrative Code 340:2-1-87.

(c) The selecting official ensures internal applicants and any applicants contacted from the eList are notified of the final selection decision.

340:2-1-87. Compensation [REVOKED]

All vacancy posting selection decisions are subject to the compensation provisions listed in the Agency Compensation Guidelines. Positions in the classified service are subject to the provisions of Merit System of Personnel Administration Rules.

340:2-1-88. Alternate hiring levels [REVOKED]

(a) Alternate hiring levels are authorized by the Office of Management and Enterprise Services Human Capital Management Division into a job family where there are basic, entry, for full performance jobs, or where Oklahoma Human Services (OKDHS) experiences recruiting difficulties for a specific job family descriptor and level.

(b) Hiring at the alternate hiring level may be a result of a position reallocation decision, vacancy announcement, or actions exempt from the announcement process. Position reallocation alternate hiring level is authorized if the position incumbent is ineligible for reclassification due to qualifications, status, examination, or if the employee is in a trainee status and has not completed a prescribed training program and is performing duties below the full performance level.

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(e) Employees hired at an alternate hiring level may progress to the next level upon completion of probation, if applicable, and meeting minimum education, experience, and licensure requirements.

340:2-1-89. Office of Management and Enterprise Services Human Capital Management Division eList - classified service [REVOKED]

(a) ~~General provisions. This Section provides basic information regarding Office of Management and Enterprise Services Human Capital Management Division (HCM) eLists. For assistance, consult Merit System of Personnel Administration rules (Merit Rules) Oklahoma Administrative Code 260:25-9 or contact Human Resource Management (HRM).~~

(b) ~~Required procedures for HCM eLists.~~

- (1) Applicants for competitive and non competitive positions apply using the State of Oklahoma online application for employment through the HCM website.
- (2) Interviews may be conducted at the discretion of the selecting official from the HCM eList.
- (3) Interview notification letters sent by email are sent at least four calendar days prior to the interview date. The applicant's response to the invitation to interview must be received within 72 hours from the date of the email.

(e) ~~Submission of HCM eList and support documentation to HRM.~~

- (1) The selecting official returns the properly coded HCM eList to HRM for finalization of the personnel transaction.
- (2) If no applicant is selected from the HCM eList, the HCM eList must be returned to HRM, prior to the void date.

(d) ~~Review of returned HCM eList.~~

- (1) HRM retains the file copy of the HCM eList.
- (2) HCM audits the eLists for compliance with Merit Rules after the selected candidate enters on duty. HCM has authority to void any appointment not compliant with Merit Rules.

340:2-1-93. Applicants previously discharged from employment [REVOKED]

Before making a job offer to any previously discharged state employee, written approval must be obtained from the hiring senior administrator or the executive officer to whom the senior administrator reports. This approval is included in the official personnel file.

[OAR Docket #23-412; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #23-413]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Office of Client Advocacy
Part 1. Administration
340:2-3-12 [REVOKED]
Part 3. Investigations
340:2-3-36.1 [AMENDED]
340:2-3-39.1 [AMENDED]
(WF 23-2C)

AUTHORITY:
Director of Oklahoma Human Services (OKDHS); Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 43A § O.S. 10-102 et seq.; and Section 5101 et seq. of Title 42 of the United States Code.

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n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 2, Subchapter 3 revoke outdated sections and amend existing rules: (1) to ensure rules conform to state and federal statutes and regulations and (2) to ensure that rules conform to current best practices. The proposed amendment ensures Office of Client Advocacy (OCA) rules are compliant with Developmental Disabilities Services rules and current best practices that pertain to vulnerable adult safety.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees [REVOKED]

(a) ~~**Application.** This Section applies to a final finding in an administrative investigation conducted by the Office of Client Advocacy (OCA) per OAC 342:2-3-32 through 340:2-3-37 that an OKDHS employee engaged in abuse, sexual abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. A finding is final when~~

- (1) ~~OCA has disseminated its final report and the time for requesting review by the Grievance and Abuse Review Committee (GARC) per OAC 340:2-3-62(b) expired without OCA receipt of a timely request; or~~
- (2) ~~a timely request for GARC review was received and processed to conclusion per OAC 240:2-3-62.~~

(b) ~~**Supplemental investigations.**~~

(1) ~~Upon receipt of an OCA investigation report, when the applicable state office administrator or designee determines a need for specific additional information necessary to make a determination whether to request review by GARC or what personnel action to initiate, the state office administrator or designee may request OCA conduct a supplemental investigation.~~

(A) ~~A request for a supplemental investigation is made within 30 calendar days of receipt of the OCA report and sets out the specific information needed.~~

(B) ~~No more than one such request may be made in an individual case.~~

(C) ~~OCA conducts a prompt supplemental investigation, commencing the investigation within 30 calendar days and completing the investigation within 60 calendar days of receipt of a request for a supplemental investigation, unless these time periods are extended for good cause as determined by the advocate general or the OKDHS Director.~~

(2) ~~Within 30 calendar days of receipt of the OCA supplemental investigation, the state office administrator or designee may request the case be submitted to GARC per OAC 340:2-3-62.~~

(c) ~~**Disciplinary guidelines regarding OKDHS employees.** These guidelines are used by state office administrators and their designees to determine appropriate OKDHS personnel action, based on the nature of the abuse, sexual abuse, neglect, caretaker misconduct, or exploitation and consistent with OKDHS corrective discipline policies.~~

(1) ~~**Abuse, sexual abuse, or neglect.**~~

(A) ~~**First offense.** The first offense may result in discharge, demotion, suspension without pay, or such other discipline deemed reasonable, depending on the severity of the incident.~~

(B) ~~**Second offense.** Unless the OKDHS Director approves a less severe disciplinary action, the second offense results in discharge.~~

(2) ~~**Caretaker misconduct resulting in physical injury or mental anguish to a vulnerable adult.**~~

(A) ~~**First offense.** The first offense may result in discharge, demotion, suspension without pay, or written reprimand, depending on the severity of the incident.~~

(B) ~~**Second offense.** The second offense may result in discharge, demotion, or suspension without pay.~~

(3) ~~**Caretaker misconduct not resulting in physical injury or mental anguish to vulnerable adult.**~~

(A) ~~**First offense.** The first offense may result in suspension without pay, written reprimand, verbal reprimand, or corrective action plan, depending on the severity of the incident.~~

(B) ~~**Second offense.** The second offense may result in discharge, demotion, suspension without pay, or written reprimand and corrective action plan.~~

(4) ~~**Second offense.** The term second offense as used in this Section means an offense occurring after any other act of abuse, neglect, or caretaker misconduct. Nothing in this Section limits disciplinary actions based in part on acts of abuse, neglect, or caretaker misconduct and based in part on other cause. The imposition of any demotion, suspension without pay, or reprimand must be accompanied by a corrective action plan.~~

PART 3. INVESTIGATIONS

340:2-3-36.1. Office of Client Advocacy (OCA) investigation procedures for cases involving vulnerable adults

(a) ~~**Initiation of OCA investigation initiation.** Oklahoma Human Services (OKDHS) OCA within its investigative scope and authority, per Section 10-105 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105), conducts a prompt and thorough investigation upon receiving a report of maltreatment of a vulnerable adult who is a recipient of home and community based waiver services, State Plan Personal Care (SPPC) services, living choice waiver services, medically fragile waiver services, or a Hissom Class Member, or a resident of the Robert M. Greer Center (Greer).~~

(1) ~~An OCA investigator initiates an investigation when they make face-to-face contact with the vulnerable adult, who is the alleged victim.~~

(2) ~~The OCA investigator initiates the investigation as soon as possible within five-calendar days, not to exceed 120 hours from the time of the referral receipt.~~

(3) ~~In the case of an emergency when a priority response is required, an OCA investigator initiates the investigation as soon as possible, but not to exceed 24 hours from the date of case assignment.~~

(4) ~~During an investigation, when the OCA investigator has concerns that the vulnerable adult victim may be engaging in acts of self-neglect or needs involuntary protective services or court intervention, the OCA investigator promptly makes a referral to the Adult Protective Services (APS) and coordinates with APS to ensure the vulnerable adult's safety, per 43A O.S. § 10-106.~~

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(b) **Joint investigations with law enforcement.** Investigations regarding vulnerable adults are conducted jointly with law enforcement when possible.

(c) **Reportable incident regarding vulnerable adults.** The OKDHS vulnerable adult investigations include allegation notification to the local law enforcement agency, per 43A O.S. § 10-105.

(d) **Investigation notice provided to vulnerable adult's caretaker (VAC), legal guardian, and next of kin.**

(1) As soon as possible after initiating an investigation of a referral regarding a vulnerable adult, OKDHS provides the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and a written description of the investigation process, regardless of whether the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult, per 43A O.S. § 10-105.1.

(2) When the vulnerable adult retains the capacity to consent to voluntary services and does not want a caretaker or next of kin to receive an investigation notification, OKDHS abides by the vulnerable adult's wishes.

(e) **Facility or provider administrator responsibility to arrange document production, visits, and interviews.** The applicable facility or provider agency administrator or the administrator's designee arranges document production, site visits, and interviews per OCA request.

(4) The facility or provider administrator or the administrator's designee who employed the accused VAC at the time of the alleged incident informs the employee of:

(1A) the OCA investigator's name and phone number;
(2B) the investigative process described in this Section;
(3C) the employee's rights and responsibilities relating to the investigation described in (j)(h) of this Section, using Form 15IV005E, Rights and Responsibilities of Accused Caretakers, or a substantially similar provider or agency form, and Form 15IV004E, Address Information Notice, a copy of which is provided to the OCA investigator; and

(4D) the allegation made against the VAC without divulging the reporting party's identity or the substance of the evidence; and

(5) obtains the signature of the CSW on the forms listed in (3) of this subsection and provides a copy to the OCA investigator.

~~(2) When the VAC is subject to the Community Services Worker (CSW) Registry maintained by OKDHS Legal Services, the rights and responsibilities of the accused community services worker and Medicaid personal care assistant are found in Oklahoma Administrative Code (OAC 340:2-3-29.1).~~

~~(A) The facility or provider administrator or the administrator's designee promptly completes Form 15IV005E and Form 15IV004E, per 340:100-3-30.~~

~~(B) The facility or provider administrator obtains the CSW's signature of the CSW and gives a copy to the OCA investigator.~~

(f) **OCA access to victims, employees, clients, facilities, files, and other records.**

(1) Per 43A O.S. § 10-105, the OKDHS investigation includes:

(A) a visit to the home or other place of residence of the person who is the subject of the report;

(B) a private interview with the person who is the subject of the report; and

(C) consultation with persons who have knowledge of the circumstances.

(2) The applicable facility or provider administrator or the administrator's designee arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.

(3) During an OCA investigation, OKDHS, Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (OMDHSAS), providers, and facilities and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.

(4) Denying access may be grounds for a contract termination between OKDHS and the contractor.

(g) **Discrimination, retaliation, or interference in an OCA investigation prohibited.**

(1) 21 O.S. § 455 states it is a felony to:

(A) willfully prevent or attempt to prevent any person who make an abuse or neglect report, pursuant to 43A O.S. § 10-104 from giving testimony or producing any record document or other object; or

(B) threaten physical harm through force or fear, cause or procure physical harm, harass or cause a person to be harassed because of testimony in a civil or criminal trial proceeding or because of making a report of child abuse or neglect.

(2) An OKDHS employee who interferes with an OCA investigation may be subject to administrative action. Interference includes, but is not limited to:

(A) intimidating, harassing, or threatening a party to the investigation;

(B) retaliation against an employee for reporting an allegation; or

(C) denying access to clients, employees, facilities, witnesses, records, or evidence.

(3) 43A O.S. § 10-104 states no employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason the employee made or caused to be made a report, or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. § 10-101 et seq.

(h) **Rights and responsibilities of accused VAC.** The rights and responsibilities of the accused VAC during an OCA investigation are outlined in this subsection.

(1) **Rights.** During the investigation process, an accused VAC has the right to:

(A) be advised of the nature of each allegation made against him or her;

(B) be advised by OCA of the investigative process involving caretaker maltreatment.

(C) be interviewed by the OCA investigator and allowed to give his or her position regarding the allegation;

(D) be advised by the OCA investigator of the substance of the evidence against him or her, but not the reporting party's identity;

(E) submit or supplement a written statement relating to the allegations;

(F) seek advice from other parties concerning a his or her rights and responsibilities in OCA investigations, including the right to seek counsel;

(G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and

(H) be notified in writing by his or her employer of the investigation's outcome when the investigation involves a VAC.

(2) **Responsibilities.** During the investigative process, the accused VAC has the responsibility to:

(A) prepare written statements and reports relevant to the investigation, upon request;

(B) be available for interviews and accommodate the OCA investigator with scheduling interviews;

(C) refrain from action that interferes with the investigation including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and

(D) provide pertinent information and respond fully and truthfully to questions.

(i) **VAC address and email.** During the investigative process the accused VAC provides OCA with a current mailing address and email address, if applicable.

(1) It is the responsibility of the accused VAC to promptly notify OCA of any changes in mailing address or email address.

(2) OKDHS sends all subsequent communications concerning the investigation and administrative actions to the last known mailing address or email address as applicable, as provided by the accused VAC.

(3) OKDHS may serve notice of investigative findings as provided in this Section and administrative actions per Oklahoma Administrative Code (OAC) 340:2-3-39.1 to the last known mailing address or email address as applicable as provided by the accused VAC.

(4) Failure to notify OCA of any changes in mailing address or email address may result in placement of the accused VAC in the Community Services Worker Registry.

(j) **Educational employees.** This subsection applies to an educational employee who is either a witness or the accused VAC in an OCA investigation.

(1) The facility or provider agency administrator where the incident took place notifies the school principal of the nature of the allegation and the assigned OCA investigator's name.

(2) OCA investigates educational employees who meet the caretaker definition, per this subsection.

(~~jk~~) **Contractor's employees.** This subsection applies to an employee of a provider or facility contractor when the employee is an accused VAC in an OCA investigation.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the nature of the allegation against the contractor's employee and the assigned OCA investigator's name.

(2) The contractor chief administrative officer is responsible for notifying the contract employee of the reason for the investigative review, advising the employee of his or her rights and responsibilities related to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for notification purposes and to coordinate with the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection.

(~~kl~~) **Document collection and review.** The OCA investigator gathers and reviews relevant documents including, but not limited to:

(1) incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

(2) medical records;

(3) photographs, videos, or both;

(4) facility or provider logs;

(5) activity and tracking documents;

(6) the vulnerable adult's Individual Plan (IP); and

(7) all relevant Developmental Disability Services (DDS) documents and forms.

(~~lm~~) **Investigative interviews.** When there is an alleged injury, the OCA investigator or other appropriate person observes, notes, and documents apparent injuries and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the OCA investigator and the person interviewed is allowed to attend an interview except for a person necessary to facilitate communication. An attorney or other representative of the interviewee attends an interview only as a silent observer with the advocate general's or the advocate general's designee's prior permission.

(~~mn~~) **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who are allegedly directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each accused VAC. At the time of the interview of the accused VAC, if the OCA investigator determines that a signed Form 15IV004E, Address Information Notice, has not previously been provided to OCA, the investigator obtains it from the accused VAC. If the interview is being conducted in a manner other than in-person, the investigator reads Form 15IV004E to the accused VAC and:

(1) obtains verbal acknowledgement of understanding from the accused VAC;

(2) records the information on Form 15IV004E as provided by the accused VAC; and

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(3) obtains consent to sign Form 15IV004E on behalf of the accused VAC.

(~~h~~o) **Recording investigation interviews.** OCA interviews are audio-recorded. To maintain information confidentiality provided in an interview, the interviewee and anyone in attendance is not permitted to record the interview. Interview recordings remain with the OCA investigative file.

(~~o~~p) **"Plan for Immediate Safety"** means the plan for actions taken to immediately control any significant and clearly observable condition that is present and is endangering or threatening to endanger a vulnerable adult.

(~~p~~q) **Allegation presentation for witnesses later identified as accused VACs.** During an investigation, when a witness is identified as a potential accused VAC, the OCA investigator interviews the witness again to inform the witness that he or she is a potential accused VAC. At the time, the witness is informed of the substance of the evidence and provided an opportunity to respond. The OCA investigator informs the facility or provider agency administrator of the new allegation and of the potential additional accused VAC. The OCA investigator advises the accused VAC of the substance of the new information and provides an opportunity to present a response.

(~~q~~r) **Interpreter services for persons who are deaf or hard of hearing or have limited English proficiency.** When OCA interviews a person who is deaf or hard of hearing or who has limited English proficiency, OCA provides interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided, per OAC 340:1-11-10.

(~~r~~s) **Areas of concern (AOC) notification.** During the investigation, the assigned OCA investigator emails or phones the applicable facility or provider administrator or the administrator's designee and informs him or her of AOCs. When the investigation is completed, all identified AOCs are provided in writing to the facility or agency provider administrator.

(~~s~~t) **The written investigative report.** After completing the information-gathering portion of the investigative process, the OCA investigator prepares a written investigative report containing:

- (1) the referral allegation investigated, including date, time, and location of the alleged incident, the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries the alleged victim sustained;
- (3) information regarding involved law enforcement entities;
- (4) a recommendation for the district attorney to consider further investigation;
- (5) the applicable definition of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the findings, per (x) of this Section;
- (7) a list of the involved parties, titles, and roles in the matter, if they were interviewed and, when they were interviewed, whether the interviews were face-to-face by phone, or virtual;

(8) the name, address, and phone numbers of any interpreter employed during the investigation;

(9) an explanation of the basis for the findings;

(10) a summary of relevant information obtained during each interview conducted during the investigation;

(11) a list of relevant documents and records reviewed during the investigation;

(12) a list of attachments to the report provided upon request; and

(13) an explanation for any delays in meeting the time requirements for completing the investigation report contained in this Section.

(~~t~~u) **OCA investigation findings regarding a vulnerable adult.** The OCA investigation of a report of vulnerable adult maltreatment of a vulnerable adult results in a written report with findings, within 60-calendar days from the referral date.

(~~u~~v) **Identification of the responsible VAC.** When the evidence gathered during the investigation is sufficient to substantiate vulnerable adult maltreatment but the person responsible for the maltreatment cannot be identified, the substantiated finding is made on an unknown VAC. The facility or provider administration may be named as responsible VAC when the policies, procedures, or practices the administration adopted are the primary factor resulting in individual client maltreatment of individual clients.

(~~v~~w) **Notice of maltreatment findings to a vulnerable adult.**

(1) After the OCA investigation is complete a findings letter is ~~mailed~~provided to the:

- (A) accused VAC;
- (B) legal guardian and next of kin; and
- (C) facility or provider administrator.

(2) When a facility or provider administrator is named as an accused VAC, a findings letter is ~~mailed~~provided to the facility's or provider's chair of the board of directors, or to the director of the state agency operating the facility, as applicable.

(~~w~~x) **Appeal process for substantiated maltreatment findings.** The appeal process is provided for accused VACs who disagree with a substantiated maltreatment finding, per OAC 340:2-3-39.1.

(~~x~~y) **Dissemination of OCA investigation reports involving VACs not subject to the CSW Registry.**

(1) Except as provided in (4) of this subsection and consistent with 43A O.S. § 10-110, a summary of the final OCA investigation report involving a vulnerable adult is sent to the administrator of an affected facility or provider agency. The summary is provided within five-business days of the investigation's closure. The administrator is responsible for notifying the accused VAC and the vulnerable adult's legal guardian or next of kin of the OCA finding.

(2) When the referral alleges maltreatment, a copy of the report is sent to the applicable district attorney.

(3) A copy of the report is also sent to the DDS State Office administrator, ODRS director, or ODMHSAS director, as applicable.

(4) When a facility or provider administrator is named as an accused VAC in the allegation, the OCA forwards a summary of the investigative report to the facility or provider agency chair of the board of directors or to the director of the state agency operating the facility.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) when the investigation involves a day treatment program.

(6) When the accused VAC is an OKDHS employee, the relevant state office administrator provides the accused VAC with a letter summarizing the allegation and stating the OCA finding.

(7) When there is a substantiated finding of client maltreatment by a licensed nurse, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation. This includes but is not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry and includes sending OSDH a copy of any report when at least one of the accused VACs is a certified nurse aide.

(9) When there is substantiated maltreatment by a guardian, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by mail, fax, or email while maintaining confidentiality of materials.

(yz) Dissemination of investigation reports involving Hisson Class Members (HCMs) and VACs subject to the CSW Registry.

(1) All OCA investigations involving a substantiated finding against a CSW or Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry, per OAC 340:2-3-29.1.

(2) A copy of the investigative report is sent to the district attorney in the county where the suspected maltreatment occurred, per 43A O.S. § 10-104.

(3) OCA sends an investigation summary to the facility or provider administrator within five-business days of the investigation's closure. Nothing in this subsection will be construed as an OCA determination that the subject of the investigation report may be placed on the CSW Registry.

(4) The investigation report is sent to the DDS director or designee, the Community Living, Aging, and Protective Services director or designee, or the Oklahoma Health Care Authority director or designee, as applicable.

(5) OCA notifies the vulnerable adult's accused caretaker and legal guardian or next of kin of the investigation finding. When the vulnerable adult is an HCM, the HCM's assigned OCA advocate notifies the HCM and the HCM's guardian or close family member of the investigation finding.

(6) When an investigation involves a vulnerable adult with a legal guardian, a copy of the completed investigation report must be filed with the court the guardian is accountable to, per 43A O.S. § 10-105.

(zab) Confidentiality of OCA investigative reports. Persons receiving copies of OCA investigative reports or summaries regarding a vulnerable adult are bound by the confidentiality provisions of 43A O.S. § 10-110.

(1) All investigative records OKDHS receives that are created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.

(2) Person seeking redacted identifying information, per 43A O.S. § 10-110, contained in the OCA investigative report, in any summary or other information contained in any other reports, records, or working papers used or developed in the investigation, must obtain a court order authorizing the information's release of such information.

(A) All reports, records, working papers, and all information contained therein remain confidential after the OKDHS release; and

(B) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

(aab) Substantiated findings involving Greer. OCA investigation report findings involving vulnerable adult maltreatment at Greer are considered final when the report does not contain a substantiated finding. In cases with a substantiated finding, the report is final upon completion of the review process, per 340:2-3-39. When DDS staff receives a copy of a final OCA investigative report or notice that a review, per OAC 340:2-3-39.1, is concluded, within 30-calendar days, the applicable director notifies the advocate general in writing of:

(1) the personnel action taken or to be taken with regard to each accused VAC name in the report;

(2) the corrective action taken or to be taken regarding AOCs notice in the report; and

(3) whether, for each worker found to have engaged in maltreatment, there were prior OCA or facility confirmations of the worker's maltreatment of a vulnerable adult. If such confirmations exist, the basis for each such finding, and the personnel action taken in response.

(bbc) Findings involving an HCM. This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused VAC named in an OCA investigation report. The DDS director or the director's designee notifies the advocate general in writing:

(1) when personnel action was or will be taken with regard to each accused VAC named in the report; and

(2) of corrective action taken or to be taken regarding AOCs noted in the report.

(eed) Ten-day staffing. Ten days after the investigation is initiated, the provider has the right to request an investigative status update. The provider makes the request to the assigned OCA Investigator's programs manager or programs supervisor. The ten-day staffing includes the provider administrator, the programs manager or programs supervisor and the OCA investigator. OCA provides an update as to the progress

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and there is an information exchange between the provider and OCA to identify any ongoing safety issue to barriers to concluding the investigation.

340:2-3-39.1. Reconsideration process for substantiated findings of vulnerable adult maltreatment in Office of Client Advocacy (OCA) investigations and Community Services Worker Registry (CSWR) procedures

(a) Notice of Reconsideration process for substantiated findings of vulnerable adult maltreatment by vulnerable adult caretakers (VAC) not eligible for CSWR placement.

(1) The OCA administrative programs officer (APO) or designee sends the VAC a notification of findings of vulnerable adult abuse/neglect and request for reconsideration within 10-calendar days of approval of a substantiated investigation finding by the OCA programs manager or supervisor.

(2) The notification of findings informs the VAC of:

- (A) any substantiated vulnerable adult abuse or neglect findings in the investigation;
- (B) the abuse or neglect referral, allegations, and findings dates;
- (C) demographic Information; and
- (D) instructions regarding the request for reconsideration, specifying that:

(i) the VAC may request reconsideration by mailing a request to the OCA Reconsideration Committee within 20-calendar days of the ~~mailing date of the notification of findings was sent~~;

(ii) the VAC has the right to provide additional written documentation to support a change of finding within 20-calendar days of the mailing date of the notification of findings.

(iii) ~~that~~ if ~~at~~ the VAC requests an attorney be notified of the determination results, verification of representation must first be established via submission of a statement of representation from the attorney on his or her official letterhead; and

(iv) failure to submit a request for reconsideration within 20-days of the ~~mailing date of the Notification of Findings~~ notification of findings was sent may result in the finding becoming final. In this case, the VAC may only contest the finding upon a showing of good cause.

(3) The notification of findings does not include the reporting party's identity.

(b) Review procedure for substantiated findings of vulnerable adult maltreatment by VAC not eligible for CSWR placement.

(1) When the VAC requests reconsideration, within 45-calendar days of accepting the request, the OCA Reconsideration Committee determines whether the substantiated maltreatment finding is supported by a

preponderance of the evidence and meets the relevant definition, per Section 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103).

(2) If the VAC does not request reconsideration, within 45-calendar days of the ~~mailing date of the Notification of Findings~~ notification of findings was sent, the OCA Reconsideration Committee determines whether the substantiated finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(3) Regardless of whether reconsideration is requested: (A) the decision to uphold, modify, or reverse the investigative finding or to remand for further investigation is made by reviewing:

- (i) the Report to District Attorney, including attachments and relevant OCA documentation, OCA history, Adult Protective Services (APS) history, criminal history, and referral history; and
- (ii) any written documents submitted by the VAC;

(B) to ensure that no conflict of interest exists, individuals with direct decision-making power regarding a case are not authorized to vote in connection with its reconsideration, and recuse themselves;

(C) the OCA Reconsideration Committee emails the APO its decision to uphold, modify, or reverse the finding; and

(D) within 15-calendar days of the OCA Reconsideration Committee's decision, the APO or designee provides notification to the:

- (i) ~~appellant~~ VAC;
- (ii) advocate general;
- (iii) programs administrator;
- (iv) programs manager;
- (v) OCA social services inspector;
- (vi) district attorney's office in the county where the finding originated;
- (vii) Developmental Disabilities Services (DDS), when applicable;
- (viii) Aging Services (AS), when applicable;
- (ix) facility administrator; and
- (x) guardian for the vulnerable adult, when applicable.

(c) Notice of reconsideration process for substantiated findings of vulnerable adult maltreatment by community services worker (CSW)s eligible for CSWR placement.

(1) The OCA APO or designee sends the CSW a notification of findings of vulnerable adult abuse/neglect and request for reconsideration within 10-calendar days of a substantiated investigation finding approval by the OCA programs manager or supervisor.

(2) The CSW may be added to the CSWR when Oklahoma Human Services (OKDHS) sent proper notice:

- (A) to his or her last known address, and the notice was returned as unclaimed or undeliverable by certified mail, return receipt requested, and regular mail;
- (B) to his or her email as provided to OKDHS; or
- (C) as provided in (1) of this Section.

(3) ~~The notice is sent by certified mail, return receipt requested.~~

(4) The notice informs the CSW of:

(A) the dates of the abuse or neglect referral, allegation, and finding; and

(B) instructions regarding the request for reconsideration, specifying that:

(i) he or she may request reconsideration of the investigative findings by submitting a detailed written statement with the request within 20-calendar days of the mailing date of the notice;

(ii) he or she has the right to provide additional written documentation to support a change of finding within 20-calendar days of the mailing date of the findings letter;

(iii) that when a VAC requests an attorney be notified of the determination results, verification of representation must first be established via submission of a statement of representation from the attorney on his or her official letterhead; and

(iv) absent good cause shown, failure by the CSW to submit a request for reconsideration within 20-calendar days of the mailing date of the notice:

(I) may result in the finding becoming final;

(II) waives the right to further administrative or judicial review; and

(III) authorizes entry of his or her name in the CSWR and disclosure, per Oklahoma Administrative Code (OAC) 340:100-3-39, to any person requesting such information.

(54) The notice does not contain the reporting party's identity.

(d) Review procedure for substantiated findings of vulnerable adult maltreatment by CSWs eligible for CSWR placement.

(1) If the CSW requests reconsideration, within 20-calendar days of the ~~mailing date of the notification of findings of vulnerable adult abuse/neglect and request for reconsideration was sent~~, the OCA Reconsideration Committee determines whether the substantiated maltreatment finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(2) If the CSW does not request reconsideration, within 20-calendar days of the ~~mailing date of the notice notification of findings was sent~~, the OCA Reconsideration Committee determines whether the substantiated finding is supported by a preponderance of the evidence and meets the relevant definition, per 43A O.S. § 10-103.

(3) Regardless of whether reconsideration is requested:

(A) the decision to uphold, modify, or reverse the investigative finding or to remand for further investigation is made by reviewing:

(i) the Report to District Attorney, including attachments and relevant OCA documentation, OCA history, APS history, criminal history, and referral history; and

(ii) any written documents submitted by the CSW;

(B) to ensure that no conflict of interest exists, individuals with direct decision-making power regarding a case are not authorized to vote in connection with its reconsideration, and recuse themselves;

(C) the OCA Reconsideration Committee informs the APO by email of its decision to uphold, modify, or reverse the finding; and

(D) within 15-calendar days of the OCA Reconsideration Committee's decision the APO or designee provides ~~email~~ notification to the:

(i) ~~appellant~~CSW;

(ii) advocate general;

(iii) programs administrator;

(iv) programs manager;

(v) OCA social services inspector;

(vi) district attorney's office in the county where the finding originated;

(vii) DDS, when applicable;

(viii) child care services (CCS), when applicable;

(ix) AS, when applicable;

(x) facility administrator; and

(xi) guardian for the vulnerable adult, when applicable.

(e) Upheld substantiated findings for CSWs eligible for CSWR placement.

(1) When the OCA Reconsideration Committee makes a determination to uphold a substantiated finding of maltreatment of a vulnerable adult by a CSW eligible for CSWR placement, the OCA Reconsideration Committee immediately conducts a CSWR review to determine potential registry placement based on criteria in (A) and (B) of this paragraph. Whether the CSW's wrongful conduct:

(A) results in, or creates a substantial risk of serious physical or emotional injury to a service recipient; or

(B) was the result of intentional, willful, or reckless disregard for the service recipient's health or safety.

(2) When the OCA Reconsideration Committee upholds a substantiated finding under a preponderance of the evidence standard, but the CSW's conduct does not meet the criteria required for potential registry placement, the committee chair notifies the APO.

(3) The APO or designee provides written notification of the reconsideration determination within 15-calendar days of the decision. This time period runs concurrent with the 15-calendar day deadline for sending notice of the reconsideration results. The notice is provided to the:

(A) ~~appellant~~CSW;

(B) advocate general;

(C) programs administrator;

(D) programs manager;

(E) OCA social services inspector;

(F) district attorney's office in the county where the finding originated;

(G) DDS, when applicable;

(H) CCS, when applicable;

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- (I) AS, when applicable;
 - (J) facility administrator; and
 - (K) guardian for the vulnerable adult, if applicable.
- (4) When the registry review affirms or modifies the findings and determines the CSW warrants potential placement on the CSWR, the OCA APO notifies OKDHS Legal Services (LS).
- (5) OKDHS LS has prosecutorial discretion and determines whether to pursue CSWR placement.
- (A) When OKDHS LS decides not to pursue CSWR placement, LS staff sends a Determination Letter to the CSW, copied to the OCA APO, and OCA takes no further action.
 - (B) When OKDHS LS staff decides to pursue CSWR placement, LS staff notifies the OCA APO or designee. The APO then notifies the CSW ~~in writing by regular and certified mail, with return receipt requested, advising the CSW, as provided in (c)(2) of this Section that:~~
 - (i) if the CSW is aggrieved by the decision, an administrative hearing may be requested in writing via mail sent to OKDHS within 20-calendar days of the ~~mailing~~ mailing date of the reconsideration decision ~~was sent~~; and
 - (ii) absent a finding of good cause by an administrative law judge (ALJ), the failure to timely request a hearing:
 - (I) results in the reconsideration decision becoming final;
 - (II) waives any right to an administrative hearing or judicial review; and
 - (III) authorizes entry of the CSW's name in the CSWR, and disclosure to any person requesting the information per this subsection.
- (f) **Hearing Notice.** When the CSW submits a timely written request for hearing, or upon the ALJ finding of good cause for a request that was not timely, OKDHS LS sends a hearing notice ~~by certified mail, return receipt requested, postage prepaid as provided in (c)(2) of this Section~~ within 10-business days of receipt of the request. The hearing notice is dated and states:
- (1) the administrative law judge's (ALJ) name;
 - (2) the hearing date and time;
 - (3) the street and city address and room number where the hearing is scheduled;
 - (4) that his or her failure to attend the hearing, absent a finding of good cause by an ALJ:
 - (A) waives any right to either an administrative hearing or judicial review; and
 - (B) authorizes entry of his or her name in the CSWR, and disclosure to any person requesting the information, per OAC 340:100-3-39;
 - (5) the CSW may be represented by an attorney;
 - (6) requests by the CSW or his or her attorney for witnesses or records, relevant to the proceeding must be directed to OKDHS LS staff, who forward requests to the relevant persons, OKDHS programs, and provider, per OAC 340:100-3-39; and
- (7) a final proposed list of evidence, witnesses, and summary of anticipated testimony must be submitted to the administrative law judge designated on the notice of hearing at least 10-calendar days prior to the hearing.
- (g) **Hearing.**
- (1) The hearing is:
 - (A) held no earlier than 15-calendar days and no later than 90-calendar days after the date the request for hearing was received by OKDHS. Upon request by the CSW or OKDHS, and for good cause shown, a hearing may be held more than 90-calendar days after the date the request for hearing was received by OKDHS, when approved by the ALJ;
 - (B) closed and all information presented therein is confidential; and
 - (C) audio recorded.
 - (2) The CSW or his or her attorney is allowed to cross-examine witnesses called by the OKDHS attorney, who is allowed to cross-examine any witnesses called by the CSW or his or her attorney.
 - (3) The ALJ has final decision on the specific persons allowed to testify, the scope of direct testimony and cross-examination, and admissibility of exhibits, except all OKDHS and provider records pertaining to a finding of confirmed maltreatment are admissible.
 - (4) The formal rules of evidence and procedure under Oklahoma law are not controlling, the burden of persuasion and initially coming forward with evidence is on OKDHS through its attorney, and the standard of proof is clear and convincing evidence.
- (h) **Hearing decision.** A written decision by the ALJ:
- (1) is issued placing the CSW on the CSWR when the ALJ finds by clear and convincing evidence that maltreatment occurred. Despite a finding by the ALJ that maltreatment occurred, the CSW is not added to the CSWR when the ALJ makes a finding that the the act or omission that is the basis for the confirmed finding either:
 - (A) did not result in, or create a substantial risk of, serious physical or emotional injury to a vulnerable adult; or
 - (B) was not the result of intentional, willful, or reckless disregard for the service recipient's health or safety;
 - (2) is issued denying placement of the CSW on the CSWR if the ALJ finds that there is not clear and convincing evidence that maltreatment occurred;
 - (3) contains findings of fact and conclusions of law;
 - (4) contains appeal rights, the action required to appeal, and the time within which such actions must be taken;
 - (5) is issued within 30-calendar days of the hearing; and
 - (6) is ~~mailed~~ sent to the CSW by certified mail, return receipt requested or email as applicable no later than the third business day following the date the decision is signed by the ALJ.
- (i) **Appeal rights.** A CSW aggrieved by a decision of the ALJ may seek judicial review of the decision. A judicial review, based solely on the administrative record, may be

initiated by filing a petition in the Oklahoma district court with jurisdiction within 30-calendar days from the date the decision is signed by the administrative law judge, per 56 O.S. § 1025.3 and 75 O.S. § 318. A copy of the petition and summons filed in district court must be served on OKDHS LS.

(j) **Request for CSWR removal.** A registrant may request removal after 60 months from the date of placement on the CSWR. A request for removal from the CSWR is forwarded to the OCA Reconsideration Committee. The OCA Reconsideration Committee makes a determination within 30-calendar days of receipt of the CSW's request.

(1) Criteria considered for removal includes, but are not limited to:

- (A) the individual's age at the time of the offense(s);
- (B) the number and types of maltreatment incidents for which the individual has findings made against them;
- (C) the circumstances surrounding the maltreatment incident demonstrating willful intent;
- (D) the likelihood the individual will maltreat again;
- (E) other documentation submitted indicating the vulnerable adult's health, safety, and well-being are, or are not endangered;
- (F) a current criminal background review, conducted within 30-calendar days of the date of the removal request;
- (G) work and training histories, since registration;
- (H) a personal statement of rehabilitative efforts; and
- (I) the length of time on the CSWR.

(2) A decision to remove a registrant from the CSWR is based on an OCA Reconsideration Committee majority decision.

(3) OCA Reconsideration Committee staff notifies the registrant of the OCA Reconsideration Committee decision.

(k) **Service.** If Form 15IV004E, Address Information Notice, is not obtained during the investigative process found in OAC 340:2-3-36.1. OKDHS may obtain service on a CSW by any means authorized by the Rules for the District Courts of Oklahoma as found in Title 12 of the Oklahoma Statutes (12 O.S. § Rule 1, et. seq.).

[OAR Docket #23-413; filed 6-6-23]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS**

[OAR Docket #23-415]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Financial Services
Part 9. Travel Reimbursement

340:2-11-118 through 340:2-11-119 [AMENDED]

(Reference WF 23-F)

AUTHORITY:

Director of Human Services, 56 O.S. § 162; Administrative Procedures Act, 75 O.S. §§ 250 et. seq. and the Oklahoma Central Purchasing Act, 75 O.S. §§ 85.1 et. seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 2 Subchapter 11 amend the rules to: (1) better align agency rule with Section 85.451 of Title 74 of the Oklahoma Statutes (O.S. 74 §85.451); and (2) reduce the administrative burden to employees and Financial Services for requesting and processing travel reimbursement.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 11. FINANCIAL SERVICES

PART 9. TRAVEL REIMBURSEMENT

340:2-11-118. Travel reimbursement requests

(a) Employees and non-employees incurring travel expenses are liable under possible penalty of law for any falsified expense or misstatements on travel reimbursement requests.

(b) Oklahoma Human Services (OKDHS) related travel expenses may be reimbursed.

(c) Applicants seeking employment with OKDHS, are not ~~reimbursement~~reimbursed for travel expenses, unless requested by OKDHS.

(d) Travel reimbursement requests must be filed within 90-calendar days of the first date in travel status. Exceptions may be made by the approving authority.

(e) Details, including the destination name and address, and business activity description, ~~and OKDHS related case number(s)~~ must be included with reimbursement requests.

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(f) Reimbursement requests for approved travel expenses must be accompanied by paid receipts.

(1) Lodging receipts must be detailed and include the lodging facility name, itemized costs, amount paid, employee's or non-employee's name, number of persons occupying the room, time-period covered, and indicate a zero balance.

(2) Public transportation expenses of less than \$25.00 do not require a receipt for reimbursement.

(g) A travel reimbursement request may not include travel status dates for more than one state fiscal year.

(h) Non-employees must file in-state and out-of-state travel reimbursement requests separately.

(i) Non-employee travel reimbursement requests may not exceed 31 calendar days in travel status.

340:2-11-119. Vehicle travel reimbursement

(a) **Vehicle selection and Trip Optimizer.**

~~(1) Oklahoma Human Services (OKDHS) employees seek the least expensive travel option when planning work-related travel, per Section 85.451 of Title 74 of the Oklahoma Statutes. OKDHS employees are required to seek the use of OKDHS vehicles as a cost-saving measure when feasible.~~

~~(2) When authorized work related travel requires driving distances greater than 100 Global Positioning System (GPS) miles per day, and a state owned or employee assigned vehicle is not used, the employee must use the Trip Optimizer to find the least expensive travel option, such as a leased vehicle, per Section 85.451 of Title 74 of the Oklahoma Statutes.~~

(b) **Privately-owned vehicles.**

(1) An employee or non-employee is reimbursed for the use of a privately-owned vehicle at the authorized rate regardless of the number of persons transported.

(2) Privately-owned vehicle travel reimbursement must not exceed the Global Positioning System (GPS) mileage for work-related travel.

(A) Vicinity travel claimed on official business is based on actual odometer readings.

(B) Any non-business mileage is deducted prior to reimbursement.

(3) An employee or non-employee traveling on official business using a privately-owned vehicle is reimbursed ~~on the basis of~~ the actual number of miles traveled, from the official duty station to the first official call, subsequent official calls, and return to the official duty station.

(A) An employee or non-employee may claim reimbursement for transportation from his or her home to the first official call, subsequent official calls, and back to his or her home, based on actual miles traveled, not to exceed the mileage as calculated from his or her official duty station.

(B) An employee or non-employee returning to a destination, other than the original starting point, must have supervisory approval and provide justification.

(C) On-call staff may claim travel reimbursement from home, as his or her official duty station, to any official call and return home on weekends, holidays, or when an occurrence is other than his or her regularly scheduled work hours.

[*OR Docket #23-415; filed 6-6-23*]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[*OR Docket #23-414*]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 28. Office of Administrative Hearings: Child Support
340:2-28-4.2 [AMENDED]

(Reference WF 23-2D)

AUTHORITY:

Director of Oklahoma Human Services (OKDHS); Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 162 and 237). 12 O.S. § 32.1. 56 O.S. § 237, et seq. OAC: 340:2-28-1, et seq.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment is necessary to update, streamline, and improve the rules which delineate, and provide transparency to certain functional aspects of the Office of Administrative Hearings: Child Support (OAH) operations. The administrative rules in Subchapter 28, as referenced, are OAH administrative court rules. The requested amendment clarifies the process for filing pdf format documents through email.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 28. OFFICE OF ADMINISTRATIVE HEARINGS: CHILD SUPPORT

340:2-28-4.2. Terms and location of Office of Administrative Hearings: Child Support

(a) The Office of Administrative Hearings: Child Support (OAH) is in session whenever there is a regularly- or specially-scheduled docket with participating district child support offices on days designated for administrative hearings. Pleadings, other documents, and orders may be filed on any business day at OAH located in the Sequoyah Building, 2400 North Lincoln Boulevard, Oklahoma City, Oklahoma. Filing may be accomplished through hand-delivery, postal or parcel delivery, and electronic transmission, if the available means are secure and compatible with OAH's OAH docketing and case management software. A document filed through email is a portable digital file or is a *.pdf formatted file and is submitted to: Legal.OAH.Staff@okdhs.org. The use of email to submit documents for filing is limited to parties and attorneys external to Oklahoma Human Services. Electronic transmission, in this context, does not include text messaging. The OAH mailing address is Oklahoma Department of Human Services, Attn: OAH, P.O. Box 25352, Oklahoma City, Oklahoma 73125-0352.

(b) Proceedings ~~cannot~~ may not commence unless and until an administrative case is opened through Oklahoma Department of Human Services Child Support Services.

[OAR Docket #23-414; filed 6-6-23]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES**

[OAR Docket #23-416]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Adult Protective Services Reports
340:5-1-1 [AMENDED]
 - 340:5-1-6 [AMENDED]
 - Subchapter 3. Maltreatment Allegations
340:5-3-5 [AMENDED]
 - Subchapter 5. Investigation of Adult Protective Services Reports
340:5-5-5 [AMENDED]
 - Subchapter 7. Long-Term Care Investigations
340:5-7-1 [AMENDED]
- (Reference WF 23-5)

AUTHORITY:

Director of Human Services; 56 O.S. § 162

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GIST/ANALYSIS:

The proposed amendments to Chapter 5, Subchapter 1: (1) update language to include "personal degradation"; and (2) to incorporate "personal degradation" into the definition of "maltreatment."

The proposed amendments to Chapter 5, Subchapter 3: (1) update notification procedures for Oklahoma State Department of Health to reflect the correct division to forward referrals; and (2) to include acronym for the Review, Evaluate, and Decide Unit.

The proposed amendment to Chapter 5, Subchapter 5 updates language to reflect current practice.

The proposed amendment to Chapter 5, Subchapter 7 includes acronym for the Review, Evaluate, and Decide Unit.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. ADULT PROTECTIVE SERVICES REPORTS

340:5-1-1. Adult Protective Services (APS) authority, core principles, and mission

- (a) APS was created to meet the requirements of the Protective Services for Vulnerable Adults Act, per Sections 10-101 et seq. of Title 43A of the Oklahoma Statutes.
- (b) APS assists vulnerable adults who are unable to meet their own needs, or who are reported to be suffering from physical or verbal abuse, neglect, self-neglect, personal degradation, or exploitation.
- (c) The vulnerable adult is the APS client. APS respects the client's right to self-determination and approaches service planning and intervention with sensitivity to the client's perception of his or her situation and needs. An objective assessment of the circumstances and need for involvement is made.
- (d) APS intervention and service planning are client-centered. The vulnerable adult alleged to need protective services, is an Oklahoma Human Services (~~OKDHS~~) client. While outcomes desired by the reporter, family members, or other caretakers are considered, APS intervention and service planning are client-centered.
- (e) The APS specialist maintains professional objectivity when providing for or arranging services for vulnerable adults, whether services are paid for by the client or from private or public funds.

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(f) Protective service plans are developed with the knowledge and approval of the client, when possible. When involuntary services are necessary to protect the life or estate of a client, guardianship is pursued with careful consideration of the effect on the client's psychological and emotional needs. Service planning focuses on services that meet the vulnerable adult's needs in the least intrusive and least restrictive manner possible.

(g) APS program goals are, to:

- (1) reestablish and maintain a stable level of functioning approaching the client's maximum potential;
- (2) reestablish and maintain the client's family and community relationships;
- (3) assist the client to remain in the community as long as possible;
- (4) ensure that the client who lacks capacity to consent, receives involuntary court-ordered services; and
- (5) assist the client in obtaining appropriate institutional care, when less restrictive services are not available.

(h) APS is responsible for program planning, staff training, technical assistance, quality assurance, and policy development. APS district directors assist in this process by providing local support for APS staff.

340:5-1-6. Definitions

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

"Abandonment" means the withdrawal of support or the act of deserting a vulnerable adult by a caretaker or other person responsible for the vulnerable adult's care.

"Abuse" means causing or permitting the:

- (A) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, mental anguish, personal degradation; or
- (B) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

"Activities of daily living (ADLs)" means basic self-care activities such as toileting, transferring, feeding, bathing, and dressing.

"Adult" means a person 18 years of age and older.

"Alleged victim" means a vulnerable adult who is suspected of being a victim of maltreatment or in need of services that are necessary to aid the individual to meet essential requirements for mental or physical health and safety.

"APS" means Adult Protective Services.

"APS specialist" means an Oklahoma Human Services (OKDHS) worker who successfully completed the Adult Protective Services (APS) New Worker Academy or is working under the oversight of an experienced APS specialist.

"APS specialist III" means the lead APS specialist who coaches and may be designated to act for the APS specialist IV.

"APS specialist IV" means OKDHS staff assigned or designated to act in an APS supervisory capacity.

"Caretaker" means a person who is responsible for the care of or financial management for a vulnerable adult as a result of family relationship or has assumed responsibility for care of a vulnerable adult voluntarily, by contract, or by friendship; or who serves as a legally appointed guardian, limited guardian, or conservator.

"Client" means a vulnerable adult in need of services.

"Conclusion" means a brief summary of the case including presenting issue, risk, need, and resolution that is completed in cases of self-neglect for which investigatory findings are not required to be sent to the district attorney. The conclusion is specific enough to distinguish the case, but does not reiterate the case record.

"Emergency" means a situation in which a vulnerable adult is likely to suffer death or serious physical harm without immediate intervention.

"Evidence" means all documentation, photographs, interviews, observations, objects, and other information collected, observed, or otherwise obtained during the course of an investigation.

"Executive function" means the brain's ability to absorb information, interpret this information, and make decisions based upon this information.

"Exploitation" means unjust or improper use of the person or resources of a vulnerable adult for the profit or advantage of another person through undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Financial neglect" means repeated instances by a caretaker or other person who has assumed the role of financial management of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to:

- (A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;
- (B) refusing to pay for necessities or utilities ~~in a~~ timely manner; or
- (C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

"Finding" means substantiation, unsubstantiation, or an inconclusive finding of an allegation following an investigation of abuse, neglect, or exploitation that is sent to local district attorney for a decision whether to prosecute.

"Guardian" means one of the types of guardianship specified in the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

(A) **General guardian.** A general guardian is a person appointed by the court to serve as the guardian of an incapacitated person to ensure that the essential requirements for the health and safety of the person are met, to manage the estate of the person, or both.

(B) **Limited guardian.** A limited guardian is a person appointed by the court to serve as the guardian of a partially incapacitated person and is authorized by the court to exercise only certain powers of a guardian over the person, or estate or financial resources of the person, or both.

(C) **Special guardian.** A special guardian is a person appointed by the court to exercise certain specified powers to alleviate a situation in which there is a threat of serious impairment to the health or safety of an incapacitated or partially incapacitated person, or a situation in which the financial resources of the person will be seriously damaged or dissipated unless immediate action is taken.

"Incapacitated adult" means a vulnerable adult whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage his or her financial resources or to meet essential requirements for the person's mental or physical health or safety without assistance.

"Inconclusive" means there is insufficient information to either support or not support the allegation of maltreatment, but there is a reason to suspect maltreatment.

"Indecent exposure" means forcing or requiring a vulnerable adult to:

- (A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or
- (B) touch or feel the body or private parts of another person.

"Information and Referral (I & R)" means a referral that is referred to an appropriate responder because it does not contain an alleged vulnerable adult and at least one allegation of maltreatment, or a more appropriate responder is better suited to meet the client's needs and provide services.

"Instrumental activities of daily living (IADLs)" means abilities necessary for an adult to function independently in the community, such as preparing meals, using the phone, driving or arranging for transportation, shopping, and handling finances.

"Investigation" means a prompt and thorough fact-finding to determine if a vulnerable adult is the victim of maltreatment.

"Mandatory reporter" means any person who has reasonable cause to believe someone is suffering from abuse, neglect, or exploitation.

"Maltreatment" means abuse, neglect, self-neglect, financial exploitation, sexual exploitation, financial neglect, abandonment, or verbal abuse, or personal degradation.

"Near death" means the vulnerable adult is in serious or critical condition, as certified by a physician, as a result of abuse or neglect.

"Neglect" means:

- (A) failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;
- (B) failure to provide adequate shelter, nutrition, health care, or clothing for a vulnerable adult; or
- (C) negligent acts or omissions that result in harm or unreasonable risk of harm to a vulnerable adult, or lack of supervision by a caretaker providing direct services.

"Next of kin" means the closest living relative by blood or marriage and includes any relative active in care or service planning.

"Personal degradation" means a willful act by a caretaker intended to shame, degrade, humiliate, or otherwise harm the personal dignity of a vulnerable adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation includes the taking, transmitting, or display of an electronic image of a vulnerable adult by a caretaker, where the caretaker's actions constitute a willful act intended to shame, degrade, humiliate, or otherwise harm the personal dignity of the dependent adult, or where the caretaker knew or reasonably should have known the act would cause shame, degradation, humiliation, or harm to the personal dignity of a reasonable person. Personal degradation does not include, the taking, transmission, or display of an electronic image of a vulnerable adult:

- (A) for the purpose of reporting vulnerable adult abuse to law enforcement, ~~Oklahoma Human Services~~ OKDHS, or other regulatory agency that oversees caretakers or enforces abuse or neglect laws or rules;
- (B) for the purpose of treatment or diagnosis; or
- (C) as part of an ongoing investigation.

"Power of attorney" means authority granted by a legal document authorizing a person or other entity to act for the principal, subject to the extent of the power authorized. The affidavit may be durable. When it is durable, the power of attorney becomes effective when the principal loses decision making abilities as defined by the document and instructions of the principal. The power is revoked upon:

- (A) written revocation of the principal;
- (B) incapacity of the principal unless it is a durable power of attorney;
- (C) death of the principal;
- (D) a termination date if specified in the document;
- (E) order of the court; or
- (F) the appointment of a guardian, in most cases.

"Referral" means any allegation of maltreatment received by APS.

"Report" means a referral that is assigned for investigation.

"Response type" means the assignment of an APS referral for investigation, service case, or information and referral.

"Self-neglect" means neglect brought about by a vulnerable adult's own actions or inactions that causes the vulnerable adult to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Service Case" means a referral is assigned for prompt and thorough determination of risk, needs, a capacity decision, and service planning.

"Services that are necessary to aid an individual to meet essential requirements for mental or physical health and safety" means services that include, but are not limited to, the:

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- (A) identification of adults in need of protective services;
- (B) provision of medical care for physical or mental health needs; or
- (C) provision of assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical maltreatment, guardianship referral, outreach, and transportation necessary to secure any of such needs. This excludes taking the adult into physical custody without the adult's consent except through proper procedures for the provision of involuntary services.

"Sexual abuse" means:

- (A) oral, anal, or vaginal penetration of a vulnerable adult by, or through the union with, the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult with any other object by a caretaker or other person providing services to the vulnerable adult;
- (B) for the purpose of sexual gratification, the touching, feeling, or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or
- (C) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"**Sexual exploitation**" means and includes, but is not limited to, a caretaker causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by Oklahoma law.

"**Substantiated**" means the greater weight of the evidence collected during an APS investigation determines that maltreatment occurred and the alleged victim meets the definition of a vulnerable adult.

"**Temporary guardian**" means a person or other entity appointed by the court under Title 43A of the Oklahoma Statutes with authority only to consent on behalf of an incapacitated adult to the provision of protective services determined necessary to remove conditions creating an emergency need and other services approved by the court. A temporary guardian serves in that capacity only until the guardianship is dismissed by the appointing court.

"**Undue influence**" means the substitution of one person's will for the true desires of another.

"**Unsubstantiated**" means evidence found during an APS investigation was insufficient to show that more likely than not maltreatment occurred.

"**Verbal abuse**" means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

"**Vulnerable adult**" means an adult who, because of physical or mental disability or other impairment, may be

subject to maltreatment and is substantially impaired in his or her ability to independently:

- (A) provide adequately for his or her own care or custody;
- (B) manage his or her property and financial affairs effectively;
- (C) meet essential requirements for mental or physical health or safety; or
- (D) protect himself or herself from maltreatment without assistance. This determination is not made based on a person's eligibility for disability benefits from any source or on the impairment being permanent, but solely on the adult's reported physical or mental condition at the time an APS referral is received and the APS specialist's assessment of that condition is made during service planning or investigation.

SUBCHAPTER 3. MALTREATMENT ALLEGATIONS

340:5-3-5. Concurrent jurisdiction with other entities

Some referrals that are appropriate for Adult Protective Services (APS) intervention must also be sent to other entities.

(1) Concurrent jurisdiction with Oklahoma State Department of Health (OSDH).

(A) Referrals alleging maltreatment of vulnerable adults are accepted and screened by APS and sent to OSDH, Protective Health Services, ~~Medical Facilities Service~~ Long-Term Care Complaints, for residents of:

- (i) residential care facilities;
- (ii) assisted living facilities;
- (iii) adult day care facilities; and
- (iv) nursing facilities when the referral is self-neglect or maltreatment by a person not employed by the facility.

(B) The APS specialist sends a copy of the final investigative report to OSDH. ~~Upon completion of~~ When an investigation involving an administrator named as the alleged perpetrator is completed and, when findings are substantiated, the APS specialist IV or designee notifies the Oklahoma State Board of Examiners for Long-Term Care Administrators.

(2) Concurrent jurisdiction with law enforcement. Referrals alleging illegal activity or situations determined too dangerous for an APS response are referred to law enforcement.

(3) Joint response by APS and law enforcement. Law enforcement assistance is requested for home visits when warranted by safety protocol.

(4) Referrals involving substance use or abuse and persons with mental illness. Oklahoma law gives the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) primary responsibility for persons with mental illness and substance use or abuse dependency. ODMHSAS treats persons with mental illness

on a voluntary basis. Community mental health centers administered by, or under contract to, ODMHSAS provide recommended aftercare services to patients who are discharged from state mental hospitals and who voluntarily request and accept mental health services.

(A) The APS specialist may assist law enforcement, when requested, by facilitating or completing a third party affidavit.

(B) When the vulnerable adult's primary problem is determined to be mental illness or substance use or abuse dependency, the Abuse and Neglect Hotline specialist must determine if other issues exist within APS jurisdiction. When no other issues exist, the case is assigned as Information and Referral. The Review, Evaluate, and Decide (RED) Unit specialist or designee directs the vulnerable adult or reporter to the nearest ODMHSAS contract facility for outpatient service.

(C) When other issues of alleged abuse, neglect, or exploitation exist, the case is assigned in the usual way.

(D) The APS specialist IV or designee contacts law enforcement to secure emergency detention when the person is a danger to self or others.

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REPORTS

340:5-5-5. Documentation of Adult Protective Services (APS) cases

The APS specialist documents the report or referral, interviews, record reviews, other evidence, and investigation findings, or conclusions in the APS case.

(1) ~~Upon completion of the~~ When an investigation is completed, the vulnerable adult's identified caretaker, legal guardian, and next of kin receive a letter from ~~the Oklahoma Department of Human Services~~, per Section 10-105.1(C)(6) of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105.1(C)(6)).

(2) When the vulnerable adult has a court-appointed guardian, the APS specialist files a notice of the findings in the guardianship case and sends a copy of the findings to the court of jurisdiction, per 43A O.S. § 10-105.1(C)(6).

SUBCHAPTER 7. LONG-TERM CARE INVESTIGATIONS

340:5-7-1. Referrals submitted to Long-Term Care Investigations

(a) Screening protocols, per Oklahoma Administrative Code 340:5-3-5, are followed for referrals submitted to Long-Term Care Investigations.

(b) The Abuse and Neglect Hotline specialist is responsible for screening referrals. Referrals are accepted for investigation, screened out when Adult Protective Services (APS)

criteria is not met, or are referred to another entity. The Review, Evaluate, and Decide (RED) Unit specialist or designee determines which Long-Term Care social service inspector is assigned the referral.

(c) All APS rules apply to Long-Term Care Investigations, except those noted in this Subchapter.

[OAR Docket #23-416; filed 6-6-23]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

[OAR Docket #23-417]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-4. [AMENDED]

Subchapter 4. Conditions of Eligibility - Mandatory Drug Screening

340:10-4-1. [AMENDED]

Subchapter 18. Conditions of Eligibility for Children's Support Service Funds

340:10-18-1. [AMENDED]

Subchapter 20. Diversion Assistance

340:10-20-1. [AMENDED]

(Reference WF 23-10)

AUTHORITY:

Director of Human Services; Sections 162 and 230.52 of Title 56 of the Oklahoma Statutes

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GIST/ANALYSIS:

The proposed amendments to Chapter 10, Subchapter 2 amend the rules to: (1) replace gendered expressions with gender-neutral language; (2) update terminology relating to field managers; and (3) update the process for approving Community Partnership to include a supervisory review.

The proposed amendments to Chapter 10, Subchapter 4 amend the rules to: (1) update drug screening testing method; (2) remove the Addictions Severity Index (ASI) from the drug testing process; and (3) replace gendered expressions with gender-neutral language.

The proposed amendments to Chapter 10, Subchapter 18 amend the rules to: (1) update the Section title; (2) add child incentives for school age children; (3) update terminology relating to field managers; and (4) relocate support service payment instructions to the Instructions to Staff.

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The proposed amendments to Chapter 10, Subchapter 20 amend the rules to: (1) add the February 1, 2022, inception date for Diversion Assistance; (2) clarify language; and (3) replace gendered expressions with gender-neutral language.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-4. Employment

(a) **Applicability.** Temporary Assistance for Needy Families (TANF) Work activities are designed to help participants obtain employment to achieve economic self-sufficiency, per Sections 261.2, 261.10, and 261.30 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 261.2, 261.10, and 261.30). Work allows participants to enhance their self-esteem and to become more independent. Every effort is made to assist participants in securing jobs that provide financial security and opportunities for advancement. The appropriate employment criteria for subsidized and unsubsidized employment are included in (1) through (5) of this subsection.

(1) Appropriate employment may be temporary, permanent, full-time, part-time, or seasonal work, as long as the daily and weekly hours of employment do not exceed those customary to the occupation.

(2) The wage must meet or exceed the federal or state minimum wage laws or the prevailing rate for similar employment, whichever is applicable. The state law applies when federal law does not cover the job.

(3) A participant is not required to accept employment when the position offered is vacant due to a strike, lockout, or other bona fide labor dispute.

(4) A participant is not required to work for an employer when it is contrary to the conditions of membership in the union governing that occupation. Employment not governed by the rules of the union to which the participant belongs may be appropriate.

(5) A participant is not required to accept employment that results in the net loss of income.

(b) **Unsubsidized employment.** The State Work Incentive Program and any employment for which the employer does not receive reimbursement for any portion of the wages paid are examples of unsubsidized employment.

(1) **State Work Incentive Program.** The State Work Incentive Program is designed to assist in employing TANF participants into entry level positions in all branches of state government. Oklahoma Human Services (OKDHS), in cooperation with other state agencies and the Office of Management and Enterprise Services

Human Capital Management, coordinates job placements for TANF participants referred to the program on Form 08TW023E, State Work Incentive Referral.

(A) Employment of eligible participants may be considered for positions of unclassified status for a two-year period in a full-time or part-time capacity. These positions are not included within any limitation on full-time equivalent employee positions for any agency.

(B) Participants hired under this program are eligible for leave and other benefits available to other state employees, subject to other eligibility requirements, and may be reassigned or promoted while in the program.

(C) Participants hired are exempt from probationary hiring procedures. They may be considered for conversion to permanent, classified status after two years of continuous program participation.

(D) Requirements for placing employees in permanent status include:

- (i) completing satisfactory performance ratings conducted during employment; and
- (ii) possessing the minimum requirements stated in the job specifications.

(2) **Other unsubsidized employment.** Unsubsidized employment includes any employment in which a participant is hired by a private or public employer and there is no reimbursement of any portion of the wages paid to the recipient.

(c) **Subsidized employment.** The Subsidized Employment Program (SEP) and on-the-job training (OJT) are examples of subsidized employment. The employment criteria in (a) of this Section apply.

(1) **SEP.** SEP is a subsidized employment program through which OKDHS reimburses employers hiring TANF participants and certain non-TANF participants into full-time employment for a portion of their wages for up to four months. Public agencies, nonprofit, private agencies, and private employers are eligible to participate. When a state agency expresses an interest in participating in the program, OKDHS staff informs agency personnel that the subsidized employment reimbursement must not be used by the state agency to claim matching federal funds. When, for any reason in any given month, a SEP participant is paid less than the amount of ~~his or her~~ the cash assistance at the time of entry into the program, the SEP participant receives a supplemental TANF benefit. SEP participants are entitled to all benefits the employer makes available to other employees. Participants are assigned based on their employability plan and the availability of appropriate and willing employers.

(A) **Participant requirements.** TANF participants are:

- (i) included in the cash assistance unit; and
- (ii) available for immediate employment.

(B) **Non-TANF participant requirements.** When funding is available, SEP placements may be made available to non-TANF participants who:

- (i) are unemployed;
 - (ii) reside in a county authorized by Adult and Family Services (AFS) TANF Unit staff for expanded SEP eligibility; and
 - (iii) have a biological child receiving TANF, Supplemental Nutrition Assistance Program (SNAP), Child Care Subsidy, or SoonerCare (Medicaid) benefits.
- (C) **Position requirements.** Position requirements must include:
- (i) full-time employment for a minimum of 35 hours per week;
 - (ii) the same wages, benefits, and working conditions as provided to other employees performing a substantially equivalent job;
 - (iii) an employer agreement to conform to the Equal Employment Opportunity Commission and fair employment practices, such as nondiscrimination regarding age, race, sex, color, national origin, disability, and in some cases religious or political beliefs; and
 - (iv) employer assurance the position does not:
 - (I) displace the employer's current employees, including any involved in a strike, lockout, or other labor dispute involving a work stoppage;
 - (II) involve commission sales when at least \$10 per hour is not guaranteed; or
 - (III) is not for casual, intermittent, or seasonal labor.
- (D) **Employer recruitment.** Designated countyfield staff or the career development specialist (CDS) recruits employers interested in SEP. The employer is asked to notify designated countyfield staff or the CDS of potential positions with job specifications and qualifications ~~in order~~ to match the employer with an appropriate TANF participant referral. Designated countyfield staff or the CDS give Form 08TW011E, Subsidized Employment Program (SEP) Referral, to the TANF participant to take to the employer specified on the form.
- (i) When explaining SEP to employers, designated countyfield staff or the CDS emphasizes that employers are expected to retain the SEP participant in full-time employment unless there is good cause for the dismissal. Employers who fail to continue the successful SEP participant's employment without good cause are not granted subsequent contracts. Good cause reasons for dismissal occur, when:
 - (I) there is a lay-off due to economic reasons that results in a reduction-in-force;
 - (II) the employee is frequently absent from work or engages in disruptive or inappropriate behavior; or
 - (III) the employee is unable to perform at an acceptable skill level.
 - (ii) Before designated countyfield staff or the CDS writes new or additional contracts with an employer, SEP employees or other employees in lay-off status must be recalled.
 - (iii) Designated countyfield staff or the CDS has the responsibility for ensuring the employer is complying with the contract.
- (E) **SEP placements.** Designated countyfield staff or the CDS arranges interviews between participants and potential employers. SEP participants may begin employment any time during the month. The employer is informed that reimbursement begins after the participant completes the first 30-calendar days of employment.
- (i) Following the employer's agreement to participate and selection of a TANF participant, designated countyfield staff or the CDS negotiates the contract, Form 08TW017E, Subsidized Employment Program (SEP) Contract, with the employer. Negotiation includes the employee's beginning employment date, salary, and the planned number of employment hours per week.
 - (ii) Upon receipt of the contract, designated countyfield staff or the CDS reviews it for completeness and, when approved, signs and dates the contract. Designated countyfield staff or the CDS delivers the employer's copy of the contract and Form 08TW018E, Subsidized Employment Program (SEP) Invoice, to the employer. The employer uses Form 08TW018E to request reimbursement from OKDHS.
 - (iii) Designated countyfield staff or the CDS contacts the participant to complete and sign Form 08TW006E, Subsidized Employment Program (SEP) Temporary Assistance for Needy Families (TANF) Participant Agreement.
 - (iv) When a contract is not approved, ~~designated field staff or the CDS mails a letter is mailed by the designated county staff or the CDS~~ to the employer explaining the disapproval reason. Designated countyfield staff or the CDS notifies the participant by phone, email, or letter that the contract was not approved.
- (F) **Program procedures.** The procedures for programs listed in (i) through (iv) of this subparagraph are used for TANF participants.
- (i) **TANF cash assistance.** Under SEP, eligibility for TANF cash assistance is frozen and is not changed or determined ineligible during the participation period. ~~During the participation period, the TANF assistance unit cannot be determined ineligible.~~ The earned income disregard period runs concurrently with SEP, per Oklahoma Administrative Code (OAC) 340:10-3-31.1.
 - (ii) **Medical benefits.** SEP participants whose TANF cash assistance is frozen, continue to be eligible for SoonerCare (Medicaid) benefits unless

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found ineligible for a reason other than earned income.

(iii) **Food benefits.** SEP participants whose TANF cash assistance is frozen and who are receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) benefits, per OAC 340:50-11-20 continue to receive SSNAP benefits without consideration of the SEP income during the participation period as long as the household composition remains the same. ~~Once~~When the SEP participation period ends and the TANF benefit closes, the household may be eligible for transitional food benefits, per OAC 340:50-11-27.

(iv) **Child care.** During the SEP participation period while the TANF cash assistance is frozen, the child remains predetermined eligible for child care subsidy benefits with a zero family share copayment, per OAC 340:40-7-1. ~~Once~~When the SEP participation period ends and the TANF benefit closes, the worker determines if the participant's child care renewal is due, per OAC 340:40-9-1. When the child care renewal is due, the worker considers the participant's earnings and computes the family share copayment, per OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart. When the child care renewal is not due, the participant's family share copayment does not increase until the renewal is due, per OAC 340:40-5-1(9).

(G) **Employer payment.** Employers are eligible for:

(i) 100 percent reimbursement of the employee's gross wages, capped at a maximum of 40 hours per week, at \$12 per hour, for the first 30-calendar days of employment;

(I) ~~Employers~~employers are eligible to apply for reimbursement 30-calendar days following the date of hire;

(II) ~~Employers~~employers file for reimbursement by submitting Form 08TW018E, with proof of the participant's earnings for the last six months attached, directly to ~~Adult and Family Services~~ (AFS) TANF Unit staff;

(III) ~~When~~when a business changes ownership, the SEP contract transfers with the business. When change of ownership occurs mid-month, the original owner maintains the right to file a claim for reimbursement for the transfer month. The new owner may claim for subsidized wages for the remaining months of the original SEP agreement; and

(ii) ~~forty~~50 percent reimbursement of the employee's gross wages, for the following three months, provided the employee remains employed a minimum of 35 hours per week and earning at least \$10 per hour. The reimbursement is capped at a maximum of 40 hours per week, at \$12 per hour; and

(iii) a bonus equal to 100 percent of the unsubsidized portion of wages up to 40 hours per week for the four month subsidized period, provided the SEP employee:

(I) remains employed a minimum of 35 hours per week;

(II) earns a minimum of \$10 per hour; and

(III) is retained for a minimum period of six months after the subsidized agreement ends.

(H) **Supplemental payments to SEP participants.** For TANF participants, AFS automatically issues supplemental payments for months in which income shown on Form 08TW018E is less than the amount of the SEP participant's cash assistance prior to entering the program.

(I) **SEP contract period completions.** At the end of the fourth month of subsidized employment, the worker reviews the participant's continued TANF eligibility.

(J) **SEP contract terminations.** ~~When~~If the SEP placement ends during the four months of subsidized employment, the worker reviews the participant's continued TANF eligibility.

(2) **OJT.** OJT is subsidized employment in which a private or public employer hires the participant and the participant, while engaged in productive work, receives training that provides knowledge or skills essential to the full performance of the job. During the OJT period, the employer receives reimbursement for a portion of the wages paid to the participating employee.

(A) Participants who successfully complete the Work Experience Program (WEP), have a recent history of employment, or complete a job readiness activity are the primary candidates for OJT referral.

(B) Income from OJT is considered as any other earned income.

(C) ~~The~~At the time of OJT entry, the worker explains to the participant at the time of OJT entry the availability of transitional child care, per OAC 340:40-7-1, and continued medical benefits, per OAC 340:10-3-75.

(d) **Work Opportunity Tax Credit (WOTC).** The WOTC law permits for-profit employers to take a federal income tax credit when workers from certain target groups are hired. Workers in these target groups have faced significant barriers to employment. The WOTC is equal to between 25 percent and 40 percent of the first year wages, up to \$9,600, depending on the number of hours the employee works, and the applicable target group for the person. The main objective of this program is to enable targeted employees to gradually move from economic dependency into self-sufficiency while earning a steady income and becoming contributing taxpayers, while the participating employers are compensated by reducing their federal income tax liability.

(1) WOTC is available to employers for workers hired from targeted groups. The targeted groups are:

(A) TANF recipients who received assistance for at least nine of the 18 months prior to the hiring date;

- (B) qualified veterans. Qualified veterans are veterans who:
- (i) received food benefits for at least three months during the first year of employment;
 - (ii) are unemployed for a period totaling at least four weeks but less than six months in the one-year period ending on the veteran's hiring date. The weeks unemployed do not have to be consecutive;
 - (iii) are unemployed for a period totaling at least six months in the one-year period ending on the veteran's hiring date. The months unemployed do not have to be consecutive;
 - (iv) are entitled to compensation for a service-connected disability and are unemployed for a period totaling at least six months in the one-year period ending on the hiring date. The months unemployed do not have to be consecutive; or
 - (v) are disabled veterans entitled to compensation for a service-connected disability hired not more than one year after being discharged or released from active duty in the United States (U.S.) Armed Forces;
- (C) qualified ex-felons. Qualified ex-felons are persons hired within one year of being convicted of a felony or being released from prison for a felony;
- (D) designated community residents. Designated community residents are persons who are at least 18 years of age, but not 40 years of age, on the hiring date, reside in a federally designated Empowerment Zone, Enterprise Community, or a Renewal Community, and continue to reside at the location after employment;
- (E) vocational rehabilitation referral recipients. Vocational rehabilitation referral recipients are persons who have a physical or mental disability and were referred to the employer while receiving or upon completion of vocational rehabilitation from:
- (i) a state plan approved under the Rehabilitation Act of 1973;
 - (ii) an Employment Network Plan under the Ticket to Work Program; or
 - (iii) a program carried out under the U.S. Department of Veteran Affairs;
- (F) qualified summer youth employees. Qualified summer youth employees are persons who ~~are~~:
- (i) are at least 16 years of age, but not 18 years of age, on the hiring date or on May 1st, whichever is later;
 - (ii) reside in an Empowerment Zone, Enterprise Community, or Renewal Community; and
 - (iii) are only employed between May 1 and September 15;
- (G) qualified food benefit recipients. Qualified food benefit recipients are persons, who, prior to their hiring date, are:
- (i) at least 18 years of age and under 40 years of age; and
 - (ii) members of a household that received food benefits for:
 - (I) the last six-consecutive months; or
 - (II) at least three of the last five months;
- (H) qualified recipients of Supplemental Security Income (SSI). Qualified recipients of SSI are persons who received SSI within 60-calendar days of their hire date;
- (I) long-term TANF recipients. Long-term TANF recipients are members of families who:
- (i) received TANF assistance for at least the previous 18-consecutive months ending on the hiring date;
 - (ii) received TANF assistance for any 18 months, whether consecutive or not, beginning after August 5, 1997, when hired within two years after the date the 18-month total is reached; or
 - (iii) stopped being eligible for TANF assistance during the past two years because federal or state law limited the maximum time they could receive assistance; and
- (J) qualified long-term unemployment recipients. Qualified long-term unemployment recipients are persons who have been unemployed for not less than 27-consecutive weeks at the hiring time and received unemployment compensation during some or all of the unemployment period.
- (2) Through an agreement with the Oklahoma Employment Security Commission, OKDHS issues U.S. Department of Labor Form ETA-9062, Conditional Certification Work Opportunity Tax Credit, to TANF and food benefit recipients.
- (3) The worker gives the participant Form ETA-9062 and a letter from the worker stating the number of months the participant received TANF ~~and/or~~ food benefits, or both to present to the employer, on or before, the first day of employment. The worker informs the participant about the purpose of the form and how the tax credit may help the participant get a job.
- (e) ~~Work Experience Program (WEP)~~. The purpose of WEP is to provide job skills and work enhancement to TANF participants enabling them to move toward self-sufficiency and obtain unsubsidized employment following completion of the placement.
- (1) **Benefits.** Program benefits for participants include an opportunity to establish a work history and earn a recommendation from an employer. Participants also learn to balance the demands of home and work, gain confidence by performing in a job setting, enhance current job skills, learn marketable skills on-the-job, and determine interest and aptitude for a particular type of work by doing the job.
 - (2) **WEP assignments.** WEP assignments are approved for an initial period of 90- calendar days.
 - (A) No salary is paid.
 - (B) With respect to injuries incurred during WEP working hours, federal law requires medical coverage be offered under state workers' compensation law or by OKDHS. Oklahoma workers' compensation law

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does not cover WEP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.

(3) **WEP referrals.** Participants are referred to WEP slots based on the employability plan. The worker coordinates assignment to a WEP position with the participant. Based on the employability plan, the worker:

- (A) determines which facility best meets the participant's needs;
- (B) arranges an interview between the facility and the participant; and
- (C) notifies the participant of the place, time, and interviewer's name.

(4) **WEP facilities.** Facilities selected for WEP placements must be capable of providing employment and have an apparent intent to hire, or be able to provide quality job skills enhancement. WEP facilities are solicited by designated ~~county field~~ staff, the CDS, or a contracted entity who agreed to assist with job development and placement, including WEP. Local job market conditions, opportunities for employment following completion of WEP participation, ~~as well as and~~ the facility's ability ~~of the facility~~ to provide the necessary supervision and skills enhancement are criteria used when soliciting a facility.

(A) WEP slots are developed to meet participant employment needs as determined by the employability plan. When a facility agrees to participate in WEP, the facility representative is requested to provide:

- (i) a written description of the type of activities in which the participant will be involved;
- (ii) the number of participants the facility can accept;
- (iii) the hours of participation; and
- (iv) any special requirements, such as uniforms or special equipment.

(B) There are two types of WEP facilities, WEP Non-profit (WEP-NP) and WEP-For-Profit (WEP-FP).

(i) WEP-NP placement is approved for public and private non-profit organizations or businesses. When a participant requires additional skills enhancement, the worker may approve a 60-calendar day extension. Extensions are not granted when the primary purpose is to provide additional help to the facility. The criteria listed in (I) through (VII) of this unit are used as a guide in determining the appropriateness of requesting an extension beyond the initial three-month period.

(I) The participant needs additional time to acquire skills to meet minimum hiring requirements.

(II) The participant demonstrates a willingness to learn, but needs additional time to develop new skills, to compete in the labor market.

(III) The facility agrees to hire the participant, but does not have funds available or a job opening until a specific date.

(IV) The facility has an opening in a different area from where the participant was working and agrees to hire the participant when additional time is granted for additional development of job skills.

(V) The participant showed improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting.

(VI) The participant missed more than two weeks due to illness or the illness of a household member.

(VII) There are extenuating circumstances that prevented the participant from receiving full benefit of the job skills enhancement.

(ii) WEP-FP is approved for businesses or entities that operate for profit. Only one WEP-FP placement is allowed per 25 full-time employees in a for-profit business or entity. The criteria in (I) through (II) of this unit must be in effect prior to a WEP-FP placement.

(I) The placement matches the participant's employability plan and the participant's chosen career path ~~chosen by the participant~~.

(II) The employer committed to hire the participant, on or before, the completion of the three-month placement.

(5) **WEP procedures.** Upon approval by the county director/field manager, designated ~~county field~~ staff, or the CDS ~~approval~~, the worker contacts the WEP facility to complete Form 08TW015E, Work Experience Program - Non-profit Training Agreement, or Form 08TW115E, Work Experience Program - For-Profit Training Agreement.

(A) The worker instructs the facility representative or supervisor on the purpose and use of Form 08TW013E, Time and Progress Report.

(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.

(C) Approved WEP slots not ~~utilized~~used within a six-month period are reviewed for appropriateness. When the position is no longer feasible, designated ~~county field~~ staff or the CDS sends a letter to the facility stating the WEP slot is no longer active and may be re-evaluated at the facility's request.

(6) **Non-cooperation by WEP facility.** When the worker obtains information the facility is violating the terms and conditions of Forms 08TW015E or 08TW115E, or participants are treated unfairly, the county director/field manager is informed immediately. The nature of the allegations guides the necessary action that may include:

(A) suspension of subsequent assignments at the facility;

(B) immediate removal of current participants; or

(C) termination of the agreement.

(7) **Notification to participant and facility.** ~~Ten-cal-~~endar 10-calendar days prior to the anticipated WEP

completion date, or at any time the participant becomes ineligible for WEP, the worker notifies the participant by letter, email, or phone call. The worker notifies the facility by letter or phone call five-calendar days prior to the termination.

(8) **Changes in placements and subsequent placements.** When the facility, worker, and participant determine placement in a different facility is more beneficial, the worker locates a new facility and arranges an interview for the participant. When the participant fails to secure employment following successful completion of WEP, a conference is held with the participant, worker, and supervisor to determine if a second WEP placement might be beneficial. The worker reviews the employability plan prior to allowing a participant to re-enter WEP. Consideration is given to reassignment to job search or another appropriate work activity. In making this decision, consideration must be given to the:

- (A) participant's ability to secure and maintain full-time employment;
- (B) opportunities for employment in the new field and in the area in which the participant received job skills enhancement;
- (C) participant's efforts to secure employment; and
- (D) length of time between assignments.

(f) **Community Partnership (CP).** CP is unpaid employment in which TANF recipients perform work for the direct benefit of the community. A CP may be approved for both public and non-profit agencies and organizations. A CP assignment is limited to projects that serve a useful community purpose and are designed to improve the employability of recipients not otherwise able to obtain employment. All CPs must be approved by AFS TANF Unit staff. Placements in CP require daily supervision. A recipient's training, experience, and skills are considered in making an appropriate CP assignment.

(1) **Benefits.** Participant program benefits include an opportunity to establish the basic skills necessary to obtain employment, such as daily attendance, appropriate attire, and proper behavior in a work environment. Participants also learn to balance the demands of home and work and gain confidence by performing in a job setting.

(2) **CP facilities.** CP facilities are solicited by designated county field staff or the CDS. The ability of the CP to provide the necessary supervision and basic skills training are criteria used when soliciting a partnership.

(A) Training slots are developed to meet the participant's employment needs as determined by the employability plan.

(B) The worker submits emails the completed Form 08TW019E, Community Partnership (CP) Approval Request, to the worker's supervisor, and the supervisor emails AFS TANF Unit staff for training facility approval.

(C) When a CP agrees to participate, the facility representative is requested to provide:

- (i) a written description of the type of activities in which the participants will be involved;

- (ii) the number of participants the CP can accept;
- (iii) the hours of participation; and
- (iv) any special requirements, such as uniforms or special equipment.

(D) No salary is paid.

(E) When injuries occur during working hours in CP, federal law requires medical coverage be offered under either state workers' compensation law or by OKDHS. Oklahoma workers' compensation law does not cover CP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.

(3) **CP assignments.** CP assignments are approved for an initial period of no more than 60-calendar days. When a participant requires additional training, the worker may approve a 30-calendar day extension. The Approval of extension requests made beyond the initial 60-calendar day period is determined by criteria listed in (A) through (F) of this paragraph are used as a guide when determining the appropriateness of an extension request beyond the initial 60-calendar day period. Criteria includes, but are is not limited to whether the:

- (A) participant needs additional time to acquire skills to meet minimum hiring requirements;
- (B) participant demonstrates a willingness to learn, but needs additional time to develop basic job skills necessary to compete in the labor market;
- (C) CP has an opening in a different area from the one in which the participant was trained;
- (D) participant shows improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting;
- (E) participant missed more than two weeks of training due to illness or the illness of a household member; or
- (F) extenuating circumstances prevented the participant from receiving the full benefit of the training.

(4) **CP referrals.** Participants are referred to CP slots based on their employability plan and the availability of CP positions. Assignment to a CP position is coordinated between the participant, worker, and the CP. Based on the employability plan, the participant and worker determine:

- (A) which CP best meets the participant's needs; and
- (B) the location, date, and time to report to the CP.

(5) **Procedures.** ~~Upon approval by~~ When AFS TANF Unit staff approves CP, the worker contacts the CP facility to complete Form 08TW020E, Community Partnership (CP) Agreement.

(A) The worker instructs the facility representative or the training supervisor regarding the purpose and use of Form 08TW013E.

(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.

(6) **Non-cooperation by CP.** When the worker obtains information that the CP is violating the terms and conditions of Form 08TW020E or participants are treated

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unfairly, the worker informs the ~~county~~ director/field manager, designated ~~county~~ field staff, or the CDS immediately. The nature of the allegations guides the necessary action that may include:

- (A) suspension of subsequent CP assignments;
- (B) immediate removal of the current participants; or
- (C) termination of the agreement.

(7) **Changes in placements and subsequent placements.** Following successful completion of CP training, the worker and participant meet to determine if a second CP placement or other work activity might be beneficial. The worker reviews the employability plan prior to allowing a participant to enter the next work activity. When making this decision, consideration is given to:

- (A) the participant's ability to secure and maintain employment;
- (B) whether the participant needs additional training or placement opportunities to enhance employment skills; or
- (C) whether the participant needs any educational opportunities to enhance employment skills.

SUBCHAPTER 4. CONDITIONS OF ELIGIBILITY - MANDATORY DRUG SCREENING

340:10-4-1. Mandatory Drug Screening

(a) Per Section 230.52 of Title 56 of the Oklahoma Statutes, adult parents, or needy caretakers who apply for Temporary Assistance for Needy Families (TANF) cash assistance are required to be screened for illegal use of a controlled substance or substances. This screening is necessary to ensure that children are safe in their own homes by ensuring their adult parent(s) or needy caretaker is not using or is not under the influence of illegal substances. TANF child-only cases and minor parents under 18 years of age are exempt from the provisions in this Section.

(b) At any point Oklahoma Human Services (OKDHS) has reasonable cause to believe the adult parent or needy caretaker currently receiving TANF cash assistance is engaged in the illegal use of a controlled substance or substances, the adult parent or needy caretaker is required to be screened. ~~OKDHS is authorized to request administration of requests~~ a chemical drug screen, ~~such as an observed urinalysis (UA). Behaviors observed by OKDHS or observed and reported by~~ community resource partners observe and report that might indicate illegal use of a controlled substance or substances include, but are not limited to:

- (1) slurred speech;
- (2) unsteady gait;
- (3) inability to focus;
- (4) lethargy;
- (5) excessive nervousness or agitation;
- (6) showing flat affect or no emotion;
- (7) inappropriate responses to questions;
- (8) inappropriate anger or hostility;

- (9) excessive worry;
- (10) facial tics or muscle spasms;
- (11) erratic attendance in TANF Work activities;
- (12) lack of follow through with agreed upon plans; or
- (13) government or law enforcement documents indicating the person was engaged in the illegal possession or use of a controlled substance or substances within the last 30-calendar days.

(c) The minimum drug screening includes a Substance Abuse Subtle Screening Inventory (SASSI). Additional screening methods may be used ~~that include, but are not limited to, a clinical interview, consideration of~~ based on the person's history with OKDHS, ~~and an Addictions Severity Index (ASI). An ASI must be completed when the results of the initial~~ When the SASSI screening are results high probability, high defense, or invalid, or the client self-declares a substance abuse problem, the client completes a chemical drug screen. ~~When the ASI indicates a need for treatment, a UA must be completed.~~

(d) The TANF application is approved with the adult parent or needy caretaker's needs included when all other eligibility factors are met and the:

- (1) drug screening result indicates low probability of illegal use of controlled substance or substances; or
- (2) assessment result is a recommendation for alcohol and/or prescription drug abuse treatment the results of the chemical drug screen are negative for the illegal use of a controlled substance or substances.

(e) The TANF application is denied or benefits are closed when the adult parent or needy caretaker refuses to comply or fails to follow through with the screening.

(f) When the adult parent or needy caretaker applicant screens positive for the illegal use of a controlled substance or substances, the worker denies the TANF application or closes the TANF benefit for the adult parent or needy caretaker. The parent or needy caretaker may choose to receive child-only benefits when all other TANF eligibility factors are met. When the parent or needy caretaker chooses to receive child-only benefits, the worker approves or continues child-only benefits using the current TANF application. The worker also:

- (1) provides the denied applicant or adult recipient with a list of substance abuse treatment programs available at minimal or no cost to the applicant or recipient;
- (2) makes a referral to the Child Abuse Hotline at 1-800-522-3511 when there is a positive screen for illegal drug use; and
- (3) determines eligibility of all household members for other requested program benefits.

(g) When the adult parent or needy caretaker is ineligible because of a positive screen for illegal use of a controlled substance or substances, ~~he or she~~ that person is not eligible for TANF benefits until:

- (1) one year after the first ineligibility determination date;
- (2) six months after the date of the first ineligibility determination date when the adult parent or needy caretaker complied with a substance abuse treatment plan; or

- (3) three years after the second or subsequent ineligibility determination date.
- (h) At the end of an ineligibility period, a new application is required and all factors of eligibility determined. The steps described at (a) and (c) through (f) are followed.

SUBCHAPTER 18. CONDITIONS OF ELIGIBILITY FOR CHILDREN'S SUPPORT SERVICE FUNDS

340:10-18-1. Conditions of eligibility for children's support service funds

- (a) **Scope.** Support service funds may be provided to families receiving Temporary Assistance for Needy Families (~~TANF~~) to promote family stability and assist in the prevention of Child Welfare Services (~~CWS~~) involvement when funds are not available through other sources. Refer to Oklahoma Human Services (OKDHS) Appendix H-4-A, Support Services Funds, and Appendix H-4-C, Child Incentives, for a list of services and the maximum amount that may be spent per service.
- (b) **Support service funds.** Payments for the services through support service funds are not an automatic entitlement to the child(ren). The worker determines on a case-by-case basis, whether to authorize payments and services. ~~The county director or field~~ manager or designee is responsible for periodically monitoring expenditures from the support service account.
 - (1) The worker does not approve support service funds for:
 - (A) fines, including traffic fines or any cost related to a criminal offense, such as legal fees or court costs;
 - (B) items and services covered by SoonerCare (Medicaid);
 - (C) ongoing household expenses, such as, but not limited to, rent, utilities, and car payments; or
 - (D) payments to reimburse the client or another person for the cost of services already paid.
 - (2) Before authorizing payment for support service funds, the worker:
 - (A) determines if the service is available through any other resource. Resources may include other OKDHS programs, local churches, and civic groups; and
 - (B) negotiates for goods and services for the child(ren) for the least possible cost. The negotiated amounts must not include state or local sales taxes.
 - (3) Payments of specific services are allowed only after the service is rendered. ~~To authorize payment, the:~~
 - (A) ~~worker signs an Authorization to Purchase form and gives it to the TANF payee;~~
 - (B) ~~TANF payee takes the Authorization to Purchase form to the provider;~~
 - (C) ~~provider renders the service and the TANF payee signs the Authorization to Purchase form confirming the service was provided; and~~

- (D) ~~provider sends the Authorization to Purchase form to OKDHS Financial Services for payment.~~
- (c) **Child incentive funds.** Child incentives are available for children pre-K through grade 12 based on funding availability. Payments for the child incentives are not an automatic entitlement to the child(ren). The worker determines on a case-by-case basis whether to authorize payments. The field manager or designee is responsible for periodically monitoring expenditures from the child incentive account.

SUBCHAPTER 20. DIVERSION ASSISTANCE

340:10-20-1. Diversion Assistance (DA)

- (a) **Scope.** ~~Families~~Applicants with a minor child(ren) may apply for a ~~one-time onetime~~ DA payment instead of Temporary Assistance for Needy Families (TANF). ~~when there is~~There must be an immediate crisis need prohibiting the parent(s) or caretaker(s) from accepting a valid to retain or obtain employment offer or endangering the parent's or caretaker's current employment. ~~The option of applying for DA instead of TANF~~DA is based on funding availability.
 - (1) ~~DA is~~does not ~~approved~~ to pay fines, including traffic fines, or any cost related to a criminal offense, such as legal fees, ~~or~~ court costs, or reinstatement of a driver license due to driving under the influence or other criminal traffic violations.
 - (2) DA is not ~~approved~~ to reimburse expenses already paid by the family or others.
 - (3) Before approving DA, the worker must determine if a DA payment will allow the family to be self-sufficient for the next 12 months. An applicant may only ~~be approved for~~ receive DA once in ~~his or her parent's~~the applicant's lifetime after February 1, 2022, and once ~~when~~ approved, the family is ~~not eligible to~~may not receive a TANF cash assistance payment for 12 ~~calendar~~ months. ~~Therefore, it is vital that financial planning be initiated to determine if a DA payment will allow the family to be self-sufficient for the next 12 months.~~
 - (A) A DA payment does not count toward the family's 60-month ~~life~~ time limit for receiving a TANF cash assistance benefit.
 - (B) Any family that includes an adult who already reached the 60-month ~~life~~ time limit is not eligible for DA.
 - (4) Regardless of a change in caretaker, a child may only receive DA once during their childhood. If a child begins living with another caretaker after receiving DA, the child is excluded from DA eligibility with any other caretaker.
 - (5) OKDHS does not include Families families approved for DA ~~are not included~~ in the count ~~number~~ of persons reported for TANF federal participation rates. ~~DA payment does not count against the person's 60-month lifetime limit for TANF receipt.~~
- (b) **Application filing.** Applicants must sign and submit an application and be interviewed, per Oklahoma Administrative

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Code (OAC) 340:65-3-1(b) ~~and (c)~~ through (d) to apply for DA. ~~They cannot apply online for a DA benefit.~~

- (1) In signing the application, an applicant agrees to not apply for TANF for at least one year from the DA application date. In two-parent families, both parents must sign the application.
 - (2) A stepparent may be included in the benefit when the couple is legally married.
 - (3) To be ~~considered~~ timely, the worker must process a DA application must be processed within seven-business days.
- (c) **Eligibility criteria.** The family must meet the eligibility criteria described in (1) through (7) of this subsection to qualify for DA.

- (1) The applicant must verify that ~~he or she~~ the applicant is employed or has a bona fide offer of employment.
 - (2) There must be a financial need that, if not met, could cause the applicant to lose employment or not be able to accept an employment offer.
 - (3) An adult(s) must be included in the DA application and must meet the specified degree of relationship to the minor child(ren) included in the application, per OAC 340:10-9-1.
 - (4) The family's monthly gross income ~~cannot~~ may not exceed the gross income maximum, per Oklahoma Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payments Standards, Schedule XVI, for the appropriate family size.
 - (5) The family's resources ~~cannot~~ may not exceed the resource limits, per OKDHS Appendix C-1, Schedule XVI.
 - (6) The applicant must furnish or apply for a Social Security number (~~SSN~~), per OAC 340:65-3-1(f).
 - (7) The family must meet citizenship and alienage requirements, per OAC 340:10-15 and OAC 340:65-3-1(g).
- (d) **DA payment amount.** The maximum DA payment is equal to four months of the payment standard, per OKDHS Appendix C-1, Schedule XVI, for the appropriate family size based on the family's financial need. DA payments may be issued in more than one authorization to purchase or other approved method when the request for additional funds is made within 120-calendar days of the initial application date, and the total payments do not exceed four times the monthly payment standard for the family size.

[OAR Docket #23-417; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. CHILD SUPPORT SERVICES

[OAR Docket #23-418]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Scope and Applicability
340:25-1-1 [AMENDED]
340:25-1-1.1 [AMENDED]

340:25-1-1.2 [AMENDED]
340:25-1-2 [REVOKED]
Subchapter 5. Operational Policies
Part 7. The Case Record - Computer File Records and Case Folders
340:25-5-55 [AMENDED]
Part 9. Disclosure of Information
340:25-5-66 [REVOKED]
340:25-5-67 [AMENDED]
340:25-5-68 [REVOKED]
Part 13. Retention and Destruction of Records
340:25-5-95 [REVOKED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-114 [AMENDED]
340:25-5-118 [REVOKED]
340:25-5-123 [AMENDED]
340:25-5-124.3 [AMENDED]
Part 20. Medical Support
340:25-5-169 [AMENDED]
340:25-5-170 [REVOKED]
Part 21. Establishment
340:25-5-178 [AMENDED]
340:25-5-190 [AMENDED]
Part 23. Enforcement
340:25-5-200 [AMENDED]
340:25-5-200.2 [REVOKED]
340:25-5-200.3 [REVOKED]
Part 27. State Tax Refund Offset Program
340:25-5-244 [AMENDED]
Part 31. Consumer Reporting Agencies - Credit Bureaus
340:25-5-265 [AMENDED]
340:25-5-265.1 [REVOKED]
Part 37. Recovery
340:25-5-305 [AMENDED]
340:25-5-328 [REVOKED]
340:25-5-336 [REVOKED]
Part 38. Title IV-D and Non-Title IV-D Central Case Registry Information
340:25-5-338 [REVOKED]
340:25-5-339 [AMENDED]
340:25-5-340 [AMENDED]
340:25-5-340.1 [REVOKED]
(Reference WF 23-25)

AUTHORITY:

Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B); 42 U.S.C. § 1396k; Chapter 7, Subchapter IV, Part D; 50A U.S.C. §§ 501 through 596; 45 C.F.R. §§ 300 through 399; 45 C.F.R. § 303.11;

Director of Human Services, 56 O.S. § 162; 3A O.S. § 724.1; 10 O.S. §§ 80, 83, 90.5, 7700-101 through 7800; 12 O.S. §§ 1170, 1171.2 through 1171.4, 2004, and 2005.2; 21 O.S. §§ 566, 566.1, 567, and 852; 36 O.S. § 6058A; 43 O.S. §§ 109.2 through 110, 112, 112A, 112.1A, 114 through 120, 135 through 139.1, 140, 410 through 413, 601-100 through 601-903; 47 O.S. §§ 1-153, 6-201, 6-201.1, 6-211, and 6-212; 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24; 63 O.S. §§ 1-311, 1-311.2, 1-311.3, and 1-321; 68 O.S. § 205.2; and 70 O.S. §§ 3970.1 through 3970.12.

Executive Order 13563: Improving Regulation and Regulatory Review.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 8, 2023

COMMENT PERIOD:

January 3, 2023 through February 2, 2023

PUBLIC HEARING:

February 7, 2023

ADOPTION:

March 6, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 9, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 25 Subchapters 1 and 5 amend the rules to: (1) implement rule changes recommended during the annual Child Support Services (CSS) policy review process; (2) implement Governor mandated rule reduction measures; (3) amend legal authorities as necessary; and (4) make non-substantive changes to improve rule clarity.

The proposed amendments support Oklahoma Human Services (OKDHS) goals of helping Oklahomans lead safer, healthier, more independent and productive lives; keeping our workforce informed, supported, and engaged; meeting the needs of vulnerable Oklahomans; and cultivating a culture of continuous improvement. The proposed amendments support the CSS strategic plan by providing customers access to tools and resources to achieve and maintain healthy families, prioritizing CSS ability to provide core services to customers, and clarifying how CSS provides services to customers.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1. Purpose and legal basis

(a) The purpose of the rules in this Chapter is to explain the Oklahoma Human Services (OKDHS) Child Support Services (CSS) program as it pertains to the public it serves. Unless the context clearly indicates otherwise, the rules in this Chapter only pertain to IV-D programs and services.

(b) All entities and personnel of the ~~Oklahoma Child Support Services~~ CSS program of the ~~Oklahoma Department of Human Services~~ (OKDHS) and all entities and personnel of entities that contract with OKDHS to administer and operate any portion of the child support program are bound by the provisions of this Chapter.

(c) Federal law, Sections 651 through 669b of Title 42 of the United States Code (42 U.S.C. §§ 651 through 669b) are the primary basis in federal law for Oklahoma's child support program. The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043, applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's child support program.

(d) State law, Oklahoma Statutes covering child support issues include, but are not limited to:

- (1) Sections 80, 83, 90.4, 90.5, and 7700-101 through 7800 of Title 10 (10 O.S. §§ 80, 83, 90.4, 90.5, and 7700-101 through 7800);
- (2) 12 O.S. §§ 1170 and 1171.2 through 1171.4;
- (3) 21 O.S. §§ 566, 567, and 852;
- (4) 43 O.S. §§ 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-903;

(5) 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24;

(6) 63 O.S. §§ 1-311.2 and 1-311.3; and

(7) 68 O.S. § 205.2.

(e) Applicability. CSS uses federal or state statutes, as appropriate, in specific situations to establish paternity and child support and enforce child support orders. CSS follows applicable federal and state laws in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.

340:25-1-1.1. Definitions

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

"**Address of record**" or "**AOR**" means an address for a party or a custodial person (CP) in the Central Case Registry of Child Support Services (CSS) used for service of process in support, custody, and visitation actions. An AOR may be different from the party's or CP's physical address.

"**Alleged father**" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined per Section 7700-102 of Title 10 of the Oklahoma Statutes (10 O.S. § 7700-102).*

"**Alternative health coverage**" means health care services other than health insurance including, but not limited to, Indian Health Services (IHS) or Defense Eligibility Enrollment Reporting System (DEERS) available to either parent under which medical services could be provided to the dependent child(ren).

"**Annual notice**" means the yearly notice provided for in 56 O.S. § 237A to notify the noncustodial parent (NCP) and CP of the amount due, actions that may be taken to enforce the child support obligation, actions required of the NCP and CP, and other related information and instructions.

"**Applicant**" means the individual who ~~requested~~ requests child support services or ~~was~~ is referred by another agency or program for child support services.

"**Arrears, "arreage," or "past-due support**" means the total amount of unpaid support obligations accrued under a support order. Refer to "delinquency" in this Section.

"**Assignment**" means any transfer of rights to support to the ~~State~~ state of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code (42 U.S.C. §§ 608 and 671) or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations (42 C.F.R. § 433.146).

"**Authorized representative**" means a person designated by a CP, NCP, or biological parent per Oklahoma Administrative Code (OAC) 340:25-1-3.1.

"**Biological parent**" means the natural parent of a child.

"**Case**" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or received child support services and all of the records and actions associated with the group.

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"Cash medical support" means *an amount ordered to be paid toward the cost of health coverage provided by a public entity or by a person other than the parents through employment or otherwise* per 43 O.S. § 118F.

"Central Case Registry" or **"CCR"** means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry per 42 U.S.C. § 654a. CSS maintains the CCR per 43 O.S. § 112A.

"Centralized Support Registry" means a repository ~~maintained by CSS~~ maintains to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments per 43 O.S. § 413. It serves as Oklahoma's State Disbursement Unit per 42 U.S.C. § 654b. The Centralized Support Registry processes payments per 43 O.S. § 413:

(A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes* until all monies owed for child support are no longer owed;

(B) *in all other cases in which support is being paid by income withholding;* and

(C) when a court orders payments to be made through the Centralized Support Registry.

"Child support order" means an obligation addressing monetary support, cash medical support, medical support for the child(ren), and support arrearage and arrearage payments, when any.

"CSED" means Oklahoma ~~Department of~~ Human Services (OKDHS) Child Support Services and was replaced by Child Support Services.

"CSS" means Child Support Services. CSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, community action program agencies, and others. CSS includes all ~~of~~ these offices, employees, and agents. CSS was formerly known as CSED and Oklahoma Child Support Services (OCSS).

"Current child support" means the base child support obligation and the proportional share of health insurance costs, fixed medical costs, transportation expenses, and annualized child care costs. Current child support does not include cash medical support.

"Custodial person," "custodian," or **"CP"** means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid* per 12 O.S. § 1170 and 56 O.S. § 237.7.

"DHS" means Oklahoma Human Services (~~OKDHS~~), also known as OKDHS, which is the state agency designated to administer the ~~State~~ state of Oklahoma child support program.

"District office" means a child support services office or duty station ~~operated by OKDHS~~ operates or through contract or agreement with OKDHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Fixed medical" means fixed periodic payments for ongoing medical costs not paid or reimbursed by insurance, or included in a cash medical support order.

"Full-service case" means a child support case for which CSS provides all appropriate Title IV-D services per OAC 340:25-1-1.2.

"Health insurance" means insurance coverage that provides routine and major medical expenses including, but not limited to: preventive care, office visits, hospitalization, and medication coverage that may be provided through a fee for service, health maintenance organization, preferred provider organization, or other private or public organization, other than SoonerCare (Medicaid).

"High-volume administrative enforcement cases in interstate actions" means the request of another state, the identification of by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes per 42 U.S.C. § 666.

"Intergovernmental" means a case referred by an initiating agency to a responding agency for services when the dependent child(ren) and the ~~noncustodial parent~~ NCP lives or works in different jurisdictions.

"Income assignment" means an assignment, by operation of law or by court or administrative order of a portion of the monies, income, or periodic earnings due and owing by the NCP to the person entitled to the support or to another person designated by the support order or assignment, per 12 O.S. § 1170 and 56 O.S. § 237.7. An income assignment may be for payment of current support, arrearages, or both. The terms "income assignment" and "income withholding" may be used interchangeably.

"Interstate case" means a case in which at least one party resides in another state or country or a support order was entered in another state or country.

"Intrastate case" means a case existing or occurring within the boundaries of a single state.

"IV-A" means Title IV, Part A, of the Social Security Act, codified in 42 U.S.C. Part A of Subchapter IV of Chapter 7, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in 42 U.S.C. Part B of Subchapter IV of Chapter 7, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7, generally relating to child support.

"IV-D case" means a child support case receiving Title IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified in 42 U.S.C. Part D of Subchapter IV of Chapter 7.

"IV-E" means Title IV, Part E, of the Social Security Act, codified in 42 U.S.C. Part E of Subchapter IV of Chapter 7, covering foster care.

"**IV-E foster care**" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for Title IV-E foster care.

"**Medicaid**" means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in 42 U.S.C. Subchapter XIX of Chapter 7 including SoonerCare, State Children's Health Insurance Program (S-CHIP), and Insure Oklahoma. In Oklahoma, the Oklahoma Health Care Authority (OHCA) provides Medicaid services for eligible adults and children.

"**Medical enforcement only case**" or "**MEO case**" means a child support case for which CSS provides only Title IV-D services related to securing and enforcing medical support to non-TANF SoonerCare (Medicaid) recipients.

"**Medical support**" means health insurance, alternative health coverage, cash medical support, or a combination of these for the benefit of a minor child(ren).

"**Member of military service**" or "**servicemember**" means any member of the uniformed service on active duty including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, National Oceanic and Atmospheric Administration, Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries when that service is similar to military service per 50 U.S.C. §§ 3911, 3914, and 3917. A servicemember may be an NCP or a CP.

"**Non-cash support**" means support given to a family in the nature of goods or services that can be assigned a specific dollar value in lieu of monetary payment.

"**Noncustodial parent**" or "**NCP**" means a parent who does not have primary physical custody of the child(ren).

"**Non-IV-D case**" means a private child support case not receiving Title IV-D services.

"**Non-IV-E foster care**" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal Title IV-E participation requirements.

"**Non-TANF SoonerCare (Medicaid)**" means a case in which a parent or CP receives Title XIX Medicaid services for the minor child(ren).

"**Notice of Income Assignment**" means the tool used to affect the income withholding process. This document is used to notify employers and other withholders to deduct child support payments from an NCP's income and to send the payments to Oklahoma's Centralized Support Registry for distribution. The terms "income withholding" and "income assignment" may be used interchangeably.

"**OAH**" means the ~~DHS~~**SOKDHS** Legal Office of Administrative Hearings: Child Support (OAH) that employs and assigns administrative law judges to conduct child support administrative hearings.

"**Obligee**" or "**person entitled**" ~~per 56 O.S. § 237.7 means, per 56 O.S. § 237.7:~~

(A) *a person to whom a support debt or support obligation is owed;*

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services; or*

(C) *a person designated in a support order or as otherwise specified by the court.*

"**Obligor**" means the person who is required to make payments under an order for support per 12 O.S. § 1170 and 56 O.S. § 237.7.

"**OCSS**" means CSS.

"**Offset**" means an amount of money intercepted from an NCP's state or federal tax refund or from an administrative payment, such as federal retirement benefits to satisfy a child support debt.

"**OKDHS**" means Oklahoma Human Services. OKDHS is the state agency designated to administer the child support program for the ~~State~~state of Oklahoma.

"**Oklahoma Health Care Authority (OHCA)**" means the Oklahoma agency that administers the Medicaid and SoonerCare programs for adults and children who meet eligibility requirements. OHCA operates under the authority of Title XIX of the Social Security Act and 63 O.S. §§ 5003 et seq.

"**Overpayment**" means a CSS payment to a CP, NCP, or other entity to which the entity or person is not entitled.

"**Participant in a case**" means a child, parent, alleged father, or CP associated with a child support services case.

"**Past support**" means past-due support or support for a prior period. Refer to "arrear" in this Section.

"**Payment plan**" ~~includes, but is not limited to, means and includes but is not limited to,~~ a plan approved by the court or the support enforcement entity provides sufficient security to ensure compliance with a support order, incorporates voluntary or involuntary income assignment, or a similar plan for periodic payment of past-due support and, when applicable, current and future support per 43 O.S. § 139.1 and 56 O.S. § 237.7. A payment plan is intended to incrementally reduce arrears.

"**Payor**" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person per 12 O.S. § 1170 and 56 O.S. § 237.7.*

"**Presumed father**" means *a man who, by operation of law per 10 O.S. § 7700-204, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.*

"**Record**" means a written document or image stored in electronic or physical form.

"**Social Security Act**" means Public Law 74-271, codified in 42 U.S.C. Chapter 7 that established the Title IV-D program and other social services programs.

"**State's attorney**" means a lawyer employed in the child support program to represent the state in rendering services per the Social Security Act, codified in Title 42 U.S.C. Part D of Subchapter IV of Chapter 7.

"**Support**" ~~per 56 O.S. § 237.7 means, per 56 O.S. § 237.7,~~ all payments or other obligations due and owing to the CP or person entitled by the NCP under a support order, and may include, but is not limited to, child support, medical

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insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in 43 O.S. §§ 118A through 119 of Title 43.

"Support for a prior period" means the amount of child support ordered under the child support guidelines in 43 O.S. §§ 118 through 119 in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" ~~per 43 O.S. § 601-101~~ means, per 43 O.S. § 601-101, a judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

"Tribunal" ~~per 43 O.S. § 601-101~~, means, per 43 O.S. § 601-101, a court or administrative agency authorized to establish, enforce, modify support orders, or determine parentage.

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at 43 O.S. §§ 601-100 through 601-903.

"Unreimbursed public assistance" means money paid as cash assistance from Title IV-A and Title IV-E programs that has not been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, UPA is codified in 10 O.S. §§ 7700-101 through 7700-902.

340:25-1-1.2. Structure and service

(a) Structure.

(1) Under Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, every state must designate a single state agency to administer a statewide plan for child support services. ~~The Oklahoma Department of~~ Human Services is the designated agency in Oklahoma. Oklahoma Child Support Services (CSS) administers the plan.

(2) CSS provides services through a state office and offices throughout the state that may be administered through service agreements or contracts with district attorneys and other entities, such as Community Action Program agencies to provide legal child support services.

(3) The primary function of CSS is to provide child support services in all Title IV-A Temporary Assistance for Needy Families (TANF), Title IV-E foster care, and non-TANF SoonerCare (Medicaid) cases where eligibility is due to the absence of one or both parents, and in other cases for persons who have applied for services. CSS also provides these services in cases forwarded by:

- (A) Title IV-D agencies of other states;
- (B) Native American tribes; and
- (C) foreign jurisdictions, as appropriate.

(4) CSS is committed to the right of all parties to have access to the justice system for the purpose of enhancing understanding and ownership of the case. In addition to

the child support services ~~provided by~~ CSS provides as described in this Chapter, when parties want to be heard on child support issues, regardless of whether the party's positions are contrary to the state's position and may be subject to legal defenses. CSS:

(A) provides available pro se self-help forms to request a hearing before either the Office of Administrative Hearings: Child Support (OAH) under Oklahoma Administrative Code ~~(OAC)~~ 340:228-17.2 or the district court. OAH or the district court determine whether a hearing is granted;

(B) assists pro se customers in completing available CSS self-help forms upon request; and

(C) refers parties to community resources including, but not limited to:

- (i) lawyer referral services;
- (ii) community legal services;
- (iii) other available self-help legal forms; and
- (iv) other available informational and community resource materials.

(5) CSS complies with the standards for an effective program and the organization and staffing requirements, per Part 303 of Title 45 of the Code of Federal Regulations (45 C.F.R. Part 303).

(b) **Services.** CSS services include, but are not limited to:

(1) establishment of paternity, child support obligations, ongoing medical support, and ongoing child care obligations through administrative and court actions;

(2) enforcement of:

- (A) child support;
- (B) health insurance;
- (C) fixed sums and judgments for medical support including birthing costs;
- (D) fixed ongoing child care costs and judgments for child care costs; and
- (E) certain spousal support obligations when due in conjunction with child support;

(3) location of noncustodial parents and their assets by establishing intrastate and interstate links with local, state, and federal agencies, private sources, and international central authorities;

(4) case reviews for modification of support orders as appropriate;

(5) collection and distribution of support payments ~~in accordance with~~ per federal and state law; and

(6) establishment and maintenance of accounting and other records ~~in accordance with~~ per federal and state law.

(c) **Excluded services.** CSS services do not include:

(1) establishment or modification of spousal support, visitation, or custody;

(2) establishment of judgment for unreimbursed medical expenses or child care costs that are not included in the fixed monthly child support obligation;

(3) enforcement of alimony in lieu of property division; and

(4) enforcement or collection of private attorney fee judgments.

(d) ~~Intergovernmental limited~~Limited services. CSS provides limited services ~~only~~:

- (1) at the request of an initiating interstate Title IV-D agency or an international central authority, per Sections 601101 through 901 of Title 43 of the Oklahoma Statutes and 45 C.F.R. § 303.7. CSS provides limited services, when appropriate, even when the noncustodial parent or custodial person does not reside in Oklahoma. ~~Requests~~The CSS director or appointed designee approves requests for intergovernmental limited services not listed in 45 C.F.R. 303.7 must be approved by the CSS director or his or her appointed designee; or
- (2) upon application for the establishment of paternity when the noncustodial parent is deceased.

340:25-1-2. Legal base [REVOKED]

~~(a) Federal law. Sections 651 through 669b of Title 42 of the United States Code (42 U.S.C. §§ 651 through 669b) are the primary basis in federal law for Oklahoma's child support program. The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043, applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's child support program.~~

~~(b) State law. Oklahoma Statutes covering child support issues include, but are not limited to:~~

- ~~(1) Sections 80, 83, 90.4, 90.5, and 7700-101 through 7800 of Title 10 (10 O.S. §§ 80, 83, 90.4, 90.5, and 7700-101 through 7800);~~
- ~~(2) 12 O.S. §§ 1170 and 1171.2 through 1171.4;~~
- ~~(3) 21 O.S. §§ 566, 567, and 852;~~
- ~~(4) 43 O.S. §§ 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-903;~~
- ~~(5) 56 O.S. §§ 166.1, 183, 230.60, and 231 through 240.24;~~
- ~~(6) 63 O.S. §§ 1-311.2 and 1-311.3; and~~
- ~~(7) 68 O.S. § 205.2.~~

~~(c) Applicability. Oklahoma Department of Human Services Child Support Services (CSS) uses federal or state statutes, as appropriate, in specific situations to establish and enforce child support orders. CSS follows applicable federal and state laws in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.~~

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 7. THE CASE RECORD - COMPUTER FILE RECORDS AND CASE FOLDERS

340:25-5-55. Case records

~~(a) Oklahoma Department of Human Services (OKDHS) Child Support Services (CSS) establishes, maintains, and closes case records per:~~

- ~~(1) Sections 652, 653, 654a, and 666 of Title 42 of the United States Code; and~~
- ~~(2) Sections 302.15, 303.2, 303.11, and 307.11 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 75.361 302.15, 303.2, 303.11, and 307.11).~~

~~(b) CSS manages and disposes of records according to Oklahoma Statutes as interpreted in OKDHS:2-21-50 through OKDHS:2-21-66. CSS maintains all records for cases closed per 45 C.F.R. §§ 75.361 and 303.11 for a minimum of three years.~~

~~(bc) CSS maintains information in case records through a combined use of the statewide automated data processing and information retrieval system and paper documents. The information in case records includes, but is not limited to:~~

- ~~(1) names and addresses of custodial persons (CP), biological parents (BP), alleged fathers, noncustodial parents (NCP), and children;~~
- ~~(2) names and addresses of employers of CPs, BPs, alleged fathers, and NCPs;~~
- ~~(3) Social Security numbers of CPs, BPs, alleged fathers, NCPs, and children;~~
- ~~(4) paternity records and related information;~~
- ~~(5) records of all legal and collection actions on cases;~~
- ~~(6) records of all accruals, payments, and distribution and disbursement of payments;~~
- ~~(7) location, asset, employment, insurance, and financial information for CPs, BPs, and NCPs and children; and~~
- ~~(8) case log, correspondence, personal notes, work products, records of contacts, communications, and other actions and information concerning the case.~~

~~(ed) When a case participant requests a name change, CSS staff updates an existing, open CSS case record when the participant submits Form 03GN543E, Name Change Request, with documentation of the participant's new legal name.~~

PART 9. DISCLOSURE OF INFORMATION

340:25-5-66. Legal basis for release of information [REVOKED]

~~Federal and state laws and the rules adopted by the Oklahoma Commission for Human Services restrict the use and disclosure of information. Release of information from child support program records is based on applicable provisions of:~~

- ~~(1) Sections OAC 340:2-21-12 through 340:2-21-16, and OAC 340:75-1-44;~~
- ~~(2) Section 413 of Title 43, Sections 24A.1 through 24A.26 of Title 51, and Sections 183 and 231 through 240.23 of Title 56 of the Oklahoma Statutes;~~
- ~~(3) Sections 303.15, 303.21, 303.70, and 307.13 of Title 45 of the Code of Federal Regulations; and~~
- ~~(4) Sections 653, 654, 654a, and 663 of Title 42 of the United States Code.~~

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340:25-5-67. Information disclosure

(a) **Legal authority.** Federal and state laws and the rules adopted by Oklahoma Human Services (OKDHS) restrict the use and disclosure of information. Information from child support program records is released per:

(1) Oklahoma Administrative Code (OAC) 340:2-21-12 through 340:2-21-16, 340:25-5-340.1 and 340:75-1-44;

(2) Section 112A and 413 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112A and 413), 51 O.S. §§ 24A.1 through 24A.26, and 56 O.S. §§ 183 and 231 through 240.23;

(3) Section 285.3 of Title 31 of the Code of Federal Regulations (31 C.F.R. § 285.3) 45 C.F.R. §§ 303.15, 303.21, 303.70, and 307.13; and

(4) Sections 653, 654, 654a, and 663 of Title 42 of the United States Code (42 U.S.C. §§ 653, 654, 654a, and 663).

(ab) **Confidentiality.** All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential per ~~Section 183 of Title 56 of the Oklahoma Statutes~~ (56 O.S. § 183).

(1) All files and records concerning the assistance or services provided under the child support program or concerning an alleged father of a child born out of wedlock are confidential per 56 O.S. § 237, except as otherwise authorized by law.

(2) Any information ~~Oklahoma Department of Human Services (DHS) OKDHS~~ Child Support Services (CSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. CSS complies with the limitations imposed by federal laws and regulations per ~~Section 653 of Title 42 of the United States Code (42 U.S.C. § 653), Section 285.3 of Title 31 of the Code of Federal Regulations (31 C.F.R. § 285.3), and Internal Revenue Service Publication 1075.~~

(3) Nothing in this Section authorizes disclosure of the location or information that may lead to discovery of the location of a case participant with a ~~family violence indicator~~ Family Violence Indicator per ~~Oklahoma Administrative Code (OAC) 340:25-5-67.1.~~

(4) CSS redacts personal information, including Social Security and driver license numbers, from court documents prior to filing them, pursuant to Rule 31 of the Rules for District Courts of Oklahoma.

(bc) **Authorized disclosure.**

(1) Information, ~~when requested per OAC 340:25-5-68,~~ may be shared with:

(A+) persons duly authorized by the United States in connection with the performance of their official duties per 56 O.S. § 183 including, but not limited to:

(iA) exchange of information to the extent necessary to carry out the state agency Title IV-D program responsibilities directly and through

statewide automated data processing and information retrieval networks within ~~DHS—OKDHS,~~ with authorized representatives of ~~DHSOKDHS~~ programs and other state agencies, other states and countries, and federal and tribal agencies;

(iiB) exchange of information directly and through statewide automated data processing and information retrieval networks with ~~DHSOKDHS~~ representatives and other state agencies administering programs under Titles IV-A through IV-E, XIX, and XXI of Chapter 7 of Title 42 of the U.S.C., and the Supplemental Nutrition Assistance Program (SNAP) to the extent necessary to carry out the responsibilities of those agencies;

(iiiC) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person for an authorized purpose, per 42 U.S.C. § 663 representing:

(i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the U.S.C. to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and

(ii) the United States or Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and

(ivD) release of Social Security numbers for child support purposes, such as:

(i) locating the parents;

(ii) submitting cases for federal administrative and income tax refund offset;

(iii) state income tax refund offset;

(iv) financial institution data match;

(v) enrolling children as beneficiaries of health insurance coverage; and

(vi) processing interstate child support services; and

(2B) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(iA) income information, records of payment, and balances;

(iiB) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the ~~Order~~ order, such as guideline worksheets and financial affidavits;

(iiiC) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(ivD) information required by ~~Titles 43 or 56 of the Oklahoma Statutes~~ 43 O.S. § 56 disclosed for

- the purpose of enforcing, reviewing, establishing, or modifying a support order or judgment;
- (vE) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;
- (viF) information necessary to access court-ordered health care coverage and obtain health care for the children; and
- (viiG) address of record for service of process per 43 O.S. § 112A. The address of record must only be released per OAC 340:25-5-340.1;
- (C3) employers and plan administrators, who may only access information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;
- (D4) persons as directed by court order or by a subpoena approved by a CSS state's attorney; and
- (E5) persons with written authorization from a child support case member to release information.

(2) Any person requesting case information must specify the information needed and for what purpose the information is being requested. The person must verify his or her identity. CSS determines:

- (A) when the person requesting the case information is authorized to receive per paragraph (1) of this subsection;
- (B) when the requested information may be released; and
- (C) the appropriate method of release.

340:25-5-68. Procedure for requesting case information from CSED [REVOKED]

~~Any person requesting case information must specify the information needed and for what purpose the information is being requested. A parent or custodian requesting disclosure of address of record must comply with Section 112A of Title 43 of the Oklahoma Statutes and OAC 340:25-5-340.1. The person must verify his or her identity. Child Support Enforcement Division (CSED) determines:~~

- ~~(1) if the person requesting the case information is authorized to receive it under OAC 340:25-5-67;~~
- ~~(2) if the requested information may be released; and~~
- ~~(3) the appropriate method of release.~~

PART 13. RETENTION AND DESTRUCTION OF RECORDS

340:25-5-95. Scope and applicability [REVOKED]

~~Oklahoma Child Support Services (OCSS) manages and disposes of records according to Oklahoma Statutes as interpreted in OKDHS:2-21-50 through OKDHS:221-66. Per OAC 340:25-5-55, OCSS maintains all records for cases closed under Section 303.11 of Title 45 of the Code of Federal Regulations for a minimum of three years.~~

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-114. Procedures for determining and processing noncooperation on Temporary Assistance for Needy Families (TANF) and non-TANF SoonerCare (Medicaid) cases

(a) Authority for Cooperation ~~cooperation~~ **of custodial persons (CP).** The ~~custodial person (CP)~~ must cooperate with the Oklahoma Human Services (OKDHS) Child Support Services (CSS) program in establishing paternity or in establishing, modifying, or enforcing a support order per Section 654 of Title 42 of the United States Code (42 U.S.C. § 654) and ~~Section~~ Sections 264.30 and 303.11 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 264.30 and 303.11). A CP ~~receiving:~~

- (1) receiving Temporary Assistance for Needy Families (TANF) must assign rights to support to OKDHS per 42 U.S.C. § 608; ~~and~~
- (2) receiving non-TANF SoonerCare (Medicaid) benefits for minor child(ren) must assign medical support rights to the Oklahoma Health Care Authority (OHCA) per 42 C.F.R. § 433.146; ~~or~~
- (3) not receiving public assistance is subject to case closure

(b) **Noncooperation of custodial persons CP.** When a CP fails to cooperate, CSS reviews the case to determine noncooperation. When CSS determines noncooperation in a TANF case, CSS notifies Adult and Family Services (AFS) staff in the appropriate OKDHS county office. AFS staff updates the computer document for noncooperation with CSS and a computer-generated notice per Oklahoma Administrative Code (OAC) 340:65-5-1 is sent advising the recipient of any decrease in benefits due to noncooperation.

- (1) For CSS to make a noncooperation determination ~~on a TANF case~~, the cooperation must be essential for the next step in providing child support services.
- (2) Noncooperation is indicated when the CP:
 - (A) fails to participate in a scheduled CSS conference or meeting;
 - (B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) ~~(NCPs)~~ (NCP) when requested to do so by CSS;
 - (C) fails to comply with an order to submit oneself or the child(ren) to genetic testing to determine paternity;
 - (D) fails to appear as a witness at an administrative, district court hearing, or other proceeding;
 - (E) fails to provide information or attest to lack of information under penalty of perjury;
 - (F) fails to forward to CSS all child support payments received from the NCPs or those received from entities other than the Centralized Support Registry;
 - (G) pursues private legal action affecting paternity, child support, medical support, or child care or authorizes payments made other than through the

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Centralized Support Registry without giving CSS notice, and fails to keep CSS informed of the case status; or

(H) engages in ongoing conduct detrimental to CSS enforcement efforts.

(3) OKDHS AFS staff determines in TANF cases when good cause for noncooperation with CSS exists per OAC 340:10-10-6.

(c) ~~Noncooperation of custodial persons~~ **CP on non-TANF SoonerCare (Medicaid) cases.** When CSS receives an OHCA referral on a non-TANF or existing case update with a pending good cause indicator, CSS centralized good cause staff determines when good cause exists for noncooperation per OAC 317:35-5-7.

(d) Noncooperation in private cases. When CSS determines noncooperation in a non-TANF case, CSS closes the case per 45 C.F.R. § 303.11.

(e) Services after noncooperation closure. CSS requires a new application to reopen a case closed for noncooperation. The applicant for services must agree to cooperate with CSS.

340:25-5-118. Noncooperation on non-Temporary Assistance for Needy Families (TANF) cases [REVOKED]

~~(a) The Oklahoma Child Support Services (CSS) determines noncooperation in a non-TANF case on the same basis as a Temporary Assistance for Needy Families (TANF) case. Oklahoma Administrative Code (OAC) 340:25-5-114 describes indications of noncooperation. When CSS determines noncooperation, CSS closes the case under Section 303.11 of Title 45 of the Code of Federal Regulations.~~

~~(b) CSS requires a new application to reopen a case closed because of noncooperation. The applicant for services must agree to cooperate with CSS.~~

340:25-5-123. Case closure system

(a) Oklahoma Department of Human Services OKDHS Child Support Services (CSS) closes cases eligible for closure per Section 303.11 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.11).

(b) A child support case may not be closed when there is a pending paternity, establishment, or modification action CSS filed with the court ~~by CSS~~ and the non-applicant has been served, unless the pending action is withdrawn or dismissed at the discretion of the CSS state's attorney.

(c) A child support case may be closed when any of the criteria in (1) ~~through (4)~~ and (2) of this subsection applies.

(1) There is no current support order and arrears are unenforceable. Arrears are determined to be unenforceable when:

(A) there has been no collection during the past year; and

(B) the noncustodial parent (NCP) has no known or prospective income or assets.

(2) The NCP's sole income is from Supplemental Security Income (SSI) or a combination of SSI and Social

Security Disability Insurance, or Social Security Retirement ~~and the child support order is set at or modified to \$0 per month due to the parent's disability and lack of income.~~

(d) A child support case may be closed when the:

(1) case was referred to CSS by an assistance program, per Oklahoma Administrative Code (OAC) 340:25-5-117 and the:

(A) referral is inappropriate to establish or enforce a child support order; and

(B) custodial person (CP) or NCP has not applied for services with CSS;

(2) CP receives non-TANF Sooner Care (Medicaid) child only benefits and the case is received from the Oklahoma Health Care Authority as a referral, but CSS learns the CP desires to decline child support services and no service of process is initiated on a legal action filed by CSS to establish or enforce the child support order, including the medical support portion; or

(3) CP:

(A) cannot be located per 45 C.F.R. § 303.11(b)(4)(15); or

(B) fails to cooperate and an action by the CP is essential for the next step in providing child support services per 45 C.F.R. § 303.11(b)(4)(16).

(e) The case applicant requests that a child support case be closed by submitting CSS Form 03GN542E, Case Closure Application - Child Support Services. When a case closure application is received, CSS staff determines if the case meets federal case closure criteria per 45 C.F.R. § 303.11.

(f) When CSS staff closes a case, CSS:

(1) terminates the ~~Order~~ Order/Notice to Withhold Income for Child Support with the employer per OAC 340:25-5-201.1;

(2) resolves enforcement actions filed and CSS processes that are specific to the case being closed;

(3) reviews the Family Violence Indicator per OAC 340:25-5-67.1;

(4) removes case balances; and

(5) documents the date and amounts removed on the Oklahoma Support Information System Case Log (CSLOG) screen.

(g) Per 45 C.F.R. § 302.33 when Title IV-A Temporary Assistance for Needy Families (TANF), Title IV-E foster care, and non-TANF SoonerCare (Medicaid) services are discontinued, CSS notifies the recipient that CSS maintains a full-service child support case, unless the CP declines services in writing. When the CP declines services in writing, CSS closes the case. When the CP fails to respond, CSS maintains a full-service child support case.

340:25-5-124.3. Assignment and management of deprived cases

(a) When a case includes a child(ren) in a deprived court action, Oklahoma Department of Human Services Child Support Services (CSS) assigns cases per this Section.

(1) No existing child support order. When there is no existing child support order and an open Family Group

Number, the district office serving the deprived action coordinates with the assigned district office to determine which office establishes the paternity and child support order. When there is no existing child support order deferral, the case is assigned to a district office serving the county in which the district court has jurisdiction over the deprived action.

(2) **Existing district court case.** When there is a prior Family and Domestic district court case involving the parent(s) and child(ren), the case is assigned to a district office serving the county of the deprived action.

(3) **Split jurisdiction.** When the case involves split jurisdiction, multiple deprived actions in different counties for different children of the same parents, the district offices coordinate paternity and child support order establishment and child support order enforcement procedures with the district courts.

(4) **No prior child support order.** When no child support order was entered prior to the filing of the juvenile petition, there is no existing Family and Domestic district court case, the parental rights of the noncustodial parent (NCP) are terminated, and the child is not placed with the NCP, the child support case is assigned and transferred according to (A) through (D) of this paragraph, as applicable:

(A) When there is one NCP or when both NCPs reside in the same county, the CSS case is assigned to the district office serving the county where the NCP(s) resides.

(B) When there are multiple NCPs residing in different counties, the district offices within whose jurisdiction the NCPs reside reach an agreement regarding district office assignment.

(C) When parental rights are terminated CSS requests the court refer all child support issues regarding the parent whose rights have been terminated to CSS for filing in the appropriate court.

(D) When the juvenile court entered a child support order but no longer desires to exercise jurisdiction to enforce the order, no prior Family and Domestic district court case exists, and the child(ren) is not placed with the NCP, CSS docket the juvenile child support or paternity order in a new district court case according to (i) through (ii) of this subparagraph, as applicable:

(i) in the county in which the NCP resides or the NCP's last verified address; or

(ii) when both parents are NCPs, (B) of this paragraph applies.

(5) **Prior child support order.** When a prior child support order exists and after final adjudication and dismissal of the deprived action from the juvenile court, or when child support issues have been deferred by the juvenile court, the office with the existing child support order docket any juvenile child support or paternity order in its district court and proceeds with both judicial and non-judicial enforcement of the child support order.

(6) **Adoption.** When the child(ren) is adopted and the deprived action terminates, the child support case is assigned as described in (A) and (B) of this paragraph.

(A) When there is an existing child support order prior to the child(ren) entering foster care, the case is assigned to the district office serving the county where the order was established.

(B) When there is no existing child support order prior to the child(ren) entering foster care, and a child support order is established during the deprived action, the case is assigned to the district office serving the county where the NCP resides.

(b) Per Section 1-4-702 of Title 10A of the Oklahoma Statutes, CSS requests the deprived court establish a paternity and child support order or requests the deprived court defer jurisdiction. When jurisdiction is deferred, CSS enforces the existing child support order or establishes a paternity and child support order in district court or Office of Administrative Hearings: Child Support.

PART 20. MEDICAL SUPPORT

340:25-5-169. Establishment of medical ~~Medical~~ enforcement only cases

(a) **Legal authority.** Oklahoma Human Services (OKDHS) Child Support Services (CSS) follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.33, 302.56, 303.30, and 303.31); Section 6058A of Title 36 of the Oklahoma Statutes (36 O.S. § 6058A); 43 O.S. §§ 112, 118F, 118.2, and 119; and 56 O.S. § 237.

(b) **Medical enforcement only (MEO) status.** When a person receiving non-TANF (Temporary Assistance for Needy Families) non-Temporary Assistance for Needy Families (TANF) SoonerCare (Medicaid) notifies CSS that only Title IV-D services related to securing medical support are requested, CSS updates the case as an MEO case and does not provide full child support services per Oklahoma Administrative Code (OAC) 340:25-1-1.2.

(c) **Services provided on MEO cases.**

(1) CSS establishes paternity, when necessary, and a child support order. The child support order must include a provision for:

- (A) current child support per OAC 340:25-5-178;
- (B) support for a prior period per OAC 340:25-5-179.1, when appropriate; and
- (C) medical support per OAC 340:25-5-168.

(2) CSS conducts a review of the order per OAC 340:25-5-198.1 and seeks a modified order including a provision for medical support when:

- (A) the existing child support order does not include a medical support provision;
- (B) insurance is not available for the child(ren); or
- (C) a parent or custodial person (CP) claims the available health insurance is not accessible or reasonable in cost.

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(d) **Exception to MEO status.** CSS opens a full-service case on all of the ~~eustodial person's (CP) CP's~~ child support cases when CSS receives a non-TANF SoonerCare (Medicaid) referral per OAC 340:25-5-117 from the Oklahoma Health Care Authority and:

- (1) assigned court-ordered child support is owed per OAC 340:25-5-117;
- (2) the child(ren) is in a deprived or delinquent juvenile court action; or
- (3) assigned cash medical support is owed per OAC 340:25-5-117.

(e) **Enforcement of MEO cases.** When a person receiving non-TANF Medicaid requests MEO services, CSS enforces only the health insurance portion of the child support order through the use of the National Medical Support Notice per OAC 340:25-5-171. CSS does not enforce the payment of child support or fixed medical support through the Order/Notice to Withhold Income for Child Support or any other enforcement remedy in an MEO case.

340:25-5-170. Enforcement of medical enforcement only cases [REVOKED]

~~When a person receiving non-TANF Medicaid requests medical enforcement only services, Oklahoma Child Support Services (OCSS) enforces only the health insurance portion of the child support order through the use of the National Medical Support Notice per OAC 340:25-5-171. OCSS does not enforce the payment of child support or fixed medical support through the Order/Notice to Withhold Income for Child Support or any other enforcement remedy in a medical enforcement only case.~~

PART 21. ESTABLISHMENT

340:25-5-178. Calculating new and modified child support obligations

(a) **Legal authority.** Oklahoma Human Services (OKDHS); Child Support Services (CSS) establishes current child support, per:

- (1) Sections 654, 656, and 666 of Title 42 of the United States Code (42 U.S.C. §§ 654, 656, and 666);
- (2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (3) Section 83 of Title 10 of the Oklahoma Statutes (10 O.S. § 83); Title 43; and 56 O.S. §§ 231 through 240.23.

(b) **Child support guidelines.** CSS uses the child support guidelines in 43 O.S. §§ 118-118I and 119 to:

- (1) establish current child support amount; and
- (2) prepare a child support computation form ~~prescribed by CSS~~ prescribes and ~~published by the Administrative Office of the Courts~~ publishes on the Oklahoma State Courts Network website, per 43 O.S. § 120.

(c) **Child support computation.** CSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based

on education and training, with a continued emphasis on setting fair and equitable child support orders, per 43 O.S. §§ 118-118I. When requesting the court enter or modify child support orders in a noncustodial parent's (NCP) multiple cases, CSS may request the court deviate from the child support guidelines amounts, per 43 O.S. § 118H.

(d) **Gross income.** When determining gross income for the child support computation, CSS follows 43 O.S. § 118B.

(e) **Child care.** To establish the current child support amount ~~of current support~~, CSS considers "actual" child care expenses to be the amount the parent(s) or custodial person (CP) pays to the child care provider. CSS considers a child care subsidy recipient's copy to be the actual child care expenses. CSS determines prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the NCP becomes part of the fixed monthly child support obligation.

(f) **Juvenile Court cases.**

(1) **Deprived cases.** When a case is referred, CSS establishes child support orders in deprived court actions, per 10A O.S. § 1-4-702, and prepares the child support order on the standard child support order form ~~prescribed by CSS~~ prescribes and ~~published by the Administrative Office of the Courts~~ publishes on the Oklahoma State Courts Network website.

(2) **Delinquent cases.** When a case is referred, CSS establishes a child support order against each parent of a child in the custody of the Oklahoma Office of Juvenile Affairs, per 43 O.S. §§ 118 through 118I.

(g) **Intergovernmental majority age.** CSS establishes child support orders for a child(ren) for whom child support is impossible under applicable law.

(h) **Minor parents.** When a parent is a minor, CSS establishes paternity, per Oklahoma Administrative Code 340:25-5-176, when necessary, and establishes a child support order.

(1) When a minor NCP or a CP is younger than 16 years of age, CSS does not impute gross income for the minor parent in the child support computation and only uses actual income.

(2) When a minor NCP or CP is between 16 and 18 years of age and regularly and continuously attending high school, unless otherwise inappropriate, CSS uses either the minor parent(s) imputed gross income based on minimum wage at 20 hours per week or actual income.

(i) **Adult disabled child.** CSS enforces child support orders for adults with disabilities, per 43 O.S. § 112.1A. CSS establishes or modifies child support orders to continue after the child reaches the age of majority, per 43 O.S. § 112.1A, when the application or referral for Title IV-D services is received during the period when child support is due, per 43 O.S. § 112.

(j) **Incarcerated NCP.**

(1) Per 43 O.S. §§ 118B and 118I, when an NCP is incarcerated for more than 180 consecutive days, CSS requests the court enter a child support and medical support order using actual income of \$0, unless:

- (A) there is evidence of income or assets independent of incarceration;
- (B) incarceration is a result of indirect contempt of court for failure to pay child support;
- (C) incarceration is a result of a crime of omission to provide child support; or
- (D) the incarceration is a result of an offense in which the CP dependent child or the CP was a victim.

(2) **Release from incarceration.** When an NCP is released from incarceration, and:

- (A) ~~When~~ an existing child support order is abated, the monthly child support obligation reverts back to the pre-incarceration order amount beginning the first day of the month following a lapse of 90-calendar days upon release from incarceration, per 43 O.S. §§ 118B and 118I; or
- (B) ~~When~~ there is no existing child support order, CSS requests the court order state that upon release from incarceration, the monthly child support amount is set based on 43 O.S. §§ 118B and 118I.

(k) **Military.** When CSS establishes a child support order for a Servicemember's child, CSS applies the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. §§ 3901 through 4043.

(l) **Disability benefits.** CSS does not impute gross income to a person the Social Security Administration determines disabled.

(m) **Default orders.** When a default order for child support is ordered and either party contacts CSS in writing within 30-calendar days of the entry of the default order and provides information to calculate an accurate child support obligation, CSS treats the request as a motion to vacate or modify, and requests the court enter a new order consistent with the evidence presented.

340:25-5-190. Service of process

(a) **Authority.** Oklahoma Human Services Child Support Services (CSS) follows the provisions of Section 2004 of Title 12 of the Oklahoma Statutes (12 O.S. § 2004) for service of process. CSS uses the most cost effective and efficient method of service of process depending on what is most appropriate under the facts of the case.

(b) **Service by regular mail to address of record (AOR).** Service to the AOR by regular mail may be appropriate when an AOR is on file with the Central Case Registry for a party in the case per Oklahoma Administrative Code 340:25-5-340. When the party has provided to CSS an email address, CSS sends the pleadings and acknowledgement and waiver of service documents to that email address at the same time as mailing to the AOR by regular mail. Service to the AOR is not appropriate when the:

- (1) remedy sought may result in the obligor's incarceration including, but not limited to, indirect civil contempt actions; or
- (2) court may require a higher level of notice to the affected party including, but not limited to, actions to determine paternity.

(c) **Service by acknowledgment.** CSS delivers the documents directly to a party and requests the party accepts and acknowledges service, as appropriate. The Acknowledgment of Service is filed in the court case.

(d) **Service by certified mail.** Service by mail is made by certified mail, return receipt requested, and delivery restricted to the addressee. CSS uses service by certified mail when service to the AOR or by Acknowledgment of Service is not appropriate or successful. CSS staff is not required to attempt service by certified mail before attempting personal service when the case history indicates a low probability of acceptance or the court requires personal service.

(e) **Service by personal delivery.** Service by personal delivery is completed by a sheriff, deputy sheriff, individual licensed to make service of process in civil cases, or an individual specially appointed for that purpose per 12 O.S. § 2004. CSS uses service by personal delivery when:

- (1) an individual has not accepted service by certified mail;
- (2) service to the AOR or by acknowledgment is not available or appropriate;
- (3) case history indicates a low probability of acceptance of service by certified mail; or
- (4) the court requires service by personal delivery.

(f) **Service by electronic means.**

(1) After service of the initial pleadings, CSS serves subsequent documents to the party electronically when the party or party's attorney:

- (A) ~~the party or party's attorney~~ consents in writing to receive service in a particular case by electronic means and
- (B) ~~the party or party's attorney~~ designates an email address for sending the electronic service.

(2) The required written consent and electronic service instructions may be made in:

- (A) the entry of appearance filed by the party or ~~party's party's~~ attorney per 12 O.S. § 2005.2; or
- (B) another document filed by the party or ~~party's party's~~ attorney in the court case.

(3) CSS may consent to electronic service per 12 O.S. § 2005.2 at the discretion of the ~~state's state's~~ attorney.

(g) **Diligent efforts.** When CSS contracts with vendors for service of process, the vendor must make diligent efforts to complete service and provide timely documentation to CSS. Diligent efforts means at least three-repeated attempts to serve the individual at different times of day or on different days of the week, before declaring inability to serve. CSS:

- (1) attempts to serve process in the manner, at the time, and place most reasonably calculated to complete service of process in the most efficient and cost effective manner;
- (2) makes diligent efforts to serve process utilizing all information:
 - (A) ~~provided by~~ CSS staff provides;
 - (B) documented in the case record; or
 - (C) gathered from other locate resources;
- (3) provides address and employer information to the process server;
- (4) attempts to serve the person at:

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- (A) work;
 - (B) home; or
 - (C) other locations based on information gathered on his or her lifestyle; and
- (5) documents all facts about attempts to serve process in the case record.
- (h) **Minor parent.** CSS serves a minor parent who is:
- (1) 15 years of age and older per 12 O.S. § 2004; or
 - (2) younger than 15 years of age, through a parent, guardian, or other appropriate adult as the next friend of the minor parent.
- (i) **Subsequent Electronic Service.** A party or party's attorney completes a Notice of Consent to Electronic Service or recognized substitute must be completed by a party or ~~party's~~ party's attorney and filed with the court in accordance with 12 O.S. § 2005(B) and applies to an individual court action. Pleadings asserting new or additional claims require a new consent of electronic service.

PART 23. ENFORCEMENT

340:25-5-200. Enforcement

- (a) **Scope and applicability.** Oklahoma Human Services Child Support Services (CSS) follows Part D of Subchapter IV of Chapter 7 of Title 42 and Section 1738B of Title 28 of the United States Code (28 U.S.C. § 1738B) Section 303.6 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.6), and Section 240.1 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.1) in initiating enforcement proceedings.
- (1) Orders for current and past child and spousal support, health care coverage, fixed amounts of medical support, judgments, and delinquencies may be enforced through expedited and judicial processes, or through other collection efforts.
 - (2) Past-due child support is a judgment by operation of law and may be enforced in the same manner as any other money judgment, per 43 O.S. § 137.
 - (3) Post-judgment remedies do not require an adjudicated judgment by a district or administrative court.
 - (4) Each missed support payment is a judgment; thus, a judgment increases with each missed payment. This total judgment becomes a lien on the noncustodial parent's (NCP) real and personal property.
- (b) **Non-Oklahoma support order.** CSS registers a support order from another state, Native American tribe, territory, or foreign country, per subsection (b) of the Full Faith and Credit for Child Support Orders Act codified in 28 U.S.C. § 1738B(b) and 43 O.S. § 601-101(21) when enforcement of the order is sought.
- (c) **Multiple support orders.** When multiple child support orders are entered in the same or different tribunals involving the same NCP and child, CSS seeks a determination of controlling order, per 43 O.S. §§ 601-207, 601-307, and 601-601 through 601-603 and Oklahoma Administrative Code (OAC) 340:25-5-270.
- (d) **Legal remedies.** CSS determines appropriate enforcement actions and may use any legal remedy to enforce support

obligations. CSS chooses remedies designed to obtain compliance with an obligor's support obligations and does not use any remedy for the purpose of punishment. When an NCP is participating in the CSS problem-solving court program or complying with a seek work order, CSS considers the NCP's participation and compliance, per OAC 340:25-5-200.3, when choosing enforcement remedies. Remedies CSS may use include, but are not limited to:

- (1) annual notice to NCP, per 56 O.S. § 237A and OAC 340:25-5-213;
- (2) income assignment, garnishment, and levy, per Chapter 21 of Title 12 Oklahoma Statutes, 43 O.S. §§ 115 and 601-501 through 601-507, 56 O.S. §§ 237, 240.2, and 240.23, and 42 U.S.C. § 666;
- (3) hearing on assets, per 12 O.S. § 842;
- (4) intercept of federal tax refunds, per 42 U.S.C. § 664, 31 C.F.R. § 285.3, and 45 C.F.R. § 303.72, OAC 340:25-5, Part 25;
- (5) Intercept of state tax refunds, per 45 C.F.R. § 303.102, 68 O.S. § 205.2, and OAC 340:25-5, Part 27;
- (6) administrative offsets per 31 U.S.C. § 3716, 31 C.F.R. § 285.1, and Executive Order 13019;
- (7) denial, revocation, or suspension of United States passports, per 56 O.S. § 240.1 and 42 U.S.C. §§ 652 and 654;
- (8) revocation, suspension, non-renewal, and non-issuance of various licenses, per 47 O.S. §§ 1-153, 6-201, and 6-211, and 56 O.S. §§ 237.1 and 240.15 through 240.21A;
- (9) imposing liens and executing and levying on personal and real property, including, but not limited to, workers' compensation benefits, personal injury, wrongful death, and probate actions, per 43 O.S. § 135, 56 O.S. §§ 237B and 240.23, and Titles 12 and 58 of the Oklahoma Statutes;
- (10) registration of foreign support orders and judgments, per the Uniform Interstate Family Support Act per 43 O.S. §§ 601-100 through 601-903 and the Uniform Enforcement of Foreign Judgments Act, 12 O.S. §§ 719 through 726;
- (11) credit bureau referrals, per 42 U.S.C. § 666 and 15 U.S.C. § 1681b, 56 O.S. § 240.7, and OAC 340:25-5, Part 31;
- (12) financial institution data match, per 42 U.S.C. §§ 666 and 669A, 56 O.S. §§ 240.22 through 240.22G, and OAC 340:25-5-212;
- (13) seek work orders, per 56 O.S. § 240.10;
- (14) indirect civil contempt of court, per 21 O.S. §§ 566 and 567, 43 O.S. § 137, and 56 O.S. § 234. CSS does not use contempt as a penal sanction and does not recommend incarceration to the district court at sentencing in an indirect civil contempt proceeding unless there is evidence or information available that the can purge the contempt. CSS asks the court to set a reasonable purge fee, per Rule 8.3 of the Rules of the District Court;
- (15) when a debtor transfers income or property to avoid child support payments, action to void the transfer or obtain favorable settlement per the Uniform Fraudulent

Transfer Act, 24 O.S. §§ 112 through 123 and 42 U.S.C. § 666;

(16) criminal actions brought per 21 O.S. § 852;

(17) civil actions brought per 42 U.S.C. § 660;

(18) transfer of child support obligation to another custodian, per 56 O.S. § 237;

(19) referral to the United States Attorney for federal prosecution, per 18 U.S.C. § 228;

(20) full collection services by the Secretary of the Treasury, per 6305 of the Internal Revenue Code of 1954; and

(21) attachment of lottery prize winnings from the Oklahoma Lottery Commission, per 3A O.S. § 724.1.

(e) **Servicemember.** When CSS initiates proceedings to enforce a child support order for a child of an NCP or a custodial person who is a servicemember, CSS applies the provisions of the Servicemembers Civil Relief Act, per 50 U.S.C. §§ 3901 through 4043.

(f) **Incarcerated NCP.** When an NCP is incarcerated for 180-consecutive days, CSS follows 43 O.S. §118I and OAC 340:25-5-140 regarding abatement of child support orders.

(g) **Spousal Support.** CSS enforces a spousal support obligation for a spouse or former spouse per 42 U.S.C. § 654 and 45 C.F.R. § 302.31 when CSS is enforcing that spouse's or former spouse's current child support obligation.

340:25-5-200.2. Enforcement of spousal support [REVOKED]

~~The Child Support Enforcement Division (CSED) enforces a spousal support obligation for a spouse or former spouse under Section 654 of Title 42 of the United States Code and Section 302.31 of Title 45 of the Code of Federal Regulations when CSED is enforcing that spouse's or former spouse's current child support obligation.~~

340:25-5-200.3. Problem-Solving Court Program [REVOKED]

~~(a) Oklahoma Department of Human Services Child Support Services (CSS) designates the following process as the problem-solving court program referenced in Section 140 of Title 43 of the Oklahoma Statutes (43 O.S. § 140), 21 O.S. § 566.1, and 56 O.S. § 240.10.~~

~~(b) When:~~

~~(1) a noncustodial parent (NCP) indicates barriers to the payment of child support, CSS staff offers information about available community resources that might assist in removing such barriers; or~~

~~(2) a court action is ongoing, CSS requests the court include requirements in the court order for the NCP to work to remove barriers to payment of child support by using available community resources.~~

~~(c) CSS requests the court set future court dates as appropriate under the circumstances of the case to review the NCP's compliance with the court's requirements. When a court action is not filed, CSS may file a seek work proceeding per 56 O.S. § 240.10.~~

~~(d) When an NCP is complying with the court's requirements:~~

~~(1) CSS staff coordinates, within an office and between offices, to find a case management strategy that treats NCP's cases consistently and is most likely to result in a reliable source of support in all of the NCP's cases.~~

~~(2) "Complying" means the NCP is following the court's orders to remove barriers to paying support or is otherwise meeting the requirements set out in a seek work order, including disclosing all information about earnings and assets.~~

PART 27. STATE TAX REFUND OFFSET PROGRAM

340:25-5-244. Review procedures for state tax refund offset program

(a) ~~The Oklahoma Department of Human Services Child Support Enforcement Division (CSED) Services (CSS) follows the provisions of this Section when reviewing state tax offsets.~~

(b) ~~CSEDCSS may release or refund the offset in whole or in part to the custodial person, noncustodial parent or debtor if CSEDCSS finds there has been a mistake of fact or identity.~~

(c) A non-obligated spouse may request a refund of the offset within the time specified in the notice of offset. The non-obligated spouse requesting a refund must submit copies of federal and state tax forms and all attachments to ~~CSEDCSS~~. If the non-obligated spouse reports income on the tax return, ~~CSEDCSS~~ may release or refund the offset in whole or in part to the non-obligated spouse, prorated based on the income of the noncustodial parent and the non-obligated spouse.

(d) ~~CSEDCSS sends a notice to the noncustodial parent-affected taxpayer whenever a state tax refund is offset for past due support or an overpayment.~~ Upon receipt of a written request for hearing within 30-calendar days from the date of mailing of the notice of tax offset, ~~CSEDCSS~~ schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

(e) The administrative order may be appealed to the district court within 30-calendar days by any aggrieved party.

PART 31. CONSUMER REPORTING AGENCIES - CREDIT BUREAUS

340:25-5-265. Release and access of arrearage information to consumer reporting agencies - credit bureaus

(a) The Oklahoma Department of Human Services, Child Support Services (CSS) periodically releases child support arrearage information to certain consumer reporting agencies - credit bureaus. Release of this information is governed by:

(1) Section 240.7 of Title 56 of the Oklahoma Statutes (56 O.S. § 240.7); and

(2) Sections 1681b and 1681f of Title 15 and Section 666 of Title 42 of the United States Code (15 U.S.C. §§ 1681b & 1681f; 42 U.S.C. § 666).

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(b) CSS reports to consumer reporting agencies the names and amounts of child support arrearages of noncustodial parents (NCP). CSS applies a:

(1) ~~a 15-day~~ 15-calendar day grace period to account for payment receipt date discrepancies due to early or late employer reporting if an NCP is making child support payments through income assignment; and

(2) ~~a~~ two-month grace period to account for the delays in the start of the income assignment process for an NCP who is a servicemember called to active duty under the provisions of the Servicemembers Civil Relief Act, codified in 50 U.S.C. § 3901 through 4043.

(c) If the annual notice process under 56 O.S. § 237A has been completed, CSS releases arrearage information to credit bureaus without additional notice.

(d) ~~When~~ the initial annual notice process under 56 O.S. § 237A and Oklahoma Administrative Code (OAC) 340:25-5-213 has not been completed, CSS issues a written notice by regular mail to the person obligated to pay the support. The notice includes:

(1) a statement of the information to be released to credit bureaus; and

(2) instructions for disputing the accuracy of the information to be released under OAC 340:25-5-200.1.

(e) CSS periodically accesses credit information available through consumer reporting agencies - credit bureaus. Access of this information is governed by 15 U.S.C §§ 1681b and 1681f.

(1) Each time CSS requests a full credit bureau report on an NCP for use in establishment or modification of a support order, CSS sends the NCP advance notice to confirm that the report requested belongs to the correct person. The NCP is not required to authorize release of the report.

(2) CSS does not send an NCP advance notice when CSS requests a credit bureau report for locate or enforcement purposes.

340:25-5-265.1. Access of consumer reporting agency - credit bureau - information [REVOKED]

(a) ~~**Access to information.** Oklahoma Child Support Services (OCSS) periodically accesses credit information available through consumer reporting agencies - credit bureaus. Access of this information is governed by Sections 1681b and 1681f of Title 15 of the United States Code.~~

(b) ~~**Notice.**~~

~~(1) Each time OCSS requests a full credit bureau report on a noncustodial parent for use in establishment or modification of a support order, OCSS sends the noncustodial parent advance notice to confirm that the report requested belongs to the correct person. The noncustodial parent is not required to authorize release of the report.~~

~~(2) OCSS does not send a noncustodial parent advance notice when OCSS requests a credit bureau report for locate or enforcement purposes.~~

PART 37. RECOVERY

340:25-5-305. Overpayment and recovery policies

(a) **Legal authority.** Oklahoma Human Services (OKDHS), Child Support Services (CSS) recovers CSS overpayments per Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section 109.5 of Title 43 of the Oklahoma Statutes (43 O.S. § 109.5); and 56 O.S. §§ 171, 185, and 231 through 244.

(b) **Purpose.** The rules in this Part:

(1) establish CSS policies and procedures used to recover CSS overpayments to custodial persons (CP), noncustodial parents (NCP), and other entities; and

(2) resolve payment disputes arising from overpayments.

(c) **Overpayment recipient and categories.** An overpayment means a CSS payment to a CP, NCP, or other entity to which the entity or person is not entitled. The recipient of the overpayment owes the amount to CSS, acting on behalf of the state of Oklahoma. Categories of overpayments are described in (1) through (3) of this subsection.

(1) Retained support occurs when the CP kept support payment(s) in violation of the assignment of support rights.

(2) Erroneous payment occurs when CSS incorrectly paid money to a CP, NCP, or other entity, or failed to retain money assigned to Oklahoma because of an administrative error.

(3) Bad debt occurs when:

(A) the funding for a payment ~~made by~~ CSS makes to a CP or NCP is subsequently withdrawn when a tax intercept or other collection is revoked;

(B) a check or other payment instrument ~~received by~~ CSS receives from an NCP or other payor on behalf of the NCP is dishonored after a payment is made to the CP; or

(C) CSS issues a payment to a CP based on an incorrect arrearage balance or an incorrect allocation of a payment.

(d) **Overpayment recovery.**

(1) CSS may use any legal remedy to recover overpayments including, but not limited to:

(A) voluntary payments;

(B) state income tax refund intercepts per 68 O.S. § 205.2; and

(C) lottery prize claims, per 3A O.S. § 724.1.

(2) When an overpayment resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or when fraud is otherwise suspected, CSS reports the information to the OKDHS Office of Inspector General for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(3) In active Temporary Assistance for Needy Families (TANF) cases, when a TANF recipient retains child support receipts, CSS may make a noncooperation referral to Title IV-A staff. CSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.

(e) **Recovery amount.**

- (1) To recover child support overpayments, CSS retains 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time until the overpayment is recovered in full. The percent retained can be changed:
- (A) at the CSS director's discretion; or
 - (B) when the CSS Center for Finance and Budget determines the overpayment is a result of CP fraud.
- (2) When the CP receives his or her full monthly support payment in the same month as an overpayment, CSS retains the full amount of any subsequent payments for that month up to the overpayment amount. CSS satisfies any remaining overpayment as set forth in (1) of this subsection.
- (f) **Notice and administrative review.**
- (1) CSS sends an overpayment and recovery notice to the overpayment recipient. The notice includes the overpayment amount, payment withholding and collection remedies, and instructions for requesting an administrative review and hearing, per Oklahoma Administrative Code OAC 340:25-5-200.1.
- (2) The administrative review provides an opportunity for the overpayment recipient to offer new or additional information regarding the overpayment amount. After the review, CSS issues a notice of administrative review decision.
- (3) When an agency, agent, or entity of the state of Oklahoma or another state owes the overpayment, CSS may collect the amount of overpayment without notice or providing the opportunity to object.
- (g) **Limits to overpayment recovery.**
- (1) CSS Center for Finance and Budget completes a case review on the balances owed to a CP prior to disbursing an overpayment.
- (2) CSS is not responsible for creating or recovering overpayments for:
- (A) non-Title IV-D time periods when non-Title IV-D cases convert to Title IV-D cases; or
 - (B) time periods when:
 - (i) CSS collects under a court order that was later vacated or after the case is dismissed;
 - (ii) the parties fail to provide CSS with verification of a change in the child's physical custody;
 - (iii) CSS collects under a court order that is later modified; or
 - (iv) CSS collects under a court order and the child is adopted;
 - (C) time periods when cash medical support is distributed to a CP and the Oklahoma Health Care Authority retroactively certifies medical assistance; or
 - (D) ongoing regular payments during the period an NCP incarcerated.
- (3) When a child support modification order is effective back to the date the motion to modify was filed and the modified support amount is less than the amount previously ordered and paid, CSS satisfies the amount due when the NCP owes past-due child support by offsetting the arrears amount, up to the balances currently owed.
- (4) CSS does not charge, collect, or pay interest on overpayments.
- (h) **Issuing refunded amounts.** When an NCP makes an overpayment, amounts less than \$3 are not refunded unless issued on an Electronic Benefits Transfer (EBT) card. Amounts less than \$3 and not issued on an EBT card are remitted to the OKDHS General Revenue Fund Treasury.
- (i) **Returning excess support amounts.** When CSS receives a payment that exceeds the NCP's total arrears balance, CSS returns the excess amount to the payor within 45-calendar days after discovering the over collection.
- (j) **Payments made in error.** When CSS receives an erroneous payment from the payor that is not disbursed, CSS returns it to the payor within 45-calendar days after discovery. CSS is not required to correct, redirect, or recover the payment unless it is retained;
- (k) **Payments that cannot be disbursed to a party.**
- (1) CSS applies support collections to other applicable balances associated with the NCP, such as assigned state balances or balances owed to another CP, when the:
- (A) CP's address is unknown;
 - (B) CP fails to activate the debit card; or
 - (C) debit card is returned to the vendor.
- (2) CSS remits a payment to the OKDHS General Revenue Fund Treasury, when the payment cannot be:
- (A) disbursed to a CP;
 - (B) applied to assigned state balances associated with an NCP;
 - (C) disbursed to the NCP, when the:
 - (i) address is unknown;
 - (ii) debit card is not activated; or
 - (iii) debit card is returned to the vendor; or
 - (D) returned to the payor.
- (1) Inactive status and closure of overpayment recovery cases.**
- (1) CSS may place an overpayment recovery case in inactive status when the whereabouts of the recipient of the overpayment are unknown. When the recipient is located, CSS returns the case to active status.
- (2) CSS may close an overpayment recovery case when:
- (A) the overpayment has been satisfied by payment in full;
 - (B) the recipient dies and leaves no resources from which the overpayment may be paid; or
 - (C) CSS determines that the overpayment is uncollectible.
- 340:25-5-328. Recovery of overpayments from other entities [REVOKED]**
- ~~If an agency, agent, or entity of the State of Oklahoma or another state owes the overpayment, the Child Support Enforcement Division may collect the amount of overpayment without notice or providing the opportunity to object.~~

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340:25-5-336. Inactive status and closure of overpayment recovery cases [REVOKED]

(a) ~~The Child Support Enforcement Division (CSED) may place an overpayment recovery case in inactive status if the whereabouts of the recipient of the overpayment (recipient) is unknown. When the recipient is located, CSED returns the case to active status.~~

(b) ~~CSED may close an overpayment recovery case when:~~

- ~~(1) the overpayment has been satisfied by payment in full;~~
- ~~(2) the recipient dies and leaves no resources from which the overpayment may be paid; or~~
- ~~(3) CSED determines that the overpayment is uncollectible.~~

PART 38. TITLE IV-D AND NON-TITLE IV-D CENTRAL CASE REGISTRY INFORMATION

340:25-5-338. Purpose [REVOKED]

~~The rules in this Part implement the provisions of Section 112A of Title 43 of the Oklahoma Statutes. These rules apply to both IV-D and non-IV-D child support cases unless the context indicates otherwise.~~

340:25-5-339. Central Case Registry

(a) ~~The Oklahoma Department of Human Services, Oklahoma Child Support Services (OCSS)(CSS) maintains a Central Case Registry (CCR) under Section 112A of Title 43 of the Oklahoma Statutes (43 O.S. § 112A). The mailing address of the CCR is: Oklahoma Child Support Services, Central Case Registry, P.O. Box 248843, Oklahoma City, Oklahoma 73124-8843. These rules apply to both IV-D and non-IV-D child support cases unless the context indicates otherwise.~~

(b) ~~In a non-IV-D child support case, under Section 120 of Title 43 of the Oklahoma Statutes per 43 O.S. § 120, the attorney of record, the noncustodial parent (NCP), or custodial person (CP) who is not represented by an attorney, must prepare a Summary of Support Order, present it to the judge with the support order, and mail it to the Central Case Registry CCR.~~

(c) ~~CCR staff record records the support order amount and other information on the statewide automated data processing and information retrieval system so that Oklahoma's Centralized Support Registry can issue support payments to the correct custodial person CP.~~

~~(1) Under Section 413 of Title 43 of the Oklahoma Statutes Per 43 O.S. § 413, non-IV-D payments are properly identified and distributed to the custodial person CP via Oklahoma's Centralized Support Registry.~~

~~(2) Non-IV-D payments are distributed per Oklahoma Administrative Code (OAC) 340:25-5-350.3.~~

(d) ~~OCSS CSS refers non-IV-D support payment inquiries from noncustodial parents NCPs, attorneys, employers, and payors to the Customer Assistance Response Effort (CARE) at the telephone numbers provided in OAC 340:25-1-2340:25-1-2.1.~~

340:25-5-340. Collection and maintenance of addresses of record

(a) **Scope and authority.** Section 112A of Title 43 of the Oklahoma Statutes (43 O.S. § 112A) provides the basis for Oklahoma Department of Human Services (~~DHS~~)(OKDHS) Child Support Services (CSS) to collect and maintain an address of record (AOR) for:

- (1) parties and custodial persons (CP) subject to paternity orders or child support orders entered in Oklahoma;
- (2) noncustodial parents (NCP) per 56 O.S. § 237A and Oklahoma Administrative Code 340:25-5-213 (OAC 340:25-5-213);
- (3) parties and CPs subject to paternity orders or child support orders entered in other jurisdictions; and
- (4) parties and CPs when voluntarily submitted.

(b) **Establishment of AOR.**

- (1) CPs and NCPs establish the initial AOR through:
 - (A) completion of Form 03EN008E, Child Support Services - Address of Record and/or Family Violence Statement;
 - (B) designation in ~~form~~ Form 03EN001E, Application for Child Support Services;
 - (C) a court order; or
 - (D) a support order summary form when services are not provided under the ~~DHS~~ OKDHS state Title IV-D plan per 56 O.S. § 237.
- (2) When an AOR is established, it remains in effect until it is updated per (c) of this Section.

(c) **Updating an AOR.**

- (1) A person responsible for maintaining an AOR, on file with CSS per 43 O.S. § 112A or 56 O.S. § 237A must notify CSS of any change in the AOR within 30-calendar days. The person may send changes to CSS, Central Case Registry, PO Box 248843, Oklahoma City, Oklahoma 73124-8843 or to a district child support office. CSS may require proof of a person's identity before establishing or changing a person's name or the AOR and may attempt to verify or confirm the correctness of the AOR.
- (2) A CP updates an AOR:

- (A) by submitting a new AOR in writing;
- (B) by calling CSS customer service at 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922. CSS updates the mailing address by phone. CSS sends Form 03EN008E, Address of Record and/or Family Violence Statement, in confirmation of the mailing address update and for the CP to complete and return an updated AOR or claim family violence; or
- (C) through a court order.

(3) An NCP updates an AOR:

- (A) by submitting a new AOR in writing; or
- (B) through a court order.

(d) **Disclosure of an AOR.**

- (1) A CP seeking disclosure of another party's or CP's AOR from CSS CCR must submit Form 03EN009E, Request for Address of Record, that:

- (A) elicits information about the requester and the reasons for the request; and
- (B) includes information about statutory limitations on the AOR release.

(2) CSS may:

- (A) refuse to release an AOR per 43 O.S. §§ 112A & 413, OAC 340:25-5-67.1, or other applicable law; and
- (B) release an AOR per OAC 340:25-5, Part 9.

(3) When the AOR is not included in a public record document, the AOR of a party or CP may be released by CCR staff or a CSS state's attorney after verifying that the sole purpose of providing the AOR is for service of process in support, visitation, or custody actions. The AOR release by a state's attorney is at the state's attorney's discretion per OAC 340:25-5-67.1 and 43 O.S. § 112A.

(4) When an AOR is established per OAC 340:25-5-340, CSS staff lists the AOR in the certificate of service for all court documents.

340:25-5-340.1. Disclosure of address of record
[REVOKED]

~~(a) A party or custodial person (CP) seeking disclosure of the address of record (AOR) of another party or CP from the Central Case Registry (CCR) of Oklahoma Department of Human Services Child Support Services (CSS) must submit Form 03EN009E, Request for Address of Record, that:~~

- ~~(1) elicits information about the requester and the reasons for the request; and~~
- ~~(2) includes information about statutory limitations on the AOR release.~~

~~(b) CSS may:~~

- ~~(1) refuse to release an AOR per Sections 112A and 413 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 112A & 413), Oklahoma Administrative Code (OAC) 340:25567.1, or other applicable law; and~~
- ~~(2) release an AOR per OAC 340:25-5, Part 9.~~

~~(c) When the AOR is not included in a public record document, the AOR of a party or CP may be released by CCR staff or a CSS state's attorney after verifying that the sole purpose of providing the address is for service of process in support, visitation, or custody actions. The AOR release by a state's attorney is at the state's attorney's discretion per OAC 340:25-5-67.1 and 43 O.S. § 112A.~~

~~(d) When an AOR is established per OAC 340:25-5-340, CSS staff lists the AOR in the certificate of service for all court documents.~~

[OAR Docket #23-418; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM

[OAR Docket #23-419]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
 - Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 [AMENDED]
 - Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care
340:40-10-4 [AMENDED]
 - Subchapter 13. Child Care Rates and Provider Issues
340:40-13-2 through 340:40-13-3 [AMENDED]
340:40-13-5 [AMENDED]
- (Reference WF 23-40)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 40, Subchapter 3 amend the rules to: (1) replace gendered expressions with gender-neutral language; (2) remove the Electronic Benefits Transfer (EBT) contractor's name; and (3) update language.

The proposed amendment to Chapter 40, Subchapter 9 amends the rules to correct a citation.

The proposed amendments to Chapter 40, Subchapter 10 amend the rules to: (1) replace gendered expressions with gender-neutral language; (2) remove the EBT contractor's name; and (3) update language relating to when a provider receives absent day payment.

The proposed amendments to Chapter 40; Subchapter 13 amend the rules to: (1) update the department name and acronym to Oklahoma Human Services and OKDHS; (2) replace gendered expressions with gender-neutral language; (3) require a worker to consult a supervisor and the supervisor to email the Child Care Subsidy when approving an in-home child care provider; (4) remove "differential" from the quality rate to mirror Child Care Services (CCS) rule terminology; (5) clarify a home child care provider who is a sole proprietor may provide a Social Security number in lieu of the Internal Revenue Service employer identification number; (6) remove the EBT contractor's name; and (7) update language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

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**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2023:**

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits are synchronized with the applicant's food benefits or Sooner-Care (Medicaid) benefits, per Oklahoma Administrative Code (OAC) 340:40-9-1(f). Child Welfare Services or Adult and Family Services (AFS) staff processes the application.

(1) **When an application is required.** An application is required when:

- (A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;
- (B) the client's subsidized child care benefits are closed for more than 30-calendar days;
- (C) the payee for the subsidized child care benefits changes; or
- (D) the family income was not considered, per OAC 340:40-7-12(6), and one or more of the affected adopted children turns 6 years of age, unless the child can be added to an open income eligible case, per OAC 340:40-9-2(d).

(2) **Who ~~can~~ may apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. When an authorized representative applies on an applicant's behalf, ~~he or she~~ the representative must bring Form 08MP008E, Authorized Representative Request or a statement ~~signed by~~ signed by the applicant signs giving the representative permission to act on the applicant's behalf, unless the applicant designated the person as the authorized representative on the signed application.

(A) When the natural or adoptive parent or stepparent lives with the child, ~~he or she~~ the parent is ~~considered~~ the applicant, and Oklahoma Human Services (OKDHS) bases eligibility is based on the parent's situation regardless of whether ~~he or she~~ the parent has custody of the child.

(B) When both the natural and adoptive parent of the child live in the same household and the adoption is final, the adoptive parent is ~~considered~~ the applicant, and OKDHS bases eligibility is based on the adoptive parent's situation.

(C) When the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) When the child's parent is a minor, either the minor parent or the responsible adult the minor lives

with ~~can~~ may be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) When the natural or adoptive parent lives in the home but is too incapacitated to apply, another person living in the home may apply on the parent's behalf when the person provides proof of the parent's inability to apply.

(3) **Application.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. When the applicant requests child care for a child with disabilities, the worker gives Form 08AD006E, Certification for Special Needs Rate for Licensed Child Care Homes and Centers, to the applicant.

(4) **Request date.** The request date, known as the application date for other ~~Adult and Family Services~~ AFS programs, is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Certification date.** The certification date is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the client chooses to use.

(A) The provider must have a valid ~~Oklahoma Human Services (OKDHS)~~ OKDHS child care provider contract.

(B) Refer to OAC 340:40-5-1(7) for reasons an applicant ~~cannot~~ may not choose certain child care providers.

(C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews may be completed face-to-face or over the phone with the applicant or authorized representative.

(7) **Explanation of eligibility factors.** At the time of ~~the~~ an initial interview, the worker informs the applicant or authorized representative of:

(A) ~~his or her~~ the rights and responsibilities;

(B) all eligibility factors, including the requirement that the chosen child care provider be contracted with OKDHS;

(C) the child care plan and reason child care may be approved based on the applicant's statements at interview;

(D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video;

(E) the earliest date child care ~~can~~ may be approved;

(F) the requirement to cooperate with the OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

(G) the requirement to report within 10-calendar days when household income exceeds the income eligibility threshold per OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart. At certification

and renewal, a computer-generated notice issues to inform the client of the current income eligibility threshold for ~~his or her~~ family size.

(8) **Timeliness.** To be ~~considered~~ timely, the worker must determine eligibility within two-business days of receiving all necessary verification to certify or deny the application.

(A) When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date.

(B) When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, Client Notice of Action Taken, explaining the reason for delay.

(9) **Right to appeal.** The applicant has the right to appeal an application processing delay or ~~the~~ eligibility decision, per OAC 340:2-5-60 ~~through~~ 340:2-5-81.

(b) **Presumptive eligibility processing.** The worker may presumptively approve a maximum of 30-calendar days of child care prior to making a complete eligibility determination when a reason described in (1) of this subsection applies.

(1) Reasons include when the applicant:

(A) is in danger of losing a job or cannot start a new job unless child care is immediately approved. In this circumstance, it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care;

(B) is employed but has not received pay from the job and is not guaranteed a wage because ~~he or she~~ the applicant is self-employed or works on a commission-only basis. Further care is not approved until the applicant provides proof ~~he or she received~~ of the applicant's earnings from the job; or

(C) requests protective or preventive child care, per OAC 340:40-7-8(f).

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what ~~he or she~~ the applicant needs to provide before further care is approved.

(c) **Eligibility determination.** The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions, per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. After calculating family income, the worker uses OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart, to determine if the household meets the income eligibility threshold. Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 340:40-7-13 for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period, per Section 98.21 of Title 45 of the Code of Federal Regulations. The applicant is responsible for child care used before the certification date.

(A) The applicant or recipient records attendance with his or her EBT card through a point-of-service machine or through the ~~ECC Connect~~ mobile app at the child care facility.

(B) OKDHS does not pay for care for any day the child attends child care when the client fails to record attendance, unless extenuating circumstances exist beyond the client's or provider's control.

(C) When the applicant or recipient fails to record attendance, ~~he or she~~ the applicant is responsible for any care provided that day and may be responsible for any missed ~~absent-day~~ absent-day payment the child care provider would have received if all ~~of the~~ days the child attended were recorded.

(2) **Applicant determined ineligible.** The worker denies the child care request or application when the applicant completes the application process and is determined ineligible, does not provide needed verification, or fails to cooperate in determining eligibility.

(A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date.

(B) When the worker denies the child care request because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary verification within 60-calendar days of the original request date.

(C) When the worker denies the child care request because the applicant fails to cooperate in determining eligibility, a new application is not required ~~if~~ when the applicant cooperates within 30-calendar days of the original request date.

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-1. Renewal of child care eligibility

(a) **Child care renewal.** The client must complete the child care renewal at the end of the 12-month eligibility period ~~in order~~ to continue receiving benefits per Section 98.21(a) of Title 45 of the Code of Federal Regulations (~~45 C.F.R. § 98.21(a)~~). Refer to Oklahoma Administrative Code 340:40-9-2(f) for reasons child care is closed prior to the renewal. At renewal, the client is sent a computer-generated notice informing the client:

- (1) the renewal is due;
- (2) the methods the client may use to complete the renewal;
- (3) types of verification that may be required; and
- (4) when benefits close if the renewal is not completed.

(b) **Renewal time frame.** A child care renewal is due no earlier than 12 months from the approval date or the last renewal unless the client receives Supplemental Nutrition

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Assistance Program food benefits and benefits must be synchronized per ~~(g)~~(f) of this Section.

(c) **Signature requirement.** The client or the client's authorized representative must sign the renewal.

(d) **Interview requirement.** An interview is not required at renewal for the Child Care Subsidy Program.

(e) **Eligibility determination.** An eligibility determination is made once the renewal is signed and all required verification is provided and evaluated.

(1) The eligibility determination results in:

- (A) completing the renewal without changes;
- (B) completing the renewal with changes; or
- (C) closing the child care benefits.

(2) Benefits, when closed, may be reopened when the client provides required information within 30-calendar days of closure.

(f) **Synchronization of benefits.** When the client receives other Adult and Family Services benefits in addition to the subsidized child care benefits, certification and renewal dates must be coordinated with the other programs.

SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEM FOR CHILD CARE

340:40-10-4. Child care electronic benefit transfer (EBT) payment process

(a) **Child care payments.** Oklahoma Human Services (OKDHS) makes payments for child care services to providers electronically using the electronic benefit transfer (EBT) system unless the provider is an in-home child care provider. In-home child care providers are paid manually via the EBT system after submitting Form 10AD121E, Child Care Claim.

(b) **Point-of-service (POS) machines.** Contracted child care providers are issued a POS machine within 10-calendar days of the date the child care provider notifies the OKDHS contractor that ~~he or she~~the provider started caring for a child authorized for OKDHS subsidized child care and submits all necessary forms to the contractor.

(c) **Recording attendance.** Clients and authorized representatives use the POS machine or the ~~ECC Connect~~ mobile app to record actual times their child attends child care. Child care providers may charge clients for care provided on days they fail to record attendance or when a denied error message is received. When the client pays for child care that is later approved for that date(s), the child care provider must reimburse the client for any care paid above the family share copayment amount.

(1) Child care providers monitor the POS machine or ~~ECC Connect~~ mobile app to ensure correct attendance times are recorded. When incorrect times are recorded, the provider ~~can~~may void the incorrect transaction and ask the client to start over.

(2) When clients or authorized representatives forget to record attendance for a day their child attends care, record incorrect times that the provider voids, or receive a denied error message, the system allows the client or authorized

representative to record previous in and out times for the current day and the previous nine days.

(3) Based on attendance recorded and the level of care authorized, electronic settlements to child care providers are made weekly.

(d) **EBT payment week.** The EBT payment week begins every Sunday at 12:01 a.m. and ends every Saturday at midnight. Electronic settlements are made each week in the child care provider's designated financial institution account on Tuesday morning for services provided two weeks prior to the current week. When the financial institution is closed on Monday or Tuesday, or Monday is a holiday, the electronic settlement is deposited on Wednesday morning.

(e) **Manual claims process.** When the child care provider reports ~~he or she was not paid correctly~~a payment error, the provider may submit Form 10AD121E to the ~~DHS~~OKDHS Financial Services Electronic Payment Services (EPS) Unit for a manual adjustment. Manual claims must be submitted within 90-calendar days of the error. EPS staff evaluates whether to adjust the payment to the provider based on the reason care was not paid electronically.

(1) When the client or authorized representative does not attempt to record attendance electronically, OKDHS does not pay the child care provider for those days unless extenuating circumstances beyond the client's, authorized representative's, or provider's control exist. These extenuating circumstances must be documented on Form 10AD121E.

(2) EPS staff makes manual adjustments when the:

- (A) client records correct attendance times that are denied in error;
- (B) EBT system applies an incorrect family share copayment; or
- (C) provider is paid the wrong rate because:
 - (i) the child care plan is incorrectly coded;
 - (ii) an incorrect birth date is entered for a child; or
 - (iii) an incorrect star status is paid.

(f) **Absent-day payments.** Child care providers ~~can be paid~~may receive an absent-day payment for a child who misses some scheduled attendance days ~~and is authorized for a weekly unit type. An absent day payment is electronically deposited in the provider's account in their weekly settlement received after the 10th day of the month following the month care was given.~~ To be eligible to receive this additional payment, the child must ~~be approved~~qualify for a weekly unit type and attend the minimum number of full-time days, per OKDHS Appendix C-4-B, Child Care Provider Rate Schedule, for that month. The provider is not eligible for an absent-day payment when the child did not attend the minimum number of full-time days for that calendar month or attended the maximum days paid, per OKDHS Appendix C-4-B. The EBT system deposits an absent-day payment in the provider's account in their weekly settlement. The provider receives the settlement after the 10th day of the month following the month the child was absent from care.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-2. Approving in-home child care

(a) **Purpose.** In-home child care is defined as care given to a child by a relative coming into the child's own home. A parent may choose an in-home provider even when an out-of-home provider is available. The purpose of standards for in-home care is to help ensure the safety of children cared for in their own home when the usual, responsible adult is temporarily absent due to employment, training, illness, or other valid reason.

(b) **Qualifications of caregiver.** The caregiver:

- (1) must be related to the child. Related to means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home;
- (2) must be at least 18 years of age;
- (3) demonstrates the vitality and flexibility needed to care for children as well as and the ability to exercise good judgment and appropriate authority;
- (4) may not be a member of the child's household;
- (5) may only care for the child of one family at a time. The provider may provide care to more than one family as long as the hours do not overlap, and the child of each family is cared for in his or her own home; and
- (6) must not be under the effects of alcohol, illegal drugs, or medication that impairs functioning when caring for children.

(c) **Requirements prior to approval of the caregiver for subsidy payment.** After a parent or caretaker selects a caregiver is selected, requirements in (1) through (3) of this subsection must be met before the caregiver may be approved as an in-home provider.

(1) The client and caregiver must complete and sign forms described in (A) through (C) of this paragraph.

(A) Form 08CC003E, In-Home Mutual Agreement and Notification to Provide Child Care Services, notifies the caregiver of the eligibility and child care plan for the child requiring care and the intent of the parent or caretaker to receive care from the caregiver. Once approved, it also serves as the in-home provider's authorization to bill the Oklahoma Department of Human Services (~~DHS~~) (OKDHS) for services provided on or after approval.

(B) Form 08CC004E, Mutual Agreement Regarding the Plan of Care, serves as a basis for discussion between the parent or caretaker and the in-home provider of the plan of care for the child, duties of the in-home provider, how to handle emergencies, and the family rules.

(C) Form 08CC005E, In-Home Provider Health and Safety Checklist, serves as a basis for discussion between the parent or caretaker and the in-home provider of adequate safety precautions and possible safety hazards in the child's home. The parent or caretaker is also responsible for informing the provider of known risks of a contagious condition of one or more persons in the household. The disclosure allows for training in the universal precautions against exposure.

(2) The caregiver must provide a copy of the caregiver's photo identification and a copy of his or her Social Security card.

(3) The caregiver must provide proof of the results of an Oklahoma State Bureau of Investigation (OSBI) criminal history investigation as described in (A) of this paragraph and not be guilty of crimes or enter a plea of guilty or nolo contendere, no contest, to crimes described in (B) of this paragraph.

(A) Criminal history investigations:

- (i) are required and must be provided by each caregiver and substitute caregiver, prior to caring for children;
- (ii) are not required for persons who have documentation of a criminal history investigation within the last 12 months;
- (iii) must be obtained from:
 - (I) ~~the Oklahoma State Bureau of Investigation (OSBI); and~~
 - (II) the authorized agency in the previous state of residence when the individual has resided in Oklahoma less than one year;

(iv) must include a search of the Oklahoma Department of Corrections files maintained by OSBI per the Sex Offenders Registration Act; and

(v) must include a computer check ~~completed by the worker~~ completed using the potential caregiver's Social Security number of the potential caregiver. When a Child Welfare Services (CWS) case number appears, the worker consults with CWS staff to determine if concerns exist about the potential in-home provider's ability to care for children.

(B) When a caregiver's criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or repeated convictions that indicate a pattern of criminal activity, the in-home provider is not approved. Persons who are convicted of or enter a plea of guilty or nolo contendere, no contest, to certain crimes are not approved to care for children or be substitute caregivers. These crimes include:

- (i) violence against a person;
- (ii) child abuse or neglect;
- (iii) possession, sale, or distribution of illegal drugs;
- (iv) sexual misconduct; or
- (v) gross irresponsibility or disregard for the safety of others.

(4) After requirements described in (1) through (3) of this subsection are met, the worker scans the supporting documentation into imaging and consults a supervisor. The supervisor sends an email to Adult and Family Services (AFS) Child Care Subsidy Unit staff requesting approval.

(A) When the chosen caregiver is approved as an in-home provider, the approval is valid for a maximum of one year from the date AFS Child Care

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Subsidy Unit staff signs Form 08CC003E. This form must be renewed annually. When approved, AFS Child Care Subsidy Unit staff mails the in-home provider a copy of Form 08CC003E advising the in-home provider of the assigned contract number.

(B) When the chosen caregiver is not approved as an in-home provider, AFS Child Care Subsidy Unit staff sends a letter to the caregiver advising of the denial. The worker sends Form 08MP038E, Client Notice of Action Taken, to inform the client ~~informing him or her~~ of the denial of benefits and need to choose another caregiver.

(5) The caregiver must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR) from a ~~DHS-approved~~ OKDHS-approved source.

(d) **Duties of the caregiver.** The caregiver:

(1) provides adequate care and supervision of children at all times, including frequent observations of children in cribs or playpens. The caregiver must arrange to have a competent adult provide consistent supervision during ~~his or her~~ the caregiver's absence from the home;

(2) is responsible only for children specified on Form 08CC003E;

(3) is aware of adequate safety precautions and takes action to correct hazards to children's safety, both indoors and outdoors;

(4) provides opportunities for learning, indoor and outdoor play, rest periods, and meals. The caregiver ensures the use of television is age-appropriate and suitable for children;

(5) gives understanding, consistent, and loving guidance. Discipline is constructive, ~~and~~ educational in nature, and appropriate to the child's age and circumstances. Loud, profane, and abusive language, corporal punishment, or any technique that is either humiliating or frightening to children is not used. Discipline is not associated with rest, toilet training, or loss of food;

(6) seeks emergency medical attention in case of sudden illness or accident. The parent or guardian stipulates who ~~is called to call~~ in case of an emergency by entering this information on Form 07LC038E, Child Information. The caregiver has emergency phone numbers readily available at all times. Emergency phone numbers include 911, the fire department, police department, ambulance service, and physician or clinic;

(7) prepares and serves food. The child's family provides the food used to prepare snacks and meals. The caregiver consults with the child's parent(s) or guardian to ensure a balanced diet suitable to the age and physical development of the child is provided; and

(8) ensures the child's school attendance in accordance with the requirements of the Oklahoma State Department of Education.

(e) **In-home provider training requirements.** The in-home provider must read "The Good Health Handbook - A Guide For Those Caring For Children" within 90-calendar days of the approval date of the in-home provider shown on Form 08CC003E. The in-home provider signs and completes

Form 08CC008E, In-Home Child Care Provider Training Declaration of Completion, and returns it to the AFS Child Care Subsidy Unit staff. The signature and completion of Form 08CC008E meets the in-home provider training requirement for the first year of approval.

(1) After the first year of approval, the in-home provider must annually receive and declare six clock-hours of training. The provider ~~can~~ may meet the training requirement by attending workshops, formal training programs, viewing videos, or through individual job-related readings. The declaration is valid for one year from the date the provider signs the document.

(2) Training hours earned by the in-home provider may transfer from one family to another during the year the declaration is in force.

(f) **Requirement to renew the in-home provider agreement.** Form 08CC003E is completed annually.

(g) **Requirements prior to approval for a special needs child care rate for a child with disabilities.** When an in-home child care provider cares for a child with disabilities, the provider may be approved for the special needs rate in addition to the applicable daily rate. Prior to receiving this additional rate, the:

(1) client, provider, and worker must complete Form 08CC006E, In-home Child Care Certification for Special Needs, per Oklahoma Administrative Code 340:40-7-3.1;

(2) provider must receive on-site consultation regarding the nature of the child's disability and the development of the child care plan including how to operate equipment ~~needed~~ by the child needs and any specialized training needs. The consultant provides available resource materials that may aid the provider for the child. This consultation may be provided by a:

(A) health care professional;

(B) child guidance specialist;

(C) SoonerStart provider when the child is younger than 3 years of age;

(D) public school teacher, who is familiar with the child; or

(E) consultant through the Center for Early Childhood Professional Development; and

(3) provider must agree to obtain six additional hours of training in areas that address the care of children with disabilities within six months of approval. This training is documented on Form 08CC008E.

(A) First aid, CPR, or informal training is not counted to meet the special training requirement.

(B) Countable formal training must be from a ~~DHS-approved~~ OKDHS-approved sponsor.

340:40-13-3. Child care payments and rates

(a) ~~The Oklahoma Department of Human Services (DHS)~~ (OKDHS) contracts to purchase out-of-home child care services for children only with licensed providers who:

(1) post rates and fees;

(2) sign and comply with all the terms of Form 08CC001E, Child Care Provider Contract;

(3) participated in mandatory contract training; and

- (4) have access to an account at a financial institution for electronic benefit transfer (EBT) purposes.
- (b) Per Section 85.44B of Title 74 of the Oklahoma Statutes, ~~DHS~~OKDHS ~~cannot~~ may not make advance payments to child care providers.
- (c) The rates ~~paid by DHS~~OKDHS ~~pays~~ are described on ~~DHS~~OKDHS Appendix C-4-B, Child Care Provider Rate Schedule, and determined by:
 - (1) the child's age;
 - (2) the settings in which the care is provided that include:
 - (A) the child's own home;
 - (B) a child care center; or
 - (C) a child care home; and
 - (3) whether the child has disabilities and the provider is approved for the special needs rate unit type. The special needs rate is added to the applicable rate a child care provider receives for a typical child of the same age after the Form 08AD006E, Certification for Special Needs Child Care Rate, Certification for Special Needs Child Care Rate for Licensed Child Care Homes and Centers, approval process is followed;
 - (4) whether the care is provided full-time, over four hours per day, or part-time, four hours or fewer per day;
 - (5) whether the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, blended, or a weekly unit; and
 - (6) whether the facility qualifies for a ~~differential~~ quality rate.
- (d) The in-home child care rate is paid for children cared for in their own homes. The in-home rate is shown on ~~DHS~~OKDHS Appendix C-4-B for the child's age. When a child is eligible for the severe or moderate special needs rate, this additional amount is added to the applicable in-home rate for that child.
- (e) When the child is cared for in an out-of-home child care center or home, the allowable rate is the amount shown on ~~DHS~~OKDHS Appendix C-4-B.
- (f) Care may only be authorized at one facility per day per child. When the client uses care at two different providers for the same day for the same child, ~~DHS~~OKDHS staff approves care at only one of the facilities. The parent or caretaker may use care at two different providers for the same child when care is needed on different days of the week.
- (g) Charges are authorized and payment is made only when the care provided is in accordance with the jointly developed child care plan between the client and ~~DHS~~OKDHS.
- (h) Age-driven rate changes are effective the first of the month following the child's birth date.
- (i) A change to add the higher special needs rate to the applicable daily rate is effective the first of the month following the month eligibility for this rate is determined.
- (j) A child care provider may be approved for a ~~differential~~ quality rate when ~~he or she~~ the provider meets the required criteria ~~for this rate~~. This rate is approved effective the first of the month following the month Oklahoma Child Care Services licensing staff approves the provider for the rate. The rate is designated on ~~DHS~~OKDHS Appendix C-4-B by its star status.

340:40-13-5. Child care provider contracts

- (a) **Criteria.** A child care program owner and the Oklahoma Human Services (OKDHS) Director or ~~his or her~~ designee must sign Form 08CC001E, Child Care Provider Contract, before OKDHS pays for out-of-home child care services. By signing the contract, the child care provider agrees to not take into account a person's race, color, religion, sex, national origin, or disability in deciding which children to accept in the child care program or in how to provide services ~~are provided to them~~. Age may be a factor only to the extent that certain services are designed for a particular age group.
 - (1) Written complaints that a child care provider is not complying with assurances in (a) of this Section are made to the OKDHS Director or to the Secretary of Health and Human Services, Washington, D.C., 20201.
 - (2) Local Child Care Services (~~CCS~~) licensing staff provides initial contract information for child care programs. The child care provider contacts Adult and Family Services (AFS), Child Care Subsidy Unit staff to request a contract.
 - (3) Child care contracts are valid for a maximum of one year. Contracts may be renewed at the sole option of OKDHS for successive ~~one year~~ one-year terms per (g) of this Section.
- (b) **License and star status for child care centers and homes.** OKDHS does not contract with out-of-state child care providers. Child care provider only obtain an OKDHS contract after they are licensed or permitted.
 - (1) A child care center provider requesting a contract is required to have a license or permit and a ~~one plus two star~~ or higher star status. Community Hope Centers are exempt from participation in the Stars quality rating system.
 - (2) A child care home provider requesting a contract is required to have a license or a permit.
 - (A) When licensed, the child care home provider may have a one star or higher status.
 - (B) When on permit, the child care home provider must have a ~~one star of one plus two star~~ or higher status.
- (c) **Procedure for obtaining child care contracts.** The procedures in (1) through (5) of this subsection are used to obtain child care contracts.
 - (1) CSS licensing staff gives the child care provider OKDHS Publication 07-12, "Obtaining a Contract with OKDHS for Child Care Subsidy Payments" and instructs the provider to contact AFS Child Care Subsidy Unit staff to obtain an OKDHS child care contract.
 - (2) When a child care program owner or another person authorized to sign the contract contacts AFS Child Care Subsidy Unit staff, staff explains ~~that the he or she~~ owner or responsible person must provide documents listed in (A) through (D) of this paragraph before signing a contract. Documents include a copy of:
 - (A) a document that verifies the identity of the owner or responsible person authorized to sign the contract;
 - (B) a document from the Internal Revenue Service verifying the employer identification number. A

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- home child care provider who is ~~not~~ a sole proprietor may provide a copy of ~~his or her~~ the employer's Social Security card in lieu of ~~an~~ the employer identification number;
- (C) the certificate of completion for the required online "Orientation to Child Care Subsidy Contracts" training; and
- (D) ownership verification.
- (3) Once the owner provides the required documents, AFS Child Care Subsidy Unit staff sends Form 08CC001E to the child care provider and explains that the earliest date a contract is valid is the date the OKDHS Director or designee approves the contract.
- (4) The owner or person authorized to sign the contract signs and returns the contract to the AFS Child Care Subsidy Unit.
- (5) AFS Child Care Subsidy Unit staff processes the contract request for approval or denial.
- (A) When approved, AFS Child Care Subsidy Unit staff assigns a contract number and sends a copy of the signed contract to the child care provider.
- (B) When denied, AFS Child Care Subsidy Unit staff sends a letter to the child care provider.
- (d) **Changes the provider must report.** Form 08CC001E informs child care providers of changes they must report to the AFS Child Care Subsidy Unit no less than 30-calendar days prior to the effective date of any changes. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. Changes that must be reported include:
- (1) collaborations or agreements;
 - (2) ownership change;
 - (3) legal business entity change;
 - (4) change in facility status;
 - (5) legal name change of the business;
 - (6) plan to stop caring for children;
 - (7) star status reduction;
 - (8) changes in the responsible person authorized to sign the contract or in that person's legal name;
 - (9) disqualification, suspension, or debarment from the Child and Adult Food Care Program or any other federal program;
 - (10) ~~when a person who has an ownership or employment relationship with the~~ an owner or employee of a child care provider is convicted of a criminal offense; and
 - (11) provider address change.
- (e) **Changes that require a new contract.** A new contract is required when changes listed in (1) through (3) of this subsection occur.
- (1) **Change in ownership.** An ownership change occurs when the owner of a child care program changes.
 - (2) **Change of legal business entity.** A change of legal business entity is a change from one legal business entity type to another. Refer to OKDHS Appendix L-7, Ownership Proof Chart, for a list of legal business entity types.
 - (3) **Change in facility status.** A change in facility status occurs when a child care home changes to a child care center or a child care center changes to a child care home.
- (f) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, ~~he or she~~ the provider agrees to provide care only at the physical address designated in the contract.
- (1) After obtaining prior approval from AFS Child Care Subsidy Unit staff, a child care center provider owning more than one child care center may be authorized to move children receiving subsidized child care benefits to an alternate center for a designated time period. A child care center provider ~~should~~ may not move a point-of-service (POS) machine or submit electronic claims for care at another location until the provider receives approval from AFS Child Care Subsidy Unit staff.
 - (2) AFS Child Care Subsidy Unit staff ~~may~~ provides written approval when (A) through (E) of this paragraph are met.
 - (A) The same owner or legal business entity operates the alternate site.
 - (B) The alternate site is licensed and contracted at the same star level and the child care provider has adequate licensed capacity at the alternate site.
 - (C) There is a legitimate business reason for providing care in another location.
 - (D) The provider advises AFS Child Care Subsidy Unit staff how ~~he or she~~ the provider is ensuring parents are aware their children are being cared for at a different location.
 - (E) The provider advises AFS Child Care Subsidy Unit staff of the date of expected return to the contracted site.
- (g) **Child care contract renewal.** Child care contracts may be renewed at the sole option of OKDHS for successive one-year terms, under the same terms and conditions, unless OKDHS makes changes to Form 08CC001E. The child care contract is not renewed when:
- (1) the child care provider or OKDHS gives written notice of its intent not to renew to the other party at least 30-calendar days prior to the previous contract term's expiration; or
 - (2) during the contract renewal period, the provider fails to:
 - (A) complete all required contract training; or
 - (B) provide any other information or documents requested.
- (h) **Contract violations.** By signing the child care provider contract, Form 08CC001E, the child care provider agrees to abide by the contract's terms. When ~~county~~ OKDHS staff becomes aware a child care provider is violating contract terms, ~~he or she~~ the staff person emails the circumstances to AFS Child Care Subsidy Unit staff. ~~County~~ staff may also complete Form 19MP001E, Referral Form, to report the violation to the Office of Inspector General. Examples of contract violations include, but are not limited to:
- (1) discriminating against persons seeking services by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990, as amended;

- (2) failing to maintain a drug-free workplace;
- (3) operating over licensed capacity;
- (4) possessing a client's electronic benefit transfer (EBT) card or recording attendance for a child using the POS machine or the ~~ECC Connect~~ mobile app;
- (5) knowing a client's EBT personal identification number (~~PIN~~);
- (6) refusing a parent or caretaker unlimited access to the facility areas used for child care during operation hours;
- (7) failing to ensure the parent or caretaker records accurate time and attendance information using the POS machine or the ~~ECC Connect~~ mobile app. When a child is approved for a blended unit type or part-time care, the parent or caretaker is only required to record attendance one time per day because the number or hours the child attends does not affect the child care provider payment amount;
- (8) charging a client receiving subsidized child care more than the OKDHS rate for days and hours OKDHS authorizes;
- (9) charging a client receiving subsidized child care an allowable fee when not charged to non-OKDHS participants;
- (10) failing to post all of the facility's rates and fees;
- (11) charging or requiring a client to record attendance for days and hours outside of client's child care plan when those days and hours are a requirement ~~imposed by the child care provider~~ imposed and are not the client's choice;
- (12) failing to advise and provide OKDHS a completed copy of any collaboration or agreement the child care provider enters into within 30-calendar days of signing the collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, or other programs receiving federal or state funding;
- (13) claiming or receiving payment from OKDHS for any care hours the provider is not charging all parents because the provider receives federal or state funds for those hours. Refer to Oklahoma Administrative Code (OAC) 340:40-5-1(7) regarding collaborations;
- (14) claiming child care payment for care given for any hours in an unlicensed collaborative classroom;
- (15) moving the children from the agreed upon location shown in the contract and claiming for services at the other location without prior approval from AFS Child Care Subsidy Unit staff;
- (16) moving the POS machine or submitting electronic claims without receiving prior approval from AFS Child Care Subsidy Unit staff, per subsection (f) of this Section;
- (17) failing to inform OKDHS of a change in facility status, legal business entity, business ownership, or the responsible person at least 30-calendar days in advance of the change;
- (18) failing to inform OKDHS in writing within 10-calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of, the child care business, who was convicted of a criminal

- offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act;
- (19) failing to allow full access to the facility's premises and personnel to investigate a complaint;
- (20) failing to report the new child care business income within 10-calendar days of first receipt to the child care provider's AFS worker when ~~he or she~~ the provider receives OKDHS benefits;
- (21) a home child care provider claiming payment for child care provided for an employee's child. Refer to OAC 340:40-5-1(7);
- (22) subcontracting services to another provider; or
- (23) breaching the contract the child care provider signs with the OKDHS EBT contractor.

(i) **Child care provider contract cancellation.** AFS Child Care Subsidy Unit staff issues a notice to the child care provider to initiate child care contract cancellation. When AFS cancels a contract, all open child care authorizations for that provider close automatically. Contracts may be cancelled:

- (1) with cause. The effective cancellation date is 13-calendar days after AFS Child Care Subsidy Unit staff mails the notice. This allows three-calendar days for mailing time. The notice contains a reference to the grounds for cancellation including the specific contract provision(s) violated; or
- (2) without cause. The effective cancellation date is 33-calendar days after AFS Child Care Subsidy Unit staff mails the notice. This allows three-calendar days for mailing time.

[OAR Docket #23-419; filed 6-6-23]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**

[OAR Docket #23-420]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Application Process

340:50-3-2 [AMENDED]

Subchapter 5. Non-financial Eligibility Criteria

Part 1. Household Definition

340:50-5-1 [AMENDED]

Part 5. Students, Strikers, Migrant Households, and Sponsored Aliens

340:50-5-45 [AMENDED]

Subchapter 11. Special Procedures

Part 11. Special Procedures for Joint Processing of Supplemental ~~Nutrition~~ Nutrition Assistance Program (SNAP) and Supplemental Security Income (SSI) Applicants

340:50-11-105 [AMENDED]

340:50-11-106 through 340:50-11-110 [REVOKED]

Subchapter 15. Overpayments and Fraud

Part 1. Overpayments.

340:50-15-3 [AMENDED]

(Reference WF 23-50)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); and 7 C.F.R. §§ 272.6, 273.1, 273.2, 273.5, 273.11, and 273.18.

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SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 8, 2023

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February 7, 2023

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March 9, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 50, Subchapter 3 amend the rules to remove a reference to the now-unpublished Form 08AD093E, Support Center Interview Notice.

The proposed amendments to Chapter 50, Subchapter 5 amend the rules to: (1) replace gendered expressions with gender-neutral terms; (2) clarify the minimum standard for Oklahoma Human Services (OKDHS) to consider a person as "living" in a Supplemental Nutrition Assistance Program (SNAP) household is that a person must return to the home at least one day each month and share a meal with the household; (3) clarify a student attending a boarding school who lives in the home on one weekend each month may participate in a SNAP household; (4) add the minimum standard language to the paragraph that discusses a child living with the child's parent; (5) explain OKDHS adds children who live equal time each month with their parents in separate households to the SNAP household that first asks to add the child; (6) provide that when a foster family elects not to include a foster child in OKDHS custody in their SNAP household, the child's parent is allowed to include the child in the parent's SNAP household if the child is in a trial reunification, the trial reunification occurs at the parent's home, and the parent and child share a meal; (7) clarify a student responsible for the care of a dependent child, age 6 to 11, must be in the same SNAP household to qualify for a higher education student policy exemption; (8) relocate the "in compliance with" interpretative instructions relating to the higher education student policy exemption for employment and training programs to the Instructions to Staff; (9) clarify that Oklahoma SNAP Works (OK SNAP Works) participation may qualify a participant for a higher education student exemption; (10) update the citation for how to consider an ineligible student's income and expenses; (11) update terminology; and (12) add clarifying language.

The proposed amendments to Chapter 50, Subchapter 11 amend the rules to: (1) update the Social Security joint processing instructions; (2) add a citation to the federal regulations; (3) instruct on the handling of SNAP applications through Social Security Administration's (SSA) Prerelease Program for the Institutionalized; (4) revoke Sections and incorporate relevant information into other Sections in this Subchapter; (5) update terminology; and (6) add clarifying language.

The proposed amendments to Chapter 50, Subchapter 15 amend the rules to: (1) update terminology; (2) add clarifying language; (3) remove a reference to a now-closed support center; (4) update the overpayment claim establishment time frame language to more closely align with federal regulations; and (5) indicate that OKDHS complies with court orders requiring restitution.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 3. APPLICATION PROCESS

340:50-3-2. Interview process

(a) **Interview requirement.** All households initially applying for food benefits or completing a certification renewal must have a face-to-face or phone interview with a worker prior to certification, per Section 273.2(e) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.2(e))₂ unless the household meets criteria in (a)(2) of this Section. Staff may conduct 100 percent of all Supplemental Nutrition Assistance Program (SNAP) initial and certification renewal application interviews by phone.

(1) A face-to-face interview must be conducted when the household or its authorized representative requests a face-to-face interview.

(2) Certification renewal interviews may be waived for households when all adult members are elderly or disabled and have no earned income.

(b) **Who must be interviewed.** The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. When the household chooses to be interviewed face-to-face, the person interviewed may bring any person to the interview.

(c) **Scheduling interviews.** The worker schedules the interview as soon as possible to ensure the household, when eligible, receives expedited service timely or may participate within 30-calendar days following the application date.

(1) The worker uses Form 08AD091E, Interview Notice, ~~or Form 08AD093E, Support Center Interview Notice~~, to schedule the interview.

(2) When the person to be interviewed is employed, the worker schedules an appointment to minimize the person's absence from work.

(3) When the household misses the scheduled interview, a notice is sent informing the household that it missed the scheduled interview and is responsible for scheduling a second interview. The worker must not deny the household's application prior to the 30th calendar day when the household misses the first scheduled interview. When the household contacts the worker within the 30-day application processing period, a new interview must be scheduled.

(4) When the household submits a timely certification renewal, per Oklahoma Administrative Code (OAC) 340:50-9-6, the worker schedules the interview as early as possible, but not later than the last day of the month.

(A) When the household fails to appear for the interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(5) When the household submits an untimely certification renewal, the worker schedules an interview as early as possible, but not later than 20-calendar days from the application date.

- (A) When the household fails to appear for the scheduled interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.
- (B) Upon request, the worker reschedules the interview for the earliest possible date.
- (d) **Worker responsibilities during the interview.** During the interview, the worker:
 - (1) reviews the information on the application with the household and resolves unclear and incomplete information;
 - (2) inquires if changes occurred in the household's income, deductions, or other circumstances since the application was filed;
 - (3) informs the household of its rights and responsibilities, including:
 - (A) work registration responsibilities, per OAC 340:50-5-85;
 - (B) ~~able-bodied~~ able-bodied adult without dependents work responsibilities, per OAC 340:50-5-100;
 - (C) reporting requirements, per OAC 340:50-9-5;
 - (D) the appropriate application processing standard, per OAC 340:50-3-1(c) and 340:50-11-4;
 - (E) responsibility to cooperate with SNAP Quality Control (QC) when asked to do so, per (f) of this Section; and
 - (F) an explanation of the civil rights complaint process, per OAC 340:50-1-5; and
 - (4) conducts the interview as an official and confidential discussion of household circumstances limited to facts related to food benefit eligibility factors;
 - (5) gives Form 08MP006E, Information for Benefit Renewal, to the household and explains benefit renewal procedures;
 - (6) ensures the household's right to privacy is protected;
 - (7) provides a paper or electronic copy of the completed application in the format ~~requested by the household~~ requests, when requested; and
 - (8) attempts to verify any necessary eligibility requirements during the interview. The worker gives or sends the household Form 08AD092E, Client Contact and Information Request, to request any verification that could not be verified during the interview. When the household informs the worker it is unable to furnish the required verification, the worker offers to help the applicant obtain the verification.
 - (A) The worker's assistance may involve ~~range from~~ explaining how or where to obtain proof when the applicant is unable to do so.
 - (B) The worker is not required to obtain proof for an applicant who is unwilling to do so.
- (e) **Household cooperation with eligibility determination.** To determine eligibility, the household or authorized representative must complete and sign the application or certification renewal, be interviewed, and provide required

information. When the household does not cooperate with the worker in determining:

- (1) initial eligibility, the worker denies the application; or
- (2) continuing eligibility at mid-certification renewal or certification renewal, the worker closes food benefits.
- (f) **Household cooperation with a QC review.** When the household is selected for a QC review, the household must cooperate with the QC reviewer per 7 C.F.R. § 273.2(d)(2). When the household refuses to cooperate, the SNAP QC administrator informs SNAP program field representative staff of the non-cooperation and SNAP program field representative staff closes the food benefit for refusal to cooperate.
 - (1) To determine the household refuses to cooperate ~~For a determination of refusal to cooperate to be made~~, the household must be able to cooperate and clearly demonstrate that it will not take the necessary actions required to complete the QC review process.
 - (2) The household may reapply following food benefit closure, but may not be determined eligible until it cooperates with the QC review unless (3) of this subsection applies.
 - (3) When food benefits were closed for refusal to cooperate with the QC reviewer and the household waits to reapply until after 125-calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors for the new application only.

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 1. HOUSEHOLD DEFINITION

340:50-5-1. Food benefit household composition

- (a) **Household definition.** A food benefit household is composed of one of the persons or groups of persons listed in (1) ~~through~~ (3) of this subsection, unless otherwise specified in this Section. Per Section 273.1 of Title 7 of the Code of Federal Regulations, a food benefit household is a:
 - (1) person who lives alone;
 - (2) person or group of persons who lives with others, but customarily purchases food and prepares meals for home consumption separate and apart from the others; or
 - (3) group of persons who lives together and customarily purchases food and prepares meals for home consumption.
- (b) **Required household combinations.** Separate food benefit household status may not be granted to persons described in (1) through (4) of this subsection even if they customarily purchase food and prepare meals for home consumption separate and apart from the others. Persons living together that must be included in the food benefit household include:
 - (1) a ceremonial or common law spouse, ~~ceremonial or common law~~, of a household member;

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- (2) children, 21 years of age and younger, who live with their natural or adoptive parent(s) or stepparent(s);
 - (3) children who are 17 years of age and younger and live with, and are under the parental control of, a household member other than their natural or adoptive parent(s) or stepparent(s).
 - (A) ~~To be considered under parental control for the purposes of this provision, a child must be financially or otherwise dependent on a food benefit household member and not be defined as an adult. A minor may be considered emancipated when the district court confers upon the minor the rights of majority, per Chapter 4 of Title 10 of the Oklahoma Statutes.~~
 - (B) ~~For this provision's purposes, the worker considers the child to be under parental control when he or she is financially or otherwise dependent on a household member. The worker considers a child to be under parental control for purposes of this provision if the child is financially or otherwise dependent on a food benefit household member and is not defined as an adult. A minor is considered emancipated when the district court confers upon the minor the rights of majority, per Chapter 4 of Title 10 of the Oklahoma Statutes.~~
 - (C) ~~This provision does not apply to foster children or children placed in the home by Developmental Disabilities Services; or~~
 - (4) persons who live together and customarily purchase and prepare meals together except, per (c) of this Section.
- (c) **Elderly and disabled persons.** An otherwise eligible household member who is 60 years of age and older ~~who~~ and is unable to purchase and prepare meals because ~~he or she~~ the member suffers from a disability considered permanent under the Social Security Act, or a non-disease related, severe, permanent disability, may be considered, together with ~~his or her~~ the member's spouse, a separate household from the rest of the household.
- (1) ~~Oklahoma Human Services (OKDHS) workers must not grant Separate separate household status must not be granted under this provision~~ when the gross income of the others with whom the ~~person~~ member and ~~his or her~~ the member's spouse live exceeds 165 percent of the federal poverty level, per ~~Oklahoma Human Services (OKDHS)~~ OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, Table III.
 - (2) When it is not obvious ~~that a person~~ member suffers from a non-disease related, severe, permanent disability, or ~~that the person~~ member is unable to purchase and prepare meals, the worker requests a physician's statement ~~explaining~~ explaining the disability or inability to purchase and prepare meals.
 - (3) Refer to Oklahoma Administrative Code (OAC) 340:50-5-4 to determine if a person is ~~considered~~ disabled under the Social Security Act when the person does not receive disability payments ~~a payment is not received~~.
- (d) **Periods of absence.** No person may participate as a part of a Supplemental Nutrition Assistance Program (SNAP)

household unless the person returns to the home at least one day each month and shares a meal with the household. A person who is away from the home for extended time periods during the month may be considered a food benefit household member when he or she returns to the home for part of each month. This rule includes persons who are away for extended periods during the month working, attending school, and/or similar situations.

- (1) A ~~person~~ student who attends a boarding school, including the state schools for the deaf and blind, is not ~~considered~~ institutionalized as long as ~~he or she returns~~ when the student lives in the home on weekends ~~the weekend~~ and holidays.
- (2) A child who lives with a parent ~~on weekends and occasionally at other times~~ at least one day per month and eats with the household may be ~~claimed as~~ a part of the parent's food benefit household as long as the child is not included in another active food benefit household. In instances where both ~~the father and mother~~ of the child ~~child's parents~~ participate in the Supplemental Nutrition Assistance Program (SNAP) ~~SNAP~~ during the same month, the parent who has the child the majority of the time is ~~authorized to include~~ includes the child in ~~his or her~~ that parent's SNAP household. When the child lives in each parent's home the same amount of time, the parent who adds the child to SNAP first includes the child.
- (3) When a foster family elects not to include a child in OKDHS custody per OAC 340:50-5-5 and the child is in a trial reunification, the child's parent may claim the child as a part of the household. To include the child, the trial reunification must occur at the parent's home, and the child must share a meal with the parent.

- (e) **Persons ineligible for SNAP food benefits.** Persons who are ineligible to receive SNAP food benefits as separate households or as a member of any household include:
- (1) certain non-household members ~~as specified~~, per OAC 340:50-5-5;
 - (2) households or household members participating in a food distribution program operated by Indian tribal organizations, per OAC 340:50-5-7;
 - (3) residents of institutions, per OAC 340:50-5-7.1; and
 - (4) persons considered disqualified or ineligible, per OAC 340:50-5-10.1.

PART 5. STUDENTS, STRIKERS, MIGRANT HOUSEHOLDS, AND SPONSORED ALIENS

340:50-5-45. Students

- (a) **Supplemental Nutrition Assistance Program (SNAP) eligibility.** A student enrolled in an institution of higher education at least half-time per (b) of this Section may not receive Supplemental Nutrition Assistance Program (SNAP) benefits unless the student meets an exemption per (c). Persons classified as students per (b) of this Section are not eligible to participate in the Supplemental Nutrition Assistance Program (SNAP) unless they qualify for an exemption per (c) of this

~~Section.~~ Students ~~that do not meet the criteria~~ who are not enrolled at least half-time in an institution of higher education per (b) of this Section may participate in SNAP when they meet all other eligibility criteria ~~are met~~.

(b) **Student classification.** ~~Per~~ Section 273.5 of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.5), ~~persons are classified as~~ requires students to meet an exemption when they are enrolled at least half-time in an institution of higher education.

- (1) An institution of higher education includes a:
 - (A) business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate to enroll in the curriculum. Schools or courses that do not require a high school diploma or equivalency certificate are not considered an institution of higher education; or
 - (B) college or university that offers degree programs even when a high school diploma or equivalency certificate is not required to enroll. A college includes a junior, community, two-year, or four-year college, or university.
 - (i) Students enrolled at least half time in the regular curriculum are ~~considered~~—enrolled in higher education.
 - (ii) ~~Persons~~Students enrolled in a special program at a college or university, such as English as a second language course or other courses that are not part of a regular degree program are not ~~considered to be~~ enrolled in higher education.
- (2) Student status begins on the first day of the school term for students who have:
 - (A) not attended an institution of higher education previously; or
 - (B) had a break of more than a semester since they last attended.
- (3) Persons are ~~classified as~~ students during normal periods of class attendance, vacation, and other breaks unless the student:
 - ~~(A)~~ graduates;
 - ~~(B)~~ is expelled or suspended;
 - ~~(C)~~ drops out; or
 - ~~(D)~~ does not intend to register for the next normal school term, excluding summer school.

(c) **Student exemptions.** The students described in this subsection may participate in SNAP when they meet all other eligibility criteria ~~are met~~. The student is either:

- (1) younger than 18 years of age or 50 years of age and older;
- (2) physically or mentally unfit.
 - (A) When the student claims mental or physical unfitness and the unfitness is not evident to the worker, verification may be required.
 - (B) Appropriate verification may consist of:
 - (i) receipt of temporary or permanent disability benefits issued by governmental or private sources;
 - (ii) participation in a state vocational rehabilitation (~~VR~~) program; or

- (iii) a statement from a physician or licensed or certified psychologist; or
- (3) participating in an on-the-job training (OJT) program. Students are ~~considered~~ participating in OJT programs only during the period of time the students are being trained by the employer;
- (4) employed for an average of 20 hours per week or 80 hours per month and paid for that employment. Earning wages equal to the federal minimum wage times 20 does not qualify the person for this exemption;
- (5) self-employed for an average of 20 hours per week or 80 hours per month and receives weekly earnings at least equal to the federal minimum wage times 20;
- (6) participating in a state or federally financed work study program during the regular school year.
 - (A) To qualify under this provision, the student must be approved for work study at the time of application for food benefits.
 - (i) The work study must be approved for the school term, and the student must anticipate actually working during the school term.
 - (ii) The exemption begins with the month the school term begins or the month work study is approved, whichever is later.
 - (iii) Once begun, the exemption continues until the end of the month the school term ends or it becomes known the student refused an assignment.
 - (B) The exemption does not continue between terms when there is a break of a full month or longer unless the student participates in a work study program during the break; or
- (7) responsible for the care of a dependent household member under six years of age. Only one person may be ~~considered as~~ responsible for a dependent child. The caretaker need not be the person providing for the child's support;
- (8) responsible for the care of a dependent ~~child~~household member, six through 11 years of age, ~~when~~and the worker determines that adequate child care is not available to enable the student to attend class and work an average of 20 hours per week or participate in a state or federally financed work study program.
 - (A) The reasons for lack of adequate child care include, but are not limited to, the lack of an available licensed and contracted child care facility within a reasonable distance from the student's home or school or the availability of funds to pay child care expenses. Determination of availability of adequate child care is made on a case-by-case basis.
 - (B) Only one person may be ~~considered~~ responsible for the care of a dependent child. The caretaker need not be the person providing for the child's support; or
- (9) a single parent enrolled in an institution of higher education on a full-time basis, as determined by the institution, and responsible for the care of a dependent child younger than 12 years of age, regardless of the availability of child care.

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(A) This provision applies in those situations where only one natural, adoptive, or stepparent, regardless of marital status, is in the same food benefit household as the child.

(B) When no natural, adoptive, or stepparent is in the same food benefit household as the child, another full-time student in the same food benefit household as the child may qualify for this exemption when ~~he or she~~ the student has parental control over the child and does not live with ~~his or her~~ the student's spouse;

(10) ~~A~~ Temporary Assistance for Needy Families (TANF) recipient;

(11) assigned to or placed in an institution of higher education through or in compliance with the requirements of one of the employment and training programs identified in (A) through (D) of this paragraph. ~~"In compliance with" means the person self-enrolled in the school during the period of time he or she was enrolled in an employment and training program and the program has a component for enrollment in an institution of higher education and accepts the placement.~~ Employment and training programs include:

(A) the Workforce Innovation and Opportunity Act Program;

(B) a food benefit employment and training program, such as OK SNAP Works, per 7 C.F.R. § 273.7, subject to the condition that the course or program of study, as determined by Adult and Family Services (AFS) SNAP staff, is:

(i) part of a career and technical education program, per Section 3 of the Carl D. Perkins Career and Technical Education Act of 2006; and Section 2302 of Title 20 of the United States Code (20 U.S.C. § 2302), designed to be completed in not more than four years at an institution of higher education, per Section 102 of the 1998 Amendments to the Higher Education Act of 1965, 20 U.S.C. § 1002; or

(ii) limited to remedial courses, basic adult education, literacy, or English as a second language;

(C) a program under Section 236 of the Trade Act of 1974 currently known as The Trade Adjustment Assistance Program and administered by the Oklahoma Employment Security Commission; or

(D) a state or local government-operated employment or training program for low-income households where one or more components of the program is at least equivalent to an acceptable SNAP employment and training program as specified, per 7 C.F.R. § 273.7(e)(1) and as determined by AFS SNAP staff; or

(12) enrolled as a result of participation in the Job Opportunities and Basic Skills program under Title IV of the Social Security Act or its successor program.

(d) **Income and deductible expenses of an ineligible student.** When the student is not eligible to receive food benefits per this Section, he or she the student is considered a non-household member, and OKDHS does not count the student's income and prorates the household's expenses, per

Oklahoma Administrative Code (OAC) 340:50-5-5. ~~His or her income is not considered and household expenses may be prorated, per OAC 340:50-5-6.~~

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 11. SPECIAL PROCEDURES FOR JOINT PROCESSING OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) AND SUPPLEMENTAL SECURITY INCOME (SSI) APPLICANTS

340:50-11-105. Initial applications Joint Social Security Income and Supplemental Nutrition Assistance Program (SNAP) Application procedures

(a) **Eligible persons.** Per Section 273.2(k) of Title 7 of the Code of Federal Regulations (7 C.F.R. § 273.2(k)), the Social Security Administration (SSA) accepts Supplemental Nutritional Assistance Program applications for Oklahoma Human Services (OKDHS). To apply with SSA, the SNAP household may only include Supplemental Security Income (SSI) applicants or recipients. SSA also does not accept applications when the household:

- (1) currently receives SNAP and is not due for a certification renewal; or
- (2) has already applied for SNAP in the past 60-calendar days.

(b) **Application Procedures.** ~~When a member of a household consisting only of applicants or recipients of Supplemental Security Income (SSI), transacts business at a Social Security Administration (SSA) office, or contact station, SSA informs the SSI household applicants and recipients of their right to apply for SNAP food benefits at the:~~

- ~~(+) with SSA Office without going to a local Oklahoma Department of Human Services (OKDHS) human services center (HSC); and/or~~
- ~~(2) local OKDHS HSC if the household chooses to do so.~~

(1) When the SSI applicant or recipient accepts the offer to apply with SSA, SSA:

(A) follows the instructions in the SSA Program Operations Manual System to complete the SNAP application and interview;

(B) provides the SNAP application to OKDHS;

(C) prescreens the application for expedited service and indicates potential expedited service eligibility on the SSA-4233 form;

(D) suggests the household may receive quicker service by applying in person at an OKDHS office when the household qualifies for expedited service;

(E) accepts any available verification the household has and provides it to OKDHS; and

(F) completes the SSA-4233 form to record eligibility information revealed by the SSA interview and

any potential missing verification and provides this form to OKDHS.

(2) When an SSI applicant or recipient declines to apply with SSA or does not meet the criteria in (a) of this Section, SSA refers them to www.okdhslive.org, www.ok-benefits.org, or the nearest OKDHS office.

(b) If it appears that a household will be entitled to expedited services, SSA advises the household that they may receive benefits quicker if they apply at the local HSC. When an SSI household chooses to apply for food benefits at SSA, the SSA staff completes a food benefit application and forwards it to the appropriate HSC within one working day of receipt of a signed application. In addition to completing the application, SSA records documentation of all verifications available when the application was completed and prescreens for expedited service entitlement.

(c) **OKDHS procedures.** When SSA submits a SNAP application to OKDHS, the OKDHS worker:

(1) screens the application for expedited service on the date OKDHS receives the application;

(2) calculates expedited service from the day OKDHS receives the application online or in the OKDHS office;

(3) processes the application within 30-calendar days of when SSA received the signed application;

(4) uses the interview completed and eligibility information provided on the SSA-4233 to determine the household's eligibility;

(5) does not contact the household or request additional information or verification unless the application is incomplete, per Oklahoma Administrative Code (OAC) 340:50-3-1, missing mandatory verification, per OAC 340:50-3-3(b), or contains questionable information, per OAC 340:50-3-3(f);

(6) completes an incomplete application or obtains any missing or needed verification without requiring a household to come to an OKDHS office;

(7) applies OAC 50-11-111 to determine if a household is categorically eligible;

(8) identifies applications from SSA Prerelease Program for the Institutionalized and follows the procedures in (d) of this Section; and

(9) employs ordinary SNAP procedures except for the requirements of this subsection.

(d) **SSA Prerelease Program for the Institutionalized.** Per 7 C.F.R. 273.11(i), public institution residents may apply for SSI and SNAP before their release from the institution through the SSA Prerelease Program for the Institutionalized. The OKDHS worker uses the resident's release date as the application date for these applications. Expedited service and the 30-calendar day processing timeframes begin on the release date.

340:50-11-106. Processing the applications [REVOKED]

Upon receipt of applications from the SSA, the County Office is responsible for prescreening the applications for entitlement to expedited service. All SSI applicants entitled to expedited service are certified in accordance with Part 1 of this Subchapter except that the processing time standard begins the

date the application is received in the county office. Applications not entitled to expedited service must be processed and the household given an opportunity to participate within 30 days from the date the application was received by the SSA.

(1) In processing the application, information supplied by the SSA is to be used. The worker may not contact the household and request them to provide additional information or verification unless the application is improperly completed, mandatory verification is missing or the worker determines that certain information on the application is questionable.

(2) When additional information or verification is necessary, the worker makes a home visit to obtain the additional information or verification. In no event may the applicant be required to come to the county office to finalize the eligibility determination.

340:50-11-107. Work registration [REVOKED]

The work registration requirement is waived until the Social Security Administration makes an eligibility determination for a household member who is applying jointly for Supplemental Security Income (SSI) and food benefits. When the household member is determined eligible for SSI, he or she becomes exempt from work registration. If he or she is determined ineligible for SSI, work registration requirements must be met. If the certification period expires by the end of the month following the month notice of SSI ineligibility is received by the human services center (HSC), the worker applies work registration requirements at the next recertification. Otherwise, the worker applies work registration requirements within ten calendar days of when the HSC is notified of SSI ineligibility.

340:50-11-108. Certification period [REVOKED]

The worker assigns a certification period not to exceed 12 months in accordance with OAC 340:50-9-1. In cases where the Supplemental Security Income (SSI) determination results in a denial and the worker believes that food benefit eligibility or benefit levels may be affected, the worker takes action in accordance with OAC 340:50-9-5.

340:50-11-109. Changes in circumstances [REVOKED]

The household is responsible for reporting changes in circumstances and the worker must act upon those changes. In households where SSI applications are pending, the worker checks ALFX file monthly until the disposition of the SSI application is shown on the SDX record. A tickler card should be established to remind the worker to do this monthly checking. As soon as disposition of the SSI application is known by the worker, appropriate action is initiated within ten days.

340:50-11-110. Recertification [REVOKED]

Households consisting only of SSI applicants or recipients may apply for recertification at the SSA Office. As in the case of application for initial certification, SSA will interview the applicant, obtain any readily available verification, complete

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~~Form SSA 4233 and send this information to the county office. The worker completes the application process and timely approves or denies applications for recertification in accordance with Section 6 of Subchapter 9. In processing the application, information supplied by the SSA is to be used. The worker may not contact the household and request them to provide additional information or verification unless the application is improperly completed, mandatory verification is missing or the worker determines that certain information on the application is questionable. When additional information or verification is necessary, the worker makes a home visit to obtain the additional information or verification. In no event may the applicant be required to come to the county office to finalize the eligibility determination.~~

SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

PART 1. OVERPAYMENTS

340:50-15-3. Overpayment claim procedures

(a) ~~Overpayment determination. Overpayments are calculated by Adult and Family Services (AFS) local county office or support center staff calculates overpayments and are referred~~ refers it to AFS Benefit Integrity and Recovery (BIR) for final determination.

(1) When the household failed to report earned income ~~in a timely manner,~~ per Oklahoma Administrative Code (OAC) 340:50-9-5, the worker does not subtract an earned income deduction from gross earnings when calculating the overpayment amount.

(2) AFS local ~~county office or support center~~ staff documents the circumstances causing the overpayment and the calculations used to determine the over-issuance amount on Form 08OP005E, Report of Food Benefit (FB) Overissuance; and sends Form 08OP005E and supporting documentation to AFS BIR staff for claim establishment.

(3) ~~When~~ If Office of Inspector General (OIG) staff determines a trafficking-related offense occurred, AFS BIR staff bases the overpayment amount on the value of the trafficked benefits. Per Section 273.18(c) of Title 7 of the Code of Federal Regulations, the value of the trafficked benefits is determined by:

- (A) the household member or authorized representative's admission;
- (B) adjudication; or
- (C) ~~OIG's~~ OIG documentation that formed the basis for the trafficking determination.

(b) **Overpayment claim establishment.** AFS BIR staff is responsible for evaluating overpayment referrals, establishing overpayment claims, and referring overpayment claims to OIG when fraudulent intent is suspected. An overpayment claim

is considered established on the date AFS BIR staff sends the overpayment notice to the household.

(1) When fraudulent intent is not suspected, AFS BIR staff:

(A) establishes the overpayment claim and classifies it as an inadvertent household or agency error, per OAC 340:50-15-4;

(B) notifies the household and worker, per (d) and (e) of this Section; and

(C) sets up a repayment plan with the household, per OAC 340:50-15-6.

(2) When fraudulent intent is suspected, AFS BIR staff sends the overpayment referral to OIG to determine whether fraudulent intent occurred. The overpayment claim is not established and notices are not sent until OIG completes its investigation and releases the claim back to AFS BIR. Refer to OAC 340:50-15-25 for procedures when overpayments are referred for an intentional program violation determination.

(c) **Claim establishment time frame.** The amount of time included in an overpayment claim varies.

(1) ~~When AFS BIR classifies an~~ From when Oklahoma Human Services (OKDHS) learned of the overpayment as an inadvertent household error or agency error, the established AFS BIRs calculates all overpayment claim does not cover more than claims back at least 12 months prior to the month in which the overpayment was discovered unless a court orders the household to pay restitution for an additional time period but no more than six years.

(2) ~~When AFS BIR classifies an overpayment as an intentional program violation is determined, the established overpayment time frame may cover up to six years prior to the date the overpayment was discovered~~ claim begins with the month the first intentional program violation occurred, subject to paragraph (1).

(3) OKDHS complies with court orders that require a household to pay restitution.

(d) **Household notification.** AFS BIR staff sends the household:

(1) the Notification of Food Benefit Overpayment notice;

(2) page ~~4~~ one of Form 08OP005E showing the overpayment over-issuance amount; and

(3) Form 08OP118E, Food Benefit Repayment Agreement.

(e) **County Local office notification.** After claim establishment, AFS BIR staff sends the ~~county~~ local office:

(1) a copy of the Notification of Food Benefit Overpayment notice sent to the client;

(2) the completed Form 08OP005E; and

(3) the County Notification of Overpayment notice.

[OAR Docket #23-420; filed 6-6-23]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

[OAR Docket #23-421]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

340:65-1-2 [AMENDED]

340:65-1-8 [NEW]

(Reference WF 23-65)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Section 7502 of Title 31 of the United States Code; and Section 200.501 of Title 2 of the Code of Federal Regulations.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 65, Subchapter 1 amend the rules to: (1) update terminology relating to Oklahoma Human Services (OKDHS) offices and field managers; (2) correct a citation; (3) replace gendered expressions with gender-neutral language; (4) add the single audit and program specific audit requirements to the rules; and (5) provide clarifying language.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

340:65-1-2. Purpose, legal basis, and confidential nature of case material

(a) **Purpose.** The purpose of this Chapter is to describe rules for the comprehensive management of Adult and Family Services (AFS) cases.

(b) **Legal basis.** Oklahoma Human Services (OKDHS) maintains the confidentiality of all applications, information,

and records concerning applicants and recipients, per the Oklahoma Social Security Act located in Sections 161-260 of Title 56 of the Oklahoma Statutes (56 O.S. §§ 161-260) and the Federal Social Security Act.

(c) **Custody of records.** All case information including electronic data procured by, or available to, any OKDHS employee is OKDHS property and is used only in accordance with the provisions of federal laws, Oklahoma Statutes, and OKDHS rules.

(1) **Authority to disclose information.** The field manager is responsible for the custody and proper use of records in the ~~county~~OKDHS office and for their proper use. All requests for information from an OKDHS record are referred to the field manager, unless the request originates within OKDHS in carrying out its regular functions. Employees of each OKDHS division may exchange necessary information when working with the same family or a related case to provide benefits and services.

(2) **Safeguarding case information.** OKDHS employees safeguard case information, per Oklahoma Administrative Code (OAC) 340:1-1-20, OKDHS:2-41-15, OKDHS:2-45, ~~OKDHS:65-3-6~~OAC 340:65-3-6, and as provided in (A) through (D) of this subsection.

(A) The field manager is:

(i) the custodian of client records assigned to and; located in a ~~county~~an OKDHS office, or processed at an alternate work location; and

(ii) responsible for:

(I) taking reasonable precautions to ensure the confidentiality and proper use of client case information; and

(II) ensuring employees know OKDHS rules regarding safeguarding client case information and when and to whom information may be released.

(B) Per OKDHS:2-1-301, alternate work locations must be capable of safeguarding case information. When an alternate work location does not meet safeguarding standards, case information is not received, stored, or processed at that location.

(C) Practices for safeguarding information include:

(i) secure records storage in locked buildings, rooms, and containers;

(ii) securely storing OKDHS-owned electronic equipment;

(iii) controlling or restricting access to areas containing case information;

(iv) case information is:

(I) secured in a storage area, such as in a desk or file cabinet, when an employee is not present;

(II) not stored on any electronic device or storage media that is not OKDHS property;

(III) not emailed outside of the agency unless it is encrypted; and

(IV) destroyed in secure destruction bins when in paper form, after it is ~~no~~no longer needed or required; and

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(v) providing reasonable privacy or restricted viewing of electronic data visible on computer screens or mobile devices.

(D) Information that must be safeguarded includes:

- (i) names and addresses, including lists;
- (ii) information contained in an application;
- (iii) investigation reports;
- (iv) medical data including, but not limited to, diagnosis and past history of disease and disability;
- (v) correspondence and other records concerning the condition or circumstances of any person from whom or about whom information is obtained;
- (vi) evaluations of information contained in (i) through (v) of this subparagraph; and
- (vii) all data items available on computer screens. Disclosure to any unauthorized person is a federal and state regulation violation. Authorized persons are:
 - (I) the client;
 - (II) the client's authorized representative;
 - (III) OKDHS employees;
 - (IV) authorized volunteers; and
 - (V) other agencies' employees with a contract or agreement that allows access to specific data.

(3) **Safeguarding federal tax information (FTI).** Per Section 6103 of Title 26 of the United States Code (26 U.S.C. § 6103), OKDHS must safeguard and restrict access to FTI ~~only~~ to persons whose duties or responsibilities require access.

(A) FTI information that must be safeguarded includes:

- (i) the client's name;
- (ii) the client's Social Security number;
- (iii) Internal Revenue Service (IRS) reporting firm, company, and political subdivision;
- (iv) state agency account number;
- (v) income type; and
- (vi) the amount of income or resources.

(B) AFS restricts FTI access to designated AFS FTI specialists who complete a favorably adjudicated suitability or security background investigation prior to handling FTI and annually thereafter. At a minimum, the background investigation must be at a tier-two level as designated by federal investigative standards and include:

- (i) the results of a Federal Bureau of Investigation (FBI) fingerprint check using Form FD-258, FBI Applicant Fingerprint Card, from the state identification bureau. In Oklahoma, the Oklahoma State Bureau of Investigation Criminal Identification Section is the agency authorized to conduct FBI fingerprinting. The fingerprint results check the employee's criminal history in all 50 states;
- (ii) a check of local law enforcement agencies where the employee lived, worked, or attended

school within the last five years to identify trends of misbehavior and any identified arrests;

(iii) validating the employee's identity and eligibility to legally work in the United States (U.S.). New employees must complete the U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification, and be processed through E-Verify within three-business days of completing the form to assist with verifying the employee's employment status and the documents provided with Form I-9; and

(iv) completing another background investigation every 10 years following the previous background investigation's completion.

(C) Information safeguarding practices include:

- (i) securing FTI, such as any written, typed, photocopied, or printed information from the Income Eligibility Verification System-Internal Revenue Service (IEVS-IRS), and Beneficiary and Earnings Data Exchange System (BENDEX) in a storage area, such as in a locked desk or file cabinet;
- (ii) not viewing or storing FTI on any electronic device that is not OKDHS or ~~State~~state of Oklahoma property;
- (iii) not printing or maintaining FTI in a non-electronic format;
- (iv) not emailing FTI; and
- (v) not faxing FTI.

(D) FTI disclosure in violation of the guidelines specified in IRS Publication 1075, is considered a felony punishable by a fine in any amount not exceeding \$5,000 or imprisonment of not more than five years, or both, together with the prosecution costs. Further, an AFS FTI specialist may lose access to FTI and be subject to disciplinary action, per OKDHS:2-1-7₂, when ~~he or she~~the specialist:

- (i) does not properly safeguard FTI;
- (ii) does not complete or pass the annual favorably adjudicated suitability or security background investigation; or
- (iii) releases FTI to an unauthorized person(s), per 26 U.S.C. § 7213.

(4) **Nature of information to be made available.**

General information not identified with any particular person or group of persons, such as total expenditures made, number of recipients, and other statistical information and social data contained in reports or surveys do not fall within the material to be safeguarded.

(A) Requested information is released to representatives of other agencies that are authorized by federal law or Oklahoma Statutes to have the information. Information may be released to other agencies only when they give assurance that the:

- (i) confidential character of the information will be preserved;

- (ii) information will be used only for purposes related to administering the assistance program and the inquiring agency's functionality; and
- (iii) 65-1-7 protection standards ~~established by their agency~~ establishes are equal to those ~~established by OKDHS~~ establishes, both in regard to how their employees will use the information and their protective procedures provisions.

(B) Client addresses may be disclosed to federal, state, and local law enforcement officers who furnish the client's name, Social Security number, and notify OKDHS that the location or apprehension of the client is within their official duties and that the client is:

- (i) a fugitive felon who is fleeing to avoid prosecution, custody, or confinement after conviction; or
- (ii) violating a probation or parole condition.

(C) The days and hours a child is approved for the Child Care Subsidy Program may be disclosed to a child care provider.

(D) Upon written request, information used to establish eligibility that is not otherwise legally protected is made available to the client or the client's representative during normal business hours. Confidential information, including the names of persons who have disclosed information about the client without the client's knowledge, and the nature or status of pending criminal prosecutions, is withheld.

(E) Information the employee obtains from collateral sources, other than public records or the employee's written evaluation of the client's situation, is not made available to the client or to any other person without the consent of the person who gave the information.

(F) Prior to a fair hearing, the designated ~~county~~ OKDHS field employee is responsible for providing the client with a copy of the completed hearing summary and documents or other records the employee plans to present at the hearing.

(5) **Information release at client request.** Upon the client's, or the client representative's, written request, OKDHS may release client-provided information to the client or the authorized representative. When an OKDHS employee receives a written inquiry from an interested person, another agency, or the courts, and the client's written permission accompanies the inquiry, the employee may furnish the information when the written release specifies what client-provided information to release and to whom it may be released.

(6) **Information release to courts.** OKDHS employees may only release case information about the client in court proceedings upon subpoena, except upon a court official's request in cases of child abandonment and desertion, child neglect, or restitution when OKDHS referred such cases to the court. In these situations, OKDHS employees' testimony is limited to material affecting the

administration of public assistance law except when participating in a case requested by the client or the client's representative in which the client's personal interests are at stake.

(A) When a court subpoenas an OKDHS employee to give testimony based upon OKDHS records, the ~~county director/field manager~~ confers with OKDHS Legal Services (LS) regarding the proper way to convey to the court the confidential character of information made available to OKDHS in the process of administering assistance and OKDHS's duty right, per 43A O.S. § 10-110, to protect its records.

(B) When there is reason to believe the court will not respect the confidential character of OKDHS records, the ~~county director/field manager~~ communicates immediately with OKDHS LS to determine the best course of action to take.

(7) **Information release to the District Attorney (DA).** OKDHS employees may release information to the DA as necessary, to carry out OKDHS rules regarding child support pursuit from a non-custodial parent. When child support pursuit is required in order for a client to receive Temporary Assistance for Needy Families benefits or SoonerCare (Medicaid), AFS employees inform the client of this requirement.

(8) **Medical information release.** Medical information OKDHS or the Oklahoma Health Care Authority pays for is not released, even at the request of the person to whom it pertains, except to another agency to which the person applied for services with the objective to protect or advance the person's welfare. There is nothing in federal law or Oklahoma Statutes to prevent a physician from releasing medical information to ~~his or her~~ the physician's patient or a patient's authorized representative. In such instances, the physician-patient relationship governs the physician.

(A) OKDHS LS is responsible for determining if the requested medical information may be released under federal regulations and OKDHS rules.

(B) AFS employees do not release information obtained from the U. S. Department of Veterans Affairs or from the Social Security Administration to anyone outside of OKDHS.

(C) When a client requests a fair hearing on a medical decision, all medical records or reports considered in establishing a medical decision are provided to the client or the client's authorized representative at a reasonable time before the hearing except for psychological and psychiatric records. Copies of psychological and psychiatric records are only released with the treating physician's or practitioner's consent or when a court of competent jurisdiction orders it released upon a finding that it is in the patient's best interest.

340:65-1-8. Audit Responsibilities

(a) Audit requirements. A non-federal entity that expends \$750,000 or more in federal awards during a fiscal year must

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complete a single audit or a program specific audit, per Section 7502(a)(1) and (a)(3) of Title 31 of the United States Code (31 U.S.C. § 7502(a)(1) and (a)(3)) and Section 200.501 of Title 2 of the Code of Federal Regulations.

(b) Oklahoma Human Services (OKDHS) responsibilities. When OKDHS operates as a federal award pass-through entity, per 31 U.S.C. § 7502(f)(2), OKDHS must:

- (1) provide its federal award subrecipients with the federal requirements that govern the award's use and the program name and any identifying numbers from which such assistance is derived;
- (2) supply the OKDHS Office of Inspector General with an updated list of all subrecipients quarterly;
- (3) monitor the award's use through site visits, limited scope inspections, and other means;
- (4) review the audits to ensure prompt and appropriate corrective action occurred with respect to audit findings;
- and
- (5) require each subrecipient to allow any OKDHS independent auditor access to the subrecipient's records and financial statements.

[OAR Docket #23-421; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE SERVICES

[OAR Docket #23-422]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 4. Family-Centered and Community Services
 - Part 5. School-Based Services [NEW]
 - 340:75-4-51 [NEW]
 - Subchapter 6. Permanency Planning
 - Part 5. Permanency Planning Services
 - 340:75-6-31 [AMENDED]
 - 340:75-6-31.4 [AMENDED]
 - Subchapter 7. Foster Home Care
 - Part 2. Development of Resource Families
 - 340:75-7-19 [AMENDED]
 - Part 30. Enhanced Foster Care
 - 340:75-7-301 [AMENDED]
 - 340:75-7-303 [AMENDED]
 - Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
 - Part 1. Therapeutic Foster Care
 - 340:75-8-1 [AMENDED]
 - 340:75-8-4 [AMENDED]
 - 340:75-8-6 [AMENDED]
 - 340:75-8-11 [AMENDED]
 - 340:75-8-11.1 [AMENDED]
- (Reference WF 23-75)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162);

Chapter 75 Subchapter 6: 10A O.S. §§ 1-1-102, 1-4-101, 1-4-705, 1-4-706, 1-4-707, 1-4-709, 1-4-710, 1-4-711, 1-4-809, 1-4-811, and 1-7-103; Title 30 O.S. et al; 43 O.S. §§ 118 and 119; Section 473(d)(3)(A) of Title IV-E of the Social Security Act (42 United States Code (U.S.C.) § 673(d)(3)(A)) and 42 U.S.C. § 673(d)(3)(C).

Chapter 75 Subchapter 8: 10 O.S. § 404.1; 10A O.S. §§ 1-1-105, 1-2-101, 1-7-103, 1-7-105, and 1-9-119; 74 O.S. § 85; Title XIX of the Social Security Act.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

January 8, 2023

COMMENT PERIOD:

January 3, 2023 through February 2, 2023

PUBLIC HEARING:

February 7, 2023

ADOPTION:

March 6, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 9, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment to Chapter 75 Subchapter 4 establishes the school-based (SB) services program in Child Welfare Services (CWS) to provide preventative and early intervention services to children and families at public schools.

The proposed amendments to Chapter 75 Subchapter 6 update language regarding Title IV-E kinship guardianship assistance age requirement and deletes outdated guidance on guardianship usage.

The proposed amendments to Chapter 75 Subchapter 7 revise joint approval of resource homes for the Interstate Compact for the Placement of Children (ICPC) and enhanced foster care (EFC) processes regarding child eligibility for services, EFC home training, and the Services and Support Plan (SSP).

The proposed amendments to Chapter 75 Subchapter 8 include: (1) defining contracted foster care (CFC); (2) updating therapeutic foster care (TFC) and intensive treatment foster care (ITFC) contractual protocols and procedures; (3) removing outdated travel and placement disruption language; and (4) adding clarifying language about respite care.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 4. FAMILY-CENTERED AND COMMUNITY SERVICES

PART 5. SCHOOL-BASED SERVICES

340:75-4-51. Purpose, partnership, goals, scope, and confidentiality requirement of school-based (SB) services

(a) Purpose. SB services is a program that offers preventative and early intervention services to children, adolescents, and families in Oklahoma through community-based partnerships between Oklahoma Human Services (OKDHS) and local school districts. The program aids students in overcoming

barriers which impede educational success and in addressing concerns before they can escalate into a crisis.

(b) Partnership. The SB Services Program is a contractual and collaborative partnership between OKDHS and local school systems. The SB Services Program requires specialists to be competent in a specialized practice area, including knowledge, skills, and abilities necessary for effective service delivery across OKDHS services, schools, and communities.

An SB specialist works in a partnering school to:

- (1) increase awareness of, and access to, OKDHS services and community resources for families;
- (2) improve coordination and communication between OKDHS and public schools; and
- (3) increase community education on family issues through agency-school-community collaboration and planning.

(c) Goals. OKDHS expects the SB Services Program to:

- (1) impact a community through improved individual and family health, safety, and functioning;
- (2) give all children the opportunity and resources to succeed academically and socially in a safe and healthy school environment;
- (3) improve community outcomes through SB activities; thus, reducing an array of family risk factors; and
- (4) work with individual families and in collaboration with other community stakeholders.

(d) Scope and applicability. The SB specialist retains the same rights and privileges and the same obligations set forth in OKDHS policy. The SB specialist maintains office hours similar to the school staff members and is expected to work no less and no more than 40 hours per week.

- (1) In the event the partnering school:
 - (A) is closed, and school staff is not working onsite, the SB specialist is authorized to telework from home provided the SB specialist is generally accessible by phone and email during working hours; and
 - (B) deems distance learning is necessary for reasons of health and safety, OKDHS continues to supply the SB specialist to perform the same services using means appropriate to distance learning.

(2) In the event the contractual agreement with the partnering school is cancelled, the immediate supervisor or reviewing supervisor ensures permanent employees are able to return to a position within OKDHS when the contract is discontinued due to actions unrelated to the SB specialist.

(3) The SB specialist maintains records by documenting students' situations and activities on the OKDHS software platform, which is used to evaluate the program's outcomes.

(e) Confidential information.

(1) The SB Services Program complies with confidentiality restraints that are in existence at the participating school, and OKDHS rules regarding confidentiality. Per the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the participating school and SB specialists agree to use and disclose Protected Health Information in compliance with the "Privacy Rule" HIPAA set forth in Sections 160.01 through 160.552 and 164.102 through

164.534 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 160.01 - 160.552, 164.102 - 164.534). Per the Family Education Rights and Privacy Act (FERPA), SB specialists use and disclose student educational records and family information in compliance with FERPA, Section 1232g of Title 20 of the United States Code and 34 C.F.R. §§ 99.1 - 99.67.

(2) The partnered school and OKDHS recognize the other has and will acquire client or student information which is protected from improper disclosure. Neither the partnered school nor OKDHS, whether directly or indirectly, divulges, discloses, or otherwise communicates such information to third parties without the prior written consent of the other.

(3) Through the contractual relationship with the partnered school, the SB specialist is able to communicate information to the school to better understand and help a specific student and family. The SB specialist is permitted to share information with the partnered school that supports the educational needs of students.

SUBCHAPTER 6. PERMANENCY PLANNING

PART 5. PERMANENCY PLANNING SERVICES

340:75-6-31. Permanency planning (PP) for the child in Oklahoma Department of Human Services (~~DHS~~)(OKDHS) custody

(a) Legislative intent. Per Section 1-1-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-102), whenever it is necessary for a child to be placed outside of the home per the Oklahoma Children's Code, it is the intent of the Legislature that:

- (1) each child be assured of the care, guidance, and supervision in a permanent home or foster home that serves the best interests of the child including, but not limited to, the development of the moral, emotional, spiritual, mental, social, educational, and physical well-being of the child; and
- (2) permanent placement is achieved as soon as possible for the child.

(b) Permanency planning and placement preferences. The purpose of permanency planning is to develop an appropriate plan addressing the child's immediate and long-term needs for safety, permanency, and well-being. Permanency planning begins immediately when a child is placed in ~~DHS~~—OKDHS custody and continues until the child is living in a permanent home and the child welfare (CW) case is closed.

(c) Efforts to place the child with a suitable relative. Per 10A O.S. § 1-4-706, every effort is made to place the child with a suitable relative of the child.

(d) Consideration given to child's initial out-of-home placement. Careful planning and consideration is given to the child's initial placement so that in the event reunification fails or is delayed, the first placement made is the best available

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placement to provide permanency for the child per 10A O.S. § 1-4-706.

(e) **Concurrent permanency planning.** Per 10A O.S. § 1-4-706, when a child is removed from the custody of the child's parent, ~~DHS~~OKDHS immediately assesses the need for permanency planning with the intention that permanency occurs for the child at the earliest opportunity.

(f) **Permanency hearing.** Permanency hearings are held as required per 10A O.S. § 1-4-811, and per Oklahoma Administrative Code (OAC) 340:75-1-18.1.

(g) **Permanency plan preferences.** The permanency plan indicates the intended or desired outcome for each child and influences the services and interventions used to achieve such outcome. The permanency plan is consistent with each child's legal status and is in his or her best interests.

(1) When a plan is established, careful consideration is given when changing the plan to ensure the child's immediate and long-term needs for safety, permanency, and well-being continue to be met.

(2) In most cases, reuniting the child with his or her parent or legal guardian is the original case plan goal, unless a petition for immediate termination of parental rights is filed or the court makes a finding that reasonable efforts to reunite are not required.

(3) When reunification is not possible, other permanency plan options based on the child's best interests include:

- (A) termination of parental rights resulting in an adoption;
- (B) permanent guardianship; or
- (C) a planned alternative permanent placement provided a child is 16 years of age and older.

(h) **Reunification.** In most situations, the initial permanency plan is to reunite the child with the family. Per 10A O.S. § 1-7-103, the child may be returned to the home of the parent or legal guardian from whom the child was removed with prior court approval. When the permanency plan is reunification, services are implemented until:

- (1) the child is returned home, the family home has stabilized, and the court case is dismissed; or
- (2) it is determined the conditions that necessitated intervention have not been corrected, although sufficient time and services have been provided.

(i) **Exceptions to reunification as the preferred permanency plan.** Exceptions to reunification as the preferred permanency plan include:

- (1) voluntary relinquishment of parental rights by all parents, biological, legal, presumed, and alleged;
- (2) a Petition for Termination of parental rights is filed; or
- (3) the court finds reasonable efforts to reunite the child and family are not required as outlined in 10A O.S. § 1-4-809 and OAC 340:75-1-18.4.

(j) **Priority for reunification with the custodial parent or placement with the non-custodial parent.** When the child's parents do not live together, the priority for reunification is primarily with the custodial parent; however, a home assessment

may be conducted regarding the noncustodial parent to assess the possibility of placement or custody with the noncustodial parent, when appropriate.

(k) **Placement with the noncustodial parent.** The court may place the child with the noncustodial parent when it is in the best interests of the child per 10A O.S. § 1-4-707. When the child is placed with the noncustodial parent, the court may order the noncustodial parent to assume:

- (1) sole custodial responsibilities for the child; or
- (2) custody of the child under ~~DHS~~OKDHS protective supervision.

(l) **Final permanency order.** Per 10A O.S. § 1-4-707, when the court orders the noncustodial parent to assume sole custodial responsibilities for the child, the court may also:

- (1) order reasonable visitation and the payment of child support by the child's other parent; and
- (2) terminate its jurisdiction in the deprived action by entering a final permanency order determining custody, visitation, and child support. The final permanency order:
 - (A) remains in full force and effect and controls custody or child support orders entered in an administrative or district court initiated prior to, or during the pendency of the deprived action until it is modified by a subsequent court order; and
 - (B) may be docketed and filed in the prior, existing, or pending administrative or district court action; or
 - (C) when there is no administrative or district court action in existence, the surviving order may be used as the sole basis for opening a new administrative or district court action.

(m) **Adoption.** When a child cannot return safely to his or her own home, in most cases adoption is the preferred permanency plan.

(n) **Legal guardianship.** A guardianship may be the permanency plan for a child, when reunification and adoption have been ruled out.

(1) ~~A guardianship is not preferred over adoption because this option does not provide the same level of family permanency.~~ The court may establish a permanent guardianship between a child and a relative or other adult per 10A O.S. § 1-4-709, when the guardianship is in the child's best interest.

(2) Subject to the availability of funds, financial assistance is available to the legal guardian, provided the eligibility requirements per OAC 340:75-6-31.4 are met.

(o) **Planned alternative permanent placement.** Per 10A O.S. § 1-4-811, a permanency plan of planned alternative permanent placement is limited to a child 16 years of age or older when ~~DHS~~OKDHS documents a compelling reason for the court to determine ~~that~~ returning home, or placement of the child for adoption or guardianship, is not in the child's best interests.

(p) **Successful adulthood plan.** Every child 14 years of age or older has a transition plan to successful adulthood, per OAC 340:75-6-110.

(q) **Notice of rights.** Every child 14 years of age or older is provided a notice of rights per OAC 340:75-6-110.

(r) **Emancipation.** The federal definition of emancipation is the age at which the child reaches majority. In Oklahoma, 18 years of age is the age of emancipation.

340:75-6-31.4. Legal guardianship

(a) **Permanent guardianship established pursuant to the Oklahoma Children's Code.** The court may establish a permanent guardianship between a child and a relative or other adult per Sections 1-4-709 and 1-4-710 of Title 10A of the Oklahoma Statutes (10A O.S. §§ 1-4-709 and 1-4-710) when the guardianship is in the child's best interests and when all conditions listed in 10A O.S. § 1-4-709 are substantially satisfied.

- (1) 10A O.S. § 1-4-709 conditions are, the:
 - (A) child was adjudicated a deprived child;
 - (B) parent:
 - (i) consented to the permanent guardianship;
 - (ii) had his or her parental rights terminated;
 - (iii) failed to substantially correct the conditions that led to the child's adjudication;
 - (iv) was adjudicated as incompetent or incapacitated by a court;
 - (v) abandoned the child;
 - (vi) ~~failed to be~~ was not identified or ~~was not~~ located despite reasonably diligent efforts to ascertain the parent's whereabouts; or
 - (vii) died;
 - (C) child consents to the permanent guardianship when the court finds the child of sufficient intelligence, understanding, and experience to provide consent;
 - (D) termination of the parent's parental rights is not legally possible, not in the child's best interests, or adoption is not the child's permanency plan;
 - (E) child and proposed permanent guardian do not require protective supervision or preventive services to ensure the permanent guardianship's stability;
 - (F) proposed permanent guardian is committed to providing for the child until he or she reaches the age of majority, and to preparing the child for adulthood and independence;
 - (G) proposed permanent guardian agrees not to return the child to the care of the person from whom he or she was removed nor allow visitation without the court's approval; and
 - (H) child resides or was placed with the proposed permanent guardian for at least the six preceding months or the proposed permanent guardian is a relative with whom the child has a relationship.
- (2) When the child is in Oklahoma Human Services (OKDHS) custody, a study of the proposed permanent guardian's home is completed and a report is provided to the court regarding the proposed permanent guardian's suitability, if permanent guardianship is in the child's best interests, and other information as the court requests. The child welfare (CW) specialist:
 - (A) when the proposed permanent guardian is:

- (i) a resource parent, updates Form 04AF003E, Resource Family Assessment - Family Profile; or
- (ii) not an OKDHS resource parent:
 - (I) completes Form 04PP008E, Title 10A Permanent Guardianship Home Study; and
 - (II) conducts a national criminal history records search in addition to the other background search requirements for each proposed permanent guardian and each adult household member; and
- (B) provides the report to the court as directed by the court, or no later than 14-calendar days prior to the permanent guardianship hearing.
- (3) A permanent guardianship is not permitted when the proposed guardian:
 - (A) would be denied placement as a prospective foster or adoptive parent, per 10A O.S. § 1-4-705(C);
 - (B) is subject to the Oklahoma Sex Offenders Registration Act living with ~~an individual a person~~ subject to the Oklahoma Sex Offenders Registration Act; or
 - (C) is the child's parent and his or her parental rights are terminated.
- (4) A permanent guardian is vested with the rights and responsibilities set forth in ~~Title 30 of the Oklahoma Statutes~~ 30 O.S. §§ 1-101 et seq. relating to the powers and duties of a guardian of a minor, except for rights and responsibilities ~~retained by~~ the child's parent retains, as set forth in the permanent guardianship decree.
- (5) OKDHS ~~cannot~~ may not recommend a parent whose parental rights are terminated to seek guardianship of a child in OKDHS custody.
- (b) **Filing the 10A permanent guardianship motion.** The district attorney or child's attorney is responsible for filing a motion for permanent guardianship with the juvenile court in the deprived case. The proposed guardian signs the information verification contained in the permanent guardianship motion, per 10A O.S. § 1-4-710.
- (c) **Filing the Title 30 guardianship proceeding.** When a Title 30 guardianship is filed for the child to achieve the permanency plan of guardianship, the proposed guardian has the responsibility to obtain an attorney for this purpose. Per 10A O.S. § 1-4-101, the written consent of the judge presiding over the deprived case must be obtained and filed in the Title 30 guardianship case, prior to the guardian being appointed for the child. Limited monetary reimbursement for attorney fees and costs is available when the attorney represents a proposed relative guardian in a Title 30 guardianship proceeding.
- (d) **Types of guardianship assistance funding available.** Guardianship assistance for a Title 10A or Title 30 guardianship may be funded through the:
 - (1) Temporary Assistance for Needy Families (TANF) Supported Permanency Program;
 - (2) Title IV-E Subsidized Guardianship Program; or
 - (3) state.
- (e) **Requirements for guardianship without benefits.** A guardianship may be established without accessing a benefit funding source when the:

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- (1) guardianship is in the child's best interests; and
 - (2) conditions listed in 10A O.S. § 1-4-709 are substantially satisfied for a Title 10A guardianship, or a return home or adoption is not an appropriate permanency option for the child when a Title 30 guardianship was court-authorized.
- (f) **Requirements for guardianship with TANF Supported Permanency Program benefits.**
- (1) A guardianship may be established with TANF Supported Permanency Program benefits subject to the availability of funds and OKDHS approval when the:
 - (A) guardianship is in the child's best interests;
 - (B) conditions listed in 10A O.S. § 1-4-709 are substantially satisfied for a Title 10A guardianship, or a return home or adoption is not an appropriate permanency option for the child when a Title 30 guardianship was court-authorized;
 - (C) child in OKDHS custody is placed in a paid kinship foster home with a relative who resides in Oklahoma and the relative meets the specified degree of relationship as defined by the TANF program, per Oklahoma Administrative Code (OAC) 340:10-9-1(a);
 - (D) child is 12 years of age and older or has a sibling 12 years of age and older who resides in the same relative foster home. The deputy director for programs may, for good cause, approve Supported Permanency for a child younger than 12 years of age;
 - (E) court makes a finding that termination of the parent's rights is either not legally possible or not in the child's best interests, or adoption is not the child's permanency plan;
 - (F) relative meets requirements for approval as a OKDHS foster home;
 - (G) child is currently residing with the relative in Oklahoma and has for four of the previous six months;
 - (H) relative is willing to assume legal responsibility for the child; and
 - (I) court and, when appropriate, the child are in agreement with the plan for the relative to obtain legal responsibility for the child.
 - (2) TANF Supported Permanency Program assistance includes:
 - (A) a monthly payment standard for the child, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule XVII;
 - (B) a Medicaid card for the child's medical care; and
 - (C) an assigned Adult and Family Services worker who provides referrals for services, when needed.
- (g) **Requirements for Title IV-E Subsidized Guardianship benefits.**
- (1) A guardianship may be eligible for Title IV-E guardianship assistance when:
 - (A) the guardianship is in the child's best interests;
 - (B) all conditions listed in 10A O.S. § 1-4-709 are substantially satisfied for a Title 10A guardianship, or a return home or adoption is not an appropriate

permanency option for the child when a Title 30 guardianship was court-authorized;

(C) the child meets eligibility for Title IV-E kinship guardianship assistance payments, per Section 473(d)(3)(A) of Title IV-E of the Social Security Act (42 United States Code (U.S.C.) § 673(d)(3)(A)). The relative may reside in or out-of-state;

(D) the child was removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home is contrary to the child's welfare and the child is Title IV-E eligible, per OAC 340:75-13-13, for at least six-consecutive months;

(E) the child is a sibling to a child eligible for, or receiving Title IV-E kinship guardianship assistance, and is residing or planning to reside in the same placement;

(F) the child is 12 years of age and older or has a sibling 12 years of age and older who resides in the same relative foster home. The deputy director may, for good cause, approve Title IV-E kinship guardianship assistance for a child ~~2 years of age and older by the end of the fiscal year the guardianship was entered into through 11 years of age and the child's sibling when the child has no older, eligible sibling~~ younger than 12 years of age;

(G) termination of the parent's rights is either not legally possible or not in the child's best interests or adoption is not the child's permanency plan;

(H) the relative completed requirements to be an OKDHS-approved or tribal foster home;

(I) the child is currently residing with the relative and has for six consecutive months;

(J) the relative is willing to assume legal responsibility for the child and has a strong commitment to permanently care for the child;

(K) the child who is 14 years of age and older ~~was~~ is consulted regarding the kinship guardianship arrangement;

(L) the child demonstrates a strong attachment to the proposed relative guardian; and

(M) prior to transferring legal responsibility, OKDHS and the proposed relative guardian sign Form 04MP049E, Title IV-E Subsidized Guardianship Agreement, outlining the assistance provided to the relative guardian.

(2) The Title IV-E Subsidized Guardianship agreement outlines the assistance provided to the relative that includes:

(A) a limited monetary reimbursement for legal fees and costs incurred in transferring legal responsibility of the child to the relative guardian is paid to an attorney representing the proposed relative guardian when a Title 30, instead of a Title 10A, guardianship is filed;

(B) a monthly payment standard for the child, per OKDHS Appendix C-20, Child Welfare Services Rates Schedule;

- (C) the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the relative guardian's circumstances and the child's needs;
 - (D) a Medicaid card for the child;
 - (E) a right to a fair hearing, per OAC 340:75-1-12.6;
 - (F) the additional services and assistance for which the child and relative guardian are eligible under the agreement;
 - (G) the procedure by which the relative guardian applies for additional services; and
 - (H) assurance the agreement remains in effect if the relative guardian moves to another state.
- (3) The child's case plan describes:
- (A) how the child meets the eligibility requirements;
 - (B) the steps OKDHS took to determine that a return to the home or adoption is not appropriate, and termination of the parent's rights is either not legally possible or not in the child's best interests;
 - (C) the efforts OKDHS made to discuss adoption with the child's relative foster parent and the reasons why adoption by the relative foster parent is not an option;
 - (D) the reason a permanent placement with a proposed relative guardian and receipt of a guardianship assistance payment is in the child's best interests;
 - (E) OKDHS efforts to discuss with the child's parent the kinship guardianship assistance arrangements or why efforts were not made; and
 - (F) when the child's placement with the proposed relative guardian does not include siblings, the reasons the child is separated from siblings during placement.
- (h) **Successor guardian and eligibility for Title IV-E guardianship assistance.** In the event of the relative guardian's death or incapacity, the child's eligibility for a kinship guardianship assistance payment under this subsection is not affected by reason of the replacement of the relative guardian with a successor legal guardian named in the Title IV-E kinship guardianship assistance agreement, per 42 U.S.C. § 673(d)(3)(C).
- (i) **Requirements for a guardianship with state-funded benefits.**
- (1) A guardianship may be established with state-funded assistance, when:
 - (A) the guardianship is in the child's best interests;
 - (B) all conditions listed in 10A O.S. § 1-4-709 are substantially satisfied for a Title 10A guardianship, or a return home or adoption is not an appropriate permanency option for the child when a Title 30 guardianship was court-authorized;
 - (C) the child is not eligible for TANF Supported Permanency Program or Title IV-E Subsidized Guardianship; and
 - (D) the deputy director for programs, for good cause, approves state-funded payments to the guardian for the child's benefit.
 - (2) The state-funded benefit is a monthly payment standard for the child, per OKDHS Appendix C-20, Child Welfare Services Rates Schedule.
- (j) **Court-ordered provisions within permanent guardianship providing for child's safety and well-being.** Per 10A O.S. § 1-4-710, the court, upon finding grounds exist for a permanent guardianship, may order visitation with the child's parent, siblings, or other relatives when contact is in the child's best interests, and any other provision necessary to provide for his or her continuing safety and well-being.
- (k) **Child support ordered with permanent guardianship.** Per 10A O.S. § 1-4-710, the court orders the parent to contribute to the child's support pursuant to child support guidelines, per 43 O.S. §§ 118 and 119.
- (l) **Permanent guardianship placement not supervised by OKDHS.** Per 10A O.S. § 1-4-710, the order appointing a permanent guardian does not require OKDHS placement supervision.
- (m) **Permanent guardianship placement review period.** Per 10A O.S. § 1-4-710, the permanent guardianship order:
 - (1) requires the placement be reviewed within one year after transfer;
 - (2) requires the permanent guardian to submit records or reports the court deems necessary for the one year review;
 - (3) divests OKDHS of legal custody and supervision of the child with no further responsibility for the child's custody or supervision; and
 - (4) does not require periodic court reviews after the one year review when the parties and court agree the reviews are not necessary to serve the child's best interests, unless periodic reviews are otherwise required by the court.
- (n) **Child returned to OKDHS custody when permanent guardianship terminated.** When a permanent guardianship, established per the Oklahoma Children's Code, is terminated due to the guardian's abuse or neglect of the child, death, or inability to care for the child, the court orders the child returned to OKDHS legal custody pending further hearing.
 - (1) OKDHS develops a new permanency plan for the child to present to the court within 30-calendar days from the permanent guardianship termination date.
 - (2) Unless parental rights were terminated, the child's parent is notified and is entitled to participate in the upcoming permanency planning hearing.
 - (3) The court may order that reunification services again be provided to each parent or consider each parent for custody of the child with OKDHS supervision, when the parent can prove conditions previously existing at the time the permanent guardianship was granted were substantially corrected, and reunification is the best alternative for, and in the child's best interests.

SUBCHAPTER 7. FOSTER HOME CARE

Permanent Final Adoptions

PART 2. DEVELOPMENT OF RESOURCE FAMILIES

340:75-7-19. Joint approval of resource homes

(a) **Joint approval of resource home.** The Oklahoma Department of Human Services (~~DHS~~) (~~OKDHS~~) resource parent may be jointly-approved to provide foster care services to the child in ~~DHS~~ ~~OKDHS~~ custody while approved by another agency, entity, or tribe. Joint approval occurs after each agency conducts an assessment and determines ~~that~~ the child's needs can be met in a jointly-approved home. While the home is jointly-approved, any changes or concerns are shared between each agency involved with the jointly-approved home. Joint-home approval is child-specific and occurs when, the:

- (1) child's need for specialized services, treatment, or placement changes;
- (2) child re-enters the child welfare (CW) system and has a previous relationship with the placement provider;
- (3) placement provider is kin to the child;
- (4) siblings need to be placed together;
- (5) infant of a youth in ~~DHS~~ ~~OKDHS~~ custody requires placement; or
- (6) child in ~~DHS~~ ~~OKDHS~~ custody requires specialized services or treatment in a kinship placement.

(b) **Joint approval of a therapeutic foster care (TFC) home.** Joint approval of the TFC home as a resource home occurs after an assessment of the child's case and approval by the TFC program staff and the TFC agency.

(c) **Joint approval of a ~~DHS~~ ~~OKDHS~~ Developmental Disabilities Services (DDS) home.** Joint approval of a DDS home as a Child Welfare Services (CWS) resource home occurs after an assessment of the child's case and approval by the CWS ~~DDS/Education~~ ~~DDS and Education~~ program supervisor and the Resource Unit.

(d) **Joint use of CWS resource home by Office of Juvenile Affairs (OJA).** Joint use of the CWS resource home occurs after an assessment of the child's case and approval by the Resource Unit.

(e) **Joint use of CWS kinship resource home.** Use of the kinship resource home as a traditional resource home requires ~~that~~ the kinship family continue to meet all the requirements of a CWS resource home.

(f) Joint approval of resource home for Interstate Compact on the Placement of Children (ICPC). An OKDHS resource parent may be jointly-approved to provide foster care services to a child in another state's custody when the request is received through OKDHS ICPC Unit and approved by another agency, entity, or tribe. Joint approval occurs after each agency conducts an assessment and determines the child's needs can be met in a jointly-approved home. While the home is jointly-approved, any changes or concerns are shared between each agency involved with the jointly-approved home.

(fg) Joint use of licensed family child care home. A resource home is considered for joint approval as a ~~DHS~~ ~~licensed~~ ~~an~~ ~~OKDHS~~ ~~licensed~~ family child care home after an assessment and joint approval by the Resource Unit and Child Care Services (CCS). Prior to each child placement, a request for approval is made in writing on Form 07LC099E, Dual

Approval Request for Foster Care Placement, based on the recommendation of CCS Licensing staff and resource staff. When a joint consensus is not achieved, CCS or the Resource Unit may request a review by the dual-approval committee, per Oklahoma Administrative Code 340:110-1-6 for a final decision. The approval decision is based on the number, ages, and specific needs of children potentially eligible for child care and foster care. Receipt of a written agreement from the caregiver is required that states the ~~individual(s)~~ person(s) from whom the child was removed is not present during child care hours.

(gh) Joint approval of resource home by ~~DHS~~ ~~OKDHS~~ and tribes. The ~~DHS~~ ~~OKDHS~~ or tribal resource home may be jointly-approved by both the tribe and ~~DHS~~ ~~OKDHS~~ when the home meets ~~DHS~~ ~~OKDHS~~ standards; however, the total number of children placed in the jointly-approved home cannot exceed the total number of children approved for the home.

PART 30. ENHANCED FOSTER CARE

340:75-7-301. Enhanced foster care (EFC) general

(a) **EFC purpose.** EFC is a service category developed to respond to the complex behavioral, medical, developmental, and mental health needs of children by stabilizing placement for a child in a family-based setting or by supporting children who need additional services to be successful in a family-based settings. EFC services are:

- (1) child-specific services provided to kinship or traditional resource homes for children already placed in those settings; and
- (2) designed for traditional homes in which additional training is provided to the family to support the placement of children transitioning from congregate care, acute or residential treatment, or children who are placed in shelter care or are at risk of placement in shelter care.

(b) **Eligibility.** EFC is available to any child in Oklahoma Human Services (OKDHS) or tribal custody meeting service criteria. Information obtained during the referral process is used to determine eligibility and to support individualized service planning for the child.

- (1) A child meets at least one of the following eligibility criteria to receive EFC, the:

(A) ~~the~~ Child and Adolescent Needs and Strengths (CANS) Assessment indicates ~~that~~ the child would benefit from EFC. The CANS Assessment is conducted by a third-party qualified ~~individual~~ person, per Oklahoma Administrative Code (OAC) 340:75-13-16 and 340:75-14-1;

(B) ~~the~~ onset of frequent placement moves from family-based settings due to the provider requesting change of placement or because the provider cannot meet the child's behavioral health needs;

(C) ~~the~~ child has a minimum of two elevated Child Behavioral Health Screeners;

(D) ~~the~~ child has a provisional or primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders," except for

V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis;

(E) ~~the~~ child's conditions are directly attributed to a primary medical diagnosis of a severe behavioral and emotional health need and may also be attributed to a secondary medical diagnosis of a physical, developmental, intellectual, or social disorder that is supported alongside the mental health needs;

(F) ~~the~~ child's conditions are directly attributed to a mental illness or serious emotional disturbance, a medical issue, or a developmental or intellectual delay; ~~or~~

(G) ~~that~~ evidence ~~that~~ the child's presenting problems require full integration of a 24-hour crisis response, behavior management, or intensive clinical interventions from professional staff to prevent the child from having to move from a family-based placement or to transition to a family-based setting from a higher level of care; ~~and~~ or

(H) the child has specific needs or factors that pertain to the child's permanency, safety, and well-being, as approved by the EFC programs administrator.

(2) ~~the~~ The resource parent caring for the child agrees to participate in the child's treatment needs and planning actively.

(c) **Training.** All resource parents receiving EFC services are required to complete 15 hours of Pressley Ridge supplemental EFC training determined by OKDHS and any child-specific training dependent on the child's individual needs, in addition to the agency required pre-service training.

(d) **EFC homes.** EFC homes are approved, per OAC 340:75-7-10.1 through 340:75-7-18, and after:

- (1) undergoing assessment;
- (2) finishing 15 hours of Pressley Ridge the supplemental EFC training;
- (3) demonstrating a willingness and capacity to provide the level of supervision ~~that~~ the child requires or needs on an ongoing basis; ~~and~~
- (4) agreeing to participate in a child's treatment needs and planning actively; and
- (45) receiving approval from the regional field manager.

340:75-7-303. Enhanced foster care (EFC) initial consultation, Service and Support Plan (SSP), and ongoing treatment

(a) **Initial consultation for services.** The initial consultation is completed with the treatment team within five-business days of ~~EFC services approval~~ determination the child meets EFC criteria. The consultation ~~shall~~ clearly articulates the child's and family's current needs and identification of services to meet those needs. The treatment team includes:

- (1) the child receiving EFC services, when age appropriate;
- (2) resource ~~parent~~ parent(s);
- (3) biological parent(s) or guardian, when appropriate;
- (34) child's assigned child welfare specialist and his or her supervisor;
- (45) resource specialist and his or her supervisor;

(56) service provider(s); and

(67) regional EFC program staff.

(b) **EFC SSP.** EFC is individualized to the child's and resource family's needs. The resource family's resource specialist completes Form 04EF001E, Enhanced Foster Care Service & Support Plan ~~the EFC SSP during the service intake with the treatment team within 30-calendar days of the initial consultation.~~ The EFC SSP outlines the child's and family's needs and the identified service array. The EFC SSP is updated as needed based on the child's and family's treatment goals and individualized needs to support collaboration and communication.

(c) **EFC ongoing treatment.** A ~~monthly family treatment team meeting (FMTT)~~ monthly family treatment team meeting (FMTT) takes place ~~with the treatment team as outlined in the EFC SSP~~ 30-calendar days after the initial consultation and every 60-calendar days from the last TTM. The ~~FMTT~~ FMTT informs the child's ongoing need and utilization of EFC services. The ~~FMTT~~ FMTT covers topics regarding the child's ~~treatment plan and efforts made to accomplish progress on treatment plan goals and objectives, including the family's participation and engagement in EFC services, and any additional services or supports needed.~~

~~(1) completion of the Child Behavioral Health Screener (CBHS) and utilization of the outcome to inform ongoing treatment and supports;~~

~~(2) a monthly report from each treatment team member about the child's current functioning and treatment efforts; and~~

~~(3) any needed revisions to the EFC SSP.~~

(d) **EFC ongoing approval.** The regional EFC program staff approves EFC services in six-month increments. ~~Every six months~~ Upon request from the child's assigned child welfare specialist or resource specialist, the regional EFC program staff ~~reviews the completed treatment plan, monthly FM documentation, completed CBHS, and discusses the need for ongoing EFC services and supports with the treatment team~~ evaluates service progress, resource family participation, and the child's current eligibility for EFC services.

SUBCHAPTER 8. THERAPEUTIC FOSTER CARE AND DEVELOPMENTAL DISABILITIES SERVICES

PART 1. THERAPEUTIC FOSTER CARE

340:75-8-1. Purpose, legal basis, and definitions

(a) **Purpose.**

(1) Therapeutic foster care (TFC) serves children in Oklahoma Human Services (OKDHS) or tribal custody who are:

- (A) 4 through 17 years of age; and
- (B) youth, up to 19 years of age or until completion of high school who have requested extended services, and:
 - (i) meet medical necessity criteria established by the Oklahoma Health Care Authority

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(OHCA), per Oklahoma Administrative Code (OAC) 317:30-5-741;

(ii) respond to close relationships within a family setting; and

(iii) require more intensive behavioral health services than available in traditional and supported foster care family settings, when additional supports are not available or have failed to stabilize the child in a lesser restrictive placement; and do not require 24-hour supervision by an adult who is not sleeping.

(2) Intensive treatment family care (ITFC) serves children in OKDHS or tribal custody who are:

(A) 6 through 17 years of age; and

(B) youth, up to 19 years of age or until completion of high school who have requested extended services, and:

(i) meet medical necessity criteria established by OHCA, per OAC 317:30-5-751; and

(ii) require more intensive treatment than traditional foster care and TFC settings provide.

(3) A TFC or ITFC contractor may use contracted foster care (CFC) to provide care to children in the legal custody of, or voluntarily placed with, OKDHS or tribal custody. When funding availability is uncertain, CFC approval may be required. Approval is requested from the TFC field manager or TFC field administrator.

(b) **Legal basis.**

(1) Section 1-7-103 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-7-103) mandates that OKDHS review and assess each child in OKDHS custody to determine the type of placement consistent with the child's treatment needs in the nearest geographical proximity to the child's home.

(2) OKDHS develops and implements a diversity of community-based services and residential care, as needed, to provide for adequate and appropriate home-based and community-based treatment or rehabilitation of each child in a:

(A) foster home;

(B) group home;

(C) community residential center; or

(D) non-secure facility consistent with the child's individualized treatment needs and, when possible, in or near the child's home community.

(c) **Definitions.** The following words and terms, when used in Part 1 of this Subchapter, have the following meaning, unless the context clearly indicates otherwise:

(1) **"Intensive treatment family care (ITFC)"** means residential behavioral management services provided in a specialized foster care setting for a child who:

(A) meets medical necessity criteria, per OAC 317:30-5-751;

(B) has severe psychological, behavioral, social, and emotional needs;

(C) may also present with a secondary physical, developmental, intellectual, or social disorder;

(D) requires a higher level of care and ITFC helps prevent placement in a more restrictive setting, such as an inpatient setting; and

(E) receives intensive individualized behavioral health and other support services from qualified staff.

(2) **"Oklahoma Human Services (OKDHS) placement agreement for residential behavioral management services (RBMS)"** means the contract entered into between OKDHS and an agency providing TFC services, including all attachments and exhibits.

(3) **"OHCA"** means the entity designated for administering Title XIX Medicaid reimbursement, including both the responsibility for the establishment of medical necessity criteria for children receiving TFC and ITFC services and prior authorization for the admission and extension of Medicaid or Title XIX reimbursed TFC and ITFC services.

(4) **"Therapeutic foster care (TFC)"** means residential behavioral management services provided in a specialized foster care setting for a child who:

(A) meets medical necessity criteria, per OAC 317:30-5-741;

(B) has special psychological, behavioral, social, and emotional needs;

(C) accepts and responds to close relationships within a family setting; and

(D) requires more intensive or therapeutic services than are found in traditional foster care when additional supports are not available or have failed to stabilize the child in a less restrictive setting.

(5) **"TFC or ITFC contractor"** means a licensed child care agency that meets OKDHS and OHCA requirements to provide residential behavioral management services in a foster care setting. A TFC or ITFC contract agency:

(A) provides direct clinical treatment services to the child placed; and

(B) recruits, trains, certifies, reimburses, and provides supportive services to the TFC or ITFC foster parent.

(6) "Contracted foster care (CFC)" means a traditional level of foster care used through the TFC or ITFC contractor. The contractor may use certified a TFC or ITFC home for a child's placement at a traditional foster care level.

340:75-8-4. Contract procedures for therapeutic foster care (TFC) or intensive treatment family care (ITFC)

(a) Contracts for the provision of TFC or ITFC placements are issued per ~~Oklahoma Administrative Code (OAC) 340:2-13-76 through 340:2-13-89~~ and Section 85 of Title 74 of the Oklahoma Statutes. Prior to issuance of the Oklahoma Health Care Authority Title XIX contract for TFC or ITFC services, the TFC field administrator for TFC or ITFC approves providers ~~are approved by the TFC field administrator for TFC or ITFC~~ as eligible TFC or ITFC contractors.

(b) Contracts for the provision of TFC or ITFC placements are monitored on-site or on a virtual platform at least annually to ensure services provided are in compliance with contract terms as approved by the TFC field administrator, per OAC 340:2-13-102.

340:75-8-6. Required protocol for therapeutic foster care (TFC) or intensive therapeutic family care (ITFC) contractors

TFC or ITFC contractors:

- (1) ~~maintain a written case record on each child that documents all services provided or obtained for the child while in placement;~~
- (2) implement and review an individualized treatment plan for each child in placement, with documented input from the child's assigned ~~Child Welfare Services (CWS) child welfare (CW) specialist,~~ according to the requirements set forth in the Oklahoma Human Services (OKDHS) contract;
- (3) ~~assume responsibility for maintaining basic needs of each child placed;~~
- (4) ~~accept responsibility for a reasonable knowledge of the child's whereabouts at all times. When a child is unaccounted for, the TFC or ITFC contractor:~~

- (A) ~~When a child is:~~
 - (i) ~~removed by anyone without authorization;~~
 - (ii) ~~taken into custody by law enforcement officials;~~
 - (iii) ~~missing from care; or~~
 - (iv) ~~otherwise unaccounted for, the TFC or ITFC contractor immediately notifies; the:~~
 - (I) ~~assigned CWSCW specialist or CWSCW supervisor. CWSCW staff follows protocol and completes missing from care notifications, per Oklahoma Administrative Code (OAC) 340:75-6-48.3; and~~
 - (II) ~~local law enforcement with the child's physical description, last known location, any known possible locations, and the child's special needs that may enhance the urgency to locate the child. The TFC or ITFC contractor contacts the TFC program staff for assistance when encountering any difficulty contacting the CWS specialist or CWS supervisor.~~

(B) ~~The contractor submits a written incident report to the child's assigned CWSCW specialist describing the circumstances and files a copy in the child's case record;~~

(5) ~~ensure the child receives all needed routine, specialized, and emergency medical care in a timely manner provided by a medical provider who accepts Medicaid payment.~~

(A) ~~OKDHS authorizes the TFC or ITFC parent and TFC or ITFC administrator in writing, through the placement provider agreement, to consent to routine and ordinary medical care and treatment the child in OKDHS custody needs upon the advice of a licensed physician, per OAC 340:75-14-3.~~

(B) ~~Prior consultation and consent from OKDHS, the child's parent(s) or guardian, and the court, when applicable, as set out by Section 1-3-102 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-3-102), are required for:~~

- (i) ~~emergency medical care. When appropriate OKDHS staff cannot be located and the situation is life threatening, the provider obtains emergency care and treatment and notifies OKDHS at the earliest possible time; and~~
- (ii) ~~any extraordinary medical care and treatment, such as surgery, general anesthesia, blood transfusions, or invasive or experimental procedures requires consent of the:~~
 - (I) ~~child's parent or guardian, when the child is in OKDHS emergency or temporary custody;~~
 - (II) ~~court of jurisdiction, when the child is in OKDHS emergency or temporary custody, and the treatment is related to the abuse or neglect, or the parent or guardian is unavailable or will not consent; or~~
 - (III) ~~court of jurisdiction, when the child is in OKDHS permanent custody.~~

(C) ~~The provider must comply with OKDHS policy for administering prescribed psychotropic medication found in OAC 340:75-14-3.~~

(D) ~~The contractor agrees to immediately report all emergency medical care to the child's assigned CWSCW specialist and to document the manner of report and response in the child's case record. The contractor ensures that CWSCW specialists, parents, and guardians are advised of physician recommendations regarding the use of psychotropic medications and the contractor must comply with OKDHS policy, per OAC 340:75-14-3. Neither OKDHS, a TFC or ITFC parent, nor TFC or ITFC contractor staff may consent to a child in OKDHS custody undergoing an abortion or sterilization procedure, initiating termination of life support, or implementing a "do not resuscitate" order;~~

(6) ~~notify the assigned CWS specialist or specialists and the TFC liaison of any accidental or non-accidental injuries the child sustains, per OAC 340:75-3-400 and 340:75-14-3;~~

(7) ~~ensure the child has opportunity to engage in religious and cultural observances, practices, or beliefs, per OAC 340:75-6-49;~~

(8) ~~develop and implement written policy and procedures regarding each child's access to legal counsel, court appointed special advocate (CASA), OKDHS staff, phone, email, mail, and visitation, per OAC 340:75-6-30, 340:75-11-237, and 340:75-14-2. The policy must ensure the:~~

(A) ~~child has the right to interact with the child's attorney, guardian ad litem, CASA, and OKDHS staff in a manner and setting assuring confidentiality;~~

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- (B) child's attorney, guardian ad litem, and CASA have the opportunity to meet with the child, observe the child in appropriate settings, including the child's current placement, and review the child's documents, reports, records, and other information relevant to the court case; and
- (C) TFC or ITFC parent is advised of his or her right to submit a report to the court for presentation at the review hearing to assist the court in reviewing the child's placement and status;
- (9) develop and implement written policy and procedures regarding the maintenance and safeguarding of each child's clothing, personal items, property, and funds while placed;
- (10) ensure the completion of a clothing and personal item inventory for each child entering and leaving placement and ensure each child leaves the placement with all of his or her clothing and personal items;
- (11) obtain prior OKDHS approval any time the child travels overnight or outside of Oklahoma, per OAC 340:75-6-89;
- (12) may not secure any placement without the prior planning and documented written approval of the CWS specialist.
- (13) develop and implement written policy for the approval and use of volunteers, per Section 404.1 of Title 10 of the Oklahoma Statutes (10 O.S. § 404.1), when the TFC or ITFC contractor utilizes volunteers that, at a minimum, require criminal history, Restricted Registry, and sex offender registry checks;
- (14) develop and implement written policy and procedures that prohibit the utilization of any child in OKDHS custody for commercial purposes;
- (15) submit written reports to the child's CWSW specialist or specialists describing the child's stay in placement, progress toward meeting the identified treatment plan, education, and medical care as requested for court hearings, and file a copy of the reports in the child's case record;
- (16) develop and implement written policy and procedures for discipline that comply with OAC 340:75-7-38 and 10A O.S. § 1-7-105;
- (17) ensure each employee and TFC or ITFC parent is trained in an approved passive physical restraint curriculum;
- (18) develop and implement written policy and procedures requiring the TFC or ITFC contractor, and all contractor employees, with reason to believe any child in placement was subject to abuse or neglect, to report it to the Oklahoma Abuse and Neglect Hotline the same day of the incident. Failure to report is a misdemeanor and failure to report with prolonged knowledge is a felony, per 10A O.S. § 1-2-101;
- (19) develop and implement written policy that prohibits possession or use of tobacco and tobacco products by any child in placement, and prohibits the use of tobacco or tobacco products by employees of the TFC or ITFC contractor in the presence of any child in placement;
- (20) develop and implement written policy and a system for resolving grievances by any child placed and by the TFC or ITFC parent regarding the substance or application of any written or unwritten policy or rule, decision, act, or omission of the TFC or ITFC contractor, TFC or ITFC employees, or agents of the contractor, per OAC 340:2-3-49 and 340:2-3-50;
- (21) afford the TFC or ITFC parent the same rights as all foster parents in Oklahoma, per 10A O.S. § 1-9-119;
- (22) ensure each employee and TFC or ITFC parent has reasonable knowledge of the rights of a child in OKDHS custody, per OAC 340:75-14-2 and 10A O.S. § 1-9-119.1;
- (23) develop and implement written policy and procedures regarding communicable disease, per OAC 340:75-1, Part 9;
- (24) develop and implement written policy and procedures that certify compliance in providing or continuing to provide a drug-free workplace, per the Drug-Free Workplace Act of 1988;
- (25) develop and implement written policy and procedures to maintain confidentiality with regard to children in placement to comply with OKDHS rules regarding the protection, use, and release of client information, per 10A O.S. § 1-6-102 and Part 3 of OAC 340:75-1;
- (26) plan and coordinate each child's discharge with the child's CWS assigned specialist or specialists, when different, and provide a minimum of 72-business hours' notice to discharge, except in medical emergencies. On-site crisis intervention is provided prior to any emergency discharge;
- (27) submit a written discharge summary to the child's CWSW specialists within 30-calendar days of the child's discharge and file a copy in the child's case record. The discharge summary includes:
- (A) a summary of treatment services;
 - (B) child's progress on the treatment plan;
 - (C) reason for discharge; and
 - (D) recommendations for future placements and services for the child's treatment needs;
- (28) ensure compliance with:
- (A) minimum licensing standards per Child Care Services licensing standards for child-placing agencies; and
 - (B) staffing requirements per OKDHS Contract Agreement for TFC or ITFC;
- (29) develop and implement written policy and operating procedures regarding corrective discipline procedures for employees;
- (30) ensure any TFC or ITFC agency staff member responsible for conducting resource family assessments (RFAs) or annual updates attended OKDHS training prior to conducting RFAs or updates. The staff member attends a minimum six hours of mandatory training annually;
- (31) ensure the TFC or ITFC parent maintains a current Life Book for each child, regardless of the child's age that documents the child's stay in care, and provides continuity throughout the child's life, per OAC 340:75-7-37;

~~(3215)~~ develop and implement written policy and operating procedures to govern the TFC or ITFC parent's maintenance and administration of prescription and non-prescription medication to each child in placement, including transporting prescription and non-prescription medication when the child receives medication any place other than the TFC or ITFC home, such as respite placements, family visits, and medication administered during school hours;

~~(33)~~ develop written policy and operating procedures regarding the use of physical force for behavior management of any child placed.

~~(A)~~ The use of mechanical restraints and the use of medication for behavior management are prohibited in the care and treatment of the child in OKDHS custody.

~~(B)~~ The use of physical force is permitted when it is necessary for the protection of the child or others consistent with an approved passive physical restraint curriculum, such as when the child's behavior poses an immediate danger or threat of danger to self or others and other methods were exhausted;

~~(3416)~~ develop and implement written policy, operating procedures, and supervision guidelines regarding the use of solitary confinement and separation programs, such as restricting the child to his or her own room for a cooling off period. The duration of room restriction is specified at the time of assignment and is consistent with the child's chronological age; developmental level; behavioral, emotional, and medical needs; and availability of supervision;

~~(3517)~~ for each scheduled review hearing, coordinate with the CWSCW specialist and the TFC or ITFC parent for a youth 14 through 17 years of age to ensure the youth's availability to respond to the court's inquiry, in person, by phone, or by other electronic means, about the youth's plan for skills development and transition to successful adulthood;

~~(3618)~~ assist the CWSCW specialist and TFC parent with ensuring youth in the eighth, ninth, or tenth grades are enrolled in the Oklahoma's Promise, formerly known as the Oklahoma Higher Learning Access Program, and provide TFC or ITFC parents with information on the program's eligibility, application guidelines, and academic requirements; and

~~(3719)~~ for any youth 14 years of age and older, assist the CWSCW specialist and youth, as needed, to remedy concerns of identity theft or fraudulent use of the youth's identity noted through a review of the his or her credit report provided by OKDHS.

340:75-8-11. Therapeutic foster care (TFC) or intensive treatment family care (ITFC) placement stability

(a) **Placement stability assessment.** TFC or ITFC contractors and ~~Child Welfare Services (CWS)~~ child welfare (CW) specialists continually assess a child's placement stability. When indications of instability are identified, the TFC or ITFC contractor and CWSCW specialist jointly evaluate the need

for additional services and supports to maintain the current placement.

(b) **Supporting placement stability.** The TFC or ITFC contractor and CWSCW specialist review the child's current treatment plan and determine the need for modifications including, but not limited to:

- (1) the need for further evaluation;
- (2) specialized treatment services;
- (3) increased communication between team members;
- (4) wraparound services;
- (5) additional supports for the TFC or ITFC parents;
- (6) use of disruption prevention staffing; and
- (7) behavior redirection and crisis management services.

(c) **Foster parent supports for TFC or ITFC.**

~~(1)~~ **Travel reimbursement.** Oklahoma Administrative Code 340:75-7-65 provides for TFC or ITFC parent reimbursement for a child's transportation that meets specific criteria.

~~(2)~~ **Foster home insurance.** Liability insurance is provided for TFC or ITFC families for damages caused by the child in Oklahoma Human Services or tribal custody according to the policy terms. TFC or ITFC families have the right to receive a copy of the liability insurance policy, per Section 1-9-119 of Title 10A of the Oklahoma Statutes. TFC or ITFC parents are responsible for deductibles.

(d) **Placement disruption.** Disruption is an unplanned change in a child's placement and occurs when a child is removed from a TFC or ITFC home and will not return to the same TFC or ITFC home due to the home or contractor being unable or unwilling to continue to serve the child. Disruptions include all placement changes that are not related to a planned movement ~~towards~~ toward the child's identified permanency goal. Unless an emergency exists, the TFC or ITFC:

- ~~(1)~~ contractor does not move children in TFC or ITFC placement without CWS approval; ~~and~~
- ~~(2)~~ parent provides a 30-calendar day notice to the TFC or ITFC contractor when requesting a child's removal from the TFC or ITFC home, unless the removal is required to protect the child's or TFC or ITFC family members' health or safety.

(e) **Disruption staffing.** A disruption staffing occurs for all unplanned placement changes. When possible, the staffing occurs prior to providing discharge notice to support the TFC or ITFC parent and child, prevent disruption, or assist with transition. When prior planning is not possible, the staffing occurs within the 72-business hours' notice of discharge period. The staffing occurs within 72-business hours following immediate discharge, such as into an inpatient setting. The staffing includes at least the TFC or ITFC therapist, TFC or ITFC parent, CWSCW specialist or supervisor, and tribal worker or supervisor. The child may participate, when able. The staffing may be conducted by conference call or other virtual means. The contractor's TFC or ITFC program director reviews all disruptions and includes copies with the contractor's monthly report to TFC program staff.

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(f) **Respite care.** Respite care provides reprieve and support for the TFC or ITFC parent, child, or both. Respite for children in TFC is only provided in certified therapeutic homes. Respite for children in ITFC is only provided in certified ITFC homes. Reprieve for the TFC or ITFC parent with whom a child is placed includes a defined timeframe, not to exceed 14-calendar days, and specifies the date for the child to return. When the need arises to extend the 14-calendar day respite, the TFC or ITFC contractor obtains prior approval from the TFC field manager.

(g) **Respite placement notification.** The TFC or ITFC contractor notifies, via Form 04FT004E, Notice of Child's Location, the CWSCW specialists involved in the placement and the TFC liaison and liaison supervisor of all placement changes, including respite, for each child in TFC or ITFC placement.

(h) **TFC or ITFC contractor.** The TFC or ITFC contractor:

- (1) ensures the respite TFC or ITFC parent is informed of the child's current treatment issues; behavioral, medical, and physical needs; and any child-specific supervision or safety plans;
- (2) pre-approves the respite after assessing both the requesting and receiving resources to ensure safety, bed space, and compatibility of children, ~~as well as ensuring~~ and ensures the respite home is not on a written plan of compliance or any other disciplinary action; and
- (3) supervises the respite TFC or ITFC parent in implementing in-home treatment strategies identified in the TFC or ITFC contractor's individualized treatment plan for the child.

340:75-8-11.1. Contracted foster care (CFC) in therapeutic foster care (TFC) or intensive therapeutic family care (ITFC) homes

(a) **Purpose.** A TFC or ITFC contractor may ~~utilize~~ certified TFC or ITFC homes to provide ~~contracted foster care (CFC)~~ to children in the legal custody of, or who are voluntarily placed with, Oklahoma Human Services (OKDHS), or a child in an Indian tribe's custody with an OKDHS tribal agreement. TFC or ITFC contractor CFC placements are submitted for approval to the TFC field manager or field administrator prior to admission to CFC placement in a specified home. Approval may be contingent upon funding availability.

(b) **Population served.** Children may be considered for CFC placement in a TFC or ITFC home on a case-by-case basis. ~~Prior approval with a designated time frame the TFC field manager or field administrator determines is required. The TFC or ITFC contractor determines a designated timeframe when a child:~~

- (1) placed in TFC or ITFC, no longer requires TFC or ITFC level of care and steps down to a traditional foster care level in the current placement;
- (2) needs traditional foster care placement in the same home with a sibling, who is placed in the home on TFC or ITFC level of care;
- (3) needs placement in traditional foster care in the same home with his or her parent, who is in OKDHS or

tribal custody, and is placed on a TFC or ITFC level of care;

(4) needs to return to a home where he or she was previously placed, following an unsuccessful permanency effort, such as trial adoption or trial reunification;

(5) appears to meet criteria for placement in TFC or ITFC and needs immediate placement when Oklahoma Healthcare Authority (OHCA) approval is not available because the placement need developed outside OHCA business hours or the business day closed without a return call from OHCA. The contractor may assist with the child's immediate placement. This placement is documented and reimbursed through the contractor's resource family partnership (RFP) contract for traditional foster care placements or by placement in CFC. OHCA approval is obtained the following business day after placement. ~~Once~~ When OHCA approval is obtained, the child is admitted to TFC or ITFC.

(A) When OHCA denies TFC or ITFC placement and when the family agrees to keep the child, the child may remain in the CFC home.

(B) When the family does not agree to keep the child, the contractor and CWSCW child welfare (CW) specialist immediately coordinate to ensure a new placement referral is initiated for placement in the appropriate level of care; or

(6) a child needing traditional foster care level is placed with a specific TFC or ITFC home due to the home's unique characteristics that meet the child's needs. This placement requires prior approval of the TFC or ITFC contractor and the TFC field manager or field administrator. Examples of unique characteristics include the ability to communicate with the child in a language other than English, specialized medical training, and wheelchair accessible housing and transportation. When funding availability is uncertain, CFC approval may be required. Approval is requested from the TFC field manager or TFC field administrator.

(c) **CFC admission procedure.** ~~All admissions to CFC have prior approval from the TFC field manager or field administrator; are determined on a case-by-case basis; and are subject to funding availability.~~

(1) The TFC or ITFC contractor notifies the child's CWSCW specialist and CWSCW supervisor when the child is determined to no longer meet TFC or ITFC level of care criteria and is appropriate to step down to traditional foster care. The TFC or ITFC contractor and CWS staff, and tribal staff for a child in tribal custody, determine the most appropriate placement option for the child, including possible CFC placement in the current TFC or ITFC placement. ~~When the child's team determines that remaining in the child's current TFC or ITFC home as a CFC level placement is the child's best placement option, the contractor submits the request to the TFC field manager or field administrator for approval, prior to placement.~~

(2) OKDHS may request the TFC or ITFC contractor consider a CFC placement for the child meeting criteria as sibling to a TFC or ITFC child, a child of a parent placed

in TFC or ITFC, or a child returning to placement after failed permanency placement. ~~When in agreement with the request for CFC placement, the TFC or ITFC contractor submits the request to the TFC liaison or liaison supervisor for approval prior to placement.~~

~~(3) The TFC or ITFC contractor submits the request for CFC placement to the TFC field manager or field administrator, the request includes, but is not limited to, the:~~

- ~~(A) child's name, date of birth, and KK number;~~
- ~~(B) county of jurisdiction and the CWS specialist's name and phone number;~~
- ~~(C) criteria identification for CFC placement for a:

 - ~~(i) child stepping down from TFC or ITFC, include the date of anticipated step down;~~
 - ~~(ii) child whose parent is in TFC or ITFC or sibling placements, include the name and date of placement of the TFC or ITFC sibling or parent; and~~
 - ~~(iii) return to previous placement, include the child's previous placement and discharge dates from the proposed placement home;~~~~
- ~~(D) description of any special care or behavioral health needs for the child considered for CFC placement, and the proposed foster parent's training or skills to meet those needs;~~
- ~~(E) each proposed foster parent's work schedule and planned child care use while the proposed foster parent is working;~~
- ~~(F) names, ages, and genders of all children currently living in the home and their relationships to the proposed foster parents;~~
- ~~(G) number of bedrooms in the home and how the bedrooms will be allocated with an additional child or children in the home; and~~
- ~~(H) summary of previous abuse and neglect referrals and all plans of compliance or corrective action plans.~~

~~(4) The TFC liaison and liaison supervisor provides a written response for request approval or denial. Email approval is a valid written response. The response is maintained in the child's file and in the foster home file when placement is completed.~~

~~(5) At the time of CFC placement, the TFC or ITFC contractor provides written notification of the placement date to the TFC liaison and liaison supervisor and the CWSCW specialist by submitting Form 04FT004E, Notice of Child's Location.~~

~~(64) The TFC liaison documents the child's CFC placement in KIDS.~~

(d) The CFC discharge procedure.

(1) Discharge planning is coordinated between TFC or ITFC contractor staff and the child's CWSCW specialist and tribal worker.

(2) Discharges from CFC are reported to the TFC liaison and liaison supervisor and the child's CWSCW specialist within five-business days from the date of discharge by submitting Form 04FT004E.

(3) The contractor averts disruption, when possible, through the use of additional services, respite, disruption prevention meetings, and other identified methods to stabilize placement. The child must meet CFC criteria for placement in a new TFC or ITFC home.

(4) The CWSCW specialist is notified immediately of all changes in the child's location, including respite, within one-business day of the date of the change in location by submitting Form 04FT004E.

(e) **CFC respite.** The TFC or ITFC contractor ensures resource homes have access to both planned and unplanned respite care providers for children placed in CFC. Respite care may be ~~utilized~~used for the same reasons and time periods specified, per Oklahoma Administrative Code (OAC) 340:75-8-11, for respite care for a child in TFC or ITFC placement. Any respite provider is fully informed of a child's special needs and has skills or training to meet those needs, prior to assuming care of the child, while ensuring the safety and well-being of all children in the home. Respite for children placed in CFC may be provided by accessing:

- (1) a CFC bed within the TFC or ITFC home in compliance with all certification requirements;
- (2) identification and approval of an alternate caregiver, per OAC 340:75-7-65; or
- (3) a traditional foster care resource, when available, by coordinating with the child's CWS resource staff. When utilizing a traditional foster care resource for respite, the contractor is responsible for paying the daily board rate directly to the foster family providing care for the child. The payment rate is the same daily rate as a traditional foster care maintenance payment per Appendix C-20, Child Welfare Services (CWS) Rates Schedule, including any difficulty of care (DOC) rate in effect for the child.

(f) TFC or ITFC contractor requirements for CFC.

- (1) The TFC or ITFC contractor ~~must~~:
 - (A) provides 24-hour support services to homes providing CFC placements including crisis intervention, consultation, training, and referral to services as needed;
 - (B) complies with policies and procedures established for TFC or ITFC placements regarding management of a CFC placement child's property, allowance, funds, and Life Books;
 - (C) ensures the TFC or ITFC contractor or subcontractor staff, CFC foster parents, respite providers, and alternate caregivers comply with OKDHS policy regarding discipline, behavior management, and corporal punishment, per OAC 340:75-7-38;
 - (D) provides written reports to the child's CWSCW specialist or tribal worker on a quarterly basis, or more frequently when ~~requested by~~ OKDHS or the court requests. The report includes:
 - (i) a summary of progress and overall adjustment made in the placement, during or following visitation with the child's parents, siblings, and important connections;
 - (ii) the child's strengths and behavioral concerns;

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- (iii) medical or psychological appointments and outcomes; and
 - (iv) the child's identified need for additional services;
 - (E) coordinates with the child's ~~CWSCW~~ specialist to make referrals and obtain needed services for the child; and
 - (F) participates in all OKDHS initiated staffings or meetings regarding the child and may choose to attend court proceedings for the child. The court may mandate TFC or ITFC contractor attendance to some court proceedings.
- (2) The TFC or ITFC contractor staff:
- (A) immediately reports to the Oklahoma Abuse and Neglect Hotline (Hotline) at 1-800-522-3511, any allegations or suspicions of abuse or neglect of a child, per Section 1-1-105 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-105) and OKDHS policy. The TFC or ITFC contractor ensures CFC foster parents understand and acknowledge ~~that~~ failure to report is a misdemeanor offense, failure to report with prolonged knowledge is a felony, and upon conviction, is punishable, per 10A O.S. § 1-2-101, and may result in discontinued use of the home to provide placement for children in OKDHS custody;
 - (B) cooperates with CWS on any referral regarding alleged abuse or neglect assessed or investigated per OKDHS policy and state law. No new placements are assigned to the home until the assessment or investigation is completed and a finding is made regarding the allegations. CWS program staff notifies the TFC or ITFC contractor of the assessment conclusion or investigation finding and jointly determines if a written plan of compliance, training, or assessment is needed prior to the home's continued use; and
 - (C) establishes a procedure to address and document a response to concerns in a CFC foster home that do not warrant a referral for an abuse or neglect assessment or investigation. Examples of this type of concern include, but are not limited to, a foster parent's judgment or supervision, disciplinary practices, non-compliance with policy or contract, unacceptable housing standards, inadequate clothing provisions for the child, or a lack of involvement in the child's education or independent living skills. When documented efforts to address these issues do not remove the concerns, CWS has the right to decline the use of the home.
- (3) TFC or ITFC contractor makes the child's records and resource file available for review by ~~CWSCW~~ specialists, CWS TFC program staff, or tribal worker assigned to the child.
- (g) **Foster parent supports for CFC.**
- (1) **Child care.** OAC 340:75-7-65 provides for the availability of child care subsidy benefits for a child placed in a CFC foster home while the foster parent is employed outside of the home for at least 20 hours weekly.
 - (2) **Travel reimbursement.** OAC 340:75-7-65 provides for CFC parent reimbursement for a child's transportation that meets specific criteria.
 - (3) **Difficulty of care (DOC) reimbursement.** OAC 340:75-7-53 provides for the availability of DOC reimbursement for a child in CFC placement based on the child's extraordinary physical, mental, or emotional needs, per Appendix C-20.
 - (h) **Foster home insurance.** Liability insurance is provided for TFC, ITFC, and CFC foster families according to the policy terms. Foster families have the right to receive a copy of the liability insurance policy, per ~~Section 1-9-119 of Title 10A of the Oklahoma~~ 10A O.S. § 1-9-119. Foster parents are responsible for deductibles.
 - (i) **Child safety.**
 - (1) The TFC or ITFC contractor ensures:
 - (A) the foster parent takes all necessary steps to provide for the safety of children in placement;
 - (B) the foster parent knows where the child is at all times. The TFC or ITFC contractor and foster parent immediately follow protocol in OAC 340:75-8-6(4) to notify CWS staff and law enforcement in the event a child is:
 - (i) is removed by anyone without authorization;
 - (ii) is taken into custody by law enforcement officials;
 - (iii) leaves without authorization or runs away; or
 - (iv) ~~otherwise~~ cannot otherwise be located;
 - (C) ~~CWS~~ Child Welfare Services is notified of any changes in the coordinated foster family circumstances that may affect the child's safety or stability in placement, including changes in finances, location, health, relationships, or household members;
 - (D) the CFC home and TFC or ITFC contractor comply with OAC 340:75-7-18 to immediately complete assessment of new household members; and
 - (E) the CFC, TFC, or ITFC home is not providing routine child care as a licensed or unlicensed child care provider.
 - (2) The TFC or ITFC contractor, the foster parent, or both obtain CWS permission before taking a child in OKDHS custody out-of-state for an overnight stay.
 - (3) ~~CWSCW~~ specialist reports all concerns for abuse or neglect in a CFC home to the ~~Oklahoma Abuse and Neglect~~ Hotline at 1-800-522-3511.
 - (4) The TFC or ITFC contractor participates in regularly scheduled staffings on all child abuse and neglect referrals with ~~CWSCW~~ program staff, per OAC 340:75-3-410. Each foster care resource file must contain a log of all investigations and screened-out referrals for use as a continual assessment of safety and resource home developmental needs.
 - (5) TFC program staff reports to the TFC or ITFC contractor for evaluation and response, all contract and policy violations, and concerns for child safety and well-being that do not meet criteria for abuse or neglect referral. The

TFC or ITFC contractor reports resolution of the concerns to the TFC liaison supervisor within 15-calendar days of the report of violations or concerns.

[OAR Docket #23-422; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES

[OAR Docket #23-423]

RULEMAKING ACTION: PERMANENT final adoption
RULES:

- Subchapter 1. General Provisions
340:100-1-1 [REVOKED]
340:100-1-3 [REVOKED]
Subchapter 3. Administration
Part 1. General Administration
340:100-3-2 [REVOKED]
340:100-3-3 [REVOKED]
340:100-3-5.2 [AMENDED]
340:100-3-9 [REVOKED]
Part 3. Administration
340:100-3-27 [AMENDED]
340:100-3-27.4 [REVOKED]
340:100-3-28 [REVOKED]
340:100-3-30 [REVOKED]
340:100-3-36 [REVOKED]
340:100-3-40 [AMENDED]
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-22.6 [AMENDED]
340:100-5-26.1 [AMENDED]
340:100-5-29 [AMENDED]
340:100-5-35.1 [AMENDED]
Subchapter 6. Group Home Regulations
Part 3. Standards
340:100-6-10 [AMENDED]
340:100-6-11 [REVOKED]
340:100-6-12 [REVOKED]
340:100-6-13 [AMENDED]
340:100-6-14 [REVOKED]
340:100-6-20 [REVOKED]
340:100-6-21 [REVOKED]
Part 5. Physical Plant Requirements
340:100-6-30 [AMENDED]
Part 7. Environmental Health, Safety, and Sanitation Requirements
340:100-6-41 [REVOKED]
340:100-6-44 [REVOKED]
Part 19. Involuntary Transfer or Discharge of Service Recipient
340:100-6-85 [AMENDED]
340:100-6-86 [REVOKED]
340:100-6-88 [REVOKED]
Part 21. Resident Rights and Responsibilities
340:100-6-95 [AMENDED]
340:100-6-97 [REVOKED]
Subchapter 15. Developmental Disabilities Services (DDS) Preadmission Screening and Resident Review (PASRR)
340:100-15-1 [AMENDED]
340:100-15-2 through 340:100-15-10 [REVOKED]
(Reference WF 23-100)

AUTHORITY: Director of Human Services; 56 O.S. §§ 162 and 1025 et seq., and the 21st Century Cares Act.
SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: January 8, 2023

COMMENT PERIOD: January 3, 2023 through February 2, 2023
PUBLIC HEARING: February 7, 2023
ADOPTION: March 6, 2023
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: March 9, 2023
LEGISLATIVE APPROVAL: Approved May 31, 2023 by SJR 22
FINAL ADOPTION: May 31, 2023
EFFECTIVE: September 15, 2023
SUPERSEDED EMERGENCY ACTIONS: n/a
INCORPORATIONS BY REFERENCE: n/a
GIST/ANALYSIS:

The proposed amendments to Chapter 100, Subchapters 1, 3, 5, 6, and 15 amend rules to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process. The proposed amendments: (1) position Oklahoma Human Services (OKDHS) DDS to improve services to individuals with intellectual and developmental disabilities; (2) support DDS goals of improving the quality of life of vulnerable Oklahomans by increasing individuals' abilities to lead safer, healthier, and more independent, productive lives; and (3) comply with federal requirements and the Governor's executive order to reduce unnecessary rules.

CONTACT PERSON: Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

340:100-1-1. Purpose [REVOKED]

The purpose of this Chapter is to describe the rules governing the Department's services to individuals who have mental retardation or developmental disabilities.

340:100-1-3. Legal base [REVOKED]

(a) An Act of the Twenty Ninth Session of the Oklahoma Legislature, House Bill 789, effective July 1, 1963, transferred administration of the three State Institutions for the Mentally Retarded (the Northern Oklahoma Resource Center of Enid, the Southern Oklahoma Resource Center of Pauls Valley, and the Hissom Memorial Center at Sand Springs) from the Mental Health Board, Department of Mental Health and Mental Retardation, to the Oklahoma Commission for Human Services.

(b) In prescribing the duties of the Oklahoma Commission for Human Services, the Constitution of the State of Oklahoma, Article XXV, Section 4, includes the following: The Commission shall formulate the policies, and adopt rules and regulations for the effective administration of the duties of the Department.

(c) In relation to the rule-making authority of the Commission, House Bill 789, now codified at 10 O.S.A., Section 1406

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et. seq., included in regard to programs and institutions for the mentally retarded the following:

(1) **Section 305.**

(A) *The Commission is authorized and directed to promulgate and adopt all rules and regulations necessary to carry out the provisions of this Act.*

(B) *The Commission shall establish and maintain such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis) as are necessary for the proper and efficient administration of the programs and institutions named in Section 1 of the Act; shall maintain records and prepare reports; shall prescribe a uniform accounting system; and shall exercise any other powers necessary to carry out the provisions of this Act.*

(2) **Section 310.** *Release of a pupil from any of the institutions named in Section 1 of Act shall be made subject to such circumstances and conditions as may be prescribed by the Commission relating to release.*

SUBCHAPTER 3. ADMINISTRATION

PART 1. GENERAL ADMINISTRATION

340:100-3-2. Client records, confidentiality, and security [REVOKED]

~~DDS case managers maintain an official electronic service recipient record for each service recipient receiving waiver services on his or her caseload.~~

~~(1) All service recipient information and records are confidential and released only to individuals or provider agencies who have proper authorization from the service recipient or his or her legal representative.~~

~~(2) It is the legal responsibility of Oklahoma Human Services (OKDHS) employees and contract providers to protect clients' privacy and to ensure the protection of confidential information.~~

~~(3) DDS ensures service recipient records are protected from loss, defacement, tampering, destruction, and violation of confidentiality.~~

~~(4) DDS personnel obtains individualized, time limited, informed consent, prior to securing service recipient information or records from provider agencies who do not have a current OKDHS contract.~~

340:100-3-3. Communicable diseases [REVOKED]

~~Services are not denied to persons with communicable diseases based solely upon their health status.~~

~~(1) The safety and well being of all consumers, staff and providers is considered and is assured by adherence to guidelines set forth by agencies inclusive of the Oklahoma State Department of Health and the National Center of Disease Control regarding containment of specific disease process.~~

~~(2) Educational programs which deal with the containment and the spread of infectious diseases are required for all staff and providers. These programs emphasize the ways in which infection is spread and also emphasize appropriate precautions to be taken to prevent transmission of diseases.~~

~~(3) Educational programs for clients meet need identified by the client's interdisciplinary team. Specialized counseling is available for and provided to those clients exhibiting a health need as deemed appropriate by the interdisciplinary team.~~

340:100-3-5.2. Guardianship Voucher Program

(a) **Scope and applicability.** Section 1415 of Title 10 and Section 228 of Title 56 of the Oklahoma Statutes, establishes the requirements for the Oklahoma Department of Human Services (DHS) (OKDHS) to pay for legal fees associated with guardianship proceedings for persons, who:

(1) are members of the Homeward Bound class;

(2) receive Developmental Disabilities Services (DDS) Home and Community-Based Services (HCBS) Waiver services and; are determined by the DDS director or designee to need guardianship due to imminent risk to health, safety, or finances; or

(3) are Robert M. Greer Center residents and are determined by the DDS director or designee to need guardianship due to imminent risk to health, safety, or finances.

(b) **Payment.** Payment for legal services is contingent upon resource availability and does not exceed \$700 per service recipient the rate defined in the OKDHS Appendix D-26, Developmental Disabilities Services Rates Schedule. Priority for funding is for groups in the order identified by (a) of this Section.

(c) **Participation.** Participation in the Guardianship Voucher Program extends only to service recipients determined, per Oklahoma Administrative Code (OAC) 340:100-3-5, to need a service listed in (d) of this Section.

(d) **Services.** Payment may be made for legal services necessary to:

(1) establish guardianship;

(2) replace, change, or add a guardian;

(3) appoint a successor guardian;

(4) alter the terms or level of an established guardianship; or

(5) restore the ward's capacity.

(e) **Subsequent services.** Requests ~~The DDS director or designee may approve requests~~ for payment for subsequent legal services related to the guardianship of the same service recipient ~~may be approved by the DDS director or designee.~~

(f) **Eligibility.** The guardian or potential guardian applying for a voucher must be:

(1) a service recipient's relative or a volunteer, per OAC 340:100-3-5.1; and

(2) recommended by the DDS Personal Support Team ~~(Team).~~

(g) **Financial eligibility.**

(1) Approved prospective volunteer guardians are exempt from financial eligibility requirements.

(2) When the service recipient's spouse, mother, or father is applying to be the guardian, he or she is subject to financial eligibility requirements. To be financially eligible to receive a guardianship voucher, the applicant spouse's annual adjusted gross income or the applicant's mother's or father's household income must be \$60,000 or less.

(3) Other relatives who desire to become the service recipient's guardian are exempt from the financial eligibility criteria.

(h) **Guardianship voucher application.**

(1) Form 06MP030E, Guardianship Voucher Application, is available from the DDS case manager assigned to the service recipient.

(2) The applicant's spouse, mother, or father applying for the guardianship voucher must submit required income verification, per OAC 340:100-3-5.2(i).

(3) Applications are sent to the DDS director or designee.

(4) Incomplete applications are returned to applicants for correction.

(5) Guardianship voucher applications are considered in chronological order of receipt at DDS State Office, with priority given to Homeward Bound class members.

(6) The number of applications approved is determined by available funding and, eligibility, per (a) of this Section.

(i) **Income verification.** When the applicant is the service recipient's spouse, mother, or father, verification of annual income must be provided. Acceptable forms of verification include a signed copy of the applicant's most recent federal income tax return or documentation of all sources of income from Supplemental Security Income, Temporary Assistance for Needy Families, child support, alimony, other state or federal subsidies, or other types of income.

(j) **Notification of application status.** The applicant is provided written notice of approval or denial within 30-calendar days of receipt of completed Form 06MP030E at DDS State Office.

(k) **Issuance and expiration of guardianship voucher.** When an application for the guardianship voucher is approved, dated Form 06MP031E, Guardianship Voucher, is issued to the applicant who then seeks and retains legal counsel. Each Form 06MP031E is approved for use from the date of issuance and is valid through the printed expiration date on the voucher.

(l) **Submitting voucher for payment.** Upon completion of the guardianship proceedings, the attorney who provides the service submits Form 06MP031E to DDS State Office for payment. A copy of all pleadings filed, the letters of guardianship, the guardianship order, Plan for the Care and Treatment of the Ward, and an itemized bill for legal services must be attached to Form 06MP031E. Designated DDS State Office staff must receive Form 06MP031E and required documentation ~~must be received by designated DDS State Office staff~~ prior to the expiration date identified, or Form 06MP031E expires and is null and void.

(m) **Fair hearing.** Any person who was denied a voucher may request a hearing, per OAC 340:2-5.

**340:100-3-9. Unscheduled client absence
 [REVOKED]**

~~Local Administrators implement policy and procedures which assure that the unscheduled absence of a client from a residential or service area does not present a risk to his/her health or welfare.~~

~~(1) Activities tracking the location of clients are no more intrusive than dictated by client needs.~~

~~(2) The implementation of procedures requiring intrusive measures such as the notification of law enforcement officials to locate a client on more than three occasions during a six month interval prompts the interdisciplinary development of a behavior enhancement program as provided by DDS behavior management policy team to develop an appropriate action/service plan (e.g., a behavior treatment plan).~~

~~(3) Adult clients who have not been determined legally incapacitated cannot be forced to return to a facility unless ordered by an appropriate legal authority.~~

PART 3. ADMINISTRATION

340:100-3-27. Quality assurance

(a) **Purpose.** Developmental Disabilities Services (DDS) quality assurance (QA) activities assess and encourage delivery of supports consistent with:

- (1) the service recipient's preferences and needs;
- (2) Oklahoma Human Services (OKDHS) rules;
- (3) applicable Oklahoma Health Care Authority (OHCA) rules;
- (4) OKDHS and OHCA contract requirements for Home and Community-Based Services (HCBS);
- (5) regulatory standards applicable to services; and
- (6) federal and state laws.

(b) **Case manager monitoring.** DDS case managers assess services rendered to each service recipient to ensure service effectiveness in meeting the service recipient's needs. The case manager periodically observes service provision to assess implementation of the service recipient's Individual Plan (Plan). The requirements per this Section are minimum expectations for face-to-face visits with service recipients. Case management may require additional visits to ensure the service recipient's health and welfare.

(1) The DDS case manager conducts face-to-face visits to monitor the service recipient's health and welfare and service effectiveness in meeting his or her needs.

(A) Face-to-face visits include observation of, and talking with, the service recipient regarding his or her health and welfare and satisfaction with services.

(B) The case manager may:
(i) observe service provision and related documentation in any location where services are provided; and

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- (ii) talk with family members and providers regarding service provision and the service recipient's health and welfare.
 - (C) For service recipients receiving services through an In-Home Supports Waiver:
 - (i) a face-to-face visit is completed at least semi-annually with one visit occurring between January and June and one between July and December; and
 - (ii) at least one of the two visits occurs at the site where the majority of services are provided.
 - (D) For service recipients receiving services through the HCBS Community Waiver:
 - (i) a face-to-face visit occurs during each calendar month in the residential service recipient's home, per Oklahoma Administrative Code (OAC) 340:100-5-22.1, or the group home service recipient's home, per OAC 317:40-5-152. Case managers certify home visits on Form 06MP070E, Access to Record and Verification of Monitoring Requirements, located per OAC 340:100-3-40;
 - (ii) a face-to-face visit is completed each calendar-year quarter, coinciding with the quarters established per OAC 340:100-5-52 for a quarterly summary of progress reports, for service recipients who do not receive residential services or group home services, with at least two of these visits occurring at the site where the majority of services are provided; and
 - (iii) the case manager visits the employment or day services site at least semi-annually, with one visit occurring between January and June, and one between July and December, when services are funded through the HCBS Community Waiver unless the Personal Support Team (Team) requests a DDS area manager or designee approved exception.
 - (E) For service recipients receiving services through the Homeward Bound Waiver:
 - (i) a face-to-face visit occurs in the home during each calendar month. Case managers certify home visits on Form 06MP070E located within the home record per OAC 340:100-3-40; and
 - (ii) the case manager visits the employment site each calendar-year quarter, coinciding with the quarters established, per OAC 340:100-5-52, for quarterly summary of progress reports, unless the Team requests a DDS area manager or designee approved exception.
 - (F) For Homeward Bound class members who reside in an intermediate care facility for individuals with intellectual disabilities (~~ICF/IID~~), the case manager visits monthly.
- (2) ~~The DDS case manager may also conduct virtual visits in addition to the required minimum face to face visits utilizing HIPAA compliant phone calls or video conferencing.~~ The DDS case manager may conduct virtual monitoring as a substitute for the required minimum

face-to-face visits utilizing Health Insurance Portability and Accountability Act (HIPAA) compliant phone calls or video conferencing as identified in (A) through (F) of this paragraph. The DDS area manager or designee approves virtual monitoring.

- (A) Virtual visits are limited to two, non-consecutive calendar months per calendar year for service recipients who receive:
 - (i) daily living supports; and
 - (ii) traditional or community living group home services, specialized foster care (SFC), agency companion services and Prader-Willi Services.
 - (B) Virtual visits are limited to one time per calendar year for service recipients who receive non-residential services on the Community Waiver and only when the member does not receive Remote Supports (RS) service.
 - (C) Virtual visits are not permitted when heightened need for visits is required such as during the first 30-calendar days after a service recipient transitions to a new residential placement or when there are concerns of unmet health and safety needs.
 - (D) Virtual visits may not be substituted for the required minimum face-to-face visits for service recipients who:
 - (i) receive services through the Homeward Bound Waiver;
 - (ii) receive services through the In-Home Supports Waiver;
 - (iii) receives RS services;
 - (iv) reside in an Alternative Group Home; or
 - (v) are in custody of OKDHS, Child Welfare Services.
 - (E) Virtual visits in addition to the required minimum face-to-face visits utilizing HIPAA compliant phone calls or video conferencing may also be conducted.
- (3) DDS case managers review and ensure Plan implementation. The case manager completes a quarterly review for service recipients receiving services through HCBS Waivers, documenting the review in ~~Client Contact Manager (CCM)~~ the service recipient's electronic record.
- (4) When the DDS case manager believes the service recipient is at risk of harm, the case manager takes immediate steps to protect the service recipient and notifies the DDS case management supervisor and other appropriate authorities.
- (5) When the DDS case manager determines a provider is not effectively addressing a service recipient's needs or meeting contractual responsibilities or policies, steps in (A) through (C) of this paragraph are followed.
- (A) The case manager consults with the relevant provider to secure a commitment for necessary service changes within an agreed time frame.
 - (B) When necessary changes are not accomplished within the specified time frame, the case management

supervisor intervenes to secure commitments from the provider.

(C) When the service deficiency is not resolved as a result of the case management supervisor's intervention, an administrative inquiry referral is initiated, per OAC 340:100-3-27.1.

(6) If, during a contract survey, administrative inquiry, SFC monitoring, or area survey, DDS QA staff discovers a situation that requires correction by DDS staff, a system administrative inquiry is initiated.

(A) DDS QA staff emails notification to DDS staff to correct the situation, establishing a reasonable time frame for correction.

(B) When the identified staff is unable to correct the situation within the established time frame, DDS QA staff emails notification to the DDS staff supervisor, establishing a reasonable time frame for correction.

(C) When the staff supervisor is unable to correct the situation within the established time frame, DDS QA staff notifies his or her supervisor, who notifies the DDS area manager, establishing a reasonable time frame for correction.

(D) When the area manager is unable to correct the situation within the established time frame, he or she notifies the DDS State Office QA unit, to resolve the situation with the community services unit deputy director.

(c) **SFC monitoring.** DDS QA staff monitors the SFC program in each area for DDS and OHCA policy compliance. Monitoring is based on a proportionate, representative sample of individuals receiving SFC supports identified for the fiscal year for each area. Monitoring includes a visit to the service recipient's SFC home. A home visit ~~can~~ may be conducted virtually if the home has electronic equipment that allows for face-to-face communication unless health and safety issues are reported that require on-site review.

(d) **Consumer Service Evaluation.** At least annually, service recipients and families receiving supports are provided the opportunity to complete a service evaluation per OKDHS Publication No. 89-10, Consumer Service Evaluation.

(1) Confidentiality is maintained unless the respondent authorizes OKDHS to reveal his or her name to those responsible for service delivery. OKDHS Publication No. 89-10 may be completed anonymously.

(2) DDS QA staff distributes OKDHS Publication No. 89-10 to service recipients or his or her legal guardians at least annually.

(3) OKDHS Publication No. 89-10, when completed is returned to the DDS State Office QA Unit.

(4) Results are forwarded to the respective DDS area office when authorized by the service recipient or legal guardian for resolution of concerns or staff recognition.

(5) A response analysis is completed and distributed to DDS area offices, DDS State Office, or OKDHS for action. Data is available upon request.

(e) **Oklahoma - Advocates Involved in Monitoring (OK AIM).** Service recipients and families receiving supports

participate in contact providers' formal assessments to promote service enhancement, consistent with service recipient expectations.

(1) OK AIM operates under direction of the Oklahomans for Quality Services Committee (OQSC).

(A) OQSC is composed of 15 persons who receive or have a family member receiving DDS services. All areas of Oklahoma are represented.

(i) OQSC members may be nominated by the public at large, current OQSC members, or DDS representatives.

(ii) Appointment of OQSC members occurs as a result of joint consensus by the OQSC chair and DDS director or designee following a determination of the nominee's:

(I) commitment to promote the interests of persons with developmental disabilities; and

(II) capacity to dedicate the necessary time to fulfill his or her responsibilities.

(iii) OQSC members have the authority to elect officers based on a simple majority vote and establish by-laws governing the conduct of business.

(B) OQSC:

(i) develops and refines procedures and the survey instrument used, based on feedback from service recipients and their families, providers, and other key constituents;

(ii) participates in the selection of agencies submitting proposals to conduct OK AIM activities; and

(iii) serves as a resource for education and coordination of agencies conducting OK AIM monitoring activities.

(2) OKDHS issues and awards a Request for Proposal (RFP) per the Oklahoma Central Purchasing Act, Sections 85.1 through 85.44E of Title 74 of the Oklahoma Statutes (74 O.S. §§ 85.1 through 85.44E) and the approved OKDHS Internal Purchasing Procedures, and solicits proposals from qualified organizations to participate in the OK AIM initiative. Qualified organizations include agencies that:

(A) are incorporated non-profit agencies dedicated to representing persons with developmental disabilities and their family members;

(B) are not involved in service delivery funded through DDS or HCBS Waivers; and

(C) meet additional requirements set forth by federal and state laws as indicated in the RFP.

(3) OQSC is consulted regarding bids submitted in response to an RFP.

(4) Agencies selected to conduct OK AIM monitoring and reporting activities are responsible for:

(A) soliciting, screening, and training volunteers to conduct OK AIM site visits;

(B) scheduling site visits with all service providers referenced in the ~~ITB~~RFP within counties for which the agency assumed responsibility;

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- (C) ensuring consistency of volunteer and staff activities with:
- (i) OQSC-approved procedures and protocols;
 - (ii) federal and state laws; and
 - (iii) OKDHS and OHCA rules;
- (D) accurately recording OK AIM monitoring activities findings;
- (E) ensuring provision of findings to provider agencies and DDS; and
- (F) immediately notifying the DDS area office of any issue identified during OK AIM monitoring activities that presents risk to the service recipient's health or welfare.
- (5) DDS area managers identify OKDHS staff responsible for resolving concerns identified during OK AIM monitoring activities and notify the agencies responsible on how to contact staff during business, evening, and weekend hours.
- (6) OQSC with DDS State Office, DDS area offices, and agencies conducting OK AIM activities participation, identifies conditions determined to present significant risks to service recipients.
- (A) Conditions determined to present imminent risks to service recipients are reported immediately to the:
- (i) statutory investigatory authority;
 - (ii) DDS area office; and
 - (iii) provider agency chief executive officer (CEO) or designee.
- (B) Issues determined to pose potential risks to service recipients are reported to DDS area office staff, who notify the provider agency CEO or designee, no later than at the close of the first business-day following observation.
- (C) OK AIM monitors report any other significant issues to designated DDS area office staff within time frames OK AIM determines appropriate.
- (7) DDS staff immediately identifies DDS area office staff to assume responsibility for verification and correction of problems posing imminent or potential risks.
- (A) The DDS area manager approves resolution time frames for validated concerns based on the degree of risk.
- (B) All identified concerns are resolved within 30-calendar days from initial notification to the DDS area office, unless the DDS area manager authorizes an extension in circumstances that pose no jeopardy to any service recipient.
- (C) Concerns presenting immediate and significant risk to service recipients are corrected immediately.
- (8) Each DDS area manager designates staff to:
- (A) track resolution of each identified concern; and
 - (B) advise agencies conducting OK AIM monitoring activities of the steps taken to resolve each concern.
- (9) OK AIM staff summarizes findings of each home visit volunteers conduct, and staff notes performance in regards to the established OQSC expectations as published in the OK AIM training manual.
- (A) Recommendations for service enhancement are presented to the relevant DDS area office for review within 30-calendar days of a home visit.
- (B) DDS area office staff shares this information with the provider and collaborates on recommendations as well as other alternatives to achieve targeted service enhancement. Plans developed as a result are shared with OK AIM staff during the next meeting. Provider comments or action plans are maintained with the OK AIM report in area office files.
- (10) OQSC re-assesses the OK AIM survey process at least annually and does so based on feedback solicited from service recipients, DDS area office staff, providers, and other constituencies affected by or involved in the process.
- (f) **Independent assessments.** An independent authority annually assesses service outcomes for a sample of service recipients receiving residential services funded or administered through DDS or HCBS Waivers.
- (1) Assessments employ standardized measures, facilitating individual as well as congregated data analysis over time.
 - (2) Assessment protocols provide for identification and resolution of circumstances posing immediate risks to service recipients.
- (g) **Failure to cooperate.** Provider agencies failing to cooperate with provisions, or providing false information in response to inquiries per this Section, are subject to identified sanctions including contract termination.
- (h) **Findings of non-compliance.** Findings of significant non-compliance with human rights, laws, or rules are immediately reported to the DDS director and other relevant authorities for appropriate action, including disciplinary action of OKDHS employees or sanction imposition, including suspension or contract termination with provider agencies, per OAC 340:100-3-27.2.
- (i) **Retaliation.** Provider agencies and OKDHS employees are prohibited from any form of retaliation against any service recipient, employee, or agency for reporting or discussing possible performance deficiencies with any authorized OKDHS agent. Authorized agents are OKDHS staff whose responsibilities include administration, supervision, or oversight of DDS services, including all DDS and Office of Client Advocacy staff.
- (j) **QA functions.** Additional DDS QA program components are found in OAC 340:100-3-27.1 through OAC 340:100-3-27.5.
- (k) **Reports.** Reports generated by QA discovery activities are distributed as described in (1) through (4) of this subsection.
- (1) Reports of performance surveys and administrative inquiries are provided to the administrator of the provider agency surveyed, are stored electronically, and made accessible to:
 - (A) DDS staff;
 - (B) OHCA;

- (C) Office of Inspector General; and
- (D) appropriate Office of Client Advocacy staff.
- (2) Performance survey reports with personal identifying information removed are available to interested citizens upon request.
- (3) Reports of administrative inquiries are not released.
- (4) Unless otherwise authorized by the individual or the legal guardian, OK AIM reports and case manager reports are available only to the:
 - (A) referenced individual(s) served;
 - (B) individual's legal guardian;
 - (C) agencies providing supports;
 - (D) relevant DDS area manager;
 - (E) DDS QA administrator; and
 - (F) other relevant DDS personnel.

340:100-3-27.4. Developmental Disabilities Services Division Quality Assurance reports [REVOKED]

~~Reports generated by Quality Assurance (QA) discovery activities are distributed as described in this subsection.~~

- (1) ~~Reports of performance surveys and administrative inquiries are provided to the administrator of the provider agency surveyed, are stored electronically, and made accessible to:~~
 - (A) ~~Developmental Disabilities Services Division (DDSD) staff;~~
 - (B) ~~Oklahoma Health Care Authority;~~
 - (C) ~~Office of Inspector General; and~~
 - (D) ~~appropriate Office of Client Advocacy staff.~~
- (2) ~~Performance survey reports with personal identifying information removed are available to interested citizens upon request.~~
- (3) ~~Reports of administrative inquiries are not released.~~
- (4) ~~Unless otherwise authorized by the individual or the legal guardian, Oklahoma Advocates Involved in Monitoring (OK AIM) reports and case manager reports are available only to:~~
 - (A) ~~the referenced individual(s) served;~~
 - (B) ~~the individual's legal guardian;~~
 - (C) ~~agencies providing supports;~~
 - (D) ~~the relevant DDSD area manager;~~
 - (E) ~~the DDSD Quality Assurance administrator; and~~
 - (F) ~~other relevant DDSD personnel.~~

340:100-3-28. Volunteer services [REVOKED]

- (a) ~~Developmental Disabilities Services Division (DDSD) volunteer service programs link service recipients to volunteers who can provide a needed service.~~
- (b) ~~In addition to requirements per OAC 340:2-35, the volunteer and DDSD volunteer services staff must meet requirements in (1) and (2):~~
 - (1) ~~The volunteer:~~
 - (A) ~~completes Form 22VL005E, Application for Volunteer Service, and submits to the local DDSD volunteer services office;~~

- (B) ~~attends any required on the job training prior to assignment of volunteer duties;~~
- (C) ~~submits completed Form 22VL003E, Volunteer Agreement, to the local DDSD volunteer services office;~~
- (D) ~~maintains record of contacts using Form 22VL004E, Volunteer Report of Contact, and submits completed Form 22VL004E to the local DDSD volunteer services unit on a monthly basis; and~~
- (E) ~~must not be listed in the Community Services Worker Registry (Registry) per OAC 340:100-3-39.~~
- (2) ~~The DDSD volunteer services staff:~~
 - (A) ~~mails Form 22VL007E, Volunteer Reference Letter, to three references listed on Form 22VL005E. The returned reference letters must be on file in the DDSD volunteer office prior to assigning a volunteer duties;~~
 - (B) ~~interviews the volunteer prior to and at the end of the job assignment and records data on Form 22VL009E, Volunteer Interview Report;~~
 - (C) ~~sends original Form 04AD003E, Request for Background Check, to DDSD State Office coordinator of volunteer services who completes:~~
 - (i) ~~Oklahoma Department of Public Safety (ODPS) search;~~
 - (ii) ~~Oklahoma State Bureau of Investigation (OSBI) criminal search;~~
 - (iii) ~~Registry search per OAC 340:100-3-39; and~~
 - (iv) ~~notification to the local volunteer services staff when all searches are completed satisfactorily;~~
 - (D) ~~provides job specific training for volunteers and presents an overview of Oklahoma Department of Human Services and DDSD. Orientation and training are documented in each volunteer's file;~~
 - (E) ~~submits Form 22VL006E, Volunteer Quarterly Report, to the DDSD State Office coordinator of volunteer services on a quarterly basis; and~~
 - (F) ~~forms an advisory council of persons dedicated to volunteerism and Oklahomans with developmental disabilities. The advisory council assists volunteer services staff with program functions, fund raising, or other identified needs.~~

340:100-3-30. News media relations [REVOKED]

- ~~DDSD, in accordance with DHS policy, maintains an "open door" policy toward the news media.~~
- (1) ~~DDSD is authorized to seek publicity for its programs, successes, activities, to recruit volunteers or request free public service announcements. Coordination of such activities for the division shall be handled in the State Office by the Division Director of Community Relations.~~
- (2) ~~Limitations on access to client information required by DHS rules is honored by DDSD staff and Administrators.~~
- (3) ~~DDSD staff at all times protect the privacy of recipients of services. At no time is information about an~~

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individual recipient released unless prior written permission is given by the client, family member, or guardian, when appropriate.

~~(4) Prior to release of information to the media, DDS staff obtain client's/legal representative's permission by completion of Form Adm 13, Permission for Release of Information To News Media. Clients in DHS custody are of special sensitivity and information release or photographs is handled in accordance with DHS rules.~~

~~(5) Information related to employees of the division is released in accordance with DHS rules.~~

~~(6) When news media representatives contact DDS facilities, area offices or State Office, staff members are to be courteous and as helpful as possible and respond in accordance with DHS rules. The best qualified, knowledgeable available person shall respond to the inquiry.~~

~~(7) Contacts from the media are to be reported to appropriate supervisory/administrative personnel.~~

~~(8) When inquiries involve matters likely to result in major news media coverage, notification is made to the DDS Administrator as well as the Public Information Office by telephone or electronic mailbox.~~

340:100-3-36. Emergency first aid for employees and visitors [REVOKED]

~~Emergency first aid procedures are employed to assist employees or visitors involved in an accident or injury on the grounds of a Developmental Disabilities Services Division (DDS) program or office.~~

~~(1) The employee or visitor seeks treatment at a community health facility for an injury of a non-serious nature.~~

~~(2) For a serious but non-life-threatening injury, the employee or visitor is made comfortable at the site of the incident, and an ambulance called immediately.~~

~~(3) For an emergency medical situation in which it is judged that the employee or visitor's life is endangered, an ambulance is called immediately, and the facility's medical or first-aid personnel are called as a source of volunteer medical emergency help until the person can be transported to a community health facility.~~

~~(4) The injured employee's or visitor's immediate family is notified in the case of a serious or life-threatening situation.~~

~~(5) When an injury occurs on OKDHS property, an incident report is completed and the injury is reported in accordance with OAC 340:2-15-5.~~

340:100-3-40. Community records

(a) **Purpose.** Oklahoma Administrative Code (OAC) 340:100-3-40 sets forth requirements for:

- (1) contract provider records maintenance;
- (2) document transfer to a history file for service recipient records the contract provider maintains; and
- (3) information transfer when a service recipient changes contract providers;

(4) maintenance of an official electronic record for each service recipient receiving services through a Home and Community Based Services waiver.

(A) All service recipient information and records are confidential and released only to individuals or provider agencies who have proper authorization from the service recipient or his or her legal representative.

(B) It is the legal responsibility of Oklahoma Human Services (OKDHS) employees and contract providers to protect clients' privacy and to ensure the protection of confidential information.

(C) Developmental Disabilities Services (DDS) ensures service-recipient records are protected from loss, defacement, tampering, destruction, and violation of confidentiality.

(D) DDS personnel obtain individualized, time-limited, informed consent, prior to securing service recipient information or records from provider agencies who do not have a current OKDHS contract; and

(5) formatting, use, and retention of electronic records and signatures generated, sent, communicated, received, or stored by DDS, in conformity with the Uniform Electronic Transaction Act, found at Section 15-101 et seq. of Title 12A of the Oklahoma Statutes (12A O.S. §§ 15-101 et seq.).

(A) Only individual providers or employees designated by the provider's agency may make entries in the member's record. All entries in the member's record must be dated and authenticated with a method established to identify the author. The identification method may include computer keys, Private/Public Key Infrastructure (PKIs), voice authentication systems that use a personal identification number (PIN) and voice authentication, or other codes. Providers must have a process in place to deactivate within one working day an employee's access to records upon termination of employment of the designated employee.

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

(i) a list of PKIs, computer key codes, voice authentication systems or other codes can be verified;

(ii) all adequate safeguards are maintained to protect against improper or unauthorized use of PKIs, computer keys, or other codes for electronic signatures; and

(iii) sanctions are in place for improper or unauthorized use of computer key codes, PKIs, voice authentication systems or other code types of electronic signatures.

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

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

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

(E) The signature and date entry are the authentication of an electronic record and are expected on the day the record is completed.

(F) The individual provider or designated administrators within the provider agency may edit records. Edits must be in the form of a correcting entry which preserves entries from the original record. Edits must be completed prior to claims submission or no later than 45-calendar days after the date of service, whichever occurs first.

(G) Use of the electronic signature for documentation constitutes a signature and has the same effect as a written signature on the documentation. The section of the electronic record documenting the service provided must be authenticated by the employee or individual who provided the described service.

(H) Any authentication method for electronic signatures must:

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

(I) Failure to properly maintain or authenticate records with the signature and date entry may result in the denial or recoupment of payments.

(J) Providers must retain electronic records and have access to the records per guidelines found at OAC 317:30-3-15.

(K) The provisions of the Electronic Transaction Act apply to the time and place of sending and receipt. When a power failure, internet interruption, or internet virus occur, confirmation by the receiving party is required to establish receipt.

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

(b) **General requirements.** Records, electronic or paper, the contract provider maintains are indexed, orderly, well-maintained, readily accessible, and current. Records contain adequate documentation of services rendered.

(1) All service recipient records are available for the service recipient, his or her legal guardian, contract provider staff, and ~~Oklahoma Human Services (OKDHS)~~ authorized agents to review upon request.

- (2) The service recipient record is maintained with:
- (A) an index;
 - (B) the service recipient's name on the record and on each page;
 - (C) discernable section tabs; and
 - (D) documents secured in the record.

- (3) All entries in the record:
- (A) are made per OAC 317:30-3-15;
 - (B) are in chronological order;
 - (C) are legible;
 - (D) include the date and time of each entry, with legible identification of the person making the entry; and
 - (E) include, when the entry is health-related:
 - (i) a description of the concern; and
 - (ii) action taken.

(4) The provider ensures compliance, per OAC 340:2-8-1 through OAC 340:2-8-13 and OAC 340:100-3-2, pertaining to personal information protection, use, and release. The provider holds personal information regarding service recipients, including names, addresses, photographs, evaluation records, and all other records confidential. Information is not disclosed, directly or indirectly, unless the adult service recipient or legal guardian consent in writing.

(c) **Home record for service recipients receiving community residential supports, group home services, or non-residential habilitation training specialist (HTS) services.** The in-home contract provider maintains a current service record for each service recipient receiving community residential supports, per OAC 340:100-5-22.1; group home service, per OAC 340:100-6; or non-residential HTS services, per OAC 340:100-5-35.

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- (1) Documents contained in each home record are not removed and include:
- (A) guardianship documents and other legal documents;
 - (B) current Individual Plan packet and addendum copies;
 - (C) applicable health-related documents including, but not limited to:
 - (i) Form 06HM005E, Referral Form for Examination or Treatment, physician orders, discharge summaries, and emergency room reports;
 - (ii) special instructions or the Health Care Plan;
 - (iii) individually-identified data forms relevant to the service recipient's current health status;
 - (iv) a Dyskinesia Identification System: Condensed User Scale (~~DISCUS~~) or Abnormal Involuntary Movement Scale (~~AIMS~~), when required, per OAC 340:100-5-29;
 - (v) current immunization record;
 - (vi) current medication administration records;
 - (vii) the most recent lab, x-ray, and consultation reports, and pharmacological evaluation, when applicable;
 - (viii) miscellaneous health-related consultations and correspondence; and
 - (ix) Form 06HM073E, Referral Form for Psychiatric Treatment or Examination;
 - (D) miscellaneous documents relating to the service recipient including, but not limited to:
 - (i) observation notes;
 - (ii) Form 06CB035E, Site Visit Report, completed by all professional contract providers;
 - (iii) standing medical orders and protocols;
 - (iv) applicable data collection sheets; and
 - (v) documentation of program coordination staff home visits;
 - (E) quarterly residential progress reports; and
 - (F) Form 06MP070E, Access to Home Record and Verification of Monitoring Requirement, certifying that all authorized persons accessing the service recipient information contained within the home record were informed and understand the penalties for misuse of confidential and protected information, per ~~Section 1533.1 of Title 21 of the Oklahoma Statutes~~ 21 O.S. § 1533.1.
- (2) In unusual circumstances, at the Personal Support Team's (Team) request, and with ~~Developmental Disabilities Services~~ DDS field administrator's written approval, a service recipient's home record or specified document types from the record may be maintained at a location other than the service recipient's home.
- (d) **Retention.** Each contract provider retains a record for each service recipient receiving services from the provider.
- (1) There is a yearly transfer of all documents more than three months old from the provider agency's records to a history file, unless otherwise specified, per OAC 340:10-3-40.

- (2) The provider agency retains original records for a six-year period or until any pending litigation involving the service recipient is completed, whichever occurs last.
- (e) **Transfers between agencies.** When a service recipient changes provider agencies, within seven-calendar days of the transfer, the agency provides the new agency with a paper or electronic copy of the current home record and any health documents the Team requests.
- (f) **Other provider records.** The provider maintains service records that substantiate service provision, service recipient eligibility, and outcome of services.
- (1) Records are maintained for a six-year period after OKDHS makes the final payment and all pending matters are closed.
 - (2) The provider maintains copies of all claims, substantiating documents, and records regarding agency fiscal status within corporate offices in Oklahoma.

SUBCHAPTER 5. CLIENT SERVICES

PART 3. SERVICE PROVISIONS

340:100-5-22.6. Alternative group home

- (a) **Legal basis.** Authority to operate alternative group homes is based on the Group Homes for Persons with Developmental or Physical Disabilities Act per Section 1430.1 through 1430.41 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 1430.1 through 1430.41). Administrative and program requirements for alternative group homes are described in Oklahoma Administrative Code (OAC) 317:40-5-152, this Section, and OAC 340:100-6.
- (b) **General information.** Alternative group homes:
- (1) serve up to four service recipients who:
 - (A) have serious behavioral or emotional challenges or community protection issues in addition to intellectual disabilities and require continuous supervision and assistance to remain in the community; or
 - (B) were charged with a felony, determined by the district court as incompetent to stand trial due to intellectual disability, formerly known as mental retardation, and dangerous, and placed by the district court in the custody of the public guardian; and
 - (2) provide for the development of skills to assist service recipients to lead healthy, independent, and productive lives to the fullest extent possible.
- (c) **Provider approval criteria.** In addition to OAC 340:100-6-12 requirements, prospective providers of alternative group home services must demonstrate a history of effective services and supports to persons with serious behavioral or emotional challenges or community protection issues. Provider approval requires review of historical information, when available, from Developmental Disabilities Services (DDS) Quality Assurance Unit and area office. The DDS director or designee must approve the location of the alternative group home ~~must be approved in writing by the DDS director~~

or designee prior to the implementation of services. Each prospective provider submits written documentation of:

- (1) a history of services to persons who present serious behavioral or emotional challenges or community protection issues, including:
 - (A) past experience;
 - (B) number of persons served;
 - (C) provider's perspective on the greatest challenges in serving persons eligible for alternative group home services; and
 - (D) provider's philosophy for service provision;
- (2) financial viability through fiscal information when requested, including the anticipated budget related to the rate for alternative group home services;
- (3) service provision plans, including:
 - (A) anticipated number of homes;
 - (B) location;
 - (C) floor plans;
 - (D) gender to be served;
 - (E) population to be served; and
 - (F) availability of psychological, psychiatric, and vocational services in the proposed location;
- (4) plans for staffing and program coordination; and
- (5) staff qualifications, including any additional training to be provided.

(d) **Eligibility to receive services.** To be eligible for services in an alternative group home, the person must:

- (1) be in the custody of the public guardian per ~~Section 1175.6b or 1175.6b.A of Title 22 of the Oklahoma Statutes~~ (22 O.S. § 1175.6b or 1175.6c); or
- (2) meet the criteria for an intermediate care facility for individuals with intellectual disabilities (~~ICF/IID~~) level of care; and
 - (A) require 24-hour, on-site, awake staff supervision to ensure safety; and
 - (B) be found by the DDS director or designee to have serious behavioral or emotional challenges or community protection issues, such as:
 - (i) evidence of commitment of a sexually violent offense, sexually predatory act, or crime of sexual violence including, but not limited to:
 - (I) rape;
 - (II) lewd or indecent acts or proposals made to a child, per 21 O.S. § 1123; or
 - (III) forcible sodomy, per 21 O.S. § 888;
 - (ii) history of stalking or opportunistic behavior that demonstrates a likelihood to commit a sexually violent or predatory act;
 - (iii) documented pattern of acts of violence toward others;
 - (iv) experience ongoing, highly disruptive behavioral episodes that:
 - (I) are dangerous per 22 O.S. § 1175.1; and
 - (II) require close supervision and frequent intervention by staff;
 - (v) evidence of commitment of one or more violent offenses, such as:

- (I) murder or manslaughter;
- (II) attempted murder;
- (III) arson;
- (IV) assault;
- (V) kidnapping; or
- (VI) use of a weapon to commit a crime; or
- (vi) severe ongoing self-injurious behavior.

(e) **Services provided.** Services provided are designed to assist service recipients in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in a home and community-based setting.

- (1) Services include supports to meet each service recipient's needs including, but not limited to:
 - (A) residential habilitation, such as assistance with the acquisition, retention, or improvement of skills related to activities of daily living, such as:
 - (i) personal grooming and cleanliness;
 - (ii) bed-making and household chores;
 - (iii) eating and food preparation; and
 - (iv) social and adaptive skills necessary to enable the service recipient to reside in a shared home;
 - (B) program supervision and oversight including 24-hour availability of response staff to meet schedules or unpredictable needs in a way that promotes maximum dignity and independence, while providing for supervision and safety. In addition to requirements in OAC 340:100-6-55, program coordination staff (PCS) must:
 - (i) serve no more than 18 service recipients;
 - (ii) ensure staffing levels meet (1)(H) of this subsection requirements; and
 - (iii) ensure records are maintained per OAC 340:100-3-40;
 - (C) implementation of community protection precautions and individual program plans per (f) of this Section;
 - (D) recreational and leisure activities, including individual and group activities;
 - (E) assistance in money management;
 - (F) health care services provided per OAC 340:100-5-26 and OAC 340:100-5-26.3;
 - (G) medication administration per OAC 340:100-5-32; and
 - (H) management of staffing levels that provides supervision to ensure the safety of the service recipient, community, staff, other service recipients, and implementation of each service recipient's Individual Plan (Plan).
 - (i) An average of 14 hours of staffing per service recipient must be provided per billable day prior to filing a claim for habilitation training staff authorized per OAC 317:40-5-152.
 - (I) At least two awake-staff must be on duty during daytime and evening hours when service recipients are in the home.

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- (II) This requirement may be reduced to one awake-staff, when there are only one or two service recipients in the home.
- (ii) Sufficient daytime staffing must be provided to:
 - (I) ensure adequate supervision in the home and community; and
 - (II) implement the Plan, except during the time the service recipient is in an authorized employment, vocational, or day services program that provides the needed supervision, security, and support identified in the Plan. Staff is trained per OAC 340:100-3-38.
- (iii) At least one awake-staff must be on duty during hours when service recipients are asleep.
 - (I) The provider agency must have a provision to immediately provide additional staff in the home ~~should~~ when the need ~~arises~~ ~~arises~~.
 - (II) Staff on duty must be physically able and mentally alert to carry out the duties of the job.
- (iv) The provider must:
 - (I) have staff available to provide necessary support and supervision when the service recipient needs to return from employment or other day services;
 - (II) provide activity options and supervision during all times when the service recipient is not participating in authorized employment activities; and
 - (III) ensure effective transition and coordination of supervision between alternative group home and employment programs or other authorized absences from the alternative group home program.
- (2) In addition to the services in (1) of this subsection, services for wards of the public guardian are designed to ensure the service recipient is not dangerous to self or others.
- (f) **Alternative group home program requirements.** In addition to compliance with applicable Oklahoma Department of Human Services (~~DHS~~~~OKDHS~~) and Oklahoma Health Care Authority (OHCA) rules, the provider ensures:
 - (1) staff implements security precautions protecting the service recipient, neighbors, children, vulnerable adults, animals, and others;
 - (2) staff implements outcomes and action steps detailed in the Plan to assist service recipients to function safely in the community and avoid criminal activity;
 - (3) collaboration and coordination occur with DDS staff, employment providers, therapists, and other entities and persons, such as law enforcement, corrections officers, schools, employers, mental health workers, and, when appropriate, the public guardian;
 - (4) written provider agency policies comply with ~~DHS~~~~OKDHS~~ and OHCA rules;
 - (5) effective security and supervision of service recipients in the residence and community are provided;
- (6) contingency plans are developed and implemented for:
 - (A) emergency relocation of a service recipient who created a danger or who is in danger;
 - (B) emergency staffing in the event changes are required to protect staff or others;
 - (C) general emergencies requiring evacuation of the entire home, such as fire or weather emergencies, per OAC 340:100-6-45; and
 - (D) elopement;
- (7) legal and court requirements are followed, including adherence to Oklahoma laws governing registered sexual offenders;
- (8) the health care coordinator (HCC) or other knowledgeable staff accompanies the service recipient to each medical or psychiatric appointment, taking current data summaries that indicate the rate of occurrence of medication-responsive symptoms or behaviors over the last one to three months. For visits to the physician prescribing psychotropic medication, the HCC presents Form 06HM073E, Referral Form for Psychiatric Treatment or Examination, per OAC 340:100-5-26;
- (9) specific offense patterns are considered and addressed when determining appropriate program locations; and
- (10) any modifications to the Plan including restrictive or intrusive procedures is supported by a specific, assessed need, and justified in the person-centered plan per OAC 317:40-1-3(b). When the Personal Support Team (Team) determines restrictive or intrusive procedures are essential for safety, the Team must develop a protective intervention protocol per OAC 340:100-5-57.
- (g) **Weapons.** Dangerous or deadly weapons are not permitted in the alternative group home or on the premises. Providers are prohibited from assisting any service recipient to obtain or possess dangerous or deadly weapons including, but not limited to:
 - (1) guns, BB guns, air rifles, or other firearms;
 - (2) crossbows;
 - (3) paint guns;
 - (4) arrows;
 - (5) explosives;
 - (6) stun guns; and
 - (7) knives, except cooking and eating utensils.
- (h) **Substances and items prohibited in alternative group homes are:**
 - (1) illegal substances; and
 - (2) alcohol.
- (i) **SoonerCare eligibility.** The service recipient and guardian, with necessary support from the provider, establish and maintain SoonerCare eligibility, when possible.
- (j) **Natural supports.** Persons who agree to provide natural supports to a service recipient living in an alternative group home must:
 - (1) work with the Team to develop a schedule, support strategies, and agreement for support. Each Plan contains a description of any natural support provided that ensures

the safety and welfare of the service recipient and community. No arrangement is made for natural supports that violate existing court orders, security arrangements, or the Plan;

- (2) keep commitments made, regarding supports; and
- (3) document or report to the program coordinator or DDS case manager regarding supports provided.

(k) **Refusal to participate.** When a service recipient or guardian refuses to participate in service delivery described in the Plan:

- (1) the provider:
 - (A) continues to implement the Plan as written; and
 - (B) immediately notifies the DDS case manager of the need for a Team meeting;
- (2) the DDS case manager takes immediate action to convene the Team to address the situation; and
- (3) steps in OAC 340:100-3-11 are followed.

(l) **Record keeping.** In addition to requirements of OAC 340:100-3-40, records of service recipients must include documentation of:

- (1) the service recipient's registration with appropriate law enforcement authorities, when required, and documentation of subsequent registration notification to DDS;
- (2) all agreements or plans with other agencies or persons who support the service recipient, including the guardian and family members that specifies the service recipient's supervision requirements when staff is not present; and
- (3) any refusal by the service recipient to follow conditions of the Plan, protective intervention protocols, or treatment recommendations.

(m) **Training.** Staff or volunteers providing direct supports for service recipients in an alternative group home are required to complete necessary training requirements per OAC 340:100-3-38.13.

(n) **Transportation.** Providers of alternative group home services must ensure transportation is:

- (1) available as needed for medical emergencies, appointments, day programs, and community activities per OAC 317:40-5-103; and
- (2) supervised per this Section in accordance with each service recipient's needs.

(o) **TransitionEmergency temporary alternative group home supports.** ~~Teams plan for a service recipient's transition to appropriate services when it is determined the alternative group home program is no longer necessary.~~ Emergency temporary alternative group home supports are described in this section. Alternative group homes may serve additional service recipients when the DDS director or designee determines he or she requires alternative group home level of care and there are no other resolutions to the emergency.

- (1) ~~Within three months of the service recipient's admission to an alternative group home, the Team develops reasonable criteria for the service recipient's transition to a less restrictive environment that are~~ When an emergency situation exists in which the Team requests temporary alternative group home supports, the case manager submits

a request and justification for the services to the DDS director or designee. The request must include:

- (A) ~~included in a written plan submitted to designated DDS State Office staff~~ a description of outcomes the service recipient and his or her guardian desires, when appropriate, and the services and supports necessary to achieve these outcomes; and
- (B) ~~reviewed at least annually by the Team~~ objective evidence supporting the need for the alternative group home placement; and
- (C) criteria of what must occur for the service recipient to return to a less restrictive placement

(2) ~~All transitions from alternative group homes must be approved by designated DDS State Office staff. DDS State Office staff may adjust the transition date when necessary.~~ Within the first two weeks of the service recipient's admission to an alternative group home, the Team develops a transition plan with action steps or methods to achieve the transition including the names of persons or provider agency positions responsible for implementing assigned responsibilities.

(p) ~~DDS-initiated transition~~ **Transition.** ~~The DDS director or designee may initiate the transition process for a person receiving alternative group home services who can be effectively served in another residential environment.~~ Teams plan for a service recipient's transition to appropriate services when it is determined the alternative group home program is no longer necessary.

(1) Within three months of the service recipient's admission to an alternative group home, the Team develops reasonable criteria for the service recipient's transition to a less restrictive environment that are:

- (A) included in a written plan submitted to designated DDS State Office staff; and
- (B) reviewed at least annually by the Team.

(2) All transitions from alternative group homes must be approved by designated DDS State Office staff. DDS State Office staff may adjust the transition date when necessary.

(q) ~~DDS-initiated transition.~~ The DDS director or designee may initiate the transition process for a person receiving alternative group home services who can be effectively served in another residential environment.

340:100-5-26.1. Psychotropic medication

(a) Oklahoma Administrative Code (OAC) 340:100-5-26.1 applies to service recipients receiving:

- (1) community residential supports per OAC 340:100-5-22.1;
- (2) group home services per OAC 340:100-6; or
- (3) behavioral supports in Level D group homes.

(b) A psychotropic medication is a drug used to treat a mental disorder or any drug prescribed to stabilize or improve mood, mental status, or behavior per OAC 340:100-1-2.

(c) Medication is not used as punishment, for staff's convenience, as a substitute for a program, or in quantities that interfere with a service recipient's participation in programming.

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(d) The service recipient's Personal Support Team (Team) obtains a description of data to be collected to evaluate the psychotropic medication's effectiveness, from the prescribing ~~physician~~healthcare provider.

(1) The Team:

(A) identifies a method for collecting necessary data; and

(B) specifies a routine method for reporting this data to the prescribing ~~physician~~healthcare provider.

(2) When ~~the~~ psychotropic medication is changed, the Team obtains new instructions for additional or different data needed to evaluate the effectiveness of the new medication, from the prescribing ~~physician~~healthcare provider.

(e) The Team monitors for side effects, such as tardive dyskinesia per OAC 340:100-5-29.

(f) The Team reviews the use of psychotropic medication annually during the individual planning process per OAC 340:100-5-53.

~~(g) When psychotropic medication is used to treat the symptoms of a psychiatric diagnosis and the medication is determined ineffective in eliminating or substantially reducing symptoms, the Team provides pertinent information to the prescribing physician about the service recipient's status.~~

~~(h) Use of psychotropic medication for behavior control is an intrusive procedure per OAC 340:100-1-2. The Team must develop a protective intervention protocol per OAC 340:100-5-57 to address behavioral symptoms being treated by the psychotropic medication. Psychotropic medication is considered for behavioral control only when it is prescribed without a confirmed psychiatric diagnosis, appropriate for the medication.~~

~~(i) Developmental Disabilities Services (DDS) defines the use of p.r.n. medication for behavioral control to be a highly-restrictive procedure per OAC 340:100-3-34. Medication is considered for behavioral control when it is prescribed to achieve a desired behavioral outcome. When a medication is ordered to be administered p.r.n. for behavioral control:~~

(1) the Team:

(A) ensures there is a specific, written protocol for the administration of the p.r.n. medication from the prescribing ~~physician~~healthcare provider as part of ~~the protective intervention planning~~a protective intervention protocol per OAC 340:100-5-57;

(B) notifies the DDS director of pharmacy services and requests a pharmacy review within five-business days; and

(C) meets to incorporate the protocol in the individual plan within 30-calendar days; and

(2) the contract provider agency staff follows critical incident reporting requirements per OAC 340:100-3-34.

340:100-5-29. Monitoring for tardive dyskinesia

(a) **Scope and applicability.** Developmental Disabilities Services ~~Division (DDSD)~~(DDS) provides a ~~standardized system~~training for staff to regularly and systematically assess, ~~evaluate~~monitor, and inform service recipients who are at risk for ~~dyskinesia, including~~ tardive dyskinesia (TD). Monitoring for ~~dyskinesia~~TD applies to all service recipients who receive

~~classes of medication per OAC 340:100-5-29(a)(1) medication associated with a risk of TD.~~ Providers of residential services funded by Oklahoma Department of Human Services (OKDHS) ~~DDSD~~DDS or Oklahoma Health Care Authority (OHCA) have primary responsibility for implementation of OAC 340:100-5-29. Providers of other types of supports inform service recipients and encourage the implementation of OAC 340:100-5-29. Providers are required to meet standards per OAC 340:100-3-27. Service recipients:

(1) ~~prescribed amoxapine, metoclopramide, or neuroleptic or other medications known to cause side effects that include dyskinesia~~medication associated with a risk of developing TD are regularly and systematically assessed and ~~evaluated~~monitored for symptoms of TD ~~for dyskinesia.~~ The service recipient who is prescribed such ~~medications~~medication, parent(s) of a minor service recipient, or, if applicable, service recipient's legal guardian is regularly informed about the risk of TD;

(2) ~~identified~~assessed with signs or symptoms of ~~dyskinesia~~TD are referred to the prescribing healthcare provider for further evaluation to ~~diagnose the type of dyskinesia;~~

(3) ~~properly~~ diagnosed by a ~~physician with dyskinesia,~~with TD by a healthcare provider, parent(s) of a minor service recipient, or, if applicable, legal guardian are informed of the ~~presence of dyskinesia, including TD;~~diagnosis; and

(4) ~~with dyskinesia~~are regularly and systematically assessed and ~~evaluated~~regarding the status of dyskinesia. ~~diagnosed with TD~~ continue to receive regular assessments and monitoring regarding the status of the diagnosis.

(b) **Assessment and monitoring requirements.** ~~Assessments are completed by a~~ trained rater or ~~licensed professional~~the prescribing healthcare provider or designee complete assessments using a standardized assessment scale. The Dyskinesia Identification System: Condensed User Scale (DISCUS) is the preferred assessment scale. ~~In the absence of trained raters for DISCUS, the Abnormal Involuntary Movement Scale (AIMS) may be used.~~ ~~DDSD~~DDS trains staff ~~identified by agency~~service providers identify to be DISCUS raters ~~on the use of DISCUS~~ at no charge to the service provider agency. Identified staff may be contract staff or employees of the service provider agency. When ~~DDSD~~rater training is needed to ~~train raters,~~ the service provider agency notifies the ~~DDSD~~DDS ~~area manager~~ in a timely manner training staff.

(1) ~~The rater obtains prerequisite~~ Service provider staff maintains information about ~~neuroleptic medication, amoxapine, or metoclopramide~~service recipient exposure to medication associated with a risk of developing TD.

(2) ~~The applicable~~ Copies of assessment scales completed by provider staff, or documentation of assessment completion by a healthcare provider or designee, are ~~is~~ filed in the service recipient's record per OAC 340:100-3-40.

(c) **Service recipients requiring assessments.** Service recipients:

(1) ~~whose~~with an unknown history of medication exposure is ~~unknown or uncertain~~ receive an initial

~~rating~~ DISCUS assessment. When the initial ~~rating~~ ~~is~~ assessment:

(A) ~~negative, has~~ a total score less than five on DISCUS, further assessments are not needed; or

(B) ~~positive, has~~ a total score of five or more on DISCUS, items in (i) and (ii) must be performed occur.

(i) ~~A physician's evaluation and, if indicated, further referral is made to confirm the type of dyskinesia. A referral is made to the prescribing health-care provider for additional evaluation.~~

(ii) ~~The assessment is repeated. Assessments continue to be completed every six months until the assessment is negative a DISCUS score less than 5 is obtained. The assessment is repeated one month after a negative assessment and if negative again, in one month and, if the score remains less than 5, further assessments are not needed;~~

(2) who are prescribed medication or receive medication that may cause dyskinesia TD are assessed before medication is started or within 30-calendar days of the treatment being identified medication initiation.

(A) Service recipients are routinely assessed every six months while on receiving medication associated with a risk of TD.

(B) Assessments may be done quarterly or more frequently if medications are changed or side effects are suspected or identified;

(3) who receive medication that may cause dyskinesia are assessed within 30 days of the treatment being identified.

(A) ~~Service recipients are routinely assessed every six months while on medication.~~

(B) ~~Assessments may be done quarterly or more frequently if medications are changed or side effects are suspected or identified;~~

(4) who had have medications discontinued that may cause dyskinesia which are associated with a risk of TD are assessed monthly as described in (A) through (C) of this paragraph.

(A) After four months of positive ratings with DISCUS scores of 5 or greater, monthly assessments are stopped, and assessments are repeated every six months.

(B) If a negative rating occurs a DISCUS score less than 5 is reported, reassess assessments are completed monthly until two negative ratings occur additional scores less than 5 are reported.

(C) After two negative ratings, DISCUS screening is assessments with a score less than 5 are reported, assessments are discontinued, and discontinued.

(5) who have medications introduced again that may cause dyskinesia, TD are monitored according to OAC 340:100-5-29(d) is followed.

(d) TD diagnosis. The diagnosis of TD is conveyed in writing by the physician to the service recipient, parent(s) of a minor service recipient, or, if applicable, legal guardian.

340:100-5-35.1. Habilitation training specialist (HTS) services in acute care hospitals

(a) **Applicability.** HTS services, per Oklahoma Administrative Code (OAC) 317:30-5- 482, are authorized, per OAC 317:40-5-110 or 317:40-5-111, and OAC 340:100-3-33; and apply to HTS services provided to adult service recipients receiving community residential supports, group home services, and in non-residential settings, per OAC 340:100-5-22.1, 340:100-6, and 340:100-5-35.

(b) **General information.**

(1) HTS services are authorized in an acute care hospital per the 21st Century Cares Act when the service is:

(A) identified in an individual's person-centered plan of services and supports;

(B) provided to meet needs of the individual that are not met through the provision of hospital services;

(C) not a substitute for services the hospital is obligated to provide through its conditions of participation or under federal or state law; and

(D) designed to ensure smooth transitions between acute care settings and home and community-based settings, and to preserve the individual's functions.

(2) HTS services are available in an acute care hospital for no more than 14- consecutive, calendar days per event, not to exceed 60-calendar days per Plan of Care year, up to the following limits no more than:

(A) 16 hours per day for those receiving daily living supports (DLS), per OAC 317:40-5- 150 or 317:40-5-153;

(B) 24 hours per day for those receiving services for Prader-Willi Syndrome, per OAC 340:100-5-34;

(C) nine hours per day for those receiving agency companion services, per OAC 317:40-5;

(D) nine hours per day for those receiving specialized foster care, per OAC 317:40-5;

(E) nine hours per day for those receiving group home services, per OAC 340:100-6;

(F) 24 hours per day for those receiving alternative group home services, per OAC 340:100-5-22.6;

(G) nine hours per day for those who do not receive community residential supports, per OAC 340:100-5-22.1; group home services, per OAC 340:100-6; or alternative group home services, per OAC 340:100-5-22.6.

(3) ~~Exceptions~~ The Developmental Disabilities Services (DDS) director or designee may authorize exceptions to the nine hours per day limit may be authorized by the DDS director or designee when needed for service recipients who require additional supports. The DDS director or designee may authorize HTS services provided in psychiatric facilities when required for admission to address issues such as significant daily living, communication and other needs.

(4) HTS services in an acute care hospital are:

(A) only authorized during times the service recipient is typically awake. HTS services are utilized used during normal sleep hours when the service recipient demonstrates a pattern of not sleeping at night;

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- (B) not intended to provide more than one Waiver funded staff at a time;
- (C) not provided by the service recipient's agency companion, per OAC 317:40-5; and
- (D) not provided at the same time as DLS therapeutic leave, per OAC 317:40-5-150 or 317:40-5-153.

SUBCHAPTER 6. GROUP HOME REGULATIONS

PART 3. STANDARDS

340:100-6-10. License or contract required

(a) It is unlawful for any person or organization to operate a group home per Sections 1430.1 through 1430.41 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 1430.1 through 1430.41) without a license from Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services (DDS). Providers who have a current contract to provide:

- (1) group home services with OKDHS Developmental Disabilities Services Division (DDSD)-DDS; or
- (2) Home and Community-Based Waiver group home services with Oklahoma Health Care Authority (OHCA) are deemed licensed.

(b) A license to operate a group home may be issued upon completion of an approved application and inspection. The license must include, but is not limited to:

- (1) maximum bed capacity for which the license is granted;
- (2) kind of program the licensee is certified to operate;
- (3) date license was issued;
- (4) expiration date of license; and
- (5) address of the home for which the license is issued.

(c) A license is issued only for the premises named on the application and is neither transferable nor assignable.

(d) ~~DDSD~~DDS Community Services staff ~~main-~~~~tains~~ maintains a record of each group home deemed licensed, including:

- (1) maximum bed capacity;
- (2) type of group home operated; and
- (3) address of group home.

(e) The group home license expires 12 months from the date of issuance.

(f) DDS may issue a conditional license to any group home in which it finds a violation exists. The issuance of a conditional license revokes any license the group home holds.

- (1) Prior to the issuance of a conditional license, DDS:
 - (A) reviews and approves a written plan of correction;
 - (B) specifies the violations that prevent full licensure and establishes a time schedule for correction of the deficiencies; and
 - (C) sends notice of the decision to issue a conditional license to the provider with the proposed plan of correction. The notice informs the provider of the

right to an appeal per Oklahoma Administrative Code (OAC) 340:100-3-27.

(2) DDS provides notice and due process for the holder of a conditional license per 10 O.S. § 1430.17.

(g) Any person or organization desiring to operate a group home must request a licensure packet from DDS, Group Home Licensure, P.O. Box 25352, Oklahoma City, OK 73125.

(h) An applicant for license, license renewal, or contract to operate a group home must submit to DDS a completed application along with the documents DDS requires to determine whether the applicant:

- (1) is 21 years of age or older and of reputable and responsible character;
- (2) demonstrates the skill and fitness to provide the necessary services;
- (3) has appropriate business experience; and
- (4) has professional experience with the population to be served.

(i) An application for a license or contract to operate a group home must include documentation that the state fire marshal or representative has inspected and approved the home. A contract provider who wishes to open an additional group home must also provide this documentation.

(1) After the initial state fire marshal inspection, each group home must be inspected as required by ordinance per local or state fire marshal and found in compliance with fire safety regulations prior to re-issuance of a license or contract.

(2) All group home inspections are subject to state fire marshal fees, citations, and penalties.

(j) Prior to opening, the provider must obtain for each group home a licensed:

- (1) plumber or municipal building inspector's report; and
- (2) electrician or municipal building inspector's report.

(k) An approval letter from the local zoning authority must accompany all initial license applications or contractor requests for each particular address.

(l) No person who is ineligible for employment as a community services worker, per OAC 340:100-3-39, is eligible to:

- (1) be licensed; or
- (2) receive a contract to become a provider. If the applicant, licensee, or contractor is a firm, partnership, limited liability company or corporation, the applicant is not eligible to:

(A) be licensed; or

(B) receive a contract if any person in (i) through (iv) is ineligible for employment as a community services worker.

(i) A member of the firm;

(ii) A major member of the limited liability company or manager;

(iii) A major partner of the partnership; or

(iv) An officer or major stockholder of the corporation.

(m) A license or a contract to operate a group home is not transferable. Ownership of a group home may only be changed from the provider named in the application to another provider

who has a current group home license or contract, and only upon prior written approval of DDS.

- (1) The current group home provider must:
 - (A) notify the DDS director or designee in writing of the change no less than 30-calendar days prior to the effective date of the change;
 - (B) remain responsible for the operation of the home until the change in ownership is complete; and
 - (C) remain liable for all penalties assessed for violations occurring prior to change of ownership.
- (2) Any citations, problems DDS identifies prior to the change in ownership, or outstanding deficiencies remaining after the change in ownership are the responsibility of the new owner of the group home to correct.

(n) Any licensed or contracted group home provider, per OAC 340:100-6, must give 90-calendar days notice prior to closing a home or to closing any part of a home that would require the transfer or discharge of more than ten percent of the residents.

- (1) Notice must be given to:
 - (A) DDS director or designee;
 - (B) any resident who requires transfer or discharge from the group home; and
 - (C) the resident's legal guardian, family, or advocate.
- (2) Notice must state the proposed date of closing and reason for closing.
- (3) The group home provider must offer to assist the resident in securing alternative placement.
- (4) The DDS director or designee must be notified if there is need for relocation assistance.

340:100-6-11. Types of licenses [REVOKED]

~~(a) **Regular license.** The group home license expires 12 months from the date of issue and may be issued upon application and inspection.~~

~~(b) **Conditional license.** OKDHS may issue a conditional license to any group home in which it finds a violation exists. The issuance of a conditional license revokes any license held by the group home.~~

- ~~(1) Prior to the issuance of a conditional license, OKDHS:~~
 - ~~(A) reviews and approves a written plan of correction;~~
 - ~~(B) specifies the violations that prevent full licensure and establishes a time schedule for correction of the deficiencies; and~~
 - ~~(C) sends notice of the decision to issue a conditional license to the provider with the proposed plan of correction. The notice informs the provider of the right to an appeal per OAC 340:100-3-27.~~
- ~~(2) OKDHS provides notice and due process for the holder of a conditional license per Section 1430.17 of Title 10 of the Oklahoma Statutes.~~

340:100-6-12. Application for group home license, license renewal, or contract [REVOKED]

~~(a) Any person or organization desiring to operate a group home must request a licensure packet from Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD), Group Home Licensure, P.O. Box 25352, Oklahoma City, OK 73125.~~

~~(b) An applicant for license, license renewal, or contract to operate a group home must submit to OKDHS a completed application along with the documents required by OKDHS to determine whether the applicant:~~

- ~~(1) is 21 years of age or older and of reputable and responsible character;~~
- ~~(2) demonstrates the skill and fitness to provide the necessary services;~~
- ~~(3) has appropriate business experience; and~~
- ~~(4) has professional experience with the population to be served.~~

~~(c) An application for a license or contract to operate a group home must include documentation that the state fire marshal or representative has inspected and approved the home. A contract provider who wishes to open an additional group home must also provide this documentation.~~

- ~~(1) After the initial state fire marshal inspection, each group home must be inspected as required by ordinance per local or state fire marshal and found in compliance with fire safety regulations prior to re-issuance of a license or contract.~~
- ~~(2) All group home inspections are subject to state fire marshal fees, citations, and penalties.~~

~~(d) Prior to opening the provider must obtain for each group home a licensed:~~

- ~~(1) plumber or municipal building inspector's report; and~~
- ~~(2) electrician or municipal building inspector's report.~~

~~(e) An approval letter from the local zoning authority must accompany all initial license applications or contractor requests for each particular address.~~

~~(f) No person who is ineligible for employment as a community services worker, per OAC 340:100-3-39, is eligible to:~~

- ~~(1) be licensed; or~~
- ~~(2) receive a contract to become a provider. If the applicant, licensee, or contractor is a firm, partnership, limited liability company or corporation, the applicant is not eligible to:~~
 - ~~(A) be licensed; or~~
 - ~~(B) receive a contract if any:~~
 - ~~(i) member of the firm;~~
 - ~~(ii) major member of the limited liability company or manager;~~
 - ~~(iii) major partner of the partnership; or~~
 - ~~(iv) officer or major stockholder of the corporation is ineligible for employment as a community services worker.~~

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340:100-6-13. Inspections

(a) Each group home must be inspected at least annually by a duly appointed representative of Oklahoma Department of Human Services (OKDHS). At least one inspection per group home must be unannounced.

(b) Any holder of or applicant for a license or contract is deemed to have given consent to any authorized employee or agent of OKDHS to enter and inspect the home.

(c) The provider receives results of the inspection and corrects identified concerns in accordance with per Oklahoma Administrative Code (OAC) 340:100-3-27.1.

(d) OKDHS may revoke, deny, or refuse to renew any group home license found in violation of Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes (10 O.S. § 1430.1 et seq.), Group Homes for Persons with Developmental or Physical Disabilities Act, or OKDHS rules.

(e) Per 10 O.S. § 1430.32, any person OKDHS determines to have violated any provision of 10 O.S. § 1430.1 et seq. or any OKDHS rule or court order issued pursuant thereto may be liable for an administrative penalty of not more than \$100 for each day the violation continues. The maximum administrative penalty may not exceed \$10,000 for any related series of violations.

(f) OKDHS may:

(1) withhold payments due for group home services until corrections are made or OKDHS approves a plan of correction for all deficiencies; or

(2) initiate other action per OAC 340:100-3-27.2.

340:100-6-14. Sanctions [REVOKED]

(a) ~~Oklahoma Department of Human Services (OKDHS) may revoke, deny, or refuse to renew any group home license found in violation of Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes (10 O.S. § 1430.1 et seq.), Group Homes for Persons with Developmental or Physical Disabilities Act, or OKDHS rules.~~

(b) ~~Per 10 O.S. § 1430.32, any person determined by OKDHS to have violated any provision of 10 O.S. § 1430.1 et seq. or any OKDHS rule or court order issued pursuant thereto may be liable for an administrative penalty of not more than \$100 for each day the violation continues. The maximum administrative penalty cannot exceed \$ 10,000 for any related series of violations.~~

(c) ~~OKDHS may:~~

(1) ~~withhold payments due for group home services until corrections are made or a plan of correction for all deficiencies is approved by OKDHS; or~~

(2) ~~initiate other action per OAC 340:100-3-27.2.~~

340:100-6-20. Change of ownership [REVOKED]

~~A license or a contract to operate a group home is not transferable. Ownership of a group home can only be changed from the provider named in the application to another provider who has a current group home license or contract, and only upon prior written approval of Oklahoma Department of Human Services (OKDHS).~~

(1) ~~The current group home provider must:~~

(A) ~~notify the Developmental Disabilities Services Division director in writing of the change no less than 30 calendar days prior to the effective date of the change;~~

(B) ~~remain responsible for the operation of the home until the change in ownership is complete; and~~

(C) ~~remain liable for all penalties assessed for violations occurring prior to change of ownership.~~

(2) ~~Any citations, problems identified by OKDHS prior to the change in ownership, or outstanding deficiencies remaining after the change in ownership are the responsibility of the new owner of the group home to correct.~~

340:100-6-21. Closing of group home [REVOKED]

~~Any provider of a group home licensed or contracted, per OAC 340:100-6, must give 90 calendar days notice prior to closing a home or to closing any part of a home that would require the transfer or discharge of more than ten percent of the residents.~~

(1) ~~Notice must be given to:~~

(A) ~~Developmental Disabilities Services Division (DDSD) director;~~

(B) ~~any resident who requires transfer or discharge from the group home; and~~

(C) ~~the resident's legal guardian, family, or advocate.~~

(2) ~~Notice must state the proposed date of closing and reason for closing.~~

(3) ~~The group home provider must offer to assist the resident in securing alternative placement.~~

(4) ~~The DDSD director must be notified if there is need for relocation assistance.~~

PART 5. PHYSICAL PLANT REQUIREMENTS

340:100-6-30. General criteria for physical plant

(a) Plans for construction or remodeling must be submitted to Oklahoma Department of Human Services and state fire marshal for review and approval prior to the start of construction.

(b) Mobile homes are not approved.

(c) Within the corporate limits of a municipality, any new group home must be at least 1200 feet from any other group home and from any similar community residential facility serving persons in drug, alcohol, juvenile, child, parole, and other programs of treatment, care, supervision, or rehabilitation in a community setting, per Section 863 of Title 60 of the Oklahoma Statutes.

(d) The group home must have interior and exterior features compatible with other residences in the surrounding neighborhood.

(e) A group home must be located:

(1) in an area where the local fire department will ~~respond~~responds to emergencies; and

(2) adjacent to an all-weather road.

(f) Each group home provider ensures that resident rooms and areas are clean, comfortable, orderly, and provide reasonable privacy.

(1) Each single resident bedroom must contain a minimum of 80 square feet of floor space.

(2) All resident bedrooms must contain a minimum of 60 square feet per person for double or triple occupancy. All new group homes must limit the number of service recipients occupying a bedroom to two.

(3) Each resident bedroom must include:

(A) a clothes closet or armoire;

(B) additional space as needed to accommodate bedside assistance and the use and storage of mobility devices and prosthetic equipment;

(C) at least one outside operable window of adequate size installed in a vertical wall that can be used as an emergency exit, unless otherwise approved by the state fire ~~marshal~~ marshal or representative;

(D) windows that have adjustable coverings to provide privacy;

(E) direct access to exits and other areas of the home without passing through another resident's bedroom, a bathroom, or outside; and

(F) a full door that can be closed to provide privacy.

(4) Each resident must have:

(A) an individual bed of proper size with an adequate mattress, pillow, and bed linens that are clean and in good condition;

(B) a bedside table;

(C) a bureau, or its equivalent, for storing personal belongings;

(D) a chair; and

(E) an adequate supply of clean towels and wash cloths, and individual soap.

(5) Male and female residents are not housed in the same or connected bedrooms, that do not have a full floor-to-ceiling partition and door that can be closed and locked, except a husband and wife may occupy the same bedroom.

(6) Residents are encouraged to reflect their personal preferences in decorating and furnishing the group home.

(g) Each group home must provide at least one full-size bathroom for resident use.

(1) A home for six or more residents must have at least two full-size bathrooms for resident use.

(2) Bathrooms must:

(A) include a stool, sink, and tub or shower; and

(B) provide privacy.

(h) All licensed group homes must provide common living areas with seating for all residents, excluding the dining room area.

(i) Tobacco use of any sort is prohibited within the group home. Cigarette butts are properly disposed of in designated areas located outside the home.

(j) Each group home and its yard must be clean, well-maintained, safe, free from hazards, and adapted to meet the needs of all service recipients.

(1) Surroundings must be kept clean and free from accumulated rubbish, weeds, ponded water, refuse, discarded furniture, old newspaper, or other items of a similar nature that may create a health hazard.

(2) The group home provider employs effective methods to prevent the entrance and harborage of insects, spiders, and rodents.

(3) All garbage must be properly stored and safely disposed of per local ordinance.

(A) Trash cans in service recipient areas must be kept clean.

(B) Outdoor garbage waste containers must be covered and insect and rodent resistant.

(C) Outside storage of garbage in plastic bags is prohibited.

(D) Sanitary garbage disposal must be provided.

(4) Sanitary sewage disposal must be provided per Oklahoma State Department of Health (OSDH) rules.

(5) The interior of the group home must be safe, clean, well-maintained, free of hazards, and adapted to meet the needs of all service recipients.

(A) The home must be free from offensive odors, accumulation of dirt, rubbish, dust, and safety hazards.

(B) Floors and floor coverings must be clean and in good condition. Floor polishes must provide for a non-slip finish.

(C) Walls and ceilings must be in good condition and cleaned regularly. All group homes must have walls capable of being cleaned.

(D) Deodorizers must not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

(E) Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers in areas away from living areas.

(F) No items may be stored in the hot water heater closet or furnace closet.

(G) General laundry must be placed in linen hampers or carts.

(H) Linens or clothing soiled with human body fluids must be placed in bags or nonporous containers with lids tightly closed.

(6) The group home must have:

(A) a kitchen and equipment to store, prepare, and serve food in a sanitary manner;

(B) utility service and adequate heating, cooling, and plumbing;

(C) lighting that is adequate for the service recipient's activities in each room;

(D) safe water supply per OSDH rules; and

(E) temperature extremes not less than 65 degrees Fahrenheit nor more than 85 degrees Fahrenheit for all areas service recipients occupy.

(7) Each service recipient's bedroom must have at least one electrical outlet.

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PART 7. ENVIRONMENTAL HEALTH, SAFETY, AND SANITATION REQUIREMENTS

340:100-6-41. Access to premises [REVOKED]

(a) A service recipient has a right to visitors of his or her choosing at any time per Oklahoma Administrative Code (OAC) 317:40-1-3(b)(6). Any modification of a service recipient's right to visitors is permitted only when requirements per OAC 317:40-1-3(b)(8) are met.

(1) Visitors are not permitted to enter the immediate living area of any service recipient without first identifying himself or herself and receiving permission from the service recipient to enter.

(2) The rights of other service recipients present in the room must be respected.

(3) A service recipient at any time may terminate a visit by a person having access.

(b) OAC 340:100-6-41 does not limit the power of the Oklahoma Department of Human Services or any other public agency otherwise permitted or required by law to enter and inspect a group home.

340:100-6-44. Housekeeping and environment [REVOKED]

Each group home and its yard must be clean, well maintained, safe, free from hazards, and adapted to meet the needs of all service recipients.

(1) Surroundings must be kept clean and neat and free from accumulated rubbish, weeds, ponded water, refuse, discarded furniture, old newspaper, or other items of a similar nature that may create a health hazard.

(2) The group home provider employs effective methods to prevent the entrance and harborage of insects, spiders, and rodents.

(3) All garbage must be properly stored and safely disposed of in accordance with local ordinance.

(A) Trash cans in service recipient areas must be kept clean.

(B) Outdoor garbage waste containers must be covered and insect and rodent resistant.

(C) Outside storage of garbage in plastic bags is prohibited.

(D) Sanitary garbage disposal must be provided.

(4) Sanitary sewage disposal must be provided in accordance with Oklahoma State Department of Health (OSDH) rules.

(5) The interior of the group home must be safe, clean, and free of hazards.

(A) The home must be free from offensive odors, accumulation of dirt, rubbish, dust, and safety hazards.

(B) Floors and floor coverings must be clean and in good condition. Floor polishes must provide for a non-slip finish.

(C) Walls and ceilings must be in good condition and cleaned regularly. All group homes must have walls capable of being cleaned.

(D) Deodorizers must not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

(E) Combustibles, such as cleaning rags and compounds, must be kept in closed metal containers in areas away from living areas.

(F) No items can be stored in the hot water heater closet or furnace closet.

(G) General laundry must be placed in linen hampers or carts.

(H) Linens or clothing soiled with human body fluids must be placed in bags or nonporous containers with lids tightly closed.

(6) The group home must have:

(A) a kitchen and equipment to store, prepare, and serve food in a sanitary manner;

(B) utility service and adequate heating, cooling, and plumbing;

(C) lighting that is adequate for the service recipient's activities in each room;

(D) safe water supply in accordance with OSDH rules; and

(E) temperature extremes not less than 65 degrees Fahrenheit nor more than 85 degrees Fahrenheit for all areas occupied by service recipients.

(7) Each service recipient's bedroom must have at least one electrical outlet.

PART 19. INVOLUNTARY TRANSFER OR DISCHARGE OF SERVICE RECIPIENT

340:100-6-85. Transfer or discharge

(a) A group home provider must not involuntarily transfer or discharge a service recipient residing in a group home except for:

(1) medical reasons;

(2) the service recipient's safety or the safety of other residents;

(3) violations of the agreement between the service recipient and group home provider; or

(4) nonpayment for the service recipient's stay unless limited by the federal Social Security Act.

(b) Involuntary transfer or discharge of a service recipient for violations of the agreement must be subject to:

(1) review of the agreement and notification to the service recipient of specific violations;

(2) discharge only after all appropriate attempts are made to resolve violations. Attempts must be documented in the service recipient's record.

(c) When a service recipient changes provider agencies, only the out-going provider agency claims for services provided on the day the service recipient moves.

(d) Involuntary transfer or discharge of a service recipient from a group home must be preceded by a minimum written notice of 30-calendar days. The notice must inform the service recipient and service recipient's legal guardian or advocate:

- (1) of the right to request an administrative inquiry, per Oklahoma Administrative Rules 340:1003-27.1 if the service recipient is aggrieved by the decision; and
- (2) how such a request is made.
- (e) The 30-calendar day requirement does not apply when:
 - (1) an emergency transfer or discharge is:
 - (A) mandated by the service recipient's health care needs; and
 - (B) per the written orders and medical justification of the attending physician; or
 - (2) the transfer or discharge is necessary due to imminent risk to the lives or health of other residents as documented in the service recipient's record.
- (f) Oklahoma Human Services (OKDHS) may initiate the transfer or discharge of a service recipient when:
 - (1) the service recipient's health care needs are not being met according to a licensed medical authority;
 - (2) the transfer or discharge is necessary for the physical safety of other residents as observed or documented in the records, including incident reports, case management records, or other documentation the group home provider maintains; or
 - (3) it is determined, per applicable OKDHS rules, that a service recipient's rights have been violated or the service recipient has been abused, neglected, or exploited.
- (g) The service recipient's wishes, in all situations, are given careful consideration in determining whether the health and safety aspects involved outweigh the wishes of a service recipient being transferred or discharged.
- (h) A group home provider may not deny appropriate care on the basis of the resident's source of payment.

340:100-6-86. Notice of involuntary transfer or discharge [REVOKED]

- (a) ~~Involuntary transfer or discharge of a service recipient from a group home must be preceded by a minimum written notice of 30 calendar days. The notice must inform the service recipient and service recipient's legal guardian or advocate:~~
 - (1) ~~of the right to request an administrative inquiry in accordance with OAC 340:1003-27.1 if the service recipient is aggrieved by the decision; and~~
 - (2) ~~how such a request is made.~~
- (b) ~~The 30 day requirement does not apply when:~~
 - (1) ~~an emergency transfer or discharge is:~~
 - (A) ~~mandated by the service recipient's health care needs; and~~
 - (B) ~~in accordance with the written orders and medical justification of the attending physician; and~~
 - (2) ~~the transfer or discharge is necessary due to imminent risk to the lives or health of other residents as documented in the service recipient's record.~~

340:100-6-88. Transfer by OKDHS [REVOKED]

- (a) ~~Oklahoma Department of Human Services (OKDHS) may initiate the transfer or discharge of a service recipient when:~~

- (1) ~~the service recipient's health care needs are not being met according to a licensed medical authority;~~
- (2) ~~the transfer or discharge is necessary for the physical safety of other residents as observed or documented in the records, including incident reports, case management records, or other documentation maintained by the group home provider; or~~
- (3) ~~it is determined, in accordance with applicable OKDHS rules, that a service recipient's rights have been violated or the service recipient has been abused, neglected, or exploited.~~
- (b) ~~The service recipient's wishes, in all situations, will be given careful consideration in determining whether the health and safety aspects involved outweigh the wishes of a service recipient being transferred or discharged.~~

PART 21. RESIDENT RIGHTS AND RESPONSIBILITIES

340:100-6-95. Resident rights and responsibilities

- (a) Each resident is responsible for making a room and board payment to the group home provider in accordance with the financial agreement.
- (b) Unless otherwise indicated in the resident's Individual Plan, each resident is responsible for participation in meaningful activities including employment, vocational training, or adult day services that occur outside the group home for a minimum of five hours per weekday.
- (c) ~~A~~Each group home develops a statement of rights and responsibilities ~~developed by each group home including which includes~~, but ~~is~~ not limited to, each resident's right to:
 - (1) civil and religious liberties, including the right to independent personal decisions and knowledge of available choices that must not be infringed. The provider must encourage and assist in the exercise of these rights;
 - (2) private communications and consultations with the resident's physician or attorney or any other person of the resident's choice including sending and promptly receiving unopened personal mail;
 - (3) without fear of reprisal, present grievances; and join with other residents or persons within or outside of the group home to work for improvements in resident care;
 - (4) manage his or her financial affairs, unless the resident delegates the responsibility in writing, to the provider. The resident must have at least a quarterly accounting of any personal financial transactions ~~undertaken~~the group home provider undertakes on the resident's behalf ~~by the group home provider~~ during any period of time the resident delegates such responsibilities to the provider;
 - (5) receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Each resident:
 - (A) must be fully informed by the attending physician of his or her medical condition and proposed treatment in terms and language the resident understands; and

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- (B) has the right to refuse medication and treatment after being fully informed of, and understanding the consequences of such actions;
- (6) respect and privacy in the resident's medical care program.
- (A) Discussion, consultation, examination, and treatment must remain confidential and be conducted discreetly.
- (B) Personal and medical records must be confidential;
- (7) retain and use personal clothing and possessions, unless prohibited by law, and security in the storage and use of such clothing and possessions;
- (8) be treated courteously and respectfully;
- (9) be free from mental and physical abuse, and free from physical and chemical restraints, except for those physical and chemical restraints authorized by a health care professional ~~authorized a health care professional~~ authorizes in writing by a health care professional, per Oklahoma Department of Human Services (OKDHS) rules, for a specified period of time;
- (10) receive a statement of the group home provider guidelines and an explanation of the resident's responsibility to comply with all reasonable group home regulations and to respect other resident's personal rights and private property;
- (11) receive a statement, when adjudicated incapacitated, stating the rights and responsibilities per this Section which must be exercised by a court-appointed guardian;
- (12) privacy for conjugal visits. A resident may share a room with a spouse, when the spouse resides in the same group home;
- (13) all rights specified in Oklahoma Administrative Code (OAC) 340:100-3-1.2; and
- (14) not perform services for a group home provider, except for normal, shared household tasks.
- (ed) Upon admission of a resident and at least annually thereafter, or upon request, each resident and resident's advocate or legal guardian must be provided a copy of:
- (1) the resident's rights; and
- (2) procedures for grievances and appeal, per OAC 340:2-3-54.
- (fe) The rights enumerated in this Section may be limited for residents of an alternative group home.
- (f) A service recipient has a right to visitors of his or her choosing at any time per OAC 317:40-1-3(b)(6). Any modification of a service recipient's right to visitors is permitted only when requirements per OAC 317:40-1-3(b)(8) are met.
- (1) Visitors are not permitted to enter the immediate living area of any service recipient without first identifying themselves and receiving permission from the service recipient to enter.
- (2) The rights of other service recipients present in the room must be respected.
- (3) A service recipient may terminate a visit at any time.
- (g) OAC 340:100-6-41 does not limit the power of OKDHS or any other public agency otherwise permitted or required by law to enter and inspect a group home.

340:100-6-97. Denial of care [REVOKED]

~~A group home provider cannot deny appropriate care on the basis of the resident's source of payment.~~

SUBCHAPTER 15. DEVELOPMENTAL DISABILITIES SERVICES DIVISION (DDSD) (DDS) PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

340:100-15-1. Purpose ~~Nursing facility services for members with intellectual disability or related condition~~

(a) The purpose of this Subchapter is to provide criteria by which ~~the Oklahoma Department of Human Services, Developmental Disabilities Services Division~~ (afterwards, hereafter referred to as the ~~Mental Retardation~~ Intellectual Disabilities (ID) Authority), determines the need for nursing facility services in contrast to other services and the need for specialized services for individuals with ~~mental retardation~~ intellectual disabilities and/or related conditions. The provisions of this Subchapter apply to all Medicaid certified nursing facilities and to departmental staff responsible for evaluating individuals suspected of having intellectual disabilities or related conditions receiving or seeking to receive services in Medicaid certified nursing facilities.

(b) In order for the determination to be made that an individual with intellectual disabilities or related conditions needs services only available in a nursing facility but does not need specialized services, the individual must:

- (1) require licensed nursing interventions at least once daily or require licensed nursing monitoring and observation on a frequent basis daily for maintenance of health or basic life support; and

(2) meets meet one or more of the following:

(A) be in a comatose state;

(B) require convalescent care;

(C) have a terminal illness;

(D) be at least 65 years of age, unless similar aging process characteristics are evident at age 50; or

(E) have a serious medical condition which requires on-going medical care and licensed nursing intervention services monitoring or observation.

These conditions include but are not limited to:

(i) neurological disorders or malformations which includes muscle wasting diseases that are progressive, dementias, hydrocephalus, meningomyelocele, brain damage secondary to birth trauma, anoxia, cardiac arrest or other causes of cerebral anoxia that are severe enough to induce a comatose state. Cerebral or peripheral nerve damage secondary to central nervous system infection or trauma or other disorders or malfunctions inconsistent with normal functioning;

(ii) pulmonary disorder, with either congenital or acquired pulmonary disorders that leave the individual unable to adequately oxygenate, therefore, requiring respiratory support;

- (iii) cardiac dysfunction or malformation which includes individuals with either congenital or acquired heart disease such as myocarditis, that are in persistent or intractable heart failure, have cardiac rhythms that are life threatening, are persistently cyanotic enough to require supplemental oxygen to survive or are otherwise liable to cardiac arrest, either primarily or secondarily. These individuals are identified by a physician as being unable to survive unless immediate skilled medical and nursing intervention is available;
- (iv) circulatory dysfunction which includes individuals with either hypotension or hypertension with a central or unknown etiology that require frequent licensed nursing intervention or monitoring and medication or stimulation. It also includes individuals whose orthopedic or postural malformations require meticulous skin care;
- (v) endocrine or metabolic disorder which includes individuals with hypothyroidism or hyperthyroidism, or diabetes with its associated problems including, but not limited to, circulation, skin care, infection, etc., aminoaciduria with secondary intellectual disabilities, glycogen storage disease or other abnormalities of lipid metabolism, and other genetic disorders limiting normal metabolism;
- (vi) gastrointestinal disorder or malfunction which includes individuals with primary or secondary disorders of absorption of normal nutrients and vitamins that do not allow adequate calorie sustenance without supplementation by artificial means, those with congenital malformations of the gastrointestinal tract that require, despite surgical intervention, continuing supplementation with special diets and those whose nutritional requirements cannot be met without intravenous supplementation; or
- (vii) renal and bladder dysfunction or malformation which includes individuals with severe polycystic kidney disease, hydronephrosis, those with kidney failure secondary to either congenital malformation, trauma or infection requiring frequent intravenous supplementation, and those in whom kidney or bladder malformations require surgical externalization with need for significant nursing and other management.
- (c) The individual must be determined by the ID Authority to be unable to benefit from specialized service for intellectual disabilities or related conditions.
- (d) It remains the responsibility of the nursing facility to provide services to improve the physical, mental, and psychosocial development of the individual.
- (e) In order for the disposition to be made that an individual with intellectual disabilities or related conditions requires nursing facility services and specialized services, the individual must:
- (1) meet the requirements in (b) of this Section; and
 - (2) be determined by the ID Authority to be able to benefit from specialized services for intellectual disabilities or related conditions.
- (f) In order for the disposition to be made that an individual with intellectual disabilities or related conditions does not need nursing facility services but does need specialized services the individual must:
- (1) be able to benefit from a program of specialized services for intellectual disabilities or related conditions, and
 - (2) not meet the criteria for nursing facility services identified in Oklahoma Administrative Code (OAC) 340:100-15-3.
- (g) Long term residents meeting the criteria listed in (a) of this Section are offered a choice of remaining in the facility or of receiving services in an alternative appropriate setting.
- (h) Short term residents meeting the criteria listed in (a) of this Section may not be considered appropriate for continued placement and must be discharged.
- (i) The ID Authority does not make advance categorical dispositions that specialized services are needed. Such determinations are based on an extensive individualized evaluation to determine the exact nature of the specialized services that are needed. The ID Authority does make categorical determinations that nursing facility level of care is needed in the categories listed in (1) and (2) of this subsection.
- (1) Individuals with a terminal illness as defined for hospice purposes are granted a categorical determination for nursing facility level of care and a negative specialized services determination by the ID Authority. Hospice criteria include late stage disease process with a life expectancy of six months or less and must be physician referred and certified.
 - (2) Individuals requiring convalescent care or extended hospital discharge as certified by a physician that are likely to require 30-calendar days are granted a categorical determination for nursing facility level of care and a negative specialized services determination by the ID Authority.
- (j) Each individual has a unique prescriptive plan of specialized services based on professional assessments. The plan addresses identified needs and enhancement of independence. Assessments address self-care skills, communication skills, motor and mobility skills, and educational, recreational and leisure skills. The plan includes:
- (1) behavioral objectives stated in measurable terms directed at skill acquisition;
 - (2) identification of additional services and supports necessary for skill acquisition to occur such as:
 - (A) adaptive, corrective, orthotic, mobility, and other types of equipment and devices;
 - (B) specific nursing care plan objectives relative to significant medical condition;
 - (C) Identification of persons responsible for service needs external to the facility such as vocational services or counseling; and
 - (3) specific methods, strategies, or steps relative to the behavioral objectives to ensure consistency of training;

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(4) identification of persons responsible for training, obtaining and maintaining equipment, and providing health related services; and

(5) methods of data collection.

(k) The plan must be monitored by a designated nursing facility staff member on a monthly basis to ensure that training of behavioral objectives is occurring in a consistent manner and progress is being shown, necessary equipment is available and in good repair, all significant health issues are being addressed, and necessary modifications to the plan occur as needed.

(l) For individuals with both an intellectual disability or related condition and mental illness, individuals with dual diagnoses, a joint disposition is required from the ID Authority and Mental Illness Authorities. The Mental Illness Authority is administered through the Oklahoma Department of Mental Health and Substance Abuse Services. This disposition is based on independent assessment information from both authorities. The disposition determines which authority assumes responsibility for serving the individual or if the individual is served by both.

(m) Any individual believed to have been adversely affected by a preadmission screening and resident review disposition made in the context of either a preadmission screening or a resident review may appeal that disposition consistent with OAC 317:35-19-16.

(1) Special case determinations may be required for individuals with intellectual disabilities or a related condition(s) who would benefit from nursing facility level of care due to unusual circumstances other than medical needs.

(2) To make a special case determination ID Authority staff must:

(A) consider all factors including:

- (i) the individual circumstances presented;
- (ii) the individual's mental and emotional support needs;
- (iii) all available assessment information;
- (iv) any other relevant information; and
- (v) availability of other formal and informal supports; and

(B) provide written specific rationale in support of the exception noting the unique and individualized circumstances of the case.

340:100-15-2. Application [REVOKED]

The provisions of this Subchapter apply to all Medicaid certified nursing facilities and to departmental staff responsible for evaluating individuals suspected of having mental retardation and/or related conditions receiving or seeking to receive services in Medicaid certified nursing facilities.

340:100-15-3. Criteria for determining that an individual requires nursing facility services but not specialized services [REVOKED]

(a) In order for the determination to be made that an individual with mental retardation and/or related conditions needs

services only available in a nursing facility but does not need specialized services, the individual must:

(1) require licensed nursing interventions at least once daily and/or require licensed nursing monitoring and observation on a frequent basis daily for maintenance of health or basic life support; and

(2) meets one or more of the following:

- (A) be in a comatose state;
- (B) require convalescent care;
- (C) have a terminal illness;
- (D) be at least 65 years of age, unless similar aging process characteristics are evident at age 50 and/or;
- (E) have a serious medical condition which requires on going medical care and licensed nursing intervention services monitoring, or observation.

These conditions include but are not limited to:

(i) neurological disorders or malformations which includes muscle wasting diseases that are progressive, dementias, hydrocephalus, meningomyelocele, brain damage secondary to birth trauma, anoxia, cardiac arrest or other causes of cerebral anoxia that are severe enough to induce a comatose state. Cerebral or peripheral nerve damage secondary to central nervous system infection or trauma or other disorders or malfunctions inconsistent with normal functioning.

(ii) pulmonary disorder, with either congenital or acquired pulmonary disorders that leave the individual unable to adequately oxygenate (i.e., requiring respiratory support).

(iii) cardiac dysfunction or malformation which includes individuals with either congenital or acquired heart disease (i.e., myocarditis) that are in persistent or intractable heart failure, have cardiac rhythms that are life threatening, are persistently cyanotic enough to require supplemental oxygen in order to survive or are otherwise liable to cardiac arrest, either primarily or secondarily. These individuals are identified by a physician as being unable to survive unless immediate skilled medical and nursing intervention is available.

(iv) circulatory dysfunction which includes individuals with either hypotension or hypertension with a central or unknown etiology that require frequent licensed nursing intervention and/or monitoring and medication and/or stimulation. It also includes individuals whose orthopedic or postural malformations require meticulous skin care.

(v) endocrine or metabolic disorder which includes individuals with hypothyroidism or hyperthyroidism, or diabetes with its associated problems (i.e., circulation, skin care, infection, etc.); aminoaciduria with secondary mental retardation; glycogen storage disease or other abnormalities of lipid metabolism, and other genetic disorders limiting normal metabolism.

(vi) ~~gastrointestinal disorder or malfunction which includes individuals with primary or secondary disorders of absorption of normal nutrients and vitamins that will not allow adequate caloric sustenance without supplementation by artificial means, those with congenital malformations of the gastrointestinal tract that require, despite surgical intervention, continuing supplementation with special diets and those whose nutritional requirements cannot be met without intravenous supplementation.~~

(vii) ~~renal and bladder dysfunction or malformation which includes individuals with severe polycystic kidney disease, hydronephrosis, those with kidney failure secondary to either congenital malformation, trauma or infection requiring frequent intravenous supplementation, and those in whom kidney or bladder malformations require surgical externalization with need for significant nursing and other management.~~

(b) ~~The individual must be determined by the State Mental Retardation Authority to be unable to benefit from specialized service for mental retardation and/or related conditions.~~

(c) ~~It remains the responsibility of the nursing facility to provide services to improve the physical, mental, and psychosocial development of the individual.~~

340:100-15-4. Criteria for determining that an individual requires nursing facility services and specialized services [REVOKED]

~~In order for the disposition to be made that an individual with mental retardation and/or related conditions requires nursing facility services and specialized services, the individual must:~~

- ~~(1) meet the requirements of OAC 340:100-15-3(a); and~~
- ~~(2) be determined by the State Mental Retardation Authority to be able to benefit from specialized services for mental retardation and/or related conditions.~~

340:100-15-5. Criteria for determining that an individual does not require nursing facility services but does require specialized services [REVOKED]

~~(a) In order for the disposition to be made that an individual with mental retardation and/or related conditions does not need nursing facility services but does need specialized services the individual must:~~

- ~~(1) be able to benefit from a program of specialized services for mental retardation and/or related conditions; and~~
- ~~(2) not meet the criteria for nursing facility services identified in OAC 340:100-15-3.~~

~~(b) Long term residents meeting the criteria listed in (a) of this Section are offered a choice of remaining in the facility or of receiving services in an alternative appropriate setting.~~

~~(c) Short term residents meeting the criteria listed in (a) of this Section cannot be considered appropriate for continued placement and must be discharged.~~

340:100-15-6. Categorical determinations regarding need of nursing facility and specialized services [REVOKED]

~~The State Mental Retardation Authority does not make advance categorical dispositions that specialized services are needed. Such determinations are based on an extensive individualized evaluation to determine the exact nature of the specialized services that are needed. The State Mental Retardation Authority does make categorical determinations that nursing facility level of care is needed in the categories listed in (1) and (2) of this subsection.~~

~~(1) Individuals with a terminal illness as defined for Hospice purposes are granted a categorical determination for nursing facility level of care and a negative specialized services determination by the State Mental Retardation Authority. Hospice criteria will include late stage disease process with a life expectancy of six months or less and must be physician referred/certified.~~

~~(2) Individuals requiring convalescent care or extended hospital discharge as certified by a physician (that the individual is likely to require 30 days or less of nursing facility convalescent care) are granted a categorical determination for nursing facility level of care and a negative specialized services determination by the State Mental Retardation Authority.~~

340:100-15-7. Specialized services [REVOKED]

~~(a) Each individual will have a unique prescriptive plan of specialized services that is based upon professional assessments. The plan addresses identified needs and enhancement of independence. Assessments must address self care skills, communication skills, motor and mobility skills, and educational and recreational/leisure skills. The plan includes the following elements:~~

- ~~(1) Behavioral objectives stated in measurable terms directed at skill acquisition;~~
- ~~(2) Identification of additional services and supports necessary for skill acquisition to occur such as:

 - ~~(A) Adaptive, corrective, orthotic, mobility, and other types of equipment and devices;~~
 - ~~(B) Specific nursing care plan objectives relative to significant medical condition;~~
 - ~~(C) Identification of persons responsible for service needs external to the facility such as vocational services, counseling, etc.;~~~~
- ~~(3) Specific methods, strategies, or steps relative to the behavioral objectives to ensure consistency of training;~~
- ~~(4) Identification of persons responsible for training, obtaining and maintaining equipment, and providing health related services; and~~
- ~~(5) Methods of data collection.~~

~~(b) The plan must be monitored by a designated nursing facility staff member on a monthly basis to ensure that training of~~

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behavioral objectives is occurring in a consistent manner and progress is being shown, necessary equipment is available and in good repair, all significant health issues are being addressed, and necessary modifications to the plan occur as needed.

340:100-15-8. Joint disposition for persons who have mental retardation or related conditions and mental illness [REVOKED]

~~For individuals with both mental retardation or related conditions and mental illness, individuals with dual diagnoses, a joint disposition is required from the Mental Retardation and Mental Illness Authorities. The Mental Illness Authority is administered through the Department of Mental Health and Substance Abuse Services. This disposition is based on independent assessment information from both authorities. The disposition determines which authority assumes responsibility for serving the individual or if the individual will be served by both.~~

340:100-15-9. Appeal process [REVOKED]

~~Any individual believed to have been adversely affected by a PASRR disposition made in the context of either a preadmission screening or a resident review may appeal that disposition consistent with OAC 340:25-6(9).~~

340:100-15-10. Special case determinations [REVOKED]

~~(a) Special case determinations may be required for individuals with mental retardation or a related condition(s) who would benefit from nursing facility level of care due to unusual circumstances other than medical needs.~~

~~(b) In order to make a special case determination that an individual with mental retardation or a related condition(s) would benefit from nursing facility level of care due to unusual circumstances other than medical needs, staff of the Mental Retardation Authority must:~~

- ~~(1) consider all factors including:
 - ~~(A) the individual circumstances presented;~~
 - ~~(B) the individual's mental and emotional support needs;~~
 - ~~(C) all available assessment information;~~
 - ~~(D) any other relevant information; and~~
 - ~~(E) availability of other formal and informal supports; and~~~~
- ~~(2) provide written specific rationale in support of the exception noting the unique and individualized circumstances of the case.~~

[OAR Docket #23-423; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 105. AGING SERVICES

[OAR Docket #23-424]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended

Part 7. Program Standards for Services Funded Under Title III of the Older Americans Act of 1965, as Amended

340:105-10-77 [AMENDED]

340:105-10-89 [AMENDED]

Subchapter 12. Senior Community Service Employment Program (SCSEP)

Part 4. Fiscal and Administrative Policies for Title V Sub-grantees

340:105-12-30 [AMENDED]

(Reference WF 23-105)

AUTHORITY:

Director of Oklahoma Human Services (OKDHS); Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendments to Chapter 105, Subchapter 10: (1) update Oklahoma Administrative Code (OAC) citations to match revisions; (2) remove confusing language and simplify processes; (3) establish information required for temporary emergency status changes; and (4) cleanup language for improved clarity and readability. The proposed amendments to Chapter 105, Subchapter 12 reflect a federal responsibility change related to grievance appeals.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

340:105-10-77. Congregate meals food preparation and service

(a) **Policy.** All preparation and ~~servicing~~ of food ~~service~~ for the Congregate Meals Program meet all applicable state and local fire, health, sanitation, and safety regulations. Food preparation and delivery is performed in the most cost-efficient manner possible.

(b) **Authority.** The authority for this Section is Section 339 of the Older Americans Act of 1965, as amended and the Oklahoma State Department of Health Food Service Establishment Regulations ~~found at per Oklahoma Administrative Code (OAC) 310:257-5-9, 310:257-5-52, and 310:257-5-62 310:257.~~

(c) **Procedures.**

(1) Projects with multiple serving sites make every effort to consolidate all meal preparation at one facility. Such consolidation is undertaken only when delivery distances and holding times make it feasible.

(2) The project director or designee arranges for all appropriate fire, health, safety, and sanitation inspections and responds appropriately to all identified deficiencies.

(3) ~~A certified food handler supervises.~~ All food preparation staff ~~work under the supervision of a certified food handler who~~ and ensures the application of hygienic techniques and practices in food preparation and service.

(4) Tested, quality recipes, adjusted to yield the number of servings needed, ~~must be~~ used to achieve the consistent and desirable quality and quantity of meals. Uniform, standardized recipes that provide for required amounts per serving are used when feasible.

(5) Meal service is designed so that hot food is available for at least one-half hour after serving begins to enable ~~individuals~~ participants who arrive late to receive a meal.

(6) ~~Holding time from the completion of food preparation until all meals are served at each site shall not exceed four hours.~~ Time and temperature control guidelines are followed per OAC 310:257-5-59 through 310:257-5-62.

(7) Temperatures are taken and documented daily before foods are removed from the stove or oven. Satellite nutrition sites record food temperatures immediately upon arrival at the site.

(8) ~~Temperatures of hot and cold foods are taken and documented daily after food is placed on the steam table or immediately before serving. If temperatures fall below the recommended level, foods are heated to the proper temperature. Foods are not reheated on a steam table as they may reach temperatures that are too hot to be eaten safely and may suffer in quality and consistency.~~

(9) Daily temperatures of hot and cold foods are documented in writing and kept at the Title III senior nutrition site and made available for random review by the project

director, site manager, Area Agency on Aging staff, consulting dietitian, and state dietitian.

(d) **Cross references.** Refer to OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-76, 340:105-10-78 through 340:105-10-80, and 340:105-10-86.

340:105-10-89. Disease prevention and health promotion services

(a) **Policy.** The Area Agency on Aging (AAA) ~~makes awards~~ grants to local entities to provide disease prevention and health promotion services and information at multipurpose senior centers, congregate meal sites, through home delivered meals programs, or other appropriate sites. Disease prevention and health promotion services include:

(1) health risk assessments;

(2) routine health screening, such as hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, oral health, and nutrition screening;

(3) nutritional counseling and educational services for older persons and their primary caregivers;

(4) health promotion programs, including programs relating to ~~prevention and reduction of preventing and~~ reducing the effects of chronic disabling conditions, such as osteoporosis; or cardiovascular disease; and promoting dental care; alcohol and substance abuse reduction; smoking cessation; weight loss and control; and stress management;

(5) programs regarding physical fitness, group exercise, and music, art, and dance movement therapy, including ~~programs for~~ multigenerational participation programs provided by a:

(A) ~~a~~ higher education institution of higher education;

(B) a local educational agency, as defined in Section 1471 of the Elementary and Secondary Education Act of 1965; or

(C) a community-based organization; and

(6) home injury control services, including ~~screening of high risk~~ high-risk home environments ~~environment screenings and provision of educational programs on fall, fracture, or other injury prevention, such as fall and fracture prevention;~~

(7) depression prevention screening ~~for the prevention of depression, community mental health services~~ coordination of ~~community mental health services~~, provision of educational activities, and ~~referral to~~ psychiatric and psychological services referral;

(8) educational programs on the availability, benefits, and appropriate use of preventive health services covered under Title XVIII of the Social Security Act;

(9) medication management screening and education to prevent incorrect medication and adverse drug reactions;

(10) information concerning diagnosis, prevention, treatment, and rehabilitation concerning age related diseases and chronic disabling conditions, including osteoporosis, cardiovascular diseases, diabetes, and

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Alzheimer's disease and related disorders with neurological and organic brain dysfunction;

(11) gerontological counseling; and

(12) social services counseling ~~regarding social services~~ and follow-up health services based on any of the services described in (1) through (11) of this subsection.

(b) **Authority.** The authority for this Section is Sections 102(12), 361, and 362 of the Older Americans Act of 1965, as ~~amended~~ Amended.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection. ~~The AAA:~~

(1) receives input from other entities in the planning and service area (PSA) involved with disease prevention and health promotion regarding targeting of AAA funds;

(2) considers ~~use of~~ using funds to expand successful disease prevention and health promotion activities currently funded by Title III-B or other sources in the community, such as annual health fairs or periodic health screenings at nutrition sites;

(3) seeks technical assistance, as appropriate, from ~~the State Agency~~ Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (CAP) staff; and

(4) submits a plan to ~~the State Agency~~ OKDHS CAP to include:

(A) services funded. Services funded do not include those for which payment ~~may be~~ is made under Titles XVIII and XIX of the Social Security Act;

(B) projected expenditures for each service; and

(C) specific objectives to target services to the medically underserved older persons in the ~~planning and service area (PSA)~~. The definition of medically underserved, which is used to allocate the funding, is stated in the ~~Area Plan~~ area plan and chosen from:

(i) the definition outlined by the Public Health Service Bureau of Health Care Delivery, Department of Health and Human Services;

(ii) a definition developed by the Oklahoma State Department of Health; or

(iii) any other definition in keeping with the intent of assisting medically underserved older persons.

(d) **Cross references.** See ~~OAC~~ Oklahoma Administrative Code ~~340:105-10-50.1(a)(15)(C) — 340:105-10-50.1(a)(15-16)~~ and 340:105-10-51.

SUBCHAPTER 12. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP)

PART 4. FISCAL AND ADMINISTRATIVE POLICIES FOR TITLE V SUB-GRANTEES

340:105-12-30. Grievance procedures

(a) **General.** Senior Community Service Employment Program (SCSEP) sub-grantee employees, participants, and applicants are provided the opportunity to make complaints

involving alleged violations of federal law or SCSEP operating procedures to the sub-grantee and Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (AS)(CAP). SCSEP grievance policy is based on the principle that, when possible, appropriate complaints are ~~resolution resolved of complaints will, whenever possible, be accomplished~~ at the lowest level possible. This policy includes three components described as requirements of, and actions ~~to be~~ taken by:

(1) ~~AS~~ CAP as the grantee;

(2) sub-grantees; and

(3) the United States (U.S.) Department of Labor (DOL).

(b) **Sub-grantee requirements and actions.** All sub-grantee employees, participants, and applicants ~~must be~~ are informed of their rights to file complaints directly with the sub-grantee and ~~the OKDHS AS-CAP~~, and their ~~right of~~ appeal rights.

(1) Sub-grantees have written grievance procedures, compliant with this policy, for complaint resolution that ~~comply with this policy, and~~ are used to resolve SCSEP employees, participants, and applicant grievances.

(2) Procedures ~~must be~~ are consistently and fairly applied. Complaints ~~must be dealt with~~ are addressed in a timely ~~manner~~.

(3) Sub-grantee procedures provide a definition of grievance, ~~and~~ specify any complaints that do not constitute a grievance under its procedures, and include an appeals process.

(4) A copy of the grievance procedures is included in the participant handbook and receipt of these procedures is documented with the *Participant Handbook Acknowledgement*.

(5) Sub-grantee grievance procedures include: ~~(A) and (B) of this paragraph.~~

(A) **Informal meeting.** The grievant is given an opportunity to meet with the SCSEP ~~Project Coordinator~~ project coordinator, immediate supervisor, or other appropriate sub-grantee-designated personnel to present the grievance informally to resolve the problem. The grievant ~~must present~~ presents ~~the his or her~~ complaint within 30-calendar days of the incident or occurrence.

(i) An informal meeting is scheduled and conducted with the parties within 15-calendar days of receipt of the complaint. Proceedings are documented in writing and copies are submitted to both parties.

(ii) A supervisor, coordinator, or designated personnel provides a written grievance response to participants within 10-calendar days of the informal meeting.

(iii) The written response advises the grievant that if he or she is not satisfied with the informal meeting decision, he or she has the right to appeal it in writing to the sub-grantee's executive director within five-calendar days.

(iv) The sub-grantee's executive director's contact information is provided to the grievant with the written response to the informal meeting.

(B) **Formal meeting.** When the informal meeting does not resolve the issue, a formal process ~~must be~~ followed. The formal meeting must occur within 15-calendar days after the receipt of the grievant's written appeal.

(6) Procedure requirements for implementing this Section are that the:

(A) grievance is presented in writing to the sub-grantee's executive director. The sub-grantee documents the receipt of a written grievance. Copies of written statements relevant to the grievance are made available to both parties;

(B) sub-grantee's executive director, or a panel designated by the executive director, such as the board of directors, hear from representatives of each party. Minutes are made of the hearing;

(C) sub-grantee's executive director or grievance panel render a decision and submit it in writing to the parties involved within 15-calendar days of the formal meeting by certified mail;

(D) minutes, along with written statements and other documentation presented at the hearing, ~~and be~~ are maintained in the sub-grantee's files for at least five years after the final disposition of the grievance; and

(E) decision of the sub-grantee's executive director or panel may be appealed to ASCAP.

(c) **Time limit for resolution of sub-grantee level grievance resolution.** ~~Sub-grantee level~~ Sub-grantee level grievances ~~must be~~ are resolved within 60-calendar days of the sub-grantee receiving the complaint.

(d) **Filing grievances directly to OKDHS ASCAP and sub-grantee grievance resolution appeals to OKDHS ASCAP.** Grievances filed directly to OKDHS ASCAP or sub-grantee grievance resolution appeals are in accordance with OKDHS per Oklahoma Administrative Code 340:2-5-43 and 340:2-5-44.

(e) **U.S. DOL requirements and actions.** Grievants, who are dissatisfied with ASCAP grievance resolution and appeals process results, may appeal to DOL. Per ~~20 C.F.R. Part 641 §Section 641.910(b) of Title 20 Part 641 of the Code of Federal Regulations~~, DOL does not review final determinations made under OKDHS ASCAP SCSEP grievance procedures, except to determine if procedures were followed; or to review alleged federal law investigation violations other than those related to nondiscrimination requirements of Title VI of the Civil Rights Act of 1964; Rehabilitation Act of 1974 § 504; Workforce Investment Act of 1998 § 188, or their implementing regulations. ~~DOL appeals must be filed with the Chief, Division of Adult Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.~~ When a participant is not satisfied with the final grievance determination and the alleged violation does not relate to the Civil Rights Act, he or she may file an appeal within 30 days of the determination. Appeals are directed to

Director, Division of National Programs, Tools & Technical Assistance, Employment and Training Administration, U.S. Department of Labor 200 Constitution Avenue NW, Washington DC 20210.

(f) **Civil Rights Act or Rehabilitation Act questions or complaints.** Questions about, or complaints alleging a violation of, the administrative requirements of Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973 § 504; or their implementing regulations ~~may be~~ are directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC 20210.

[OAR Docket #23-424; filed 6-6-23]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 110. LICENSING SERVICES

[OAR Docket #23-425]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- Part 1. Licensing Services - Child Care
- 340:110-1-1 [REVOKED]
- 340:110-1-3 [REVOKED]
- 340:110-1-5 [REVOKED]
- 340:110-1-6 [AMENDED]
- 340:110-1-8.3 through 340:110-1-8.10 [AMENDED]
- 340:110-1-8.11 [NEW]
- 340:110-1-9.2 [AMENDED]
- 340:110-1-10.1 [AMENDED]
- 340:110-1-15 [AMENDED]
- 340:110-1-21 [AMENDED]
- Part 3. Licensing Services - Residential Care and Agencies
- 340:110-1-40 through 340:110-1-42 [REVOKED]
- 340:110-1-44 through 340:110-1-45 [REVOKED]
- 340:110-1-47.1 [AMENDED]
- 340:110-1-54 [REVOKED]
- Subchapter 3. Licensing Standards for Child Care Facilities
- Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
- 340:110-3-81 [AMENDED]
- 340:110-3-85 through 340:110-3-88 [AMENDED]
- 340:110-3-89.1 through 340:110-3-94 [AMENDED]
- 340:110-3-97 through 340:110-97.1 [AMENDED]
- Part 9. Requirements for Residential Child Care Facilities
- 340:110-3-152 [AMENDED]
- 340:110-3-153.1 [AMENDED]
- 340:110-3-154 [AMENDED]
- 340:110-3-157 [AMENDED]
- 340:110-3-163 [AMENDED]
- 340:110-3-165.1 [AMENDED]
- Part 15. Requirements for Child Care Centers, Day Camps, Drop-In Programs, Out-of-School Time Programs, Part-Day Programs, and Programs for Sick Children
- 340:110-3-277 through 340:110-3-281.1 [AMENDED]
- 340:110-3-281.4 [AMENDED]
- 340:110-3-283 through 340:110-3-284 [AMENDED]
- 340:110-3-284.2 [AMENDED]
- 340:110-3-286 through 340:110-3-289 [AMENDED]
- 340:110-3-292 through 340:110-3-293 [AMENDED]
- 340:110-3-297 through 340:110-3-305 [AMENDED]
- Part 16. Requirements for Community Hope Centers
- 340:110-3-400 [AMENDED]
- Subchapter 5. Requirements for Child-Placing Agencies

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Part 1. Requirements for Child-Placing Agencies

340:110-5-6 [AMENDED]

340:110-5-8 [AMENDED]

340:110-5-12 [AMENDED]

Part 5. Requirements for Foster Homes Agencies

340:110-5-57 [AMENDED]

340:110-5-60 [AMENDED]

APPENDIX EE Oklahoma Director's Credential [REVOKED]

APPENDIX EE Oklahoma Director's Credential [NEW]

APPENDIX FF Oklahoma Professional Development Ladder [REVOKED]

APPENDIX FF Oklahoma Professional Development Ladder [NEW]

APPENDIX II Immunizations [REVOKED]

APPENDIX II Immunizations [NEW]

(Reference WF 23-110)

AUTHORITY:

Director of Human Services; 56 O.S. § 162; 10 O.S. §§ 401, 404, 404.1, 405, and 406 of the Oklahoma Child Care Facilities Licensing Act.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Proposed amendments to Chapter 110, Subchapter 1, Parts 1 and 3, Subchapter 3, Parts 5, 9, 15 and 16, Subchapter 5, Parts 1 and 5 reflect Oklahoma Human Services (OKDHS) Child Care Services (CCS) 200 day review of division policy and licensing requirements. The purpose of the review was to: (1) improve services to licensed facilities; (2) clarify needed enforcement of regulation; (3) remove barriers to compliance for licensing requirements; (4) improve health and safety of children; (5) improve Quality Rating and Improvement System (QRIS) criteria and provide for additional quality rating levels; (6) and comply with the Child Care Development Fund (CCDF) and House Bill (HB) 1797. In addition to internal CCS division review, CCS conducted licensing requirement roundtable reviews with stakeholders, including participants of the child care industry, including; Child Care Advisory Committee (CCAC), parent representatives, Oklahoma State Department of Health (OSDH), Office of State Fire Marshall, and experts with national child care technical assistance and research. Child Welfare Services (CWS) was consulted for necessary licensing requirement amendments to assist with improved health and safety and services to residents in residential facilities and child-placing agencies serving adoptive and foster parents and children.

Proposed amendments to Chapter 110, Subchapter 1, Parts 1 and 3, Subchapter 3, Parts 5, 9, 15, and 16, Subchapter 5, Part 1 reflect compliance with HB 1797 passed during the 2021 legislative session. This legislation amended the Oklahoma Child Care Facilities Licensing Act, Section 404.1 and 406 of Title 10 of the Oklahoma Statutes (10 O.S. §§ 404.1 and 406) to prohibit individuals with substantiated heinous and shocking abuse, and also require parent and legal guardian notification of the abuse.

Proposed amendments to Chapter 110, Subchapter 1, Parts 1 and 3 amend CCS policy by improving procedures for: (1) licensing inquiries and requests for license processes; (2) QRIS criteria, including implementing additional quality rating levels; (3) complaint investigations; (4) Restricted Registry; (5) grievance processes; and (6) CCS quality assurance reviews. Proposed amendments also provide for revocation of unnecessary Oklahoma Administrative Code (OAC) Sections.

Proposed amendments to Chapter 110, Subchapter 1, Part 1 amend CCS policy and procedures for QRIS. QRIS provides a framework for building strong early care and education programs. In efforts for continuous improvement of quality child care environments, and aligning with OKDHS True North goals for being a trauma-informed and hope-centered agency, CCS and the QRIS standing subcommittee considered QRIS program criteria revisions. Input, research, and resources were obtained from national and federal technical assistance experts, other states' QRIS programs, CCS stakeholders, child care providers, and state partners. Data from surveys obtained from child care programs, parents, and CCS personnel were reviewed. Proposed transition of quality rating levels and implementing additional rating levels provides program recognition of services currently provided to children and families and improves children's learning environments. Proposed amendments to QRIS criteria addresses critical issues impacting Oklahoma's children and the child care industry in the areas of: (1) personnel professional development and retention; (2) education in children's social and emotional well-being; (3) enriched learning environments by enhancing curriculum and children's learning activities; and (4) improved family partnerships.

Proposed amendments to Chapter 110, Subchapter 3, Parts 5, 9, 15, and 16 amend licensing requirements for: (1) family child care homes; (2) residential child care facilities; (3) child care centers; (4) day-camps; (5) drop in programs; (6) out-of-school time programs; (7) part-day programs; (8) programs for sick children; and (9) community hope centers. Subchapter 5, Parts 1 and 5, amend licensing requirements for child-placing agencies. Proposed amendments to licensing requirements were reviewed by CCAC, licensing requirement roundtable members, and standing subcommittees representing residential facilities and child-placing agencies.

Proposed amendments to Chapter 110, Subchapter 3, Part 5 amend licensing requirements for family child care homes to provide needed clarification regarding age-appropriate cardio-pulmonary resuscitation (CPR) and first aid and health and safety training for compliance with CCDF. Proposed amendments to Subchapter 3, Part 15 amend licensing requirements to provide needed clarification regarding orientation training for CCDF compliance for: (1) child care centers; (2) day-camp programs; (3) drop-in programs; (4) out-of-school time programs; (6) part-day programs; (7) and programs for sick children.

CONTACT PERSON:

Holli Kyker, Programs Administrator, Legal Services-Policy, Department of Human Services, PO Box 25352, Oklahoma City, OK 73125, 405-982-2217.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT OKLAHOMA HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

Subchapter 1. General Provisions

Part 1. Licensing Services - Child Care

OAC 340:110-1-1 is revoked as language in applicable OAC Sections provide the purpose and description of Subchapters.

OAC 340:110-1-3 is revoked as legal base and authority language is included in 10 O.S. 401 §§ et seq. and applicable OAC Sections.

OAC 340:110-1-5 is revoked and renumbered to OAC 340:110-1-6 to combine inquiry and request for licensing processes.

OAC 340:110-1-6 is amended to: (1) provide for the combination of child care and residential and child-placing inquiry and license processes; (2) reflect revised requests for license processes and timeframes; and (3) align CCS terminology.

OAC 340:110-1-8.3 is amended to: (1) reflect language for transition of one-star plus, two-and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) clarify CCS processes and procedures; and (4) align CCS terminology.

OAC 340:110-1-8.4 is amended to: (1) reflect language for transition of one-star plus, two- and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) clarify CCS processes and procedures; and (4) align CCS terminology.

OAC 340:110-1-8.5 is amended to: (1) reflect language for transition of one-star plus, two- and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) implement additional personnel policy topics; (4) increase frequency of personnel staff meetings in center-based programs; (5) provide options of personnel benefits and resources to be offered in four-

and five-star child care center-based programs; (6) require family child care homes to register as direct-care organizations; (7) clarify CCS processes and procedures; and (8) align CCS terminology.

OAC 340:110-1-8.6 is amended to: (1) reflect language for transition of one-star plus, two-and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) clarify master teacher responsibilities; (4) provide master teacher ratio language for additional rating levels; (5) clarify family child care home primary caregiver qualifications; (6) clarify CCS processes and procedures; and (7) align CCS terminology.

OAC 340:110-1-8.7 is amended to: (1) reflect language for transition of one-star plus, two-and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) implement QRIS orientation for directors and primary caregivers; (4) clarify CCS processes and procedures; and (5) align CCS terminology.

OAC 340:110-1-8.8 is amended to: (1) reflect language for transition of one-star plus, two-and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) implement curriculum guidelines and availability to families; (4) include teacher-led physical activities with children; (5) provide options for four- and five-star programs regarding lesson plans, enrichment concepts, and curriculum enhancements; (6) clarify CCS processes and procedures; and (7) align CCS terminology.

OAC 340:110-1-8.9 is amended to: (1) reflect language for transition of one-star plus, two-and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) clarify family partnership, communication, and resources; (4) implement practices for cultural inclusion; (5) implement additional family involvement and events for four- and five-star programs; (6) clarify CCS processes and procedures; and (7) align CCS terminology.

OAC 340:110-1-8.10 is amended to: (1) reflect language for transition of one-, two- and three-star rating levels; (2) implement additional four- and five-star rating levels; (3) clarify approved assessment tools; (4) clarify CCS processes and procedures; and (5) align CCS terminology.

OAC 340:110-1-8.11 is issued to provide additional criteria options for four- and five-star programs regarding: (1) professional development; (2) family involvement; (3) health and safety; (4) continuity of children's care; and (5) child assessment.

OAC 340:110-1-9.2 is amended to: (1) establish CCS processes for compliance with HB 1797; and (2) reflect a summary of facts used in determining complaint investigation findings is provided to program operators upon investigation completion without written request.

OAC 340:110-1-10.1 is amended to: (1) clarify the removal process of individuals from the Restricted Registry; and (2) align CCS terminology.

OAC 340:110-1-15 is amended to: (1) provide for the combination of child care and residential and child-placing grievance processes; (2) clarify grievance review; and (3) align CCS terminology.

OAC 340:110-1-21 is amended to: (1) clarify the CCS quality assurance review process and procedures; and (2) align CCS terminology.

Part 3. Licensing Services - Residential Care and Agencies

OAC 340:110-1-40 is revoked as language in applicable OAC Sections provide the purpose and description of Subchapters.

OAC 340:110-1-41 is revoked as definition language is provided in applicable OAC Sections.

OAC 340:110-1-42 is revoked as legal base and authority language is included in 10 O.S. 401 §§ et seq., and applicable OAC Sections.

OAC 340:110-1-44 and 340:110-1-45 are revoked and renumbered to OAC 340:110-1-6 as CCS inquiry and request for license processes are similar with all types of licensed facilities.

OAC 340:110-1-47.1 is amended to: (1) establish CCS processes for compliance with HB 1797; and (2) reflect a summary of facts used in determining complaint investigation findings is provided to program operators upon investigation completion without written request.

OAC 340:110-1-54 is revoked and renumbered to OAC 340:110-1-15 as CCS grievance process is similar with all types of licensed facilities.

Subchapter 3. Licensing Standards for Child Care Facilities

Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes

OAC 340:110-3-81 is amended to: (1) reflect hazards, inaccessible and locked definitions; and (2) align CCS terminology.

OAC 340:110-3-85 is amended to: (1) reflect licensing notification also includes phone number changes, unscheduled temporary or permanent program closure or relocation, and incidents of exposing children to imminent risk of harm; (2) list additional diseases requiring OSDH prompt notification; (3) remove good judgment phraseology; (4) require primary caregivers obtain and maintain Level 1 or higher on the Oklahoma Professional Development Ladder (OPDL); (5) clarify age-appropriate CPR and first aid training and

clarify health and safety training topic for CCDF compliance; (6) define formal and informal training; (7) clarify reading and television no longer qualifies for professional development hours; (8) comply with HB 1797 by prohibiting individuals with substantiated heinous and shocking abuse and requiring parent and legal guardian notifications; and (9) align CCS terminology.

OAC 340:110-3-86 is amended to reflect: (1) addition of phone requirement language from OAC 340:110-3-86.1; (2) prohibited tobacco products include simulated tobacco; (3) furnishings do not pose tipping hazards; (4) deletion of trampoline restriction language and placement in OAC 340:110-3-91; and (5) CCS terminology alignment.

OAC 340:110-3-86.1 is amended to reflect: (1) additional types of situations included in emergency plans; (2) emergency plans include reporting to poison control center, when necessary; (3) emergency number posting may be in a prominent place or by the phone; (4) clarified non-glass and non-mercury thermometers; (5) first aid kit and additional supplies required in the vehicle; and (6) CCS terminology alignment.

OAC 340:110-3-87 is amended to reflect: (1) driving prohibitions when driving offenses occurred within the last five years; (2) children do not share a seat belt; (3) car seats are not used when expired or previously involved in an vehicle accident; (4) adult passengers must be secured in a seat belt, unless medically exempt; (5) prohibition against exceeding vehicle capacity; (6) transportation prohibition in areas of vehicle not designed for transport; (7) requirement that vehicles meet all state laws and are maintained in safe operating condition; (8) requirement of child safety checks to ensure no children remain in the vehicle; (9) an operable phone is in each vehicle; (10) navigational and communication device usage; (11) clarification of no tobacco use while transporting; and (12) CCS terminology alignment.

OAC 340:110-3-88 is amended to reflect: (1) personnel information forms are submitted to CCS within two weeks; (2) personnel and children records are maintained for 12 months; (3) clarification of compliance file items; and (4) CCS terminology alignment.

OAC 340:110-3-89.1 is amended to reflect: (1) parent policy also includes the days the program is closed, relevant emergency plan and procedure information, and a description of infant safe sleep environment; and (2) CCS terminology alignment.

OAC 340:110-3-90 is amended to reflect: (1) inclusion of Appendix II- Immunizations and revisions to immunization information; (2) inclusion of over the counter medication in medication requirements; (3) diaper cream is considered a medication; however, insect repellants and sunscreens are not considered medications; (4) 12 month medication permissions for chronic conditions; (5) documentation for diaper cream no longer required after each use; (6) additional diseases requiring reporting to OSDH and following OSDH guidance and recommendations; (7) prompt parent notification of suspected allergic reaction; and (8) CCS terminology alignment.

OAC 340:110-3-91 is amended to reflect: (1) allowing use of mini-trampolines and mini-rebounders with specific restrictions; and (2) CCS terminology alignment.

OAC 340:110-3-91.1 is amended to reflect: (1) types of rest equipment also includes play yards; (2) mat thickness revision to one inch; (3) prohibition against pacifiers with attachments or soft toys in cribs; (4) children are not forced to stay on rest equipment after resting; and (5) CCS terminology alignment.

OAC 340:110-3-92 is amended to reflect: (1) time out and time away is used only for children 2 years of age and older and limited to one minute per age; (2) types of acts prohibited also include hitting, striking with an object, forced exercise, rejecting and neglecting children, exposure to extreme temperatures, and tying to restrict movement; (3) prohibitions of punishing or threatening in association with education and withdrawing outdoor play; and (4) CCS terminology alignment.

OAC 340:110-3-93 is amended to reflect: (1) children in stationary equipment are moved every 20 minutes; (2) when breast milk and formula may be reused; (3) food safety for infant, toddler, and 2-year-olds regarding types of foods and serving sizes; (4) children not left unattended on diaper changing surfaces; (5) limiting time on potty chairs, not exceeding 10 minutes; (6) rinse water from potty chairs is not emptied in a sink; and (7) CCS terminology alignment.

OAC 340:110-3-94 is amended to reflect: (1) referencing Oklahoma State Department of Education (OSDE) for current meal nutrition guidelines; (2) parents may bring home made baby food; (3) allowing built-in thermometers for refrigerators; and (4) CCS terminology alignment.

OAC 340:110-3-97 is amended to reflect: (1) electrical device charging cords are inaccessible for 3-year-olds and younger; and (2) CCS terminology alignment.

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OAC 340:110-3-97.1 is amended to reflect: (1) three caregivers may have 12 children younger than two years of age; (2) primary caregivers maintain an OPDL of Level 4 or higher; (3) primary caregivers receive 20 hours of professional development annually; (4) assistant caregivers obtain and maintain Level 1 or higher on OPDL; (5) formal and informal training definitions; (6) reading and television no longer qualifies for professional development hours; (7) the home is registered as a direct care organization; and (8) CCS terminology alignment.

Part 9. Requirements for Residential Child Care Facilities

OAC 340:110-3-152 is amended to reflect: (1) compliance with HB 1797 by requiring parent and legal guardian notifications of substantiated heinous and shocking abuse; and (2) CCS terminology alignment.

OAC 340:110-3-153.1 is amended to reflect: (1) compliance with HB 1797 by prohibiting individuals with substantiated heinous and shocking abuse; and (2) CCS terminology alignment.

OAC 340:110-3-154 is amended to: (1) clarify resident's admission records; and (2) align CCS terminology.

OAC 340:110-3-157 is amended to: (1) reflect weapons definition; (2) clarify weapon and ammunition storage safety practices; (3) clarify resident safety; and (4) align CCS terminology.

OAC 340:110-3-163 is amended to: (1) reflect current veterinary vaccination timeframes for dogs and cats; and (2) align CCS terminology.

OAC 340:110-3-165.1 is amended to reflect infant safe sleep practices including: (1) mattresses are covered with tight-fitting sheets; (2) infant swaddling safety practices; (3) infants are moved to appropriate rest equipment for sleeping; and (4) prohibition of soft products and other items in a crib, unless approved by a licensed physician. Amendments also include alignment of CCS terminology.

Part 15. Requirements for Child Care Centers, Day Camps, Drop-In Programs, Out-of School Time Programs, Part-Day Programs, and Programs for Sick Children

OAC 340:110-3-277 is amended to: (1) clarify other businesses sharing the facility do not pose a health and safety risk; and (2) align CCS terminology.

OAC 340:110-3-278 is amended to reflect: (1) program policy also includes protecting children from over-exposure to the sun; and (2) CCS terminology alignment.

OAC 340:110-3-279 is amended to reflect: (1) referencing phone requirements in other OAC sections; and (2) CCS terminology alignment.

OAC 340:110-3-280 is amended to reflect: (1) additional diseases requiring reporting to Licensing; (2) additional diseases requiring reporting to OSDH and following OSDH guidance and recommendations; (3) requirement of prompt parent notification of suspected allergic reaction; (4) compliance with HB 1797 by requiring parent and legal guardian notifications of substantiated heinous and shocking abuse; and (5) CCS terminology alignment.

OAC 340:110-3-281 is amended to reflect: (1) child record accessibility includes authorized individuals as determined by the program; and (2) CCS terminology alignment.

OAC 340:110-3-281.1 is amended to reflect: (1) parent release provides for children's allergies to be posted without confidentiality; and (2) CCS terminology alignment.

OAC 340:110-3-281.4 is amended to reflect: (1) diaper cream documentation is no longer required after each use; and (2) CCS terminology alignment.

OAC 340:110-3-283 is amended to reflect compliance with HB 1797 by prohibiting individuals with substantiated heinous and shocking abuse.

OAC 340:110-3-284 is amended to reflect: (1) good judgment phraseology removal; (2) professional development plans are required at six months; (3) clarified orientation topics for CCDF compliance; (4) clarification of professional development as a course or training event; (5) child passenger safety training references the law for required training; and (6) CCS terminology alignment.

OAC 340:110-3-284.2 is amended to reflect: (1) master teacher educational level clarifications; (2) removal of unnecessary CPR and first aid timeframe language; and (3) CCS terminology alignment.

OAC 340:110-3-286 is amended to reflect: (1) clarification of teaching personnel performing support services; (2) terminology revisions for child with special needs; and (3) CCS terminology alignment.

OAC 340:110-3-287 is amended to reflect: (1) clarifications for restriction of non-job related activities while counting in ratios; (2) supervision exception includes 5-year-olds; (3) supervision during transportation begins with physical custody of the child; (4) language references cell phone use in OAC 340:110-3-305; and (5) CCS terminology alignment.

OAC 340:110-3-288 is amended to: (1) add behavior and guidance to title of OAC section; (2) include additional prohibitions against hitting, striking with an object, and tying to restrict movement; and (3) align CCS terminology.

OAC 340:110-3-289 is amended to reflect: (1) expanded language for play equipment and activities to foster inclusivity of multi-cultures and family diversity; (2) children excluded from outdoor play is based on parent provided written information; (3) clarifications for school-related educational activities being exempt from screen time limitations; (4) clarification for personnel electronic media use for child and classroom related activities, during rest time; and (5) CCS terminology alignment.

OAC 340:110-3-292 is amended to reflect: (1) stray animal clarification; (2) rabies vaccination clarification; (3) restrictions of visiting animal exhibits and habitats from food preparation areas and children's rest areas; and (4) CCS terminology alignment.

OAC 340:110-3-293 is amended to reflect: (1) parent access is for areas used by children; (2) parent resources may be provided electronically; (3) program information options may include a program website or parent portal; and (4) CCS terminology alignment.

OAC 340:110-3-297 is amended to: (1) specify alternative diaper changing includes any age child too heavy to lift; (2) ensure proper hygiene practices and proper supervision; and (3) align CCS terminology.

OAC 340:110-3-298 is amended to: (1) reflect OSDE is referenced for current meal nutrition guidelines; (2) remove requirements for breastmilk storage; (3) specify breastmilk is not re-used after two hours from serving; and (4) align CCS terminology.

OAC 340:110-3-299 is amended to reflect: (1) updated OSDH terminology; (2) parents may bring home made baby food; (3) additional items not to be stored in ice chests; (4) allowing built-in thermometers for refrigerators; (5) removal of unnecessary language implied with general hygiene practices; and (6) CCS terminology alignment.

OAC 340:110-3-300 is amended to reflect: (1) expansion of language addressing location of phones; and (2) CCS terminology alignment.

OAC 340:110-3-301 is amended to reflect: (1) 4-year-olds may play occasionally in unfenced area; and (2) CCS terminology alignment.

OAC 340:110-3-302 is amended to: (1) include tipping over in equipment hazard prevention; (2) reduce mat thickness to one inch; (3) allow use of mini-trampolines and mini-rebounders with specific restrictions; and (4) align CCS terminology.

OAC 340:110-3-303 is amended to reflect: (1) references to inaccessible and locked definitions in OAC 340:110-3-275; (2) standing liquid must be attended at all times or emptied after each use; (3) heater closets are inaccessible and not used for any storage; (4) electrical charging devices are inaccessible for 3-year-olds and younger; and (5) CCS terminology alignment.

OAC 340:110-3-304 is amended to reflect: (1) prior to children being outside, area is free of animal waste and debris; (2) food and diaper trash disposal practices; (3) removal of trash as needed; and (4) CCS terminology alignment.

OAC 340:110-3-305 is amended to reflect: (1) inclusion of vehicle phone requirement language; (2) language provision for navigational devices and communication device usage; and (3) CCS terminology alignment.

Part 16. Requirements for Community Hope Centers

OAC 340:110-3-400 is amended to reflect compliance with HB 1797 by prohibiting individuals with substantiated heinous and shocking abuse and requiring parent and legal guardian notifications.

Subchapter 5. Requirements for Child-Placing Agencies

Part 1. Requirements for Child-Placing Agencies

OAC 340:110-5-6 is amended to reflect compliance with HB 1797 for parent and legal guardian notifications of substantiated heinous and shocking abuse.

OAC 340:110-5-8 is amended to: (1) reflect when personnel references may be obtained by phone interviews; (2) comply with HB 1797 by prohibiting individuals with substantiated heinous and shocking abuse; and (3) align CCS terminology.

OAC 340:110-5-12 is amended to: (1) clarify contents of personnel records; and (2) align CCS terminology.

Part 5. Requirements for Foster Homes Agencies

OAC 340:110-5-57 is amended to: (1) clarify individuals residing more than 30-calendar days are considered household members; and (2) align CCS terminology.

OAC 340:110-5-60 is amended to reflect: (1) inclusion of weapons definition in safety requirements; (2) weapon and ammunition storage safety practices; (3) current veterinary vaccination timeframes for dogs and cats; (4) requirement of separate sleeping rooms for children of a different sex older than 7 years of age; (5) requirement that cribs meet Consumer Product Safety

Commission standards; (6) prohibition of soft products and other items in a crib; unless approved by a licensed physician; (7) infant swaddling safety practices; (8) infants are moved to appropriate rest equipment for sleeping; and (9) alignment of CCS terminology.

APPENDIX EE is amended to reflect no longer requiring college credit hours or degree programs be earned exclusively from regionally accredited colleges or universities.

APPENDIX FF is amended to: (1) clarify educational requirements for master teachers; and (2) reflect approved college credit hours must also articulate to a two- or four-year college or university.

APPENDIX II is amended to: (1) revise immunization schedule requirements; (2) allow for 30-calendar day exemption for immunization records for all children; and (3) require a 30-calendar day exemption for foster children and homeless families for compliance with CCDF.

[OAR Docket #23-425; filed 6-6-23]

TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-454]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- 442:1-1-1. Purpose [NEW]
442:1-1-2. Notice [NEW]
442:1-1-3. Record of hearing [NEW]
442:1-1-4. Duty of disclosure [NEW]
442:1-1-5. Appearance of parties [NEW]
442:1-1-6. Failure to appear [NEW]
442:1-1-7. Summary suspension of licensee [NEW]
442:1-1-8. Pleadings [NEW]
442:1-1-9. Failure to comply [NEW]
442:1-1-10. Discovery [NEW]
442:1-1-11. Emergency actions [NEW]

AUTHORITY:

Executive Director of the Oklahoma Medical Marijuana Authority; 63 O.S. § 420-430

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Superseded rules:

- 442:1-1-1. Purpose [NEW]
442:1-1-2. Notice [NEW]
442:1-1-3. Record of hearing [NEW]
442:1-1-4. Duty of disclosure [NEW]
442:1-1-5. Appearance of parties [NEW]
442:1-1-6. Failure to appear [NEW]
442:1-1-7. Summary suspension of licensee [NEW]
442:1-1-8. Pleadings [NEW]

- 442:1-1-9. Failure to comply [NEW]
442:1-1-10. Discovery [NEW]
442:1-1-11. Emergency actions [NEW]

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n/a

GIST/ANALYSIS:

The amendments establish administrative rules governing proceedings before the agency, including provisions regarding proper notice, pleadings, disclosure requirements, and appearance by parties.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

442:1-1-1. Purpose

These rules are promulgated to provide due process to parties appearing before the Authority and are not to be construed inconsistently with the Oklahoma Administrative Procedures Act. The assigned administrative law judge has the discretion to waive, supplement or modify any requirement of the applicable law or rule of procedure where permitted by law and when the administration of justice requires.

442:1-1-2. Notice

Adequate notice of any hearing in accordance with these rules shall be given to every summoned person or entity. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

442:1-1-3. Record of hearing

All proceedings shall be recorded. A written transcript or a copy of the tape recording shall be made available to any person or entity alleged to have committed a violation of these rules or who is otherwise a party to an action upon written request and payment of costs for reproduction.

442:1-1-4. Duty of disclosure

It is the duty and obligation of every licensee to make full disclosure at any hearing of any knowledge of a violation of any law or of the rules and regulations of the Authority. No person may refuse to testify at any hearing on any relevant matter, except in the proper exercise of a legal privilege, nor shall any person testify falsely.

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442:1-1-5. Appearance of parties

All parties to a proceeding must enter an appearance or may be determined to have waived their right to appear. Corporate entities, limited liability companies, other business entities, and governmental units or entities may appear only by an attorney licensed to practice law in Oklahoma or by an out-of-state attorney admitted to practice before the Agency pursuant to the rules of the Oklahoma Bar Association.

442:1-1-6. Failure to appear

The license of any licensee or summoned person or entity who fails to appear before the assigned administrative law judge after having been ordered personally or in writing to do so may be suspended pending appearance before the assigned administrative law judge. Nonappearance of a summoned person or entity after adequate notice may be construed as a waiver of right to be present at a hearing.

442:1-1-7. Summary suspension of licensee

(a) If the Executive Director or assigned administrative law judge finds that the public health, safety, or welfare requires emergency action and incorporates such finding to that effect in any Order, summary suspension of any licensee may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in the Administrative Procedures Act, 75 O.S., §§ 301 through 326.

(b) A licensee whose license has been summarily suspended may make a written request for a hearing on the summary suspension not later than ten (10) days after the license was summarily suspended.

(c) The assigned administrative law judge shall conduct a hearing on the summary suspension promptly and in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling with the burden on the licensee to show good cause why the suspension should be set aside.

442:1-1-8. Pleadings

(a) Pleadings shall be filed with the Authority and include appeals, applications, petitions, answers, complaints, exceptions, replies and motions. Submissions received after 5:00 p.m., CST or CDT, shall be deemed filed on the next regular business day.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A party filing a pleading shall, by certified mail, email, or hand deliver, a copy of the pleading to each party of record. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with this subsection is grounds for the Authority to strike the pleading from the record.

(d) An objection to a defect, omission or fault in the form or content of a pleading must be specifically stated in a motion filed not later than seven (7) days before the date of the hearing. A party who fails to timely file an objection under this subsection waives the objection.

(e) The assigned administrative law judge shall decide any motion or application without hearing based upon the written submissions of the parties unless the assigned administrative law judge determines that an evidentiary hearing is necessary for a proper resolution of the issue(s) submitted.

(f) The tribunal may resolve any dispute or controversy by full or partial summary adjudication when the tribunal is satisfied that there is no reasonable dispute as to a material fact, or the reasonable inferences that may be drawn from material facts, or if only questions of law are involved. If the tribunal's summary adjudication and resolution does not dispose of all the issues pending in the action then it must recite the issues remaining for determination in its decision granting partial summary relief.

(g) Confidential information filed with or submitted to the Authority or administrative law judge in conjunction with any proceeding pursuant to the 63 O.S. §§ 420 et seq., the Oklahoma Medical Marijuana and Patient Protection Act at 63 O.S. §§ 427.1 et seq., Medical Marijuana Waste Management Act, 63 O.S. §§ 428 et seq and the Oklahoma Administrative Code ("OAC") 442, shall not constitute a public record and shall be sealed by the Court.

442:1-1-9. Failure to comply

Failure or refusal to comply with an order from the administrative law judge, including a consent order, may result in the imposition of sanctions against the offending party. In addition, the Authority may seek enforcement by District Court order.

442:1-1-10. Discovery

Discovery shall not be commenced unless a scheduling order is entered in the case and the tribunal determines that discovery is necessary for the resolution of the issues. Discovery shall be completed in accordance with the scheduling order entered in the case. The tribunal may set the total permitted number of written discovery including interrogatories, requests for production and requests for admission based on the needs of the case. The tribunal may limit the frequency, scope, and manner of depositions based on the needs of the case.

442:1-1-11. Emergency actions

When the Executive Director or an assigned administrative law judge finds that the public health, safety or welfare requires that action be taken immediately and when such a finding is incorporated in an order, emergency action may be ordered. Such order shall be served on every named party by certified mail or by personal service at an address listed on Agency records. If a party is being represented by an attorney, service may be made on the attorney instead of on the party. The knowing failure of a party to accomplish service in accordance with

this subsection is grounds for the Authority to strike the pleading from the record.

[OAR Docket #23-454; filed 6-7-23]

**TITLE 442. OKLAHOMA MEDICAL MARIJUANA AUTHORITY
CHAPTER 10. MEDICAL MARIJUANA REGULATIONS**

[OAR Docket #23-455]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [NEW]
 - 442:10-1-1. Purpose [NEW]
 - 442:10-1-2. Regulatory program established [NEW]
 - 442:10-1-3. Limitations of licenses [NEW]
 - 442:10-1-4. Definitions [NEW]
 - 442:10-1-5. Criminal history screening [NEW]
 - 442:10-1-6. Proof of residency [NEW]
 - 442:10-1-7. Proof of identity [NEW]
 - 442:10-1-8. Applicant photograph [NEW]
 - 442:10-1-9. Recommending physician registration [NEW]
 - 442:10-1-9.1. Recommending physician standards [NEW]
- Subchapter 2. Medical Marijuana Licenses [NEW]
 - 442:10-2-1. Application for patient license [NEW]
 - 442:10-2-2. Application for patient license for persons under age eighteen (18) [NEW]
 - 442:10-2-3. Application for caregiver's license [NEW]
 - 442:10-2-3.1. Withdrawal of a caregiver's authorization [NEW]
 - 442:10-2-4. Application for temporary patient license [NEW]
 - 442:10-2-5. Term and renewal of medical marijuana patient and caregiver licenses [NEW]
 - 442:10-2-6. Information contained on patient and caregiver license [NEW]
 - 442:10-2-7. Medical marijuana license verification system [NEW]
 - 442:10-2-8. Possession limits [NEW]
 - 442:10-2-9. Prohibited acts and penalties [NEW]
 - 442:10-2-10. Confidential patient information [NEW]
 - 442:10-2-11. Restrictions on smokable medical marijuana and medical marijuana products [NEW]
- Subchapter 3. Transporter License [NEW]
 - 442:10-3-1. License for transportation of medical marijuana [NEW]
 - 442:10-3-2. Requirements for transportation of marijuana [NEW]
 - 442:10-3-3. Transporter agent license [NEW]
 - 442:10-3-4. Employer deactivation of transporter agent license [NEW]
 - 442:10-3-5. Information contained on a transporter agent license [NEW]
 - 442:10-3-6. Inventory manifests [NEW]
- Subchapter 4. Research Facilities and Education Facilities [NEW]
 - 442:10-4-1. License required [NEW]
 - 442:10-4-1.1. Responsibilities of the license holder [NEW]
 - 442:10-4-2. Licenses [NEW]
 - 442:10-4-3. Applications [NEW]
 - 442:10-4-4. Inspections [NEW]
 - 442:10-4-5. Inventory tracking, records, reports, and audits [NEW]
 - 442:10-4-6. Penalties [NEW]
- Subchapter 5. Medical Marijuana Businesses [NEW]
 - 442:10-5-1. License required [NEW]
 - 442:10-5-1.1. Responsibilities of the license holder [NEW]
 - 442:10-5-2. Licenses [NEW]
 - 442:10-5-2.1. Objection by municipality [NEW]
 - 442:10-5-3. Applications [NEW]
 - 442:10-5-3.1. Proof of residency for commercial licensees [NEW]
 - 442:10-5-3.2. Persons prohibited from holding a commercial license [NEW]
 - 442:10-5-4. Inspections [NEW]
 - 442:10-5-4.1. Operational status visit [NEW]
 - 442:10-5-5. Processing medical marijuana on behalf of a patient or caregiver [NEW]

- 442:10-5-6. Inventory tracking, records, reports and audits [NEW]
 - 442:10-5-6.1. Penalties [NEW]
- 442:10-5-7. Tax on retail medical marijuana sales [NEW]
- 442:10-5-8. Food safety standards for processors [NEW]
- 442:10-5-9. Standards for handling and processing medical marijuana and medical marijuana products [NEW]
- 442:10-5-10. Medical marijuana waste disposal [NEW]
- 442:10-5-11. Attestation confirming or denying foreign financial interests [NEW]
- 442:10-5-12. Marijuana transaction limitations [NEW]
- 442:10-5-13. Loss and theft [NEW]
- 442:10-5-14. Handling of medical marijuana by dispensary [NEW]
- 442:10-5-15. Entry to licensed premises [NEW]
- 442:10-5-16. Prohibited acts [NEW]
- Subchapter 6. Commercial Licensees [NEW]
 - 442:10-6-1. General security requirements for commercial licensees [NEW]
 - 442:10-6-2. Construction of premises [NEW]
- Subchapter 7. Packaging, Labeling, and Advertising [NEW]
 - 442:10-7-1. Labeling and packaging [NEW]
 - 442:10-7-2. Prohibited products [NEW]
 - 442:10-7-3. Advertising [NEW]
- Subchapter 8. Laboratory Testing [NEW]
 - 442:10-8-1. Testing standards and thresholds [NEW]
 - 442:10-8-2. General operating requirements and procedures [NEW]
 - 442:10-8-3. Sampling requirements and procedures [NEW]
 - 442:10-8-4. Laboratory quality assurance and quality control [NEW]
 - 442:10-8-5. Quality assurance laboratory [NEW]
- Subchapter 9. Waste Disposal Facilities [NEW]
 - 442:10-9-1. License or permit required [NEW]
 - 442:10-9-1.1. Responsibilities of the license or permit holder [NEW]
 - 442:10-9-2. Licenses and permits [NEW]
 - 442:10-9-3. License applications [NEW]
 - 442:10-9-4. Permit applications [NEW]
 - 442:10-9-5. Inspections [NEW]
 - 442:10-9-6. Security requirements [NEW]
 - 442:10-9-7. Audits and inventory [NEW]
 - 442:10-9-8. Penalties [NEW]
 - 442:10-9-9. Waste disposal [NEW]
- Subchapter 10. Receivership [NEW]
 - 442:10-10-1. Certificate of Authority [NEW]
 - 442:10-10-2. Term and renewal of Certificate of Authority [NEW]
 - 442:10-10-3. Responsibilities of the Certificate of Authority holder [NEW]
 - 442:10-10-4. Revocation of Certificate of Authority [NEW]
- Appendix A. Testing Thresholds [NEW]
- Appendix B. LQC Results [NEW]
- Appendix C. Schedule of Fines [NEW]
- Appendix D. Sample Collection for Final Medical Marijuana Products [NEW]
- Appendix E. Sample Collection for Pre-rolls [NEW]
- Appendix F. Required Testing By Batch Type [NEW]

AUTHORITY:

Executive Director of the Oklahoma Medical Marijuana Authority; 63 O.S. § 420-430

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Permanent Final Adoptions

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 1. General Provisions [NEW]
 - 442:10-1-1. Purpose [NEW]
 - 442:10-1-2. Regulatory program established [NEW]
 - 442:10-1-3. Limitations of licenses [NEW]
 - 442:10-1-4. Definitions [NEW]
 - 442:10-1-5. Criminal history screening [NEW]
 - 442:10-1-6. Proof of residency [NEW]
 - 442:10-1-7. Proof of identity [NEW]
 - 442:10-1-8. Applicant photograph [NEW]
 - 442:10-1-9. Recommending physician registration [NEW]
 - 442:10-1-9.1. Recommending physician standards [NEW]
- Subchapter 2. Medical Marijuana Licenses [NEW]
 - 442:10-2-1. Application for patient license [NEW]
 - 442:10-2-2. Application for patient license for persons under age eighteen (18) [NEW]
 - 442:10-2-3. Application for caregiver's license [NEW]
 - 442:10-2-3.1. Withdrawal of a caregiver's authorization [NEW]
 - 442:10-2-4. Application for temporary patient license [NEW]
 - 442:10-2-5. Term and renewal of medical marijuana patient and caregiver licenses [NEW]
 - 442:10-2-6. Information contained on patient and caregiver license [NEW]
 - 442:10-2-7. Medical marijuana license verification system [NEW]
 - 442:10-2-8. Possession limits [NEW]
 - 442:10-2-9. Prohibited acts and penalties [NEW]
 - 442:10-2-10. Confidential patient information [NEW]
 - 442:10-2-11. Restrictions on smokable medical marijuana and medical marijuana products [NEW]
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 - 442:10-4-6. Penalties [NEW]
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 - 442:10-5-2. Licenses [NEW]
 - 442:10-5-2.1. Objection by municipality [NEW]
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 - 442:10-5-6. Inventory tracking, records, reports and audits [NEW]
 - 442:10-5-6.1. Penalties [NEW]
 - 442:10-5-7. Tax on retail medical marijuana sales [NEW]
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 - 442:10-5-10. Medical marijuana waste disposal [NEW]
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 - 442:10-5-14. Handling of medical marijuana by dispensary [NEW]
 - 442:10-5-15. Entry to licensed premises [NEW]
 - 442:10-5-16. Prohibited acts [NEW]
- Subchapter 6. Commercial Licensees [NEW]
 - 442:10-6-1. General security requirements for commercial licensees [NEW]

- 442:10-6-2. Construction of premises [NEW]
- Subchapter 7. Packaging, Labeling, and Advertising [NEW]
 - 442:10-7-1. Labeling and packaging [NEW]
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 - 442:10-9-1. License or permit required [NEW]
 - 442:10-9-1.1. Responsibilities of the license or permit holder [NEW]
 - 442:10-9-2. Licenses and permits [NEW]
 - 442:10-9-3. License applications [NEW]
 - 442:10-9-4. Permit applications [NEW]
 - 442:10-9-5. Inspections [NEW]
 - 442:10-9-6. Security requirements [NEW]
 - 442:10-9-7. Audits and inventory [NEW]
 - 442:10-9-8. Penalties [NEW]
 - 442:10-9-9. Waste disposal [NEW]
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 - 442:10-10-1. Certificate of Authority [NEW]
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- Appendix A. Testing Thresholds [NEW]
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- Appendix C. Schedule of Fines [NEW]
- Appendix D. Sample Collection for Final Medical Marijuana Products [NEW]
- Appendix E. Sample Collection for Pre-rolls [NEW]
- Appendix F. Required Testing by Batch Type [NEW]

Gubernatorial approval:

November 1, 2022

Register publication:

40 Ok Reg 382

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22-804

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The amendments establish Oklahoma Medical Marijuana Authority as an independent entity as required under SB 1543. The rules adjust references from OAC 442:10-1-1 to OAC 442: Appendix E, replacing: Oklahoma State Department of Health with Oklahoma Medical Marijuana Authority, Department with Authority, and Commissioner with Executive Director. The rules will make permanent emergency rules adopted to comply with statutory requirements for medical marijuana regulations. New requirements that commercial growers are prohibited from being within 1,000 feet of a school are adjusted in OAC 442:10-9-3(e)(5). The definition of "public school" is amended to include technology centers in OAC 442:10-1-4. Language establishing a moratorium on processing and issuing new medical marijuana business licenses for growers, processors and dispensaries beginning August 1, 2022 is added to OAC 442:10-5-3(h). New packaging standards allowing transparent packaging and requiring the use of an exit package and specific package warning labels are added to OAC 442:10-7-1(d). Enhanced penalties for unlawful diversion of product by businesses and patients is added to OAC 442:10-2-9, OAC 442:10-4-6, OAC 442:10-5-6.1, and OAC 442:10, Appendix C. The requirement that medical marijuana commercial grow licensees who operate an outdoor medical marijuana facility register with the Oklahoma Department of Agriculture, Food, and Forestry as an environmentally sensitive crop owner is added to OAC 442:10-5-1.1. The requirement that commercial grower licenses to post signage at the site of the commercial grow operation is added to OAC 442:10-6-1. Amendments to OAC 442:10-4-2(e)(2), OAC 442:10-5-2(e) and OAC 442:10-9-2(e) govern material changes that affect a licensee's qualifications for licensure and clarifies that licensees cannot operate under the conditions of a material change until approved in writing by the Authority. Amendments to OAC 442:10-5-2(e)(2)(A)(iv) requires commercial licensees carry a physical copy of the written location change approval while transporting medical marijuana products from location to location. Amendments to OAC 442:10-5-8 remove references to the Medical Marijuana

Advisory Council and renumber the subsequent food safety standards for processors section to conform, adjusting internal citations throughout.

Clarification regarding the transporter license issued to qualifying applicants and the application for individual transporter agent licenses is added to OAC 442:10-3-1(a). The language regarding "chain of custody" is removed in OAC 442:10-3-6(e) to clarify inventory manifests. OAC 442:10-5-2(k) is amended to reference violations outlined in Appendix C. OAC 442:10-5-6(b)(3)(A) clarifies record retention for both commercial licensees and patient licensees involved in each transaction. OAC 442:10-5-12(c) clarifies the mandatory requirement to use the OMMA provided system for verification of licensees and transactions. OAC 442:10-7-1(g) is amended to require all storage receptacles be labeled with product batch numbers when in use.

Amendments to OAC 442:10-8-1 include clarifying and clean up language. OAC 442:10-8-1(d) allows growers to transfer medical marijuana from harvest batches to processors for decontamination or remediation prior to testing only if the remediated and decontaminated medical marijuana is returned to the originating licensed commercial grower and successfully passes all tests prior to transfer or sale. Provisions regarding the embargo of medical marijuana in OAC 442:10-8-1(g) are amended to no longer conflict with the provisions of 63 O.S. § 427.24. OAC 442:10-8-1(i) removes chemical residue from the list of required tests for production batch samples, requires heavy metal limits be applied to the product from that is submitted at testing, defines a list of terpenoids that must be included in tests for harvest batch and production batch samples, removes the requirement for a continual process of physical inspection, requires harvest batch and production batch samples that are remediated or decontaminated be fully tested and successfully pass all analyses required under this subsection and Appendix F, establishes testing requirements for noninfused pre-rolls, kief, infused pre-rolls, and shake and trim. Amendments to OAC 442:10-8-2 clarify that laboratory accreditation must be specific to the procedure used in the laboratory and allows a medical laboratory director to delegate in writing the duties and responsibilities to a designee that meets all requirements of a laboratory director, requires all deviations from the written procedure be reviewed and approved in writing by the laboratory director, removes the requirement that any non-routine repair must be reported to and reviewed by the quality assurance laboratory, and provides clarification regarding required staff competency documentation. Amendments to OAC 442:10-8-3 require tamper-proof seals affixed to samples at the time of collection, requires samples be collected in the final form for transfer or sale of harvest batches or production batches, requires copies of the sample field log be maintained by both the laboratory and the commercial licensee from which the samples are being collected, and adds the state inventory tracking system tag number, the sample tag number, and the source package tag number to the list of required items on all COAs. Amendments to OAC 442:10-9-6(c) allow commercial licensees to transport their own waste to a licensed medical marijuana waste disposal facility.

CONTACT PERSON:

Ashley Crall, Senior Policy Analyst and Legislative Liaison, Oklahoma Medical Marijuana Authority, 2501 N. Lincoln Blvd., OK 73105, 405-568-5766. Ashley.Crall@omma.ok.gov.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA MEDICAL MARIJUANA AUTHORITY, 2501 N. LINCOLN BLVD., OKLAHOMA CITY, OKLAHOMA 73105 AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

The amendments establish Oklahoma Medical Marijuana Authority as an independent entity as required under SB 1543. The rules adjust references from OAC 442:10-1-1 to OAC 442: Appendix E, replacing: Oklahoma State Department of Health with Oklahoma Medical Marijuana Authority, Department with Authority, and Commissioner with Executive Director. The rules will make permanent emergency rules adopted to comply with statutory requirements for medical marijuana regulations. New requirements that commercial growers are prohibited from being within 1,000 feet of a school are adjusted in OAC 442:10-9-3(e)(5). The definition of "public school" is amended to include technology centers in OAC 442:10-1-4. Language

establishing a moratorium on processing and issuing new medical marijuana business licenses for growers, processors and dispensaries beginning August 1, 2022 is added to OAC 442:10-5-3(h). New packaging standards allowing transparent packaging and requiring the use of an exit package and specific package warning labels are added to OAC 442:10-7-1(d). Enhanced penalties for unlawful diversion of product by businesses and patients is added to OAC 442:10-2-9, OAC 442:10-4-6, OAC 442:10-5-6.1, and OAC 442:10, Appendix C. The requirement that medical marijuana commercial grow licensees who operate an outdoor medical marijuana facility register with the Oklahoma Department of Agriculture, Food, and Forestry as an environmentally sensitive crop owner is added to OAC 442:10-5-1.1. The requirement that commercial grower licenses to post signage at the site of the commercial grow operation is added to OAC 442:10-6-1. Amendments to OAC 442:10-4-2(e)(2), OAC 442:10-5-2(e) and OAC 442:10-9-2(e) govern material changes that affect a licensee's qualifications for licensure and clarifies that licensees cannot operate under the conditions of a material change until approved in writing by the Authority. Amendments to OAC 442:10-5-2(e)(2)(A)(iv) requires commercial licensees carry a physical copy of the written location change approval while transporting medical marijuana products from location to location. Amendments to OAC 442:10-5-8 remove references to the Medical Marijuana Advisory Council and renumber the subsequent food safety standards for processors section to conform, adjusting internal citations throughout.

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[OAR Docket #23-455; filed 6-7-23]

Permanent Final Adoptions

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 1. ADMINISTRATION

[OAR Docket #23-403]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Information

450:1-1-1.1 [AMENDED]

Subchapter 9. Certification and Designation of Facility Services

450:1-9-5.6 [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 8, 2022

COMMENT PERIOD:

January 3, 2023 through February 2, 2023

PUBLIC HEARING:

February 3, 2023

ADOPTION:

March 30, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 30, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Records Disposition Schedule 82-17

Incorporating rules:

450:1-9-5.6(d)(5)

Availability:

9:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Mental Health and Substance Abuse Services, 2000 N. Classen, Suite 2-600, Oklahoma City, OK 73106, 405-271-9200

GIST/ANALYSIS:

The proposed rule revisions to Chapter 1 amend the definition of sentinel event and clarify requirements regarding non-physical intervention training.

CONTACT PERSON:

Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1.1. Definitions

The following words or terms, as defined below, when used in Chapters 1, 15, 16, 17, 18, 21, 23, 24, 27, 30, 50, 53, 55, 60, 65, 70, and 75 shall have the following meaning, unless

the context clearly indicates otherwise and will prevail in the event there is a conflict with definitions included elsewhere in Chapters 1, 15, 16, 17, 18, 21, 23, 24, 27, 30, 50, 53, 55, 60, 65, 70 and 75:

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

"AOA" means American Osteopathic Association.

"Behavioral Health Aide (BHA)" means individuals must have completed sixty (60) hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

(A) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(B) must be supervised by a bachelor's level individual with a minimum of two years case management experience or care coordination experience; and

(C) treatment plans must be overseen and approved by a LBHP or Licensure Candidate; and

(D) must function under the general direction of a LBHP, Licensure Candidate and/or systems of care team, with a LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

"Board" means the Oklahoma State Board of Mental Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Rehabilitation Facilities (CARF).

"Certification" means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates the provider is in compliance with minimum standards as incorporated in OAC 450 to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified Alcohol and Drug Counselor (CADC)" means Oklahoma certification as an Alcohol and Drug Counselor.

"Certified Behavioral Health Case Manager" or "CM" means any person who is certified by the ODMHSAS as a Behavioral Health Case Manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

"Certified facility" means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a summary of findings documented by ODMHSAS related to an applicant's compliance with certification standards.

"COA" means the Council on Accreditation of Services for Families and Children, Inc.

"Consumer" means an individual who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred

to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Critical incident" means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitor; medication errors; residential consumers that have absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Critical standard" means a standard that ODMHSAS deems to have the potential to significantly impact the safety, well-being, and/or rights of consumers, or consumers' access to appropriate services.

"Discharge summary" means a clinical document in the treatment record summarizing the consumer's progress during treatment, with goals reached, continuing needs, and other pertinent information including documentation of linkage to aftercare.

"Contractor" or "contractors" means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

"Employment Consultant (EC)" means an individual who (i) has a high school diploma or equivalent; and (ii) successful completion of Job Coach training.

"Entities" or "entity" means sole proprietorships, partnerships and corporations.

"Facilities" or "facility" means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Family Support and Training Provider (FSP)" ~~means~~means an individual who is credentialed through the ODMHSAS to provide training and support necessary to ensure engagement and active participation of family members during treatment. In order to qualify as an FSP, individuals shall:

- (A) ~~have~~Have a high school diploma or equivalent;
- (B) ~~be~~Be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or have lived experience as the primary caregiver of a child or youth who has received services for substance use disorder and/or co-occurring substance use and mental health, or have lived experience being the caregiver for a child with Child Welfare/Child Protective Services involvement;

(C) ~~successful completion of~~Complete Family Support Training according to a curriculum approved by the ODMHSAS and pass the examination with a score of 80% or better;

(D) ~~pass~~Pass an OSBI background check; and

(E) An FSP must also:

(i) ~~treatment plans must be~~Utilize treatment plans that are overseen and approved by a LBHP or Licensure Candidate; and

(ii) ~~must function~~Function under the general direction of a LBHP, Licensure Candidate or systems of care team, with a LBHP or Licensure Candidate available at all times to provide back up, support, and/or consultation.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"Governing authority" means the individual or group of people who serve as the treatment facility's board of directors and who are ultimately responsible for the treatment facility's activities and finances.

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"Institutional Review Board" or "IRB" means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

"Intensive Case Manager (ICM)" means an individual who is designated as an ICM and carries a caseload size of not more than twenty-five (25) individuals. They are a LBHP, Licensure Candidate, CADC, or certified as a Behavioral Health Case Manager II, and have:

- (A) a minimum of two (2) years Behavioral Health Case Management experience,
- (B) crisis diversion experience, and
- (C) successfully completed ODMHSAS ICM training.

"IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

"Levels of performance" or "level of performance" means units of service by types of service.

"Licensed Alcohol and Drug Counselor" or "LADC" means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Licensed Behavioral Health Professional" or "LBHP" means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the

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state in which services are provided and certified in a psychiatric mental health specialty;

(C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;

(D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;

(E) A practitioner with a license to practice in the state in which services are provided issued by one of the following licensing boards:

- (i) Social Work (clinical specialty only);
- (ii) Professional Counselor;
- (iii) Marriage and Family Therapist;
- (iv) Behavioral Practitioner; or
- (vi) Alcohol and Drug Counselor.

"Licensed dietitian" means a person licensed by the Oklahoma Board of Medical Licensure and Supervision as a dietitian.

"Licensed mental health professional" or **"LMHP"** means a practitioner who meets qualifications as defined in Title 43A §1-103(11).

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Licensure candidate" means ~~practitioners~~ a practitioner actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

"Necessary standard" means a certification standard that ODMHSAS deems important for an entity's overall functioning but generally does not have a significant, immediate impact on consumers.

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

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

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Peer Recovery Support Specialist" or **"PRSS"** means an individual certified by ODMHSAS as a Peer Recovery Support Specialist pursuant to requirements found in OAC 450:53.

"Performance improvement" means an approach to the continuous study and improvement of the processes of providing services to meet the needs of consumers and others.

"Probationary certification" means a certification status granted for a one-year period for programs or facilities that have changed majority ownership or majority board composition but operations of the program or facility continue.

"Psychiatrist" means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

"Rehabilitative services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract.

"Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, staff member, or visitor, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome ~~to a consumer~~. These events ~~take place in the facility and/or occur during the delivery of services~~ and signal the need for immediate investigation and response. Sentinel events include, but are not limited to, suicide, homicide, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death. Sentinel events include occurrences that take place at the facility and/or during the delivery of services, as well as suicide and unintentional drug overdose deaths that occur at any time while an outpatient consumer is an active consumer and within seventy-two (72)

hours of discharge from inpatient and residential settings, including sites certified under Chapter 23 of this Title.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health [43A O.S. § 3-302(1)].

"Service Provider" means a person who is allowed to provide substance abuse services within the regulation and scope of their certification level or license.

"Site Review Protocol" means an ODMHSAS document developed as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility as well as to the Board for its consideration and action related to certification.

"Staff privileging" means an organized method for facilities and programs to authorize an individual to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, certification, training, experience, competence, judgment, and other credentials.

"Substantial compliance" means the demonstration of compliance by an entity subject to certification to ODMHSAS of a minimum percentage of all applicable critical and necessary standards in accordance with these rules. The determination of whether an individual standard is deemed compliant may be done on a pass/fail basis or as a minimum percentage of required elements.

"Support Services Provider (SSP)" means an individual age eighteen (18) or older with a high school diploma or equivalent.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

450:1-9-5.6. Quality clinical standards for facilities and programs

(a) Staff qualifications.

- (1) All staff who provide clinical services within facilities and programs shall have documented qualifications or training specific to the clinical services they provide.
- (2) Each facility or program shall have policies and procedures for documenting and verifying the training, experience, education, and other credentials of service providers prior to their providing treatment services for

which they were hired. All staff shall be documented as privileged prior to performing treatment services.

(3) All direct care staff shall be at least eighteen (18) years old.

(4) Each facility or program shall minimally perform a review each calendar year of current licensure, certifications, and current qualifications for privileges to provide specific treatment services.

(b) Staff development and training.

(1) All facilities and programs shall have a written staff development and training plan for all administrative, professional and support staff. This plan shall include, at a minimum:

- (A) Orientation procedures;
- (B) In-service training and education programs;
- (C) Availability of professional reference materials;
- (D) Mechanisms for ensuring outside continuing educational opportunities for staff members; and
- (E) Performance improvement activities and their results.

(2) In-service training shall be conducted each calendar year and shall be required within thirty (30) days of each employee's hire date and each calendar year thereafter for all employees on the following topics:

- (A) Fire and safety, including the location and use of all fire extinguishers and first aid supplies and equipment;
- (B) Universal precautions and infection control;
- (C) Consumer's rights and the constraints of the Mental Health Patient's Bill of Rights;
- (D) Confidentiality;
- (E) Oklahoma Child Abuse Reporting and Prevention Act, 10 O.S. §§ 7101-7115;
- (F) Facility policy and procedures;
- (G) Cultural competence (including military culture if active duty or veterans are being served);
- (H) Co-occurring disorder competency and treatment principles;
- (I) Trauma informed service provision;
- (J) Crisis intervention;
- (K) Suicide risk assessment, prevention, and response; and
- (L) Age and developmentally appropriate trainings, where applicable.

(3) All clinical staff, direct care staff, and/or volunteers providing direct care shall have non-physical intervention training in techniques and philosophies addressing appropriate non-violent interventions for potentially physical interpersonal conflicts, staff attitudes which promote dignity and enhanced self-esteem, keys to effective communication skills, verbal and non-verbal interaction and non-violent intervention within thirty (30) days of being hired with updates each calendar year thereafter. Staff and volunteers shall not participate in an intervention without first completing this training. This standard shall not apply to facilities or programs subject to Chapter 27 of this

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Title or outpatient programs subject to Chapter 18 of this Title.

(4) The local facility Executive Director shall designate which positions and employees, including temporary employees, will be required to successfully complete physical intervention training. A designated employee or volunteer shall not provide direct care services to consumers until completing this training. This standard shall not apply to facilities or programs subject to Chapter 16 or Chapter 27 of this Title, or outpatient programs subject to Chapter 18 of this Title.

(5) The training curriculum for (3) and (4) of this subsection must be approved by the ODMHSAS commissioner or designee.

(6) Each site providing residential level of care services and/or subject to Chapter 23 of this Title shall have staff during all hours of operation who maintain current certification in basic first aid and Cardiopulmonary Resuscitation (CPR).

(c) **Clinical supervision.**

(1) With the exception of facilities certified under Chapter 16 of this Title, all facilities and programs shall have written policies and procedures, operational methods, and documentation of the provision of clinical supervision for all direct treatment and service staff. For facilities that employ only one service provider, supervision will be in the form of clinical consultation from a qualified service provider in the same field. These policies shall include, but are not limited to:

- (A) Credentials required for the clinical supervisor;
- (B) Specific frequency for case reviews with treatment and service providers;
- (C) Methods and time frames for supervision of individual, group, and educational treatment services; and
- (D) Written policies and procedures defining the program's plan for appropriate counselor-to-consumer ratio, and a plan for how exceptions may be handled.

(2) Ongoing clinical supervision shall be provided and shall address:

- (A) The appropriateness of treatment selected for the consumer;
- (B) Treatment effectiveness as reflected by the consumers meeting their individual goals; and
- (C) The provision of feedback that enhances the clinical skills of service providers.

(d) **Clinical record keeping, basic requirements.**

(1) All facilities and programs shall establish and maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records stored under confidential conditions and with planned retention and disposition.

(2) Each facility or program shall maintain an individual record for each consumer.

(3) The facility's or program's policies and procedures shall:

(A) Define the content of the consumer record in accordance with all applicable state and federal rules, requirements, and statutes;

(B) Define storage, retention and destruction requirements for consumer records in a manner that prevents unauthorized information disclosures;

(C) Require consumer records not in electronic format be maintained in locked equipment which is kept within a locked room, vehicle, or premise;

(D) Require legible entries in consumer records, signed with first name or initial, last name, and dated by the person making the entry;

(E) Require the consumer's name or unique identifier be typed or written on each page in consumer records not in electronic format;

(F) Require a signed consent for treatment before a consumer is admitted on a voluntary basis; and

(G) Require consent for release of information in accordance with federal and state laws, guidelines, and standards, including OAC 450:15-3-20.1 and OAC 450:15-3-20.2. For disclosure of information related to substance use disorder referral, payment, and follow up, a signed consent is required.

(4) If electronic clinical (medical) records are maintained, there shall be proof of compliance with all applicable state and federal rules and statutes related to electronic medical records, encryption, and other required features.

(5) ODMHSAS operated facilities shall comply with Records Disposition Schedule 82-17 as approved by the Oklahoma Archives and Records Commission.

(6) The facility or program shall assure consumer records are readily accessible to all staff providing services to consumers. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.

(e) **Discharge summary.**

(1) A completed discharge summary shall be entered in each consumer's record within fifteen (15) days of the consumer completing, transferring, or discontinuing services. The summary shall be signed and dated by the staff member completing the summary. Consumers who have received no services for one hundred eighty (180) days shall be discharged if it is determined that services are no longer needed or desired.

(2) A discharge summary shall include, but not be limited to, the consumer's progress made in treatment, initial condition and condition of the consumer at discharge, diagnoses, summary of current medications, when applicable, and recommendations for referrals, if deemed necessary. It shall include a discharge plan which lists written recommendations and specific referrals for implementing aftercare services, including medications. Discharge plans shall be developed with the knowledge and cooperation of the consumer, when possible. This standard shall not apply to facilities certified under Chapter 16 of this Title.

(3) The signature of the staff member completing the summary and the date of completion shall be included in the discharge summary.

(4) In the event of death of a consumer, in lieu of a discharge summary, a summary statement including applicable information shall be documented in the record.

(f) **Critical incidents.**

(1) All facilities and programs shall have written policies and procedures requiring documentation and reporting of critical incidents and analysis of the contributors to the incident to ODMHSAS.

(2) The documentation of critical incidents shall contain, at a minimum:

(A) Facility name and signature of the person(s) reporting the incident;

(B) Names of the consumer(s), and/or staff member(s) involved;

(C) Time, date, and physical location of the incident;

(D) Time and date incident was reported and name of person within the facility to whom it was reported;

(E) Description of incident;

(F) Severity of each injury, if applicable. Severity shall be indicated as follows:

(i) No off-site medical care required or first aid care administered on-site;

(ii) Medical care by a physician or nurse or follow-up attention required; or

(iii) Hospitalization or immediate off-site medical attention was required;

(G) Resolution or action taken and date resolution or action was taken; and

(H) Signature of the facility administrator, or designee of the facility administrator. Designees shall be identified in the facility's policy and procedures.

(3) Critical incidents shall be reported to ODMHSAS with specific timeframes, as follows:

(A) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax, or ODMHSAS designated electronic system, to ODMHSAS within seventy-two (72) hours of the incident.

(B) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but within not more than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours of the incident.

[OAR Docket #23-403; filed 6-5-23]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 15. CONSUMER RIGHTS**

[OAR Docket #23-404]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Information
450:15-1-2 [AMENDED]
Subchapter 3. Consumer Rights
Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
450:15-3-6 [AMENDED]
450:15-3-14 [AMENDED]

AUTHORITY:
Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
December 8, 2022

COMMENT PERIOD:
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PUBLIC HEARING:
February 3, 2023

ADOPTION:
March 30, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
March 30, 2023

LEGISLATIVE APPROVAL:
Approved May 31, 2023 by SJR 22

FINAL ADOPTION:
May 31, 2023

EFFECTIVE:
September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

GIST/ANALYSIS:
The proposed rule revisions to Chapter 15 make clarifications and amendments to language regarding consumer rights to communications and social contacts. Revisions also add language regarding consumer rights to access medications. Definitions are also added.

CONTACT PERSON:
Melissa Miller, Policy Director and Administrative Rules Liaison, Melissa.Miller@odmhsas.org or (405) 248-9345

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

450:15-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer

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by staff responsible for the consumer's health, safety, or welfare, including but not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) use of mechanical restraints without proper authority;
- (E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or
- (F) deprivation of food, clothing, shelter, or health-care by staff responsible for providing these services to a consumer; or
- (G) verbal abuse.

"Advocate" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, and seeks to improve the quality of the consumer's life and care.

"Advocate General" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy.

"Board" means Board of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Comprehensive basis of accounting" means a system of accounting other than GAAP, including but not limited to statutory basis, cash basis, or tax basis.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts.

"Consumer committee" or **"Consumer government"** means any established group within the facility comprised of consumers, led by consumers and which meets regularly to address consumer concerns to support the overall operations of the facility.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

~~**"Comprehensive Basis of Accounting"** means a system of accounting other than GAAP, including but not limited to statutory basis, cash basis, or tax basis.~~

"Critical incident" means an occurrence or set of events inconsistent with the routine operations of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include, but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff, and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

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

"Designated record set" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

(A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or

(B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

(i) Administrative records including court commitment paperwork, critical incident reports or peer review documents; and

(ii) Information compiled in anticipation of litigation.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty-hour period or pending the hearing on

a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS contracts to provide the physical custody, detention or treatment of consumers.

"Generally Acceptable Accounting Principles" or **"GAAP"** means the authoritative set of accounting principles, standards, and procedures.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person. As used in this subchapter, guardian includes a general or limited guardian of the person, a general or limited guardian of the estate, a special guardian, and a temporary guardian.

"Licensed mental health professional" ~~or~~ **"LMHP"** means a practitioner who meets qualifications as defined in Title 43A §1-103 (11).

~~"Maltreatment" is used collectively in this Subchapter to refer to~~ means abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, verbal abuse, and rights ~~violation~~ violations.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that results in or creates an unreasonable risk of harm to a consumer and that also:

- (A) violates a statute, regulation, written rule, policy, procedure, directive, or accepted professional standards and practices; or
- (B) unintentional excessive or unauthorized use of force.

"Money" means any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

"Neglect" means:

- (A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;
- (B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

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

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

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or **"Resident government"** means any established group within the facility comprised of residents, led by residents and which meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or **"RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, which is certified pursuant to 43 O.S. §3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" ~~refers to~~ means manual, mechanical and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier, or some other means.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, staff member, or visitor, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to, suicide, homicide, assault and

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other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death. Sentinel events include occurrences that take place at the facility and/or during the delivery of services, as well as suicide and unintentional drug overdose deaths that occur at any time while an outpatient consumer is an active consumer and within seventy-two (72) hours of discharge from inpatient and residential settings, including sites certified under Chapter 23 of this Title.

"Sexual abuse" ~~includes~~ means:

- (A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;
- (B) oral, anal or vaginal penetration of a consumer by staff;
- (C) the anal or vaginal penetration of a consumer by staff with any other object; or
- (D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or
- (E) indecent exposure by staff providing services to the consumer.

"Sexual exploitation" by staff with regard to a consumer ~~includes~~ means:

- (A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or
- (B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Treatment Advocate" ~~is~~ means a family member or other concerned individual designated by a consumer to participate in treatment and discharge planning, and acts in the best interest of and serves as an advocate for the consumer.

"Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by staff that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-6. **Right to communication** ~~Communications and social contacts~~

(a) Consumers in inpatient settings are encouraged to engage with family and friends. Consumers are entitled to correspondence and visitation when clinically appropriate.

(b) Consumers admitted voluntarily and consumers admitted under emergency detention status are entitled to unimpeded, private and uncensored communication with persons of their choice unless a consumer's treatment team concludes that such communication is not clinically appropriate and documents reasons for this conclusion in the clinical record.

(c) Communication and visitation for all consumers, by phone or face-to-face, with legal counsel or clergy shall not be limited except as requested by individual attorneys or clergy members.

~~(a-d) Every consumer~~ Consumers admitted voluntarily and consumers admitted under emergency detention status shall be allowed to contact one individual immediately upon entry into such place of detention or admission for purposes of notification of the consumer's location (43A O.S. § 5-201).

~~(b) Every consumer is entitled to communicate by uncensored, sealed mail.~~

~~(1) Each program shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those consumers who cannot procure the same.~~

~~(2) The facility director may establish procedure regarding the mailing, delivery and opening of consumer mail if determined necessary for security or safety precautions. A consumer's correspondence may be restricted as determined by the treatment team. Either occurrence shall be documented in the consumer's record.~~

~~(3) No correspondence shall be placed in the consumer's record or any program record without the written consent of the consumer.~~

(e) Each facility shall provide writing materials and reasonable amounts of postage to ensure correspondence can be written and mailed for those consumers who cannot procure these items. The facility director may establish procedures regarding the mailing, delivery and opening of consumer mail if determined necessary for security or safety. A consumer's correspondence may be restricted as determined by the treatment team. Either occurrence shall be documented in the consumer's clinical record.

~~(e) Every consumer is entitled to unimpeded, private and uncensored communication by telephone and by personal visit with persons of his or her choice.~~

~~(1) Each program shall make telephones readily available within the facility to ensure calls can be conveniently made and received.~~

~~(2) Each program shall establish in writing reasonable times and places for the use of telephones and for visitation and communicate such to consumers and the consumer's family or friends. Each program shall post hours for visitation. Requests for telephone usage or visitation outside the established hours shall be addressed on an individual basis by the consumer's treatment team.~~

~~(3) Telephone usage and visitation may be limited as determined by the treatment team for a therapeutic reason and documented in the consumer's record. Limitations shall be reviewed at each treatment team meeting and shall~~

~~not continue longer than therapeutically necessary. Limitations shall not be for punitive reason.~~

(f) Each facility shall establish in writing reasonable times and places for the use of telephones and for visitation to consumers and treatment advocates. Each facility shall post hours for visitation. Requests for telephone usage or visitation outside the established hours shall be addressed on an individual basis by the consumer's treatment team.

(g) Telephone usage and visitation may be limited in addition to the provisions in (f) of this Section as determined by the treatment team for therapeutic reasons, which shall be documented in the clinical record. Limitations shall be reviewed at each treatment team meeting and shall not continue longer than clinically necessary. Limitations shall not be implemented for punitive reasons.

(h) Visitation using a HIPAA-compliant video conferencing platform in addition to in-person visitation shall be used to promote consumer engagement with family and friends when clinically appropriate.

450:15-3-14. Right to treatment

(a) Each consumer shall be provided with prompt, competent and appropriate individualized treatment that offers the consumer a realistic prospect of improvement. Consumers who have problems in multiple domains shall be provided with appropriately integrated attention to all of their needs within the context of the treatment program. Each consumer shall be afforded treatment by sufficient numbers of duly qualified facility personnel that meet applicable licensing or certification or accreditation standards and conform to applicable rules of ODMHSAS.

(b) Each consumer or his or her legal guardian shall have the opportunity to be involved in the consumer's treatment. An individual of the consumer's choice shall have the opportunity to be involved in the consumer's treatment with the consent of the consumer.

(c) Each consumer shall be free from unnecessary, inappropriate or excessive medication. Medications shall not be used for convenience of staff, to punish, or as a substitute for a treatment program.

(d) Each consumer shall have sufficient access during treatment to all prescribed and over-the-counter medications that allows for administration of the consumer's medications as prescribed or instructed by medical personnel and/or drug labels, with the exception that a physician within the treatment facility may provide consultation to the consumer regarding adverse reactions to the medication regimen and revise the medication regimen based on concerns regarding safety to the consumer. The consumer shall be informed of any changes made and such situations shall be documented in the consumer's record, including documentation of how the consumer was informed.

~~(e)~~ If the consumer is involuntarily committed, consideration shall also be given to whether the conditions that resulted in the consumer's commitment still exist.

~~(ef)~~ Each consumer shall be informed of his or her proposed and ongoing treatment, including participation in his or her treatment plan and of the reasonable expectations and consequences of his or her following or not following the plan.

~~(fg)~~ Each consumer who has a co-occurring disorder shall receive services for those disorders. No program shall deny services to a consumer for any disorder solely because that consumer is displaying symptoms of, or receiving treatment for a co-occurring disorder of another type.

~~(gh)~~ Each consumer is entitled to receive a thorough treatment plan update to determine the value and appropriateness of the present care and treatment being received, and the necessity of continuing the consumer's care in the facility rather than in a less restrictive environment outside the facility.

~~(hi)~~ Each consumer shall be informed of said rights including the right of each consumer voluntarily admitted to refuse treatment and the qualified right of an involuntary consumer to refuse treatment, which shall be noted in the consumer's record.

~~(ij)~~ Each consumer shall be informed of the benefits, risks (including side effects, both long and short term) of medications prescribed.

~~(jk)~~ In the presence of a significant change in the consumer's condition which creates an emergency condition and danger to the consumer or to others, the attending physician may order necessary treatment for the consumer without obtaining informed consent. The circumstances constituting the emergency condition shall be documented in the consumer's record.

~~(kl)~~ Each consumer has the right to know why services are refused and the program shall provide a written explanation concerning the reason he or she was refused certain services.

~~(lm)~~ Each consumer shall not be subject to unnecessary, inappropriate or unsafe termination from treatment. Discharge shall not take place as punishment for displaying symptoms of the consumer's disorder.

[OAR Docket #23-404; filed 6-5-23]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS**

[OAR Docket #23-405]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

450:17-1-2 [AMENDED]

450:17-1-6 [AMENDED]

Subchapter 5. Optional Services

Part 25. Certified Community Behavioral Health Clinics

450:17-5-170 [AMENDED]

450:17-5-177 [AMENDED]

450:17-5-183 [AMENDED]

450:17-5-184 [AMENDED]

450:17-5-189.3 [NEW]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

Permanent Final Adoptions

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 8, 2022

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PUBLIC HEARING:

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ADOPTION:

March 30, 2023

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LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

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EFFECTIVE:

September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 17 add new language and make clarifications regarding requirements for Community Mental Health Centers and Certified Community Behavioral Health Clinics. Revisions also include language regarding the operation of crisis facilities within designated service areas. The definition of sentinel event is also amended.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

450:17-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by a staff responsible for the consumer's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer.

"Adults who have a Serious Mental Illness" means persons eighteen (18) years of age or older who show evidence of points of (A), (B) and (C) below:

- (A) The disability must have persisted for six months and be expected to persist for a year or longer.
- (B) A condition or Serious Mental Illness as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V"

codes, substance abuse, and developmental disorders which are excluded, unless they co-occur with another diagnosable Serious Mental Illness.

(C) The adult must exhibit either (i) or (ii) below:

- (i) Psychotic symptoms of a Serious Mental Illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or
- (ii) Experience difficulties that substantially interfere with or limit an adult from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the criminal justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence, disregard for safety and welfare of self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations.

(V) Impairment in functioning at school or work manifested by the inability to pursue educational or career goals.

"Advance Practice Registered Nurse" means a registered nurse in good standing with the Oklahoma Board of Nursing, and has acquired knowledge and clinical skills through the completion of a formal program of study approved by the Oklahoma Board of Nursing Registration and has obtained professional certification through the appropriate National Board recognized by the Oklahoma Board of Nursing. Advance Practice Registered Nurse services are limited to the scope of their practice as defined in 59 Okla. Stat. § 567.3a and corresponding rules and regulations at OAC 485:10-5-1 through 10-16-9.

"AOA" means American Osteopathic Association

"ASAM" means the American Society of Addiction Medicine.

"ASAM criteria" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Case management services" means planned referral, linkage, monitoring and support, and advocacy provided in partnership with a consumer to assist that consumer with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a service plan developed with and approved by the consumer and qualified staff.

"CARF" means Commission on Accreditation of Rehabilitation Facilities

"Child with Serious Emotional Disturbance" or **"SED"** means a child under the age of 18 who shows evidence of points of (A), (B) and (C) below:

(A) The disability must have persisted for six months and be expected to persist for a year or longer.

(B) A condition of Serious Emotional Disturbance as defined by the most recently published version of the DSM or the International Classification of Disease (ICD) equivalent with the exception of DSM "V" codes, substance use disorders, and developmental disorders which are excluded, unless they co-occur with another diagnosable serious emotional disturbance.

(C) The child must exhibit either (i) or (ii) below:

(i) Psychotic symptoms of a Serious Mental Illness (e.g. Schizophrenia characterized by defective or lost contact with reality, often hallucinations or delusions); or

(ii) Experience difficulties that substantially interfere with or limit a child or adolescent from achieving or maintaining one or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills. There is functional impairment in at least two of the following capacities (compared with expected developmental level):

(I) Impairment in self-care manifested by a person's consistent inability to take care of personal grooming, hygiene, clothes and meeting of nutritional needs.

(II) Impairment in community function manifested by a consistent lack of age appropriate behavioral controls, decision-making, judgment and value systems which result in potential involvement or involvement with the juvenile justice system.

(III) Impairment of social relationships manifested by the consistent inability to develop and maintain satisfactory relationships with peers and adults.

(IV) Impairment in family function manifested by a pattern of disruptive behavior exemplified by repeated and/or unprovoked violence to siblings and/or parents, disregard for safety and welfare or self or others (e.g., fire setting, serious and chronic destructiveness, inability to conform to reasonable limitations and expectations which may result in removal from the family or its equivalent).

(V) Impairment in functioning at school manifested by the inability to pursue educational goals in a normal time frame (e.g., consistently failing grades, repeated truancy, expulsion, property damage or violence toward others).

"Chronic Homelessness" ~~refers to an individual~~ with means a disabling condition ~~who in which and individual~~ has either: (a) been continuously homeless for ~~one~~ (1) year or more, or (b) has had at least ~~four~~ (4) episodes of homelessness in the past ~~three~~ (3) years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"Community living programs" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"Community-based Structured Crisis Center" or **"CBSCC"** means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consultation" means the act of providing information or technical assistance to a particular group or individual seeking resolution of specific problems. A documented process of interaction between staff members or between facility staff and unrelated individuals, groups, or agencies for the purpose of problem solving or enhancing their capacities to manage consumers or facilities.

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"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" ~~includes all~~ means activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Consumer committee" or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

"Contract" means a document adopted by the governing authority of a treatment facility and any other organization, facility, or individual, which specifies services, personnel, or space to be provided by the program, as well as the monies to be expended in exchange.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance use disorder symptoms or diagnoses that affect a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to consumers with co-occurring disorders.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency psychological, physiological, and safety aspects of alcohol, drug-related, and mental health crises.

"Crisis stabilization" means emergency, psychiatric, and substance use disorder treatment services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"Designated Collaborating Organization" or **"DCO"** means a provider with whom a Certified Community Behavioral Health Clinic has a formal relationship to provide certain allowable services on behalf of the Certified Community Behavioral Health Clinic.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Emergency services" means a twenty-four (24) hour capability for assessment, intervention, and resolution of a consumer's crisis or emergency provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to function or remain in the community and may include placement of the individual in a protective environment, withdrawal management, individual and group consultation, and medical assessment.

~~**"Face-To-Face"** for the purposes of the delivery of behavioral health care, means a face to face physical contact and in person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face to face encounter.~~

"Face-to-face" means, for the purpose of the delivery of behavioral health care, an in-person encounter between the health care provider and the consumer, or a telehealth encounter with two-way video functionality.

~~**"Facilities or Facility"**~~ **"Facility"** or **"Facilities"** means entities as described in Title 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Family" means the parents, brothers, sisters, other relatives, foster parents, guardians, and others who perform the roles and functions of family members in the lives of consumers.

"Follow-up" means the organized method of systematically determining the status of consumers after they have been discharged to determine post-treatment outcomes and utilization of post-treatment referrals.

"General psychiatric rehabilitation" or "PSR" means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Home-based services to children and adolescents" means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

"Homeless" ~~refers to~~ means a state in which a person ~~who~~ is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

"ICCD" means the International Center for Clubhouse Development.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, house-cleaning, problem-solving, communication and vocational skills.

"Individual Placement and Support" or "IPS" means an evidence-based, specific type of employment and education service to help people with mental illness, substance use disorders, or co-occurring disorders find and keep competitive employment.

"Intensive services" means a comprehensive range of services, supports and coordinated care using a team-based approach that necessitate contact multiple times per week (or at a minimum, weekly) to a defined population. Coordination

requires an ongoing relationship between the individual and a designated member of the care team.

"Licensed Behavioral Health Professional" or "LBHP" means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (E) A practitioner with a license to practice in the state in which services are provided by one of the following licensing boards:
 - (i) Social Work (clinical specialty only);
 - (ii) Professional Counselor;
 - (iii) Marriage and Family Therapist;
 - (iv) Behavioral Practitioner; or
 - (v) Alcohol and Drug Counselor.

"Licensed mental health professional" or "LMHP" means a practitioner who meets qualifications as defined in Title 43A §1-103(11).

"Licensure candidate" means ~~practitioners~~ a practitioner actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or
- (F) Alcohol and Drug Counselor.

"Linkage" ~~refers to~~ means the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medical resident" means an allopathic physician or an osteopathic physician who is a graduate of a school of medicine or college of osteopathic medicine and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

"Medically necessary" means health care services or supplies needed to prevent, diagnose or treat an illness, injury, condition, disease or its symptoms and that meet accepted standards of medicine.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs,

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giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

"Mobile crisis" means the provision of crisis intervention services by at least one (1) professional at the location of a consumer who is not at the treatment facility (e.g., services provided at the consumer's home).

"Nurse Care manager" means a Licensed Practical Nurse (LPN) or a Registered Nurse (RN).

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

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

"Peer Recovery Support Specialist" or **"PRSS"** means an individual who meets the qualifications and is certified as a PRSS pursuant to OAC 450:53.

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Permanent supported housing" means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

"PICIS System" means a management information system based on national standards for mental health and substance abuse databases. Information gathered through PICIS is used for prior authorizations, service utilization management and continuous quality improvement processes. PICIS data is reported throughout the treatment episode to ensure service recipients receive appropriate types and levels of care and are making satisfactory progress. Numerous reports are developed using PICIS data and are provided to clinicians, administrators and the general public.

"Primary Care Practitioner (PCP)" means a licensed allopathic physician, osteopathic physician, Advance Practice Registered Nurse (APRN), or Physician Assistant (PA) licensed in the State of Oklahoma.

"Program of Assertive Community Treatment" or **"PACT"** ~~is~~ means a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, the consumer's response related to the intervention plan or services provided.

"Psychiatric Residential Treatment Facility" or **"PRTF"** means a non-hospital facility that provides inpatient

psychiatric services to individuals under the age of twenty-one (21).

"Psychosocial assessments" ~~are~~ means in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychosocial rehabilitation" or **"PSR"** means curriculum based education and skills training performed to improve an individual's ability to function in the community. PSR provides an array of services that focus on long term recovery and maximization of self-sufficiency, role functioning, and independence, as distinguished from the symptom stabilization function of acute care.

"Psychotherapy" ~~or~~ **"Therapy"** means a goal directed process using generally accepted clinical approaches provided face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Restraint" ~~refers to~~ means manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Risk Assessment" means a clinical function that aims to determine the nature and severity of the mental health problem, determine which service response would best meet the needs of the consumer, and how urgently the response is required.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, staff member, or visitor, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome ~~to a consumer~~. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to, suicide, homicide, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death. Sentinel events include occurrences that take place at the facility and/or during the delivery of services, as well as suicide and unintentional drug overdose deaths that occur at any time while an outpatient consumer is an active consumer and within seventy-two (72) hours of discharge from inpatient and residential settings, including sites certified under Chapter 23 of this Title.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services

[43A O.S. §3-302(1)]. Only one certified Community Mental Health Center is allowed per service area.

"Service Intensity" means the frequency and quantity of services needed, the extent to which multiple providers or agencies are involved, and the level of care coordination required.

"Service plan" or **"Treatment plan"** means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"Special population 1" means individuals eighteen (18) years of age and over with serious mental illness and complex needs, including those with co-occurring substance use disorder, who meet Most in Need criteria as identified in the CCBHC Manual.

"Special population 2" means children and youth [ages six (6) through twenty-one (21)] with serious emotional disturbance and complex needs, including those with co-occurring substance use disorder, who meet Most in Need criteria as identified in the CCBHC Manual.

"Supportive services" ~~refers to~~ means assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Tobacco" means any nicotine delivery product or device that is not approved by the U.S. Food and Drug Administration (FDA) for the purpose of nicotine dependence treatment, including, but not limited to cigarettes, cigars, snuff, chewing tobacco, electronic cigarettes and vaping devices.

"Transitional housing program" means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches, including but not limited to supervised transitional living programs and supervised transitional housing programs.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Urgent recovery clinic" means a program of non-hospital emergency services for mental health and substance use crisis response including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary to a higher level of care. This service is limited to CMHCs and Comprehensive Community Addiction Recovery Centers (CCARCs) certified by ODMHSAS or facilities operated by ODMHSAS.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related

abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

"Wellness Coach" means an individual who is actively working on personal wellness and who is designated to collaborate with others to identify their personal strengths and goals within the eight dimensions of wellness (spiritual, occupational, intellectual, social, physical, environmental, financial, and emotional).

(A) In order to qualify to be a Wellness Coach, individuals shall:

- (i) Have a behavioral health related associates degree or two years of experience in the field and/or have an active certification and/or license within the behavioral health field (e.g. PRSS, Case Management, LBHP, LPN, Recreational Therapist, etc.); and
- (ii) Complete the ODMHSAS Wellness Coach Training Program and pass the examination with a score of 80% or better.

(B) Wellness Coach roles and responsibilities include:

- (i) Role model wellness behaviors and actively work on personal wellness goals;
- (ii) Apply principles and processes of coaching when collaborating with others;
- (iii) Facilitate wellness groups;
- (iv) Conduct motivational interventions;
- (v) Practice motivational interviewing techniques;

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- (vi) Provide referrals to community resources for nutrition education, weight management, Oklahoma Tobacco Helpline, and other wellness-related services and resources;
- (vii) Create partnerships within local community to enhance consumer access to resources that support wellness goals;
- (viii) Raise awareness of wellness initiatives through educational in-service and community training;
- (ix) Elevate the importance of wellness initiatives within the organization;
- (x) Promote a culture of wellness within the organization for both consumers and staff;
- (xi) Respect the scope of practice and do not practice outside of it, referring people to appropriate professionals and paraprofessionals as needed.

"Young Adults in Transition" ~~are~~means persons between sixteen to twenty-five (16-25) years of age who have a Serious Mental Illness (ages 18 - 25), or Serious Emotional Disturbance (ages 16 - 18).

450:17-1-6. Services and service areas

- (a) All facilities providing services shall have a group of services herein designated as required core services in accordance with 450:17-3-2. Each site certified as a CMHC shall offer all required core services through in-person and/or virtual means. CMHCs may have specific additional services some of which are designated as optional services in accordance with 450:17-5-1. All required core services and all optional services must be co-occurring disorder capable.
- (b) Service areas are established by ODMHSAS to ensure the most efficient statewide availability of treatment services. Only one certified CMHC is allowed per service area. Each CMHC entity may only operate CMHC sites within its designated service area.
- (c) If operated by a CMHC entity, Community-Based Structured Crisis Center (CBSCC) sites must be within the CMHC's designated service area unless special approval by ODMHSAS is obtained.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 25. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINICS

450:17-5-170. Certified Community Behavioral Health Clinic

~~The purpose of this Part is to set forth, in addition to all other applicable rules, rules regulating program requirements, activities and services for CMHCs who opt to provide Certified Community Behavioral Health Clinic (CCBHC) services. The purpose of a CCBHC is to: 1) provide access to integrated~~

~~services for all individuals regardless of pay source or ability to pay; 2) provide a full array of mental health and substance use disorder services available in every certified location, and provide, or coordinate with, primary care services; 3) provide quality driven services as demonstrated through data reports and outcomes reports generated by the ODMHSAS or its contractor; and 4) provide enhanced integration and coordination of mental health, primary, and substance use disorder services and supports for persons across the lifespan. Services and supports shall be delivered utilizing an interdisciplinary, team-based approach and in compliance with all requirements in the CCBHC Manual.~~

(a) The purpose of this Part is to set forth, in addition to all other applicable rules, program requirements, activities and services for CMHCs who opt to operate as a Certified Community Behavioral Health Clinic (CCBHC).

(b) The purpose of a CCBHC is to:

- (1) Provide access to integrated services for all individuals regardless of pay source or ability to pay;
- (2) Provide a full array of mental health and substance use disorder services in every certified location, and provide, or coordinate with, primary care services;
- (3) Provide quality-driven and outcome-driven services as demonstrated through data reports and outcomes reports generated by the ODMHSAS or its contractor; and
- (4) Provide enhanced integration and coordination of mental health, primary, and substance use disorder services and supports for persons across the lifespan utilizing an interdisciplinary, team-based approach and in compliance with all requirements in the CCBHC Manual.

(c) In order to be certified as a CCBHC, an entity must have a current contract in good standing for CCBHC services from ODMHSAS.

450:17-5-177. General service provisions

- (a) Facility is responsible for the provision of the following services:
 - (1) Screening, assessment and treatment planning;
 - (2) Crisis Services (24/7 walk-in crisis clinic or urgent care);
 - (3) Outpatient behavioral health services;
 - (4) Outpatient primary care screening and monitoring;
 - (5) Case management;
 - (6) Psychiatric rehabilitation;
 - (7) Peer and family supports;
 - (8) Intensive community-based outpatient behavioral health care for members of the US Armed Forces and veterans;
 - (9) Coordination and services for persons discharging from jail and, when possible, persons discharging from prison;
 - (9)10 Extensive outreach and intensive community-based outpatient behavioral health care for historically disadvantaged populations and older persons to ensure consumers served are representative of the communities served; and

(4011) Individual Placement and Support (IPS) Services.

(b) Certain services may be provided either directly by the facility or through formal relationships with other providers. Whether directly supplied by the facility or by a Designated Collaborating Organization (DCO) through a formal arrangement, the facility is ultimately clinically responsible for all care provided. The facility must have policies and procedures that ensure DCO-provided services for facility's consumers must meet the same quality standards as those provided by the facility.

(c) Compliance with this Section shall be determined by a review of policies, procedures and consumer records.

450:17-5-183. Care coordination

(a) Based on a person and family-centered care plan and as appropriate, the facility will coordinate care for the consumer across the spectrum of health services, including access to physical health (both acute and chronic) and behavioral health care, as well as social services, housing, educational systems, and employment opportunities as necessary to facilitate wellness and recovery of the whole person. This care coordination shall include not only referral but follow up after referral to ensure that services were obtained, to gather the outcome of those services, and to identify next steps needed.

(b) The facility must have procedures and agreements in place to facilitate referral for services needed beyond the scope of the facility. At a minimum, the facility will have agreements establishing care coordination expectations with Federally Qualified Health Centers (FQHCs) and, as applicable, Rural Health Centers (RHCs) to provide healthcare services for consumers who are not already served by a primary healthcare provider.

(c) The facility must have procedures and agreements in place establishing care coordination expectations with community or regional services, supports and providers including but not limited to:

- (1) Schools;
- (2) OKDHS child welfare;
- (3) Juvenile and criminal justice agencies;
- (4) Department of Veterans Affairs' medical center, independent clinic, drop-in center, or other facility of the Department; and
- (5) Indian Health Service regional treatment centers.

(d) The facility will develop contracts or memoranda of understandings (MOUs) with regional hospital(s), Emergency Departments, Psychiatric Residential Treatment Facilities (PRTF), ambulatory and medical withdrawal management facilities or other system(s) to ensure a formalized structure for transitional care planning, to include communication of inpatient admissions and discharges of BHH participants.

(1) Transitional care will be provided by the facility for consumers who have been hospitalized or placed in other non-community settings, such as psychiatric residential treatment facilities. The CCBHC will provide care coordination while the consumer is hospitalized as soon as it becomes known. A team member will go to the hospital setting to engage the consumer in person and/or

will connect through telehealth as a face to face meeting. Reasonable attempts to fulfill this important contact shall be documented. In addition, the facility will make and document reasonable attempts to contact all consumers who are discharged from these settings within 24 hours of discharge.

(2) The facility will collaborate with all parties involved including the discharging/admitting facility, primary care physician, and community providers to ensure a smooth discharge and transition into the community and prevent subsequent re-admission(s).

(3) Transitional care is not limited to institutional transitions, but applies to all transitions that will occur throughout the development of the enrollee and includes transition from and to school-based services and pediatric services to adult services.

(4) The facility will document transitional care provided in the clinical records.

(e) Care Coordination activities shall include use of population health management tools, such as dashboards, patient registries, and team staffings.

(f) Care coordination activities will be carried out in keeping with the consumer's preferences and needs for care, to the extent possible and in accordance with the consumer's expressed preferences, with the consumer's family/caregiver and other supports identified by the consumer. The facility will work with the consumer in developing a crisis plan with each consumer, such as a Psychiatric Advanced Directive or Wellness Recovery Action Plan.

(g) Referral documents and releases of information shall comply with applicable privacy and consumer consent requirements.

(h) Compliance with this Section will be determined by on-site observation, review of organizational documents, contracts, MOUs, and clinical records.

450:17-5-184. Crisis services

~~(a) The Facility shall make crisis services available through clearly defined arrangements, for behavioral health emergencies during hours when the facility is closed. The Facility will also provide crisis services that are available and accessible twenty four (24) hours a day and delivered within one (1) hour from the time services are requested.~~

~~(b) Facility~~The CCBHC will make available, either directly or through a qualified DCO, the following co-occurring capable crisis services:

~~(1) Twenty four (24) hour mobile crisis teams that are available via telehealth/secure tablet, or if an in person response is required, arrival within one (1) hour from the time requested;~~

(1) Mobile crisis teams that are available for community response twenty-four (24) hours a day, seven (7) days a week, with response times of no more than one (1) hour in urban areas and two (2) hours in rural areas (as designated by the most recent data from the U.S. Census Bureau). Response time is the time from referral to the mobile crisis team to on-site, community-based response;

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(2) Emergency crisis intervention services available in-person at the facility twenty-four (24) hours a day, seven (7) days a week; and

(3) ~~Any additional~~ Specialized crisis stabilization service available through the facility services, such as a PACT team or dedicated outreach staff/team-, that are accessible to all consumers in the catchment area with serious mental illness/serious emotional disturbance that meet criteria as determined by the CCBHC or as designated by ODMHSAS.

(eb) Crisis services must include suicide crisis response and services capable of addressing crises related to substance use disorder and intoxication, including ambulatory and medical withdrawal management.

(ec) ~~Facility~~ The CCBHC will have an established protocol specifying the role of law enforcement during the provision of crisis services.

(ed) Compliance with this Section shall be determined by facility policies and clinical records. The ODMHSAS may also utilize surveys and/or interviews with law enforcement agencies, consumers, families and community partners to determine if these requirements are met.

450:17-5-189.3. Intensive services for consumers with serious mental illness/ serious emotional disturbance

(a) Intensive services and care coordination shall be delivered with a single point of accountability for providing treatment, rehabilitation and support services to consumers with serious mental illness/serious emotional disturbance that meet criteria as determined by the CCBHC or as designated by ODMHSAS; and/or who are categorized as Special Population 1 or Special Population 2.

(b) The CCBHC shall use an intensive team-based model that is separate and distinct from other outpatient care teams, such as Programs of Assertive Community Treatment, to merge clinical and rehabilitation staff expertise within one service delivery team for such consumers. This model shall include services with a focus on community tenure, stable housing, and opportunities for employment.

(c) Program policies shall define the intensive team-based approach and criteria as identified in (a) and (b) above and stipulate that these policies must be followed by staff to develop care coordination plans for consumers with serious mental illness/serious emotional disturbance.

(d) Clinical records shall document the implementation of services identified in (a) and (b) above.

[OAR Docket #23-405; filed 6-5-23]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 18. STANDARDS AND CRITERIA FOR SUBSTANCE RELATED AND ADDICTIVE DISORDER TREATMENT SERVICES

[OAR Docket #23-406]

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RULES:

Subchapter 7. Facility Clinical Records

Part 9. Service Planning

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Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

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n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 18 clarify requirements regarding signatures on service plans.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

PART 9. SERVICE PLANNING

450:18-7-81. Service Plan

(a) A service plan shall be completed for each adult and child consumer, including dependent children receiving services from a residential or halfway house facility. The service

plan is performed with the active participation of the consumer and a support person or advocate, if requested by the consumer. In the case of children under the age of sixteen (16), it is performed with the participation of the parent or guardian, if allowed by law, and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges, and problems. The service plan shall be completed by a LBHP or Licensure Candidate.

(b) The service plan is developed after and based on information obtained in the assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) The service plan must have an overall general focus on recovery which, for adults, may include goals like employment, independent living, volunteer work, or training, and for children, may include areas like school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Service plan updates should occur at a minimum of every six (6) months ~~during which~~ while outpatient services are provided. Service plan updates shall occur at a minimum of once every thirty (30) days ~~during which~~ while halfway house, residential, or medically supervised withdrawal management services are provided for levels of care with ASAM Level 3 (residential and inpatient services).

(e) Service plans, both comprehensive and update, must include dated signatures of the consumer (if ~~over age 14~~ age fourteen [14] or older), the parent/guardian (if ~~the consumer is under age sixteen (16) and allowed~~ required by law), and the LBHP or Licensure Candidate. If a minor is eligible to self-consent to treatment pursuant to state law, a parent/guardian signature is not required. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing. Signatures must be obtained after the service plan is completed.

(f) Compliance with 450:18-7-81 shall be determined by a review of the clinical records, interviews with staff and consumers, and other facility documentation.

[OAR Docket #23-406; filed 6-5-23]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 21. ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC) AND ASSESSMENTS**

[OAR Docket #23-407]

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RULES:

Subchapter 1. General Provisions
450:21-1-2 [AMENDED]

- 450:21-1-3 [AMENDED]
- 450:21-1-7.4 [AMENDED]
- 450:21-1-7.6 [AMENDED]
- 450:21-1-7.7 [AMENDED]
- Subchapter 4. Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Instructors
- 450:21-4-2 [AMENDED]
- 450:21-4-2.1 [NEW]
- 450:21-4-7 [AMENDED]
- Subchapter 7. Certification of Alcohol and Drug Assessors Related to Driver's License Revocation
- 450:21-7-3 [AMENDED]
- 450:21-7-4 [AMENDED]
- 450:21-7-8 [AMENDED]
- 450:21-7-9 [AMENDED]

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The proposed rule revisions to Chapter 21 make changes to renewal requirements for ADSAC facilitators and assessors. Revisions also make changes to required certification thresholds for ADSAC institutions/organizations. Changes include amendments and clarifications regarding ASAM overrides, critical incident reporting, release of information requirements, and evaluation instruments. Other reorganization and clean-up is also included, and definitions are amended.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

450:21-1-2. Statutory authority

(a) Under 43A O.S. § 3-453(E), ODMHSAS has authority to certify Alcohol and Drug Substance Abuse Courses. ~~Pursuant to 47 O.S. § 6-212.2, persons convicted of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or other drug related revocation or suspension~~

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~~of driving privileges must complete an Alcohol and Drug Substance Abuse Course as a requirement for reinstatement of Oklahoma driving privileges.~~

(b) Pursuant to 43A O. S. §§ 3-453, ODMHSAS is authorized to adopt rules governing:

- (1) Applications and certification of individuals, institutions and organizations to conduct an Alcohol or Drug Substance Abuse Course (ADSAC);
- (2) Denial, suspension or revocation of certification of individuals, institutions and organizations;
- (3) Minimum requirements for all ADSAC content and curricula;
- (4) Minimum qualifications for all ADSAC facilitators;
- (5) Enrollment fees for those attending an ADSAC course;
- (6) Facilities, equipment and instructional materials for ADSAC;
- (7) Minimum qualifications for facilitators of ADSAC facilitator training;
- (8) ADSAC participant attendance requirements;
- (9) Requirements for certifying to the Oklahoma Department of Mental Health and Substance Abuse Services and the Oklahoma Department of Public Safety successful course completion of ADSAC by a participant;
- (10) Operational and physical site requirements for all institutions and organizations offering ADSAC courses; and
- (11) Training requirements for ADSAC facilitators.

(c) Pursuant to 43A O. S. §§ 3-461, ODMHSAS is authorized to adopt rules governing:

- (1) Certification of individuals approved to provide assessment services;
- (2) Assessment standards;
- (3) Assessment responsibilities and activities of certified assessors; and
- (4) Requirements for reporting completed assessments to ODMHSAS.

450:21-1-3. Definitions

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

"**Abuse**" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a participant by staff responsible for the participant's health, safety, or welfare, including, but not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) use of mechanical restraints without proper authority;
- (E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the participant; or
- (F) deprivation of food, clothing, shelter, or health-care by staff responsible for providing these services to a participant.

"**Action Code**" means a numerical designation applied to ADSAC by the Oklahoma Department of Public Safety, and which will be provided by ODMHSAS to organizations and institutions conducting ADSAC, for use in completing the written verification of an individual's completion of an ADSAC.

"**Administrator**" means the person responsible for administering ADSAC courses within a certified institution or organization.

"**ADSAC**" means Alcohol and Drug Substance Abuse Course.

"**ADSAC Facilitator**" means an individual certified to teach both the ten (10) or the twenty-four (24) hour ADSAC courses.

"**ASAM**" means the American Society of Addiction Medicine.

"**ASAM levels of care**" means the different options for treatment as described in the current edition of the ASAM criteria that vary according to the intensity of the services offered. Each treatment option is a level of care.

"**Assessment**" means a face-to-face clinical interview evaluating an individual's need and receptivity to substance abuse treatment and his or her prognosis.

"**Assessor**" means an individual certified to conduct alcohol and other drug assessments related to driver's license revocations.

"**Audit**" means a systematic inspection of accounting records involving analyses, tests, and confirmations or the hearing or investigation by an auditor.

"**Biopsychosocial Assessment**" means a face-to-face clinical interview conducted by an ADSAC assessor designed to elicit historical and current information regarding the behavior and experiences of a participant, and is designed to provide sufficient information for problem formulation, intervention planning, and formulation of appropriate substance abuse-related clinical and/or educational interventions to reduce or eliminate recidivism.

"**Certification**" means an institution, organization, or individual approved by ODMHSAS to conduct ADSAC courses.

"**Certified Alcohol and Drug Counselor**" or "**CADC**" means any person who is certified through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

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

"**Conflict of interest**" means a conflict between the private interests and public obligations of a certified organization, institution, or certified ADSAC Facilitator.

"**Consumer**" means an individual who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"**Course**" means multiple classes offering an approved ADSAC curriculum.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved institution or organization approved to do ADSAC, or the routine work with a participant in an ADSAC course. Critical incidents specifically include, but are not limited to: self-destructive behavior; deaths and injuries to the participant, participant's family, staff or visitors; abuse of a participant, fire, unauthorized disclosure of information; damage to or theft of property belonging to a participant or an approved institution or organization; other unexpected occurrences; or events subject to litigation. A critical incident may involve multiple individuals or results.

"Curricula" (plural of Curriculum) See Curriculum.

"Curriculum" means a specific course of study in alcohol and drug substance abuse designed for ADSAC.

"Defendant Questionnaire" or **"DQ"** means an automated assessment or screening instrument used in assessing an offender with alcohol or other drug involvement. This instrument contains scales to measure truthfulness, stress coping ability, and severity of the alcohol or other drug use disorder diagnosis using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) criteria.

"Denial" means a refusal to certify to conduct ADSAC courses.

"DOC" means the Oklahoma Department of Corrections.

"Documentation" means the provision of written, dated and authenticated evidence to substantiate compliance with standards.

"DPS" means Department of Public Safety.

"Driver Risk Inventory" or **"DRI"** means an assessment or screening instrument, which contains six scales measuring truthfulness, alcohol, drug, driver risk, stress management, and severity of alcohol or other drug abuse and classifies a participant as being either a substance abuser or substance dependent in compliance with current Diagnostic and Statistical Manual criteria.

"Equipment" means hardware, such as audio visual equipment, used as a tool to present material in an ADSAC course.

"Evidence based practice" means programs or practices that are proven to be successful through research methodology and have produced consistently positive patterns of results.

"Facilitator candidate" means an individual who has applied for and is in the process of being certified to conduct an ADSAC course as an ADSAC facilitator.

"Facility" means any ODMHSAS approved building in which ADSAC is conducted.

"Group counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with two (2) or more participants that does not consist of solely related individuals, to promote positive emotional or behavioral change. Services rendered in this setting should be guided by the participant's treatment goals and objectives, and does not include social or daily living skill development as described in educational group counseling.

"Independent practitioner" means any professional, appropriately licensed or certified as an alcohol and drug counselor through the State of Oklahoma, pursuant to state law, and certified by ODMHSAS to conduct ADSAC assessments who does so through the format of a private practice.

"Individual counseling" means a method of using various commonly accepted treatment approaches provided face-to-face by a treatment professional with one participant to promote positive emotional or behavioral change.

"Instructional material" means written or printed data distributed to the participant during an ADSAC course for informational or educational purposes.

"Intensive outpatient services" or **"IOP"** means an organized, non-residential outpatient treatment service with scheduled sessions that provide a range of nine (9) to fifteen (15) treatment hours per week. Intensive outpatient services may offer evening outpatient services several nights per week or be incorporated into an inpatient or residential treatment program in which the individual participates in daytime treatment services but goes home at night. Intensive Outpatient shall correspond to ASAM Patient Placement Criteria Treatment Level: Level II.1, Intensive outpatient.

"Intern facilitator" means a facilitator who has initial approval to conduct ADSAC courses under supervision, both ten (10) and twenty-four (24) hour, but who has not completed internship or training requirements, and is not certified.

"Lapse" means the expiration of an otherwise valid ADSAC certification due to the failure to timely complete and submit the required application for recertification.

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (E) A practitioner with a license to practice in the state in which services are provided issued by one of the following licensing boards:
 - (i) Social Work (clinical specialty only);
 - (ii) Professional Counselor;
 - (iii) Marriage and Family Therapist;
 - (iv) Behavioral Practitioner; or

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(v) Alcohol and Drug Counselor.

"Licensure Candidate" means practitioners a practitioner actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinical if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner;
- (F) Alcohol and Drug Counselor.

"Mutual support group" means a non-professional, widely available, peer directed, system of support meetings, available at little or no charge to the participant, in a group format, dedicated to the support and teaching of the skills related to an alcohol and other drug free lifestyle.

"Needs assessment" or **"NEEDS"** means a one hundred and thirty (130) item comprehensive adult assessment instrument addressing attitude, emotional stability, employment, health, education, substance abuse, relationships, support systems, criminal history and supervision needs.

"Notes" means a complete, chronological written description of any intervention(s) provided to a participant requiring documentation. Notes may include the participant's response and are written by the ADSAC staff delivering the service.

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

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

"OSBI" means the Oklahoma State Bureau of Investigation.

"Participant" means a person convicted of driving under the influence of alcohol or other intoxicating substances or who has received an alcohol or drug-related revocation or suspension of driving privileges in Oklahoma and who is involved in the ADSAC process.

"Professional setting" means a facility that is adequate and suitable for the purpose of providing adult education or assessment services, meeting all confidentiality requirements of 42 CFR, Part 2 and HIPAA, and without distraction or interruption from adjacent business or activities.

"Program" means a structured set of treatment activities designed to achieve specific objectives relative to the needs of individuals served by the facility and certified or recognized by ODMHSAS.

"Recertification" means the renewal of certification for an institution, or organization, or instructor to provide ADSAC courses.

"Residential treatment" means treatment for a participant in a live-in setting which provides a twenty-four (24) hour therapeutic regimen. Corresponding ASAM Patient

Placement Criteria Treatment Level: Level III. 5, Clinically managed High-Intensity Residential Services.

"Revocation" means cancellation of an existing certification to conduct or instruct ADSAC courses.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a participant, staff member, or visitor, or risk thereof. Serious injury specifically includes loss of limb or limb function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome ~~to a participant~~. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death. Sentinel events include occurrences that take place at the facility and/or during the delivery of services, as well as suicide and unintentional drug overdose deaths that occur at any time while an outpatient consumer is an active consumer and within seventy-two (72) hours of discharge from inpatient and residential settings, including sites certified under Chapter 23 of this Title.

"Suspend" means to temporarily cancel certified ADSAC services or certification for a designated period of time.

"TAAD" or **"Triage Assessment for Addictive Disorders"** means a very brief, structured interview covering current alcohol and drug problems related to DSM-IV criteria for substance abuse and dependency. The TAAD is intended to be presented as an interview and not as a paper and pencil instrument.

"Transtheoretical Model of Change" or **"TMC"** means a model which identifies distinct stages of change existing for each individual involved in any educational or therapeutic process and enhances the ability to accurately assess the individual's readiness for clinical or educational engagement at the time of an assessment. This is also referred to as the "Stages of Change" model.

"Victims Impact Panel" or **"VIP"** means the two (2) hour presentation, identified statutorily, intended to enhance awareness of the participant regarding possible impact on others by the individual driving while impaired.

450:21-1-7.4. Critical incidents

(a) All facilities and programs shall have written policies and procedures requiring documentation and reporting of critical incidents and analysis of the contributors to the incident to ODMHSAS in accordance with this Section.

(a**b**) The institution, organization, facilitator or assessor shall report critical incidents. Documentation of critical incidents shall minimally include:

- (1) The facility name and the name and signature of the person(s) reporting the incident;
- (2) The name(s) of the participant(s), staff member(s) or property involved;
- (3) The time, date and physical location of the incident;

- (4) The time and date the incident was reported and the name of the staff person within the facility to whom it was reported;
- (5) A description of the incident;
- (6) Resolution or action taken, ~~date action was taken, and signature of appropriate staff member(s) and date resolution or action was taken;~~ and
- (7) Severity of each injury, if applicable. Severity shall be indicated as follows:
 - (A) No off-site medical care required or first aid care administered on-site;
 - (B) Medical care by a physician or nurse or follow-up attention required; or
 - (C) Hospitalization or immediate off-site medical attention was required.

(bc) Critical incidents shall be reported to ODMHSAS as follows:

- (1) Critical incidents requiring referral to medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered to ODMHSAS via fax or mail to ODMHSAS designated electronic system within twenty-four (24)seventy-two (72) hours of the incident being documented;
- (2) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but within not more than twenty-four (24) hours ~~after of~~ the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours ~~after of~~ the incident.

~~(c) Critical incidents shall be reported to the Provider Certification Division of ODMHSAS.~~

450:21-1-7.6. Participant records, basic requirements

- (a) Participant records shall be developed and maintained to ensure that all appropriate individuals have access to relevant course and other information regarding the participant. The record shall communicate information in a manner that is organized, clear, complete, current and legible.
- (b) Entries in participant records shall be legible, signed with first name or initial, last name, and dated by the person making the entry.
- (c) The participant shall be identified by name or unique identifier on each sheet in ~~the participant record~~participant records not in electronic format.
- (d) A signed consent ~~in a form designated by the Commissioner or designee for treatment~~ shall be part of the case record for any person admitted to an ADSAC course or administered an ADSAC assessment.
- (e) A signed consent for release of information in accordance with federal and state laws, guidelines, and standards, including OAC 450:15-3-20.1 and OAC 450:15-3-20.2 shall be a part of the participant's case record. For disclosure of information related to substance use disorder referral, payment, and follow up, a signed consent is required.

450:21-1-7.7. Participant record storage, retention and disposition

- ~~(a)~~ Each institution, organization, facilitator or assessor shall:
 - (1) Limit access to participant records to persons on a need to know basis;
 - (2) Require participant records be stored under lock and key;
 - (3) With regard to closed participant records, require:
 - (A) Confidential storage under lock and key;
 - (B) Record disposition and destruction under confidential conditions; and
 - (C) Maintain written documentation to be available for participants for a minimum of six (6) years after completion of all course requirements. Written documentation shall include, but not be limited to:
 - (i) ~~completed pre and post tests~~Completed pre- and post-tests;
 - (ii) ~~notes~~Notes, if existing;
 - (iii) ~~proof~~Proof of completion of course; and
 - (iv) ~~enrollment~~Enrollment form.
- ~~(b) EXCEPTION: With regard to 450:18-7-4(a)(3)(B), facilities operated by ODMHSAS shall comply with the provisions of the Records Disposition Schedule for said facility as approved by the Oklahoma Archives and Records Commission [67 O.S. § 305 and OAC 60:1-1-2].~~

SUBCHAPTER 4. CERTIFICATION OF ALCOHOL AND DRUG SUBSTANCE ABUSE COURSES (ADSAC), ORGANIZATIONS AND INSTRUCTORS

450:21-4-2. Applications for institutions and organizations

- (a) Applications for certification of institutions;~~and~~ organizations ~~or facilitators~~ to conduct ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.
- (b) ODMHSAS shall give each institution;~~and~~ organization ~~and facilitator candidate~~ requesting certification to conduct ADSAC courses the following:
 - (1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;
 - (2) A copy of these standards and criteria; and
 - (3) The appropriate application(s).
- (c) An institution or organization applying for certification to conduct ADSAC shall provide to ODMHSAS for consideration:
 - (1) Completed application;
 - (2) Film approval form(s) for the ten (10) and twenty-four (24) hour ADSAC;
 - (3) Instructional materials for the ten (10) and twenty-four (24) hour ADSAC;
 - (4) Written verification the applicant is a nonprofit educational institution of higher learning appropriately accredited pursuant to state law, a governmental entity or a

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- nonprofit corporation. If a non-profit corporation, verification shall be a copy of the U.S. Internal Revenue Service Documents granting the corporation 501(c)(3) status;
- (5) Completed certification applications and resumes of proposed facilitators;
- (6) The physical address (street, building name and suite [if applicable], city and zip code) and description of all sites at which the ADSAC course(s) will be conducted; and
- (7) Letters of support from at least two (2) of the following individuals who serve in the community in which each proposed site, including satellites, is located:
- (A) District or Associate District Judge;
 - (B) County Sheriff;
 - (C) Municipal Judge;
 - (D) District or Assistant District Attorney; or
 - (E) Chief of Police.
- (d) If the applicant is a non-profit corporation, the applicant shall submit evidence it was constituted, and is operated, to provide substance abuse, mental health or educational services as its primary services and that the corporation is operated from a professional administrative office, which is open and operated during normal business hours.
- (e) Requests from a certified ADSAC provider for additional or replacement course sites shall be submitted to the ODMHSAS and shall meet all requirements for initial applications, except the institution or organization need not submit items previously submitted that are currently applicable to the new site(s) and expressly stated as such in the application for new course site(s).
- (f) Renewal of certification of ADSAC institutions or organizations shall be contingent upon submission of renewal application and programmatic history of compliance with Oklahoma Administrative Code, Title 450. The application for renewal shall include all items required for initial certification as well as any unpaid fees required by 450:21-4-1(g). Applications with outstanding unpaid fees will not be processed until a resolution is reached regarding payment of outstanding fees.
- (g) In addition to submitting an application and fulfilling the renewal standards for certification per 21-4-2(f), a review of consumer and ~~organization~~organizational documentation shall be performed for institutions and organizations. ~~A score of at least 75% on clinical standards must be achieved in order to move forward with certification.~~ The process will follow that of agency certifications found in 450:1-9-7.2. ~~All deficiencies must be resolved in order for certification to be renewed.~~ Institutions and organizations must achieve the following:
- (1) Demonstrate compliance with a minimum of ninety percent (90%) of all Critical Standards as identified in the ODMHSAS Provider Certification Manual on the initial site review, file an acceptable plan of correction in the required timeframe addressing standards for which compliance was not achieved on the initial site review, and demonstrate compliance with one hundred percent (100%) of all Critical Standards after the initial site review.
 - (2) Demonstrate compliance with a minimum of seventy-five percent (75%) of all Necessary Standards as identified in the ODMHSAS Provider Certification

- Manual on the initial site review and file an acceptable plan of correction in the required timeframe addressing standards for which compliance was not achieved on the initial site review. ODMHSAS may verify compliance with standards identified in the plan of correction at its discretion
- ~~(h) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:~~
- ~~(1) A letter of recommendation from an administrator of a certified institution or organization;~~
 - ~~(2) A current resume, which shall include:
 - ~~(A) Educational background including an official college transcript from an accredited college or university; and~~
 - ~~(B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).~~~~
 - ~~(3) A completed application.~~
 - ~~(4) A one hundred dollar (\$100.00) application fee for initial certification; and~~
 - ~~(5) Upon initial application, a completed Oklahoma State Bureau of Investigation background check or a similar background check from any other state(s) of residence for the past five (5) years;~~
 - ~~(6) A current, recognizable, color, photographic image, in good condition, in digital format or no smaller than two (2) inch by two (2) inches if printed, of the applicant every three (3) years with the certification renewal; and~~
 - ~~(7) A new OSBI background check every three (3) years with the certification renewal application. The results of the OSBI background check must be submitted with the recertification application and any conviction may result in denial of certification.~~
- ~~(ih) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years commencing with the date of issue.~~
- ~~(j) Faxes will not be accepted as permanent copies for an applicant's record.~~
- ~~(ki) Applications are good for one (1) year from approval. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.~~
- ~~(lj) Completed applications must be received by ODMHSAS twenty (20) days prior to the new facilitator training event.~~
- ~~(m) A facilitator whose certification has been expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-4-7. If approved by the Department, such a facilitator will not be required to attend the initial ADSAC facilitator training or successfully complete the training exam.~~
- ~~(n) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-4-7, including attending the initial ADSAC facilitator training, and successful completion of the training exam.~~

(e) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

450:21-4-2.1. Applications for facilitators

(a) Applications for certification of facilitators to conduct ADSAC courses shall be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS or designee.

(b) ODMHSAS shall give each facilitator candidate requesting certification to conduct ADSAC courses the following:

- (1) A copy of §§ 3-451 through 3-453 of Title 43A of the Oklahoma Statutes;
- (2) A copy of these standards and criteria; and
- (3) The appropriate application(s).

(c) An applicant for initial certification as a facilitator to conduct ADSAC courses shall provide to ODMHSAS for consideration:

- (1) A letter of recommendation from an administrator of a certified institution or organization;
- (2) A current resume, which shall include:
 - (A) Educational background including an official college transcript from an accredited college or university; and
 - (B) Employment history covering the previous ten (10) years to include name, complete address and telephone number of employer(s).
- (3) A completed application.
- (4) A one hundred dollar (\$100.00) application fee for initial certification; and
- (5) Upon initial application, a completed Oklahoma State Bureau of Investigation background check or a similar background check from any other state(s) of residence for the past five (5) years;
- (6) A current, recognizable, color, photographic image, in good condition, in digital format or no smaller than two (2) inch by two (2) inches if printed, of the applicant every three (3) years with the certification renewal; and
- (7) A new OSBI background check every three (3) years with the certification renewal application. The results of the OSBI background check must be submitted with the recertification application and any conviction may result in denial of certification.

(d) ODMHSAS shall consider each applicant for certification in accordance with these rules. The Commissioner of ODMHSAS or designee shall notify each applicant in writing of an approval or denial of certification. Certification shall be effective for three (3) years commencing with the date of issue.

(e) Applications are good for one (1) year from approval. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

(f) Completed applications must be received by ODMHSAS twenty (20) days prior to the new facilitator training event.

(g) A facilitator whose certification has been expired for less than twelve (12) months must make application for an initial

certification as set forth in 450:21-4-7. If approved by the Department, such a facilitator will not be required to attend the initial ADSAC facilitator training or successfully complete the training exam.

(h) A facilitator whose certification has been expired for more than twelve (12) months must make application for an initial certification as set forth in 450:21-4-7, including attending the initial ADSAC facilitator training, and successful completion of the training exam.

(i) Each facilitator shall notify ODMHSAS of any change of application information related to his or her email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the facilitator may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

450:21-4-7. ADSAC facilitator certification, qualification and disqualification

(a) Minimum qualifications for certification of ADSAC facilitators are as follows:

- (1) Possess a bachelor's degree in behavioral or health-care sciences education, psychology, social work or chemical dependency with at least two (2) years verifiable full-time equivalent experience in the substance abuse treatment field. This work experience can be in the areas of clinical, prevention or direct care. Proof of current licensure as LADC or certification as CADC will fulfill the experience requirement;
- (2) A valid driver's license or state identification card;
- (3) Completion of the following in the order listed below:

(A) Observe one (1) complete twenty-four (24) hour ADSAC course in sequential order, conducted by a certified facilitator. This observation must be completed and verified to ODMHSAS prior to attending facilitator training;

(B) Attend the new facilitator training and pass the ODMHSAS Certification Examination for ADSAC Facilitator:

- (i) A minimal score to pass the exam shall be eighty (80) percent;
- (ii) The exam shall require the participant to correctly identify the major components of the transtheoretical model of change;
- (iii) The exam shall require the participant to correctly identify the major components of the interactive journaling process; and
- (iv) The exam shall require the participant to correctly identify rules from this Chapter.

(C) Conduct one complete twenty-four (24) hour ADSAC under the supervision of a certified ADSAC facilitator or an ODMHSAS representative.

(4) The facilitator candidate shall be allowed nine (9) months to complete training requirements and one (1) year from application to complete all other requirements. Failure to meet all requirements within the specified timeframes will result in denial of certification. To be

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reconsidered, the candidate will be required to re-apply to ODMHSAS.

(5) Renewal of certification as an ADSAC facilitator shall be dependent upon acceptance of a completed renewal application submitted to ODMHSAS, remission of a fifty dollar (\$50.00) application fee for renewal of certification, and the accomplishment of minimum standards. These standards are:

(A) Each facilitator shall conduct at least six (6) complete ten (10) or twenty-four (24) hour courses during each certification period beginning with the date of initial certification:

(i) To be eligible for recertification as an ADSAC facilitator capable of conducting both ten (10) and twenty-four (24) hour ADSAC courses, verification of having conducted at least two (2) twenty-four hour (24) ADSAC courses in the last three years prior to the request for recertification; and

(ii) Submission of proof of having conducted less than two (2) twenty-four (24) hour ADSAC courses in the three (3) years prior to the request for recertification, shall result in the facilitator being required to attend a one (1) day training event addressing skills consistent with twenty-four (24) hour course facilitation.

(B) ~~Documentation~~In order for the certification to remain active, documentation must be submitted annually throughout the certification period, in a form and manner prescribed by ODMHSAS, demonstrating completion of receiving twelve (12) continuing education hours each twelve (12) month period beginning with the date of initial certification. These hours shall be from each of the following areas, with four (4) hours coming from area (i), four (4) hours coming from area (ii) and four (4) hours coming from area (iii):

- (i) Adult education;
- (ii) Facilitation skills; and
- (iii) ~~General substance abuse training; and~~Substance use disorder prevention or treatment, suicide prevention, and/or crisis intervention.
- ~~(iv) Hours for any mandatory trainings required by ODMHSAS may come from area (iii) above.~~

(6) All renewals of certification are due on the third anniversary of certification. After July 1, 2008 all certification renewals may come due on January 1 of the renewal year. If a universal certification date is adopted, then, requirements for certification renewals will be accepted on a prorated basis during the transition period.

(b) An applicant may not be certified nor certification as an ADSAC facilitator renewed under any of the following conditions:

(1) A non-pardoned felony conviction within the last five (5) years;

(2) Conviction of driving under the influence of alcohol or other intoxicating substances or receiving an alcohol or drug related revocation or suspension of driving privileges for five (5) years prior to the application for certification; or,

(3) Having involvement in any business or endeavor which is a conflict of interest. ODMHSAS may on its own initiative, or upon complaint, investigate potential or alleged conflict of interest, or any other alleged, or suspected violation of these standards.

SUBCHAPTER 7. CERTIFICATION OF ALCOHOL AND DRUG ASSESORS RELATED TO DRIVER'S LICENSE REVOCATION

450:21-7-3. Assessor applicants

(a) An applicant for certification as an assessor shall submit proof of the following:

(1) Proof of current licensure as an LBHP or certification as an alcohol and drug counselor acting within scope of licensure/certification or proof of current status as a Licensure Candidate under the onsite supervision of a certified ADSAC assessor; and

(2) Proof of having at least two (2) years documented full-time clinical experience in drug/alcohol treatment counseling; and

(3) Proof of successful completion of a one (1) day ASAM training within two (2) years of the submission of the application; and

(4) A recognizable, current, color photographic image of the applicant no smaller than two (2) inch by two (2) inch;

(5) A current OSBI background check or a similar background check from another state of residence for the past five (5) years; and

(6) A copy of the applicant's resume documenting all education and employment for the previous ten (10) years to include names, addresses and phone numbers for all employers; and

(7) Fees.

(b) Applications for certification as an assessor shall be made in writing to ODMHSAS on a form in a manner prescribed by the Commissioner or designee.

(c) Completed applications must be received by ODMHSAS twenty (20) days prior to the training event. Before being certified, the applicant shall:

(1) Observe one (1) assessment with written permission of the participant prior to completing new assessor training;

(2) Complete the ODMHSAS new assessor training; and

(3) Complete and pass the ODMHSAS assessment skills competency examination. A minimum score to pass the exam shall be eighty (80) percent:

(A) The exam shall require the applicant to correctly identify the major aspects of the Driver Risk

Inventory-revised (DRI-II), and the Defendant Questionnaire (DQ);

(B) The exam shall require the applicant to correctly identify the major components of motivational interviewing; and

(C) The exam shall require the applicant to correctly identify rules from this chapter.

(4) Conduct two (2) assessments, after completing the new assessor training under the supervision of a certified ADSAC assessor, with written permission of the participant; and

(A) Submit a copy of one written court report completed by the applicant on each assessment;

(B) The observing assessor shall submit an evaluation of the applicant's skill level on a form and in a manner prescribed by the ODMHSAS Commissioner or designee.

(d) ODMHSAS may require explanation of negative references prior to issuance of certification.

(e) Faxes will not be accepted as part of a permanent record.

(f) Applications are good for one (1) year from approval. All requirements must be completed within the initial twelve (12) month period or a new application must be submitted.

(g) Any prior sanctions by ODMHSAS of an individual may be cause for denial of an assessor application.

(h) An assessor applying for renewal shall submit the following for ODMHSAS review:

(1) Completed ODMHSAS renewal application form;

~~(2) Documentation of receiving ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Acceptable continuing education hours shall include the following subject areas with four (4) hours coming from area (A), four (4) hours coming from area (B) and two (2) hours coming from area (C):~~

~~(A) The application and use of the following:~~

- ~~(i) ASAM;~~
- ~~(ii) DRI;~~
- ~~(iii) DQ;~~
- ~~(iv) NEEDS; and~~
- ~~(v) TAAD;~~

~~(B) Evidence-based interview techniques;~~

~~(C) General substance abuse; and~~

~~(D) If a mandatory training is required by ODMHSAS the hours may come from area (c) above; and~~

~~(E) Training hours shall not include ADSAC course facilitation.~~

(32) A current, recognizable, color, photographic image, in good condition, in digital format or no smaller than two (2) inch by two (2) inches if printed, of the applicant every three (3) years with the certification renewal application;

(43) A new OSBI background check every three (3) years with the certification renewal application;

(54) The fifty dollar (\$50) application renewal fee for certification; and

(65) Any unpaid fees required by 450:21-7-5(c)(7)(A). Renewal applications with outstanding unpaid fees will

not be processed until a resolution is reached regarding payment of outstanding fees.

~~(i) In addition to submitting an application and fulfilling the renewal standards for certification per 450:21-7-3(h) and 450:21-7-5(c)(14), a review of consumer and agency documentation shall be performed. A score of at least 75% on clinical standards must be achieved in order to move forward with certification. The process will follow that of agency certifications found in 450:1-9-7.2. All deficiencies must be resolved in order for certification to be renewed.~~

(i) In addition to submitting an application and fulfilling the renewal standards for certification per 450:21-7-3(h) and 450:21-7-5(c)(14), the assessor shall submit the following to ODMHSAS annually throughout the certification period, in a form and manner prescribed by ODMHSAS, in order for the assessor certification to remain active:

(1) Documentation of completing ten (10) continuing education hours in each twelve (12) month period beginning with the date of original certification. Training hours shall not include ADSAC course facilitation training. Acceptable continuing education hours shall include the following subject areas, with four (4) hours coming from area (A), four (4) hours coming from area (B), and two (2) hours coming from area (C):

(A) The application and use of the following:

- (i) ASAM;
- (ii) DRI;
- (iii) DQ;
- (iv) NEEDS; and
- (v) TAAD;

(B) Evidence-based interview techniques; and

(C) Substance use disorder prevention or treatment, suicide prevention, and/or crisis intervention.

(2) Documentation of current, valid professional licensure/certification or licensure candidate status from the appropriate licensing entity.

~~(j) Certification shall be valid for thirty six (36) months.~~

(kj) Failure to timely renew the certification shall result in expiration of certification and forfeiture of the rights and privileges granted by the certification.

(1) A person whose certification has expired for less than twelve (12) months must make application for an initial certification as set forth in 450:21-7-3 with the exception of attending the initial ADSAC assessor training or having to pass the training exam.

(2) A person whose certification has expired for twelve (12) months or more must make application for an initial certification as set forth in 450:21-7-3.

(hk) Each assessor shall notify ODMHSAS of any change of application information related to his or her licensure status, email address, phone number, work or home address at least fifteen (15) days in advance of the change. In case of an emergency, the assessor may notify ODMHSAS of any change up to thirty (30) days after a change has occurred.

(ml) All renewals of certification are due on the third anniversary of certification.

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450:21-7-4. Certification duration

~~ODMHSAS shall certify assessors for three (3) years. Certification shall be valid for three (3) years for qualifying applicants.~~

450:21-7-8. Participant evaluation

(a) The assessment and evaluation of the participant shall be as comprehensive as possible. ADSAC assessors shall not conduct any portion of the assessment process or provide any evaluation services on more than one participant at a time. The assessment shall include, but not be limited to:

(1) A face-to-face biopsychosocial assessment that gathers sufficient information to assist the consumer in developing an individualized service plan. The biopsychosocial assessment includes historical and current information regarding the behavior and experiences of the consumer and is conducted in a standardized manner.

(2) The assessor shall obtain and document the ~~participants~~ participant's driving history information from public record(s), when made available. This information shall, at a minimum, include the following:

- (A) Arrest date;
- (B) All charges relating to alcohol and drug offenses; and
- (C) Driving record.

(3) Alcohol and other drug information as supplied by the participant or referring party:

- (A) Blood alcohol concentration at time of arrest;
- (B) Prior alcohol/drug treatment;
- (C) Polydrug use;
- (D) Prior alcohol-related arrest(s); and
- (E) Prior drug related arrest(s).

(4) Pursuant to 450:21-7-9, the use of completed and scored standardized evaluation instruments; and

(5) All information shall be in a format prescribed by the Commissioner of ODMHSAS or designee.

(b) Recommendations, known as Intervention Categories, shall be based on scores derived from and verified by, a battery of required and appropriate assessment/evaluation instruments, and adhered to by all assessors unless otherwise indicated by ODMHSAS:

(1) All those identified as being at low risk to recidivate as indicated by scores derived from the assessment process shall be referred to educational interventions only:

(A) Intervention Category One shall be identified by alcohol or drug scale scores from the DRI-~~H~~ or DQ of zero (0) to thirty-nine (39) and recommendations shall consist of:

- (i) Ten (10) hour ADSAC course; and
- (ii) Victims Impact Panel.
- (iii) The ten (10) hour ADSAC course and Victims Impact Panel may be attended concurrently.

(B) Intervention Category Two shall be identified by alcohol or drug scale scores from the DRI-~~H~~ or DQ of zero (0) to thirty-nine (39) and a previous alcohol or drug related offense resulting in license revocation pursuant to Title 47, § 6-212.2, A and recommendations shall consist of:

- (i) Twenty-four (24) hour ADSAC course; and
- (ii) Victims Impact Panel.
- (iii) The twenty-four (24) hour ADSAC course and the Victims Impact Panel may be attended concurrently.

(2) All those identified as being at moderate risk to recidivate shall be referred to a combination of educational and clinical interventions:

~~(A)~~ Intervention Category Three, shall be identified by alcohol or drug scale scores from the DRI-~~I~~ or DQ of forty (40) to ~~sixty-nine~~ sixty-nine (69) and recommendations shall consist of:

- ~~(A)~~ Twenty-four (24) hour ADSAC course;
- ~~(B)~~ Victims Impact Panel; and
- ~~(C)~~ Substance abuse related group involvement for six (6) weeks, meeting one (1) time per week.
- ~~(D)~~ The twenty-four (24) hour ADSAC should be attended prior to the initiation of the six (6) week substance abuse group.

~~(B)~~ Those with scoring appropriate for an Intervention Category Four or Five and placed at this level due to clinical override shall be required to attend:

- ~~(i)~~ Twelve (12) weeks of substance abuse related group meeting a minimum of one (1) time per week and a maximum of two (2) times per week; and
- ~~(ii)~~ Twelve (12) weeks of mutual support group attendance, once per week.
- ~~(iii)~~ It must be possible to complete the combination of interventions within ninety (90) days.

(3) All those identified as being at problem risk to recidivate shall be referred to clinical interventions only: Intervention Category Four shall be identified by alcohol or drug scale scores from the DRI-~~H~~ or DQ of seventy (70) to ~~eighty-nine~~ eight-nine (89) and recommendations shall consist of:

- (A) Intensive outpatient treatment;
- (B) Aftercare; and
- (C) Twelve (12) weeks of mutual support meetings.
- (D) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.
- (E) The combination of interventions recommended must be able to be completed within ninety (90) days.

(4) All those identified as being at severe risk to recidivate shall be referred to clinical interventions only: Intervention Category Five will be identified by alcohol or drug scale scores from the DRI-~~H~~/DQ of ninety (90) to one hundred (100) and recommendations shall consist of:

- (A) Residential or inpatient treatment;
- (B) Aftercare; and
- (C) Mutual support meetings.
- (D) Interventions recommended for this intervention category, with the exception of aftercare, should be completed concurrently.

- (E) The combination of interventions recommended must be able to be completed within ninety (90) days.
- (5) If no groups are available or if the participant has a significant, appropriately diagnosed co-occurring disorder, then individual counseling can be substituted for group counseling. This must be addressed with an override and cleared through ODMHSAS.
- (6) Interventions completed prior to the assessment may be accepted if:
- (A) The intervention is completed after the offense resulting in license revocation;
 - (B) The intervention meets or exceeds all the requirements listed in the recommendation; and
 - (C) The provider of the intervention is appropriately accredited.
- (7) Assessments will remain valid for six (6) months from the date of completion:
- (A) If after six (6) months, action toward completing assessment recommendations has not been initiated, then the assessment shall be considered invalid and a new assessment will be required.
 - (B) The participant must be notified of this fact in writing upon assessment.
- (8) A recommendation can be lowered one intervention category through the appropriate use of one of the available overrides. However, an intervention level for clinical services only or combination of educational and clinical services cannot be lowered to an intervention level for educational services only. ODMHSAS approval must be granted for overrides of more than one intervention category.
- (9) Any significant discrepancy between the scores obtained on either the DRI-H or the DQ and an appropriately chosen additional supportive instrument should be cause for reevaluation of participant's answers to the assessment instruments. If the discrepancy cannot be resolved, then an override should be considered.
- (10) Any recommendation can be lowered with the appropriate use of one of the following overrides;
- (A) "Geographic accessibility";
 - (B) "On waiting list for appropriate level of care";
 - (C) "Language barriers"; or
 - ~~(D) "Sustained abstinence"; or~~
 - ~~(E) "ASAM override".~~
- (11) In each instance, the most appropriate and applicable override category shall be used.
- (12) All overrides must be supported in writing and with information or evidence that clearly justifies the decision made. Verifying and/or validating documentation must be included in the record.
- (13) "Geographic accessibility" should be used when one or more of the services required for a specific intervention category does not exist within seventy (70) miles from the town the participant identifies as the home town, as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:
- (A) The recommendation should be reduced to the first intervention category with all services available, and
 - (B) Before using this override, the participant's address shall be verified;
- (14) "On waiting list for appropriate level of care" should be used when one or more of the services required for a specific intervention category is not available within seventy (70) miles from the town the participant identifies as a home town as no one shall be required to travel more than seventy (70) miles to complete any of the recommendations listed here:
- (A) The service recommended must also not be available within thirty (30) days of the initial date of assessment,
 - (B) The recommendation should be reduced to the first intervention category with all services available, and
 - (C) Before using this override, the participant's address shall be verified.
- (15) "Language barriers" should be used when one or more of the services required for a specific intervention category is not offered in the language of a non-English speaking participant within seventy (70) miles from the town the participant identifies as the home town:
- (A) The recommendation should be altered to include the most appropriate combination of interventions available in the participant's language,
 - (B) Due to problems with service availability caused by language barriers, this is the only override in which interventions from multiple categories can be commingled, and
 - (C) Before using this override, the participant's address shall be verified.
- ~~(16) "Sustained abstinence" should be used when an override may be appropriate when recognizing that a significant period of verifiable abstinence or recovery exists between the time of the offense and the assessment:~~
- ~~(A) The abstinence/recovery must be at least six (6) months' duration;~~
 - ~~(B) The abstinence/recovery must be continuous;~~
 - ~~(C) The abstinence/recovery must be verifiable;~~
 - ~~(D) Three notarized statements from individuals who know, but are not related to, the participant, and~~
 - ~~(E) The notarized statement verifying abstinence/recovery will be in a form prescribed by the commissioner of ODMHSAS or designee.~~
- ~~(17) "ASAM override" should be used when the participant has been assessed by a receiving provider as not meeting the ASAM level of care recommended by the ADSAC assessment. This override must be substantiated by including the receiving provider's ASAM in the participant's ADSAC file.~~
- (16) "ASAM override" should be used when:
- (A) The participant has been assessed by a receiving provider as not meeting the ASAM level of care

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recommended by the ADSAC assessment. This override must be substantiated by including the receiving provider's ASAM in the participant's ADSAC file; or (B) The DRI or DQ recommend either Intervention Category Four or Five level of service, but the TAAD or NEEDS and biopsychosocial assessment show clinical evidence of continuous abstinence of at least six (6) months. In these circumstances, the participant shall be required to attend:

(i) Twelve (12) weeks of substance abuse related group meeting a minimum of one (1) time per week and a maximum of two (2) times per week; and

(ii) Twelve (12) weeks of mutual support group attendance, once per week.

(iii) It must be possible to complete the combination of interventions within ninety (90) days.

(c) The assessor shall have policies and procedures in place to ensure participate evaluation is conducted in accordance with the requirements in 450:21-7-8.

(d) The Department may review participant records and documentation to verify compliance with the requirements in 450:21-7-8 at its discretion.

450:21-7-9. Standardized evaluation instruments

(a) Standardized evaluation instruments shall be administered in the manner intended and findings shall be a component of the overall assessment and recommendations.

(b) The approved standardized evaluation instruments shall be limited to:

(1) For all offenses related to driving under the influence or while impaired that result in license revocation, a completed and scored, current computerized version of the Driver Risk Inventory (DRI) in a face-to-face structured interview. For all offenses not related to driving under the influence or while in impaired that result in license revocation, a completed and scored, current computerized version of the Defendant Questionnaire (DQ) shall be used and;

(2) A completed biopsychosocial;

(3) A completed and scored additional, supportive clinical instrument to support initial findings shall be chosen by the assessor from the menu of approved supportive instruments listed below:

(A) Needs Assessment (NEEDS); or

(B) Triage Assessment for Addictive Disorders (TAAD); and

(4) A thorough face-to-face interview.

(5) All additional, supportive clinical assessment instruments shall be used only in a manner consistent with the instrument design, intended purpose and to support the identified level of severity of the participant;

(6) All assessment instruments approved for use in the ADSAC process shall be used according to directions from the manual of each instrument; and

(7) Assessment instruments appropriate for use with those with a primary language other than English shall

be identified as the instruments are approved for use by ODMHSAS.

(c) The assessor shall have policies and procedures in place to ensure participate evaluation is conducted in accordance with the requirements in 450:21-7-9.

(d) The Department may review participant records and documentation to verify compliance with the requirements in 450:21-7-9 at its discretion.

[OAR Docket #23-407; filed 6-5-23]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 23. STANDARDS AND CRITERIA FOR COMMUNITY-BASED STRUCTURED CRISIS CENTERS

[OAR Docket #23-408]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

450:23-1-2 [AMENDED]

Subchapter 3. CBSCC Services

Part 2. Urgent Recovery Clinic Services

450:23-3-23 [AMENDED]

450:23-3-25 [NEW]

Subchapter 5. CBSCC Clinical Records

450:23-5-1 [REVOKED]

450:23-5-2 [REVOKED]

450:23-5-7.1 [REVOKED]

450:23-5-8 [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 23 add requirements regarding nursing staff and pharmacy services for Urgent Recovery Clinics. Language regarding discharge planning for facility-based crisis stabilization is added and amended. Definitions are added and other clean-up changes are also made, including the removal of language that is duplicative or otherwise unnecessary.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

450:23-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a resident by a staff responsible for the resident's health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a resident.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance use disorder crisis stabilization as authorized by O.S. 43A 3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance use disorder treatment services. This service is limited to CMHC's and Comprehensive Community Addiction Recovery Centers (CCARCs) who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Consumer" means an individual, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons.

"Co-occurring disorder" means any combination of mental health and substance use disorder symptoms or diagnoses in a client.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to individuals with co-occurring disorders.

"Crisis intervention" means an immediately available service to meet the psychological, physiological and environmental needs of individuals who are experiencing a mental health and/or substance abuse crisis.

"Crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment and referral.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to a consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Emergency detention" as defined by 43A § 5-206 means the detention of a person who appears to be a person requirement treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond a one hundred twenty (120) hour period or pending the hearing on a petition requesting involuntary commitment or treatments provided by 43A of the Oklahoma Statutes.

"Emergency examination" For adults: means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted. The examination must occur within twelve (12) hours of being taken into protective custody.

"Facility-based crisis stabilization" means emergency psychiatric and substance abuse services for the resolution of crisis situations that takes place in a crisis unit where the individual is admitted for treatment.

"Homeless" a homeless person is a person who; means a state in which a person a) lacks a fixed, regular and adequate night time residence AND b) has a primary nighttime residence that is a supervised publicly or privately operated shelter designated to provide temporary living accommodations including welfare hotels, congregate shelters, half way houses, and transitional housing for the mentally ill; or an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, not limited to people living on the streets.

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Individuals are considered homeless if they have lost their permanent residence, and are temporarily living in a shelter to avoid being on the street.

"Initial Assessment" means examination of current and recent behaviors and symptoms of a person or minor who appears to be mentally ill or substance dependent.

"Intervention plan" means a description of services to be provided in response to the presenting crisis situation that incorporates the identified problem(s), strengths, abilities, needs and preferences of the individual served.

"Licensed mental health professional" or **"LMHP"** means a practitioner who meets qualifications as defined in Title 43A § 1-103(11).

"Linkage services" means the communication and coordination with other service providers that assure timely appropriate referrals between the CBSCC and other providers.

"Minor" means any person under eighteen (18) years of age.

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

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

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous performance improvement, continuous improvement, organization-wide performance improvement and total quality management.

"Persons with special needs" means any persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness and/or substance abuse disorders. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"PICIS" means a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. PICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.

"Progress notes" mean a chronological description of services provided to a consumer, the consumer's progress, or

lack of, and documentation of the consumer's response related to the intervention plan.

"Psychosocial evaluations" ~~are~~ means in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Restraint" ~~refers to~~ means manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of the individual's body. For minors: mechanical restraints shall not be used.

"Triage" means a dynamic process of evaluating and prioritizing the urgency of crisis intervention needed based on the nature and severity of consumers' presenting situations.

"Trauma Informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of all consumers.

"Urgent recovery clinic" means a program of non-hospital emergency services provided in a clinic setting for mental health and substance use crisis response including, but not limited to, observation, evaluation, emergency treatment, and referral, when necessary, to a higher level of care.

SUBCHAPTER 3. CBSCC SERVICES

PART 2. URGENT RECOVERY CLINIC SERVICES

450:23-3-23. URC Crisis intervention services

(a) URCs shall provide evaluation, crisis stabilization, and social services intervention and must be available seven (7) days per week for consumers experiencing substance abuse related crisis; consumers in need of assistance for emotional or mental distress; or those with co-occurring disorders.

(b) Licensed behavioral health professionals and other support staff shall be adequate in number to provide care needed by consumers twenty-four (24) hours a day seven (7) days per week.

(c) A minimum of one (1) Licensed Practical Nurse or Registered Nurse shall be at the URC in-person twenty-four (24) hours a day seven (7) days per week.

(~~e~~) The URC shall provide or otherwise ensure the capacity for a practitioner with prescriptive authority at all times for consumers in need of emergency medication services.

(~~e~~) Crisis intervention services shall be provided by a co-occurring disorder capable team of social services, clinical, administrative, and other staff adequate to meet the clinical needs of the individuals served and make appropriate clinical decisions to:

- (1) Determine an appropriate course of action;
- (2) Stabilize the situation as quickly as possible; and
- (3) Guide access to inpatient services or less restrictive alternatives, as necessary.

(~~e~~) Compliance with this Section shall be determined by a review of the following: personnel files and clinical privileges

records; clinical records; PICIS information; policy and procedures; critical incident reports; staffing; census; and by on-site observation.

450:23-3-25. Pharmacy services

(a) The URC shall provide specific arrangements for pharmacy services to meet consumers' needs. Provision of services may be made through an agreement with another program, through a pharmacy in the community, or through the CBSCC's own Oklahoma licensed pharmacy.

(b) Compliance with 450:23-3-25 shall be determined by a review of the following: clinical records; written agreements for pharmacy services; and/or State of Oklahoma pharmacy license.

(c) Failure to comply with 450:23-3-25 will result in immediate denial, suspension and/or revocation of certification.

SUBCHAPTER 5. CBSCC CLINICAL RECORDS

450:23-5-1. Clinical record keeping system [REVOKED]

~~Each CBSCC shall maintain an organized clinical record keeping system to collect and document information appropriate to the treatment processes. This system shall be organized; easily retrievable, usable clinical records stored under confidential conditions and with planned retention and disposition.~~

450:23-5-2. Basic requirements [REVOKED]

(a) ~~The CBSCC's policies and procedures shall:~~
~~(1) define the content of the consumer record in accordance with 450:23-5-4 through 23-5-9; and~~
~~(2) meet all requirements set forth in OAC 450:1-9-5.6(d).~~

(b) ~~Compliance with 450:23-5-2 shall be determined by on-site observation and a review of the following: CBSCC policy, procedures and operational methods; clinical records; other CBSCC provided documentation; and PI information and reports.~~

450:23-5-7.1. Aftercare and discharge planning [REVOKED]

(a) ~~Aftercare and discharge planning is to be initiated for the consumer at the earliest possible point in the crisis stabilization service delivery process. Discharge planning must be matched to the consumer's needs and address the presenting problem and any identified co-occurring disorders or issues.~~

(b) ~~The program will have designated staff with responsibility to initiate discharge planning.~~

(c) ~~Referral and linkage procedures shall be in place so staff can adequately advocate on behalf of the person served as early~~

~~as possible during the stabilization treatment process to transition to lesser restrictive or alternative treatment settings, as indicated.~~

(d) ~~Compliance with 450:23-5-7.1 shall be determined by a review of closed consumer records, policies and procedures, and interviews with referral contacts.~~

450:23-5-8. Aftercare and discharge summary planning, facility-based crisis stabilization

(a) CBSCCs offering facility-based crisis stabilization services shall initiate aftercare and discharge planning for the consumer at the earliest possible point in the crisis stabilization service delivery process. Discharge planning must be matched to the consumer's needs and address the presenting problem and any identified co-occurring disorders or issues.

(ab) An aftercare plan shall be entered into each consumer's record upon discharge from the CBSCC. A copy of the plan shall be given to the consumer, the consumer's legal guardian, or both the consumer and legal guardian as applicable, as well as to any facility designated to provide follow-up with a valid written authorization by the consumer, the consumer's legal guardian, or both the consumer and legal guardian as applicable.

(bc) An aftercare plan shall include a summary of progress made toward meeting the goals and objectives of the intervention plan, as well as an overview of psychosocial considerations at discharge, and recommendations for continued follow-up after release from the CBSCC.

- (ed) The aftercare plan shall minimally include:
- (1) Presenting problem at intake;
 - (2) Any co-occurring disorders or issues, and recommended interventions for each;
 - (3) Physical status and ongoing physical problems;
 - (4) Medications prescribed at discharge;
 - (5) Medication and lab summary, when applicable;
 - (6) Names of family and significant other contacts;
 - (7) Any other considerations pertinent to the consumer's successful functioning in the community;
 - (8) The Consumer's, the consumer's legal guardian, or as indicated both the consumer's and legal guardian's comments on participation in his or her crisis resolution efforts; and
 - (9) ~~The credentials of the staff members treating the consumer and their dated signatures.~~
 - (9) The signature of the staff member completing the aftercare plan and the date of completion.

(de) Compliance with 450:23-5-8 shall be determined by a review of closed consumer records.

[OAR Docket #23-408; filed 6-5-23]

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TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES CHAPTER 24. STANDARDS AND CRITERIA FOR COMPREHENSIVE COMMUNITY ADDICTION RECOVERY CENTERS

[OAR Docket #23-409]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 3. Required Services
Part 1. CCARC Required Core Services
450:24-3-5 [NEW]
Part 7. Ambulatory Withdrawal Management Services
450:24-3-64 [AMENDED]
450:24-3-65 [REVOKED]
Part 9. Outpatient Treatment Services, ASAM Level 1
450:24-3-81 [AMENDED]
450:24-3-82 [REVOKED]
Part 11. Intensive Outpatient Services, ASAM Level 2.1
450:24-3-101 [AMENDED]
450:24-3-102 [REVOKED]
Part 13. Medication Clinic Services
450:24-3-121 [AMENDED]
450:24-3-122 [AMENDED]
Subchapter 7. Facility Clinical Records
450:24-7-1 [REVOKED]
450:24-7-4 [REVOKED]
450:24-7-7 [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
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n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 24 clarify medication clinic service requirements and requirements regarding service plan signatures. Other clean-up changes are also made, including reorganization and removal of language that is duplicative or otherwise unnecessary.

CONTACT PERSON:

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

SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 3. REQUIRED SERVICES

PART 1. CCARC REQUIRED CORE SERVICES

**450:24-3-5. HIV/STD/AIDS education, testing and
counseling services**

(a) Every facility shall provide or refer for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, testing, and counseling services for drug dependent persons in accordance with 43A O.S. §3-425.1. Every facility shall:

(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer;

(2) Provide or refer all drug dependent persons, and their identified significant others for HIV/STD/AIDS testing and counseling;

(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and

(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

(b) Compliance with 450:24-3-5 shall be determined by a review of written policies and procedures, consumer records, and other supporting facility records and documentation.

PART 7. AMBULATORY WITHDRAWAL MANAGEMENT SERVICES

**450:24-3-64. Ambulatory withdrawal management
without extended on-site monitoring
environment**

(a) Facilities shall provide co-occurring disorder capable intensive ambulatory withdrawal management without extended on-site monitoring treatment services.

(a**b**) The facility shall provide for monitoring/documenting vital signs, food, and liquids.

(b) The facility shall provide a safe, welcoming, trauma informed, and culturally/age appropriate environment.

(c) The facility shall maintain a written plan for emergency medical procedures, which shall be approved by a licensed physician; and

(d) The facility shall have supplies, as designated in the written emergency procedures, which shall be accessible to the staff.

(e) The facility shall maintain written programmatic descriptions and operational methods for (a), (c) and (d).

(f) Compliance with 450:24-6-0 may be determined by a review of the following:

- (1) Policy and procedures;
- (2) Treatment protocols;

- (3) Treatment records;
- (4) Interviews with staff; and
- (5) Other supporting facility documentation.

450:24-3-65. Ambulatory withdrawal management without extended on-site monitoring, substance use disorder, co-occurring [REVOKED]

- ~~(a) Facilities shall provide co-occurring disorder capable intensive ambulatory withdrawal management without extended on-site monitoring treatment services.~~
- ~~(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

 - ~~(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and~~
 - ~~(2) Provide or refer all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS testing and counseling;~~
 - ~~(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and~~
 - ~~(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.~~~~
- ~~(c) Compliance with 450:24-6-0 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.~~

PART 9. OUTPATIENT TREATMENT SERVICES, ASAM LEVEL 1

450:24-3-81. Outpatient treatment services

- (a) Facilities shall provide co-occurring disorder capable outpatient substance use disorder treatment services. Outpatient services shall be determined as necessary using the ASAM criteria and shall include a range of services to consumers based on their needs regarding emotional, social and behavioral problems. These outpatient services shall be provided or arranged for, and shall include, but not be limited to the following:
 - (1) Individual therapy;
 - (2) Group therapy;
 - (3) Family therapy;
 - (4) Rehabilitation services;
 - (5) Case management services;
 - (6) Peer recovery support services; and
 - (7) Wellness services and related activities.
- (b) Compliance with 450:24-3-81 shall be determined by a review of written policy and procedures; clinical records; and data reported by facilities.

450:24-3-82. Outpatient treatment services, substance use disorder, co-occurring [REVOKED]

- ~~(a) Facilities shall provide co-occurring disorder capable outpatient substance use disorder treatment services.~~
- ~~(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

 - ~~(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and~~
 - ~~(2) Provide or refer all drug dependent persons, and their identified significant other(s), for HIV/STD/AIDS testing and counseling;~~
 - ~~(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and~~
 - ~~(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.~~~~
- ~~(c) Compliance with 450:24-3-82 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.~~

PART 11. INTENSIVE OUTPATIENT SERVICES, ASAM LEVEL 2,1

450:24-3-101. Intensive outpatient treatment services

- (a) Facilities shall provide co-occurring disorder capable intensive outpatient substance use disorder treatment services. Intensive outpatient services shall be determined as necessary using the ASAM criteria and shall include a range of nine (9) to fifteen (15) treatment services per week for adults or six (6) to twelve (12) treatment hours per week for children based on their needs regarding emotional, social and behavioral problems. These intensive outpatient services shall be provided or arranged for, and should include, but not be limited to the following:
 - (1) Individual therapy;
 - (2) Group therapy;
 - (3) Family therapy;
 - (4) Rehabilitation services;
 - (5) Case management services;
 - (6) Peer recovery support services; and
 - (7) Wellness services and related activities.
- (b) Compliance with 450:24-3-101 shall be determined by a review of written policy and procedures; clinical records; and data reported by facilities.

450:24-3-102. Intensive outpatient treatment services, substance use disorder, co-occurring [REVOKED]

- ~~(a) Facilities shall provide co-occurring disorder capable intensive outpatient substance use disorder treatment services.~~

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(b) ~~These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:~~

~~(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer; and~~

~~(2) Provide or refer all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS testing and counseling;~~

~~(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and~~

~~(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.~~

~~(e) Compliance with 450:24-3-62 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.~~

PART 13. MEDICATION CLINIC SERVICES

450:24-3-121. Medication clinic services

(a) CCARCs shall offer comprehensive medication clinic services to consumers in need of this service.

(b) Medication clinic services shall include an assessment of each individual's condition and needs; and an assessment of the effectiveness of those services.

(c) Medication clinic services shall be co-occurring capable and shall utilize accepted practice guidelines for psychopharmacologic management of co-occurring and/or substance use disorders.

(d) Medication ~~clinical~~ clinic services shall include but not be limited to:

(1) Prescribing or administering medication, including evaluation and assessment of the ~~medication services~~ medications provided.

(2) Medication orders and administration:

~~(A) Only licensed staff physicians, medical residents or consultant physicians shall write medication orders and prescriptions.~~

(A) Licensed allopathic physicians, osteopathic physicians, medical residents or consultant physicians shall write medication orders and prescriptions. Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.

(B) A list of those physicians authorized to prescribe medications shall be maintained and regularly updated.

~~(C) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.~~

(C) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed.

~~(3) Physician's assistants and nurse practitioners may write medication orders, or prescriptions consistent with state and federal law.~~

(e) Compliance with 450:24-3-121 shall be determined by on-site observation and a review of the following: clinical records, written policy and procedures, and roster of licensed, credentialed staff.

450:24-3-122. Medication clinic, medication monitoring

(a) Medication administration, storage and control, and consumer reactions shall be regularly monitored at all facilities where medications are stored, dispensed, or administered.

(b) Facilities shall assure proper storage and control of medications, immediate response if incorrect or overdoses occur, and have appropriate emergency supplies available if needed.

(1) Written procedures for medication administration shall be available and accessible in all medication storage areas, and available to all staff authorized to administer medications.

(2) All medications shall be kept in locked, non-consumer accessible areas. Conditions which shall be considered in medication storage are light, moisture, sanitation, temperature, ventilation, and the segregation and safe storage of poisons, external medications, and internal medications.

(3) Telephone numbers of the state poison centers shall be immediately available in all locations where medications are prescribed, or administered, or stored.

(4) A qualified physician shall supervise the preparation and stock of an emergency kit which is readily available, but accessible only to physician, nursing and pharmacy staff. Documentation by the qualified physician shall clearly indicate that the supervision has been performed.

(5) Only authorized licensed staff shall administer medications.

(6) A list of licensed staff members authorized to administer medications shall be maintained and regularly updated.

(c) Compliance with 450:24-3-122 shall be determined by on-site observation and a review of the following: written policy and procedures, clinical records, and PI records.

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:24-7-1. Clinical record keeping system

[REVOKED]

~~Each CCARC shall maintain an organized clinical record system for the collection and documentation of information appropriate to the treatment processes; and which insures organized, easily retrievable, usable clinical records stored under~~

~~confidential conditions and with planned retention and disposition.~~

450:24-7-4. Record access for clinical staff [REVOKED]

~~(a) The CCARC shall assure consumer records are readily accessible to the program staff directly caring for the consumer. Such access shall be limited to the minimum necessary to carry out the staff member's job functions or the purpose for the use of the records.~~

~~(b) Compliance with 450:24-7-4 shall be determined by on-site observation and staff interviews.~~

450:24-7-7. Behavioral Health Service Plan

(a) The service plan is performed by a LBHP or Licensure Candidate with the active participation of the consumer and a support person or advocate if requested by the consumer. In the case of children under the age of sixteen (16), it is performed with the participation of the parent or guardian, if allowed by law, and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges and problems.

(b) The service plan is developed after and based on information obtained in the mental health assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) For adults, the service plan must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Comprehensive service plans must be completed within six (6) treatment sessions and adhere to the format and content requirements described in the facility policy and procedures.

(e) Service plan updates should occur at a minimum of every six (6) months during which services are provided and adhere to the format and content requirements described in the facility policy and procedures. Service plan updates shall occur at a minimum of once every thirty (30) days during which services are provided for levels of care with ASAM Level 3 (residential and inpatient services).

(f) Service plans, both comprehensive and update, must include dated signatures for the consumer customer (if ~~over age 14~~ age fourteen [14] or older), the parent/guardian (if ~~under age sixteen (16) or otherwise applicable~~ required by law), and the LBHP or Licensure Candidate. If a minor is eligible to self-consent to treatment pursuant to state law, a parent/guardian signature is not required. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing. Signatures must be obtained after the service plan is completed.

(g) Service plans for residential and halfway house services shall be completed in accordance with the time frames specified in 450:18-7-82.

(h) Service plans for medically supervised withdrawal management services shall be completed in accordance with 450:18-7-84.

(i) Compliance with 450:24-7-7 shall be determined by a review of the clinical records, policies and procedures, and interviews with staff and consumers, and other agency documentation.

[OAR Docket #23-409; filed 6-5-23]

**TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 70. STANDARDS AND CRITERIA FOR OPIOID TREATMENT PROGRAMS**

[OAR Docket #23-410]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 70. Standards and Criteria for Opioid Treatment Programs [AMENDED]

AUTHORITY:

Oklahoma Board of Mental Health and Substance Abuse Services; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. § 85.9G.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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March 30, 2023

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March 30, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

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EFFECTIVE:

September 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule revisions to Chapter 70 remove requirements regarding identification for consumers and restrictions regarding liquid only forms of methadone. Changes also include amendments to drug testing frequency and requirements, clarification regarding agents allowed to administer and dispense medications, clarification regarding service plan signature and consent requirements, removal of requirements regarding frequency of attendance for consumers with dual enrollments, amendments to and reorganization of requirements regarding take-home dosing, revisions to language regarding HIV/STD/AIDS service requirements, and the addition of a new section with requirements for mobile medication units. Language regarding service phases is also amended, as well as language regarding case management and peer recovery support service requirements. Other clean-up changes are also made, including updating terminology, adding definitions, reorganizing sections, and removing language that is duplicative or otherwise unnecessary.

Permanent Final Adoptions

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

450:70-1-2. Definitions

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

"Accreditation" means the process of review and acceptance by a nationally recognized accreditation body.

"Accreditation body" means a body that has been approved by SAMHSA to accredit opioid treatment programs using opioid agonist or partial agonist treatment medications.

"Administer" means the direct application of a prescription drug by ingestion or any other means to the body of a patient person served by a licensed practitioner, or the patient at the direction of, or in the presence of, a practitioner.

"Administrative withdrawal" means a ~~patient's~~ medically supervised withdrawal involving the gradual tapering of dose of medication over time, coinciding with the ~~patient's~~ usually involuntary discharge from medication assisted treatment. Administrative withdrawal typically results from non-payment of fees, violent or disruptive behavior, incarceration or other confinement.

"Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance and/or detoxification of a person physiologically dependent upon opioid drugs.

"ASAM criteria" means the most current edition of the American Society of Addiction Medicine's published criteria for admission to treatment, continued services, and discharge.

"Biopsychsocial assessment" means in-person interviews conducted by a LBHP or Licensure Candidate designed to elicit historical and current information regarding the behavior and experiences of a patient person served, and are designed to provide sufficient information for problem formulation, intervention planning, case management needs, and formulation of appropriate substance abuse-related treatment and service planning.

"Buprenorphine" means a partial agonist, Schedule III narcotic approved for use in opioid dependence treatment.

"CARF" means the Commission on the Accreditation of Rehabilitation Facilities.

"Central registry" means a document or database to which an OTP shall report patient-identifying information about individuals who are applying for or undergoing medically supervised withdrawal or maintenance treatment on an approved opioid agonist or partial agonist to a central record system approved by the Commissioner or designee.

"Certification" means the process by which ODMHSAS or SAMHSA determine that an OTP is qualified to provide opioid treatment under applicable State and Federal standards.

"Chain of custody" means the process of protecting items so that movement, possession and location are secure and documented and there is no possibility for altering or otherwise tampering with the item.

"Chronic pain disorder" means an ongoing condition or disorder consisting of chronic anxiety, depression, anger and changed lifestyle, all with a variable but significant level of genuine neurologically based pain. The pain becomes the main focus of the ~~patient's person served attention~~, and results in significant distress and dysfunction.

"Clinical Opioid Withdrawal Scale" or "COWS" means a well validated, standardized assessment instrument for evaluating the severity of a ~~patient's~~ withdrawal through the identification of objective and subjective symptoms and the severity of these symptoms.

"Clinical record" or "treatment record" means the collection of written information about the evaluation or treatment of a person served that includes the intake data, evaluation, service plan, description of services provided, medications as prescribed, continuing care plan, and discharge information.

"Clinical supervision" means an organized process by which knowledgeable and skilled supervisors systematically and routinely provide ongoing and in-depth review of direct service providers' performance.

"COA" means the Commission on Accreditation.

"Comprehensive maintenance treatment" is:

(A) ~~Dispensing or administering an approved opioid agonist or partial agonist medication at stable dosage levels for a period in excess of 21 days to a patient for opioid dependence, and~~

(B) ~~Providing medical, clinical and educational services to the patient with opioid dependence.~~

"Comprehensive maintenance treatment" means dispensing or administering an approved opioid agonist or partial agonist medication at stable dosage levels for a period in excess of 21 days for opioid use disorder; and providing medical, clinical and educational services to the person served with opioid use disorder.

"Continuing care plan" or "discharge summary" means a written plan of recommendations and specific referrals for implementation of continuing care services, including medications, developed with the knowledge and cooperation of the patient person served.

"Co-occurring disorder" or "COD" means any combination of mental health and substance use disorder symptoms or diagnoses as determined by the current Diagnostic and Statistical Manual of Mental Disorders that affect a patient person served.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of an approved treatment facility, or the routine care of a patient. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries (including automobile accidents) to the patient, patient family, staff and visitors; medication errors; neglect or

~~abuse of a patient; fire; unauthorized disclosure of information; damage to or theft of property belonging to a patient or an approved treatment facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.~~

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a facility, service setting, or otherwise routine care of a person served. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to persons served, staff and visitors; medication errors; persons receiving residential treatment that are absent without leave (AWOL); neglect or abuse of a person served; fire; unauthorized disclosure of information; damage to or theft of property belonging to persons served or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DEA" means Drug Enforcement Administration.

"Discharge planning" means the process, beginning at admission of determining a consumer's continued need for treatment services and developing a plan to address ongoing consumer recovery needs.

~~"Diskette" means a compressed wafer form of methadone intended to be dissolved in water for consumption. For the purposes of this chapter methadone diskettes will not be considered to be the same as tablet methadone. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid by the patient in full and clear view of OTP staff before the patient may leave the clinic with the dose.~~

"Dispense" means preparing, packaging, compounding and labeling for delivery, a prescription drug in the course of professional practice to an ultimate user by the lawful order of a physician.

"Diversion" means the unauthorized or illegal transfer of an opioid agonist or partial agonist treatment medication.

"Diversion control plan" or "DCP" means documented procedures to reduce the possibility that controlled substances are used for any purpose other than legitimate use.

"Drug test" means the assessment of an individual to determine the presence or absence of illicit or non-prescribed drugs or alcohol or to confirm maintenance levels of treatment medication(s), by a methodology approved by the OTP medical director based on informed medical judgment and conforming to State and Federal law. This may include blood testing, oral-fluid and urine testing.

"Exception request process" means a process recording the justification of the need to make a change in treatment protocol for ~~an opioid patient~~ person receiving medication assisted treatment for opioid use disorder and submitted to SAMHSA using form SMA-168.

"FDA" means the Federal Food and Drug Administration.

"Federal opioid treatment standards" means the established standards of SAMHSA, CSAT and the DEA that are used to determine whether an OTP is qualified to engage in medication assisted opioid treatment.

"HIPAA" means Health Insurance Portability and Accountability Act

"Holiday" means those days recognized by the State of Oklahoma as holidays.

"Individual Placement and Support" or "IPS" means an evidence based specific type of employment and education service to help people with mental illness, substance use disorders or co-occurring disorders, find and keep competitive employment.

"Individualized service planning" means the ongoing process by which a clinician and the ~~patient~~ person served identify and rank problems, establish agreed upon goals, and decide on the treatment process and resources to be utilized.

"Interim maintenance treatment" means maintenance treatment provided in conjunction with appropriate medical services while a ~~patient~~ person served is awaiting transfer to a program that provides comprehensive maintenance treatment.

"JC" or "TJC" means the Joint Commission.

"Licensed Behavioral Health Professional" or "LBHP" means:

- (A) An Allopathic or Osteopathic Physician with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry;
- (B) An Advanced Practice Registered Nurse licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided and certified in a psychiatric mental health specialty;
- (C) A Clinical Psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;
- (D) A Physician Assistant who is licensed in good standing in Oklahoma and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;
- (E) A practitioner with a license to practice in the state in which services are provided by one of the following licensing boards:
 - (i) Social Work (clinical specialty only);
 - (ii) Professional Counselor;
 - (iii) Marriage and Family Therapist;
 - (iv) Behavioral Practitioner; or
 - (v) Alcohol and Drug Counselor.

"Licensure candidate" means practitioners actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

- (A) Psychology;
- (B) Social Work (clinical specialty only);
- (C) Professional Counselor;
- (D) Marriage and Family Therapist;
- (E) Behavioral Practitioner; or

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(F) Alcohol and Drug Counselor.

"Liquid methadone" means a liquid concentrate of methadone meant to be mixed with water for ingestion.

"Lock box" means a container with a combination lock or key lock entry system for securing take home medications. The box must have the ability to lock and should be secure enough to thwart access by children.

"Long-term care facilities" means a facility or institution that is licensed, certified or otherwise qualified as a nursing home or long term care facility by the state in which methadone or buprenorphine treatment services are rendered. This term includes skilled, intermediate, and custodial care facilities which operate within the terms of licensure.

"Long-term detoxification treatment withdrawal management" means detoxification treatment for a period of more than 30 days but less than 180 days.

"Medical director" means a physician, licensed to practice medicine in Oklahoma, who assumes responsibility for the administration of all medical services performed by an OTP, either by performing them directly or by delegating specific responsibility to authorized program physicians and healthcare professionals functioning under the medical director's direct supervision, unless otherwise indicated in this chapter. This includes ensuring the program is in compliance with all federal, state, and local laws and regulations regarding the medical treatment of dependence on an opioid drug.

"Medical withdrawal" means a condition created by administering an opioid agonist or partial agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects of withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state.

"Medication unit" means a satellite facility established as part of, but geographically separate from, an OTP from which appropriately licensed practitioners dispense or administer an opioid agonist or partial agonist treatment medication or collect samples for drug testing or analysis. No medical or clinical interventions related to OTP treatment can be conducted at this site.

"Non-oral methadone" means an injectable form of methadone not allowed for use by an OTP.

"Nurse practitioner" means a registered nurse who is prepared through advanced education and clinical training, to provide a wide range of health care services.

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

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

"OBND" means the Oklahoma Bureau of Narcotics and Dangerous Drug Control.

"Oklahoma state issued identification card" means a photo identification card issued by the Oklahoma Department of Motor Vehicles for use in identification.

"Opiate drug" means any of a class of drugs also called narcotics derived from the opium poppy or containing opium

and with analgesic or sedative effects that can form sustain or enhance addiction and physical dependency.

"Opioid agonist" means a drug that has an affinity for and stimulates physiologic activity at cell receptors in the central nervous system normally stimulated by opioids. Methadone is an opioid agonist.

"Opioid agonist or partial agonist treatment medication" means a prescription medication, such as methadone, buprenorphine or other substance scheduled as a narcotic under the Federal Controlled Substances Act (21 U.S.C. Section 811) that is approved by the U.S. Food and Drug Administration for use in the treatment of opiate addiction or dependence.

"Opioid antagonist" means a drug that binds to cell receptors in the central nervous system that normally are bound by opioid psychoactive substances and that blocks the activity of opioids at these receptors without producing the physiologic activity produced by opioid agonists. Naltrexone is an opioid antagonist.

"Opioid dependence" means a cluster of cognitive, behavioral, and physiological symptoms in which an individual continues use of opioids despite significant opioid-induced problems. Opioid dependence is characterized by repeated self-administration resulting in opioid tolerance, withdrawal symptoms, and compulsive drug-taking. Dependence may occur with or without the physiological symptoms of tolerance and withdrawal.

"Opioid drug" means any of a class of drugs also called narcotics, having a dependence-forming or dependence-sustaining liability similar to morphine. Originally a term for synthetic narcotics only, but for the purposes of this chapter and unless otherwise specified, currently used to describe both opium based and synthetic narcotics. These drugs have analgesic or sedative effects.

"Opioid partial agonist" means a drug that binds to, but incompletely activates, opiate receptors in the central nervous system, producing effects similar to those of an opioid agonist but, at increasing doses, does not produce as great an agonist effect as do increased doses of an agonist. Buprenorphine is a partial opioid agonist.

"Opioid treatment" means the dispensing of opioid agonist or partial agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid dependence. This term encompasses detoxification treatment, short-term detoxification treatment, long-term detoxification treatment, maintenance treatment or comprehensive maintenance treatment, interim maintenance treatment and treatment provided in medication units, long term care facilities or hospitals.

"Opioid Treatment Program (OTP)" ~~means an organization which has been certified by ODMHSAS to provide opioid treatment whose certification has not been suspended, revoked, or surrendered to the department~~ means an organization which has been certified by ODMHSAS to provide therapeutic services and FDA-approved medications for opioid use disorder, referred to in statute as an Opioid Substitution Treatment Program.

"Pain management" means the successful management of chronic pain or a chronic pain disorder.

"Patient record" or "medical record" means the collection of written information about a patient's evaluation or treatment that includes the intake data, evaluation, service plan, description of services provided, medications as prescribed, continuing care plan, and discharge information on an individual patient.

"Parenteral" means injected, infused or implanted, used to describe drug administration other than oral or anal.

"Person served" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s), consumer(s), patient(s) or resident(s) or a combination thereof.

"Physician assistant" means a licensed or certified mid-level medical practitioner who works under the supervision of a licensed physician (MD) or osteopathic physician (DO).

"Program physician" means a licensed physician who provides medical treatment and counsel to the patients or persons served by an OTP while under the supervision of the medical director.

"Program sponsor" means a person named in the application for an OTP permit who is responsible for the operation of the OTP and who assumes responsibility for all its employees, including any practitioners, staff, or other persons providing medical, rehabilitative, or therapy services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided face-to-face by a Licensed Behavioral Health Professional (LBHP) or Licensure Candidate with consumers in individual, group, or family settings to promote positive, emotional, or behavioral change.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life. Rehabilitation services must be provided by a Licensed Behavioral Health Professional (LBHP), Licensure Candidate, Certified Alcohol and Drug Counselor (CADC) or Certified Behavioral Health Case Manager II (CM II).

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for an immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of

violence, including domestic violence or sexual assault, and adverse drug events (including medication overdoses by patients and associates of patients) resulting in serious injury or death.

"Sentinel event" means a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a person served, staff member, or visitor, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to, suicide, homicide, assault and other forms of violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death. Sentinel events include occurrences that take place at the facility and/or during the delivery of services, as well as suicide and unintentional drug overdose deaths that occur at any time while a person receiving outpatient services is an active client and within seventy-two (72) hours of discharge from inpatient and residential settings, including sites certified under Chapter 23 of this Title.

"Service Provider" means a person who is allowed to provide services for those with substance use disorders within the regulation and scope of their certification level or license.

"Short-term detoxification — treatment withdrawal management" means detoxification treatment for a period not in excess of 30 days.

"State Opioid Treatment Authority" or "SOTA" means the agency designated by the Governor or other appropriate official designated by the Governor to exercise the responsibility and authority within the State or Territory for governing the treatment of opioid dependence with an opioid drug. For Oklahoma it is the Oklahoma Department of Mental Health and Substance Abuse Services.

"STD" means sexually transmitted disease.

"Tablet methadone" means methadone in a tablet form intended to be taken orally. For the purposes of this chapter diskettes will not be considered to be tablet methadone. Tablet methadone is not allowed for use by an OTP.

"Take-home privilege or take-home medication" "Take-home dose" or "take-home medication" means one or more doses of an opioid agonist or partial agonist treatment medication dispensed to a patient person served for use off the premises.

"Therapeutic hour(s)" means the amount of time in which the patient person served was engaged with a service provider in identifying, addressing, and/or resolving those issues that have been identified in that patient's individual's treatment plan.

"Urine analysis (UA) drug screen" means a urine sample taken to determine if metabolites are present indicating the use of drugs.

"Withdrawal treatment" means either administrative withdrawal, or medical titration and withdrawal from any drug or medication until the patient person served has achieved a drug free state.

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SUBCHAPTER 3. FACILITY RECORD SYSTEM

PART 1. RECORD SYSTEM

450:70-3-3.1. ~~Patient transfer~~Transfer of persons served

(a) The OTP shall refer ~~patients~~persons served to other resources when the individual has treatment or service needs the facility does not provide.

(1) The OTP shall maintain a directory of currently available local resources.

(2) The transferring program must supply ~~patient medical~~clinical records necessary in response to a written request and a valid consent form within fifteen (15) days of receipt and in compliance with all applicable state and federal law.

(A) The program shall furnish copies of ~~medical~~clinical records requested, or a summary or narrative of the records, including records received from a physician or other health care provider involved in the care or treatment of the ~~patient~~person served, pursuant to a written consent for release of the information, except if the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the ~~patient~~person served, and the program may delete confidential information about another ~~patient~~person served or family member of the ~~patient~~person served who has not consented to the release.

(B) The information shall be furnished by the program within fifteen (15) days after the date of receipt of the request.

(C) If the program denies the request, in whole or in part, the program shall furnish the ~~patient~~person served a written statement, signed and dated, stating the reason for the denial. A copy of the statement denying the request shall be placed in the ~~patient's~~record of the person served.

(b) Compliance with 450:70-3-3.1 may be determined by:

- (1) ~~A review of policies and procedures,~~
- (2) ~~Treatment records,~~
- (3) ~~Performance improvement guidelines,~~
- (4) ~~Interviews with staff, and~~
- (5) ~~Other facility documentation.~~

(b) The OTP shall have written policy and procedure stating these guidelines when a person served is transferring from one clinic or level of care to another:

(1) The admitting program shall obtain from the person served an authorization for disclosure of confidential information, for the purpose of obtaining accurate and current information concerning the individual's treatment at the former program.

(2) The medical director or program physician at the admitting program shall not allow the person served to attend the clinic less frequently than the most recent schedule allowed at the former program unless:

(A) Copies of the clinical records are obtained to sufficiently document the satisfactory adherence of the person served to all relevant federal and state regulations for the required time in treatment; and

(B) The program physician has completed an evaluation of the person served.

(3) At a minimum, staff from the admitting program shall document in the clinical record and staff from the transferring program must provide the following information before the initial dose of methadone or buprenorphine is administered to a person served who is transferring:

(A) The last date and amount of opioid treatment medication administered or dispensed at the former program;

(B) The length of time in continuous treatment;

(C) The most recent record of clinic attendance;

(D) The name, address, and telephone number of the program contacted;

(E) The date and time of the contact; and

(F) The name of the program employee furnishing the information.

(c) Compliance with 450:70-3-3.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Performance improvement guidelines,
- (4) Interviews with staff, and
- (5) Other facility documentation.

PART 3. INTAKE AND ADMISSION ASSESSMENT

450:70-3-5. Assessment and record content - Medical

(a) All OTPs shall assess each individual for appropriateness for admission, ensuring the individual is placed in the least restrictive level of care.

(b) Each OTP shall ensure that ~~patients~~persons served are admitted to treatment by a program physician, who determines that such treatment is appropriate for the specific ~~patient~~person served by applying current and established DSM diagnostic and ASAM criteria.

(c) The OTP shall have written policy and procedure stating the program shall require each ~~patient~~person served to undergo a complete, fully documented history and physical examination by the medical director, a program physician or physician with a valid Oklahoma license before admission to the medication assisted opioid treatment program. For the purposes of this chapter, a Physician Assistant or Nurse Practitioner, with appropriate Oklahoma license/certification and working under the direction and supervision of the OTP medical director may perform services allowed by Oklahoma certification or licensure such as those listed here, unless otherwise specified. A full medical examination, including the results of serology and other tests, must be completed within fourteen (14) days following admission.

(d) Compliance with 450:70-3-5 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and

- (3) Other facility documentation.

450:70-3-5.1. Assessment and record content - History

(a) ~~Patients~~Persons served who have had a complete history and physical including laboratory tests within the past three months may be admitted to the OTP without a new medical examination and laboratory tests, unless the program physician requests it. The admitting program shall obtain copies of these results within fifteen (15) days of admission. If records are not obtained within fifteen (15) days, the program shall conduct a complete history and physical.

(b) The OTP shall have written policy and procedure stating any ~~drugs~~FDA-approved medications for use in treating a significant opioid use disorder when used by an OTP for persons with a history of physiologic dependence, shall only be used in treating persons with a history of symptoms of opioid use disorder as stated in Title 43A, Section 3-601 A. 1. and as verified by the medical director or a program physician through medical examination; or persons with a history of dependence as stated in Title 43A, Section 3-601 A. 1. and written documentation from an agency at which another type of substance use disorder treatment was attempted or accomplished. Such documentation shall be received prior to admission to the program and/or induction of any drug uses as a part of an opioid treatment regimen. When buprenorphine is used to provide medication assisted treatment in this setting, a one year history of opioid use disorder or dependence shall be required.

(c) The OTP shall have written policy and procedure stating that if clinically appropriate, the program physician may waive the requirement as stated in Title 43A, Section 3-601 A. 1. for:

- (1) A ~~patient~~person served within six (6) months of release from a correctional institution;
- (2) A ~~patient~~person served with a pregnancy verified by the program physician; or
- (3) A ~~patient~~person served having previously received medication-assisted recovery services for an opioid use disorder and within two (2) years of discharge from an OTP.

(d) Compliance with 450:70-3-5.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.2. Assessment and record content - Symptoms

(a) Any ~~patient~~person served seeking admission while under the influence, or undergoing withdrawal of alcohol or drugs other than opioids shall be assessed prior to admission for medical needs. The written criteria to be used for medical needs assessment shall be approved by the OTP medical director and meet state and federal requirements regarding standards of care.

(b) Using a standardized and accepted instrument (such as the COWS Scale) no ~~patient~~person served shall be admitted to medication assisted opioid recovery services unless symptoms

of opioid dependency listed below are present with at least two symptoms coming from numbers one (1) through seven (7);

- (1) Elevated resting pulse rate;
- (2) Increased sweating;
- (3) Tremors;
- (4) Variation in pupil size;
- (5) Increased yawning;
- (6) Runny nose and/or tearing;
- (7) Presence of "gooseflesh";
- (8) Increased restlessness;
- (9) Bone and/or joint pain;
- (10) Increased anxiety or irritability; or
- (11) Gastrointestinal distress.

(c) Compliance with 450:70-3-5.2 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.3. Assessment and record content - Dispensed and prescribed pharmaceuticals

(a) The OTP shall have written policy and procedure stating the ~~patient~~clinical record shall contain adequate documentation of any prescription ~~drug~~medication, including methadone or buprenorphine, that a ~~patient~~person served may be taking, including the name of the ~~drug~~medication, the prescription number, the dose, the reason for prescribing, the name of the prescribing doctor, the pharmacy's name and telephone number, the date it was prescribed, and the length of time the ~~patient~~person served is to be taking the ~~drug~~medication. A release of information to the prescribing physician either by mail, facsimile or other acceptable electronic means allowing the medical director to coordinate treatment and discuss medications.

(b) Compliance with 450:70-3-5.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.4. Assessment and record content - Level of care

(a) The OTP shall have written policy and procedure stating that ~~patients~~persons served with two (2) or more unsuccessful managed withdrawal episodes within a twelve (12) month period must be assessed by the medical director or a program physician for identification of need for other forms of treatment. An OTP shall not admit a ~~patient~~person served for more than two (2) withdrawal management episodes in one (1) year.

(b) Compliance with these standards and criteria may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of all facility records, and
- (3) Investigations, site visits, treatment protocols, ~~patient~~clinical records, clinical service manuals and certification reviews.

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450:70-3-5.5. Assessment and record content - Care of minors

(a) ~~No person under eighteen (18) years of age may be admitted to maintenance treatment unless a parent, legal guardian or otherwise legally responsible adult designated by the relevant state authority consents in writing to such treatment.~~

(a) Written approval from a parent or guardian for a person served under the age of eighteen (18) admitted to maintenance treatment shall be obtained if required by law. If a minor is eligible to self-consent to treatment pursuant to state law, written approval from a parent or guardian is not required.

(b) Compliance with 450:70-3-5.5 may be determined by:

- (1) A review of policies and procedures,
- (2) treatment records, and
- (3) Other facility documentation.

450:70-3-5.6. Assessment and record content - Central registry

(a) The OTP shall have written policy and procedure outlining the requirement for the reporting of persons receiving medication assisted opioid treatment to the ODMHSAS. This report to the Central Registry shall be made electronically as requested by the Department and within twenty-four (24) hours of admission, change of medical status or discharge of any patientperson served.

(b) Compliance with 450:70-3-5.6 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.7. Assessment and record content - Consent and admission information

(a) The OTP shall have written policy and procedure stating the admission requirements for opioid treatment programs.

(b) All applicants for medication assisted opioid treatment shall sign a written consent for opioid treatment in the primary language of the applicant.

(c) The ~~patient~~-admission information shall contain, but not be limited to, the following:

- (1) Date of initial contact requesting services;
- (2) Identification information, including ~~Patient's~~the name, home address, and telephone number of the person served;
- (3) Referral source;
- (4) Mental status examination and findings;
- (5) History and physical information;
- (6) Family to be notified in case of emergency; and

(d) Compliance with 450:70-3-5.7 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.8. Assessment and record content - ASAM

(a) The OTP shall document and assess all ~~patient~~persons served for appropriateness of admission taking into account the ~~patient's~~needs of the person served as identified by, but not limited to:

- (1) Acute intoxication and/or withdrawal potential;
 - (2) Biomedical conditions and complications;
 - (3) Emotional, behavioral, or cognitive conditions and complications;
 - (4) Readiness to change;
 - (5) Relapse, continued used, or continued problem potential; and
 - (6) Recovery/living environment.
- (b) Compliance with 450:70-3-5.8 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.9. Assessment and record content - Supportive service array

(a) The OTP shall have a written policy and procedure that shall be made available to all ~~patients~~persons served, outlining rehabilitation services. Minimum services include:

- (1) Individual therapy or rehabilitation services until the ~~patient~~person served is fully stabilized and as indicated in this chapter;
- (2) Group and family therapy or rehabilitation services for spouses, parents, or significant others and as indicated in this ~~chapter~~Chapter;
- (3) Individual Placement and Support Services;
- (4) Case management services;
- (5) Peer recovery support services; and
- (6) Referral for additional services as outlined by the individualized treatment plan.

(b) Compliance with 450:70-3-5.9 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-3-5.10. Assessment and record content - Service notification

(a) The OTP shall have written policy and procedure requiring the ~~patient~~person served to be informed of all services that are available through the agency; and of all policies and procedures that may impact the ~~patient's~~treatment of the person served.

(b) There shall be written verification such notification was made, signed by the ~~patient~~person served.

(c) The OTP shall have written policy and procedure requiring the ~~patient~~person served be informed of the following upon admission:

- (1) The progression of opioid dependence and the ~~patient's~~assessed stage of opioid use disorder of the person served;
- (2) The goal and benefits of medication assisted opioid recovery services;
- (3) The signs and symptoms of overdose and when to seek emergency assistance;
- (4) The characteristics of opioid agonist and partial agonist treatment medication, including common side-effects and potential interaction effects with non-opioid agonist treatment medications and/or illicit drugs;

- (5) The requirement for staff members to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult;
 - (6) The requirement for staff members to comply with the confidentiality requirements of 42 CFR Part 2 and 45 CFR parts 160 and 164;
 - (7) Drug screening and urinalysis procedures;
 - (8) Take-home medication requirements;
 - (9) Testing and treatment available for HIV, HCV, tuberculosis and other communicable diseases;
 - (10) The process for a patientperson served to file a grievance with the agency for any reason, including involuntary discharge, and to have the client's grievance handled in a fair and timely manner; and
 - (11) The process for a patientperson served to file a grievance with the ODMHSAS PatientConsumer Advocate office ~~agency~~ for any reason, including involuntary discharge.
- (d) Compliance with 450:70-3-5.10 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.12. Assessment and record content - Co-occurring disorder

- (a) The OTP shall have written policy and procedure requiring the facility to ensure that, if, during the assessment or physical examination, a determination is made that a patientperson served may have a mental disorder, the patientperson served is referred for assessment and treatment of the mental disorder.
- (b) All required consents, for communication and collaboration with the patient's behavioral health professional to monitor and evaluate interactions between the client's opioid agonist or partial agonist treatment medication and any medications used to treat the patient's mental disorder of the person served are required to be completed and in the chart.
- (c) Compliance with 450:70-3-5.12 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.13. Assessment and record content - Medical

- (a) The OTP shall have written policy and procedure requiring the OTP to ensure that, if, during the assessment or physical examination, a determination is made that a patientperson served may have a medical condition requiring intervention, the patientperson served is referred for assessment and treatment of the medical condition.
- (b) The OTP will have all required consents, for communication and collaboration with the patient's health professional to monitor and evaluate interactions between the patient's opioid agonist or partial agonist treatment medication and medications used to treat the patient's medical condition of the person served.
- (c) Compliance with 450:70-3-5.13 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and

- (3) Other facility documentation.

450:70-3-5.14. Assessment and record content - Medical service refusal

- (a) The OTP shall have written policy and procedure allowing the medical director to refuse the admission and/or medication assisted opioid recovery services to any patientperson served if, in the reasonable clinical judgment of the medical director, the person would not benefit from such treatment. Prior to such a decision, appropriate staff should be consulted and the reason(s) for the decision must be documented by the medical director.
- (b) Compliance with 450:70-3-5.14 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.15. Assessment and record content - Identification [REVOKED]

- (a) ~~The OTP shall have written policy and procedure requiring the patient must present a valid form of photo identification which can include:~~
 - (1) ~~A valid, State authorized driver's license from the State of residence,~~
 - (2) ~~A valid federally authorized form of identification eard, or~~
 - (3) ~~A valid Tribal ID card with photograph from a federally recognized tribe.~~
- (b) ~~Photocopies shall be obtained upon admission and the copy must be maintained in the patient's record. The program shall document in the patient's file attempts to induce the patient to obtain state identification.~~
- (c) ~~Compliance with 450:70-3-5.15 may be determined by:~~
 - (1) ~~A review of policies and procedures,~~
 - (2) ~~Treatment records, and~~
 - (3) ~~Other facility documentation.~~

450:70-3-5.16. Assessment and record content - Initial dosing

- (a) OTPs shall develop and maintain written policies and procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:
 - (1) Methadone shall be administered or dispensed only in oral ~~and liquid~~ form and shall be formulated in such a way as to reduce its potential for parenteral abuse. ~~Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid.~~
 - (2) For each new patientperson served enrolled in a program, the initial dose of methadone shall not exceed thirty (30) milligrams and the total dose for the first day shall not exceed forty (40) milligrams, unless the program physician documents in the patient's clinical record that forty (40) milligrams did not suppress opiate abstinence symptoms.
 - (3) Any increase above forty (40) milligrams shall be based on the physician's medical judgment and documented in the chart.

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- (4) Buprenorphine may be administered in tablet or sublingual form.
- (5) Initial and later treatment dosing shall be determined by the medical director and according to best medical practice.
- (b) Compliance with 450:70-3-5.16 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-5.17. Assessment and record content - ~~Patient service~~Service refusal

(a) The OTP shall ensure that a ~~patient's~~ refusal of a particular service by a person served does not preclude the ~~patient~~person served from accessing other needed mental health or substance use disorder treatment services. Should the service provider determine the ~~patient's~~ needs of the person served cannot be met within the facility, clinical documentation of assessments and referrals for the ~~patient~~person served shall contain, at a minimum:

- (1) Date of initial contact requesting services;
- (2) Identification information, including ~~Patient's~~the name, home address and telephone number of the person served;
- (3) Referral source;
- (4) Mental status examination and results;
- (5) History and physical;
- (6) Family to be notified in case of emergency;
- (7) A continuing care plan;
- (8) What agency was contacted; and
- (9) Where and why the individual was referred.
- (b) Compliance with 450:70-3-5.16 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-6. Assessment - Process requirements

(a) Written policies and procedures governing the intake and assessment process shall specify the following:

- (1) The information to be obtained on all applicants or referrals for admission;
- (2) The procedures for accepting referrals from outside agencies or organizations;
- (3) The records to be kept on all applicants;
- (4) Any prospective ~~patient~~ data regarding the person served to be recorded during the intake process;
- (5) The procedures to be followed when an applicant or a referral is found ineligible for admission; and
- (6) The procedures and policies for the purpose of admitting and assessing persons with special needs or disabilities.
- (b) Compliance with 450:70-3-5.16 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-3-7. Biopsychsocial assessment

(a) All OTPs shall complete a biopsychsocial assessment which gathers sufficient information to assist the ~~patient~~person served in developing an individualized treatment plan. The OTP may utilize the current edition of the Addiction Severity Index (ASI) or develop a biopsychsocial assessment which contains, but not be limited to, the following:

- (1) Identification of the ~~patient's~~ strengths, needs, abilities, and preferences of the person served;
- (2) Presenting problem and history of the presenting problem;
- (3) Previous treatment history, including opioid substitution therapy:
 - (A) Mental health,
 - (B) Substance abuse, and
- (4) Health history and current biomedical conditions and complications;
- (5) Alcohol and drug use history;
- (6) History of trauma;
- (7) Family and social history, including family history of alcohol and drug use;
- (8) Educational attainment, difficulties, and history;
- (9) Cultural and religious orientation;
- (10) Vocational, occupational and military history;
- (11) Sexual history, including HIV, AIDS and STD at-risk behaviors;
- (12) Marital or significant other relationship history;
- (13) Recreational and leisure history;
- (14) Legal history;
- (15) Present living arrangement;
- (16) Economic resources;
- (17) Level of functioning;
- (18) Current support system;
- (19) Current medications, including the name of prescribing physician, name of medication, strength and dosage, and length of time the consumer has been on the medication;
- (20) ~~Patient's~~ Expectations of the person served in terms of service; and
- (21) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.

(b) The assessment shall be completed by a LBHP or licensure candidate.

(c) The assessment shall be completed as soon as possible after admission and no later than the third (3) therapy or rehabilitation service visit.

(d) In the event of a consumer re-admission after one (1) year of the last biopsychsocial assessment, a new biopsychsocial assessment shall be completed. If readmission occurs within one (1) year after the last biopsychsocial assessment, an update shall be completed.

(e) Compliance with 450:70-3-7 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

PART 7. SERVICE PLANNING

PART 5. BIOPSYCHSOCIAL ASSESSMENT

450:70-3-8. Individualized service planning

(a) Upon completion of the admission evaluation, an individualized service plan shall be developed by a LBHP or licensure candidate in collaboration with the person served. Service plans completed by a licensure candidate must be co-signed by a fully licensed LBHP.

(b) The service plan shall be based on the ~~patient's~~ presenting problems or diagnosis, intake assessment, biopsychosocial assessment, and expectations of ~~their~~ recovery of the person served.

(c) Frequency of services shall be determined by mutual agreement between the facility treatment team and the ~~patient~~ person served.

(d) Service plans shall be completed by the fourth visit after admission.

(e) The service plan review should occur according to the time frame required by the agency but, no less often than every six (6) months; and further, is required by any of the following situations:

- (1) Change in goals and objectives based upon ~~patient's~~ documented progress, or identification of any new problem;
- (2) Change in primary therapist or rehabilitation service provider assignment;
- (3) Change in frequency and types of services provided;
- (4) Critical incident reports; or
- (5) Sentinel events.

(f) Each ~~patient~~ person served accepted for treatment shall be assessed initially and periodically by qualified personnel to determine the most appropriate combination of services and treatment. The service plan also must identify the frequency and intensity of services to be provided.

(g) The plan must be reviewed and updated to reflect that ~~patient's~~ personal history, current needs for medical, social, and psychological services, and current needs for education, vocational rehabilitation, and employment services of the person served. Service plan updates shall be completed by an LBHP or licensure candidate. Service plan updates completed by a licensure candidate must be co-signed and dated by a fully licensed LBHP.

~~(h) The OTP will provide adequate and appropriate services to each patient as clinically necessary. Therapy shall be provided by a program LBHP or Licensure Candidate. Rehabilitation services must be provided by a LBHP, Licensure Candidate, CADC or Certified Case Manager II. Case Management services must be provided by a LBHP, Licensure Candidate, CADC, or Certified Case Manager I or II. Peer recovery support services must be provided by a Certified Peer Recovery Support Specialist. Individual Placement and Support (IPS) services must be provided by a provider trained and credentialed in IPS.~~

(h) Service plans, both comprehensive and update, must include dated signatures of the person served (if age fourteen [14] or older), the parent/guardian (if required by law), and the LBHP or Licensure Candidate. If a minor is eligible to self-

consent to treatment pursuant to state law, a parent/guardian signature is not required. Licensure candidate signatures must be co-signed by a fully-licensed LBHP in good standing. Signatures must be obtained after the service plan is completed.

(i) Compliance with 450:70-3-8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

PART 9. PROGRESS NOTES

450:70-3-9. Progress notes

(a) Unless defined otherwise by level of care, medication assisted opioid treatment services and any issues related to treatment shall be reflected by written documentation in the ~~patient's~~ clinical record that shall chronologically describe the services provided by date and, for timed treatment sessions, time of service, and the consumer's progress in treatment.

(b) Progress notes must be signed by the service provider and include the service provider's credentials.

(c) Compliance with 450:70-3-8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

PART 11. DISCHARGE

450:70-3-10. Discharge assessment

(a) All consumers shall be assessed for biopsychosocial appropriateness of discharge from each level of care using ASAM criteria that includes a list of symptoms for all six dimensions and each of the levels of care, to determine a clinically appropriate placement in the least restrictive level of care. This organized process involves a professional determination for appropriate placement to a specific level of care based on the consumer's severity of symptoms and current situations.

- (1) Acute intoxication and/or withdrawal potential;
- (2) Biomedical conditions and complications;
- (3) Emotional, behavioral or cognitive conditions and complications;
- (4) Readiness to change;
- (5) Relapse, continued use or continued problem potential; and
- (6) Recovery/living environment.

(b) Compliance with 450:70-3-10 may be determined by:

- (1) A review of policies and procedures, and
- (2) Discharge assessments in ~~patient~~ clinical records.

SUBCHAPTER 4. SERVICES SUPPORT AND ENHANCEMENT

PART 1. STAFF SUPPORT

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450:70-4-2. Clinical supervision [REVOKED]

(a) All OTPs shall provide clinical supervision for those delivering direct services and shall be provided by persons qualified to provide clinical supervision as determined by state licensure or certification.

(b) All OTPs shall have written policy and procedures, operational methods, and documentation regarding clinical supervision for all direct treatment staff and service staff. These policies shall include, but are not limited to:

- (1) Credentials required for the clinical supervisor;
- (2) Specific frequency for case reviews with treatment and service providers;
- (3) Methods and time frames for supervision of individual, group, and educational treatment services; and
- (4) Written policy and procedures defining the program's plan for appropriate provider to patient ratio, and a plan for how exceptions may be handled.

(c) Ongoing clinical supervision should address:

- (1) The appropriateness of services selected for the patient;
- (2) Service effectiveness as reflected by the patient meeting his/her individual goals; and
- (3) The provision of feedback that enhances the clinical skills of direct service staff and service providers.

(d) Compliance with 450:70-4-2 may be determined by:

- (1) A review of policies and procedures;
- (2) Clinical services manuals;
- (3) Clinical supervision manuals;
- (4) Documentation of clinical supervision;
- (5) Personnel records;
- (6) Treatment records;
- (7) Interviews with staff; and
- (8) Other facility documentation.

(e) Failure to comply with 450:70-4-2 will result in the initiation of procedures to deny, suspend and/or revoke certification.

450:70-4-3. Staff privileging [REVOKED]

(a) Each OTP shall have policy and procedure for documenting and verifying the training, experience, education, and other credentials of service providers prior to their providing clinical services.

(b) Each OTP shall have written policy and procedures and operational methods for evaluating the professional qualifications of service providers providing clinical services, including those who perform staff privileging evaluations and the verification process, and the granting of privileges.

(c) All service providers shall be documented as privileged prior to performing clinical services.

(d) The evaluation and verification of professional qualifications includes, but is not limited to, the review and verification of:

- (1) Professional degree(s) via official college transcript(s);
- (2) Professional licensure(s);
- (3) Professional certification(s);
- (4) Professional training;
- (5) Professional experience; and

(6) Other qualifications as set forth in the position's job description.

(e) Each OTP shall minimally perform an annual review of current licensure, certifications, and current qualifications for privileges to provide specific treatment services.

(f) Compliance with 450:70-4-3 may be determined by:

- (1) A review of policies and procedures;
- (2) Clinical supervision manuals;
- (3) Personnel records;
- (4) Privileging documents;
- (5) Interviews with staff; and
- (6) Other facility documentation

450:70-4-4. Staffing - Dosing coverage

(a) The OTP shall have written policy and procedure requiring at least two (2) staff members be present on the premises during dispensing hours. At least one (1) of the staff members shall be appropriately licensed to dispense approved FDA-approved opioid agonist or partial agonist drugs/medications. It is recommended that physicians have, or be in the process of obtaining, specialty certification and/or licensure related to opioid treatment.

(b) Compliance with 450:70-4-4 may be determined by:

- (1) a review of policies and procedures,
- (2) staff schedules,
- (3) treatment records, and
- (4) other facility documentation.

450:70-4-4.1. Staffing - Transportation, dispensing and responsibility

(a) The OTP shall have written policy and procedure to ensure that only appropriately trained and licensed medical personnel shall be allowed access to, transportation of, dispensing of, administration of, or responsibility for approved opioid agonist or partial agonist medications.

(1) Access to medication deliveries to an OTP shall be received, secured and inventoried by program personnel specifically designated for this task.

(2) Acceptance of delivery of scheduled drugs/medications must be made only by a licensed practitioner employed at the OTP or other authorized individuals designated in writing who must sign for all scheduled drugs/medications. Staff who are currently or previously experience a significant opioid use disorder are not allowed to perform this function.

(3) The OTP shall have one staff member to have primary responsibility for receiving, securing and inventorying medications.

(4) The OTP also shall identify additional program personnel who have authority to receive, store and inventory the medication at times when the individual designated to have primary responsibility is not available.

(5) The OTP shall maintain a written list of all designated personnel who have been authorized to receive, store and inventory the medication. This list shall be updated whenever a change in designated personnel occurs.

(b) Transportation of opioid medications by OTP staff shall also:

- (1) Be limited to persons served by the OTP patients in a residential treatment facility, hospital, long-term care/long-term care facility, or jail, or consumers receiving treatment through a mobile medication unit in accordance with 450:70-6-10.1; and
- (2) ~~Always~~Be done with an appropriate chain of custody form, such as the one available through the Division of Pharmacologic Therapies within SAMHSA.

(c) Compliance with 450:70-4-4.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Personnel records,
- (3) Privileging documents,
- (4) Training records,
- (5) Interviews with staff, and
- (6) Other facility documentation.

450:70-4-4.2. Staffing - Medical Director coverage

(a) The OTP shall have written policy and procedure requiring the medical director be present, on site for two hours each week during normal dispensing hours for every one hundred (100) active ~~patients~~persons served in an OTP. ~~In this instance, a designee cannot substitute for the medical director.~~

(b) ~~For this standard, substituting a program physician, physician assistant or certified nurse practitioner for the medical director is not sufficient.~~

(b) With the exception of short-term, ad hoc absences, a designee cannot substitute for the medical director. For short-term, ad hoc absences such as those due to illness or planned time off, a physician or physician assistant may temporarily serve as a substitute for the medical director.

(c) Compliance with 450:70-4-4.2 may be determined by:

- (1) A review of policies and procedures,
- (2) Staff schedules,
- (3) Privileging documents,
- (4) Employee contracts,
- (5) Interviews with staff, and
- (6) Other facility documentation.

450:70-4-4.3. Staffing - Training

(a) The OTP shall have written policy and procedure requiring each person engaged in the medication assisted recovery services for a significant opioid use disorder to have sufficient education, training, and/or experience to enable that person to perform the assigned duties and functions. This includes specific training in opioid related treatment service options. All physicians, nurses, and other licensed professional care providers, including therapists and rehabilitation service providers, must comply with the credentialing requirements of their respective professions. Hiring preference should be given to staff with substance use disorder and/or opioid use disorder treatment specific licenses and certifications.

(1) All direct service and medical staff shall receive training relevant to service delivery in a medication assisted opioid treatment setting. There shall be seven (7) clock hours of such training during each year.

(2) All direct service staff shall receive initial training and ongoing training updates for all personnel employed by the treatment facility covers at a minimum:

- (A) Rights of ~~the patients~~persons served served;
- (B) Person and family centered services;
- (C) The prevention of violence in the workplace;
- (D) Confidentiality requirements;
- (E) Cultural competency; and
- (F) Expectations regarding professional conduct.

(3) All physicians working in an OTP should have, or be in the process of obtaining, specialty certification and/or licensure related to medication assisted opioid and/or substance use disorder treatment.

(b) Compliance with 450:70-4-4.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Credentialing and privileging documents,
- (3) Training records,
- (4) Interviews with staff, and
- (5) Other facility documentation.

450:70-4-4.4. Staffing - Qualifications

(a) The OTP shall have written policy and procedure requiring ~~opioid agonist or partial agonist treatment~~FDA-approved medications for opioid use disorder be administered or dispensed only by a practitioner licensed and registered under the appropriate State and Federal laws to administer or dispense such ~~drugs/medications, or by an agent of such practitioner if the agent is supervised by and under the order of the licensed practitioner, if the agent is authorized by Federal and State law to administer or dispense medications for opioid use disorder.~~

(b) The facility shall maintain documentation verifying the qualifications for the service providers.

(c) Staff shall be, at least, ~~twenty-one~~twenty-one (21) years old (excluding student interns).

(d) Compliance with 450:70-4-4.4 may be determined by:

- (1) A review of policies and procedures,
- (2) Credentialing and privileging documents,
- (3) Interviews with staff, and
- (4) Other facility documentation.

(e) Failure to comply with 450:70-4-4.4 will result in the initiation of procedures to deny, suspend and/or revoke certification.

PART 3. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:70-4-5. Service support and enhancement

(a) Each OTP shall have written policies and procedures describing operational methods, administration and organization adequate to ensure quality ~~patient~~care, ability to operate in accordance with all approved accreditation elements and to meet the requirements of all pertinent Federal, State and local laws and regulations. In addition, an OTP will operate in accordance with all approved accreditation elements; including the OBNDD, DEA and SAMHSA.

(b) OTPs will produce evidence of a current and valid certification from SAMHSA to be considered qualified to dispense

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opioid ~~drugs~~medications in the treatment of significant opioid use disorders and dependence. Prior to beginning the delivery of medication-assisted opioid recovery services, an OTP must apply for and receive a permit for temporary operations from ODMHSAS.

(c) An OTP must produce evidence that the program has been determined under the Controlled Substances Act to be qualified and registered to dispense opioid agonist treatment medications to individuals for treatment of significant opioid use disorders and opioid dependence.

(d) In order to retain ODMHSAS certification an OTP shall produce within twelve (12) months of opening, a current, valid accreditation by an accreditation body or other entity designated by SAMHSA such as CARF, JC, or COA including a written description of the current accreditation status of the OTP and must comply with any additional conditions for certification established by SAMHSA.

(e) Compliance with 450:70-4-5 may be determined by:

- (1) A review of policies and procedures,
- (2) Current certifications, accreditations, registrations, and licenses, and
- (3) Other facility documentation.

450:70-4-5.1. Organizational - Staffing

(a) An OTP shall have an accurate and current description of organizational structure including;

- (1) The names and contact information of all persons responsible for the OTP.
- (2) The current addresses of the OTP and of each additional facility, medication unit or additional site under the control of the OTP providing opioid agonist treatment services, and
- (3) The sources of any funding other than patient fees from persons served for the OTP including the name and address of any governmental entity that provides such funding.

(b) Each OTP shall formally designate a program sponsor and medical director.

(1) The program sponsor shall agree in writing on behalf of the OTP to adhere to all requirements set forth in this chapter and any regulations regarding the use of opioid agonist or partial agonist treatment medications in the treatment of significant opioid use disorders which may be promulgated in the future.

(2) The medical director shall agree in writing to assume responsibility for administration of all medical services performed by the OTP. In addition, the medical director shall be responsible for ensuring that the OTP is in compliance with all applicable Federal, State, and local laws and regulations.

(c) Compliance with 450:70-4-5.1 may be determined by:

- (1) A review of policies and procedures, and
- (2) Other facility documentation.

450:70-4-5.2. Organizational - Structure and documentation [REVOKED]

~~(a) The OTP shall have a written organizational description, which is reviewed annually and minimally includes:~~

- ~~(1) The overall target population for whom services will be provided;~~
- ~~(2) The overall mission statement;~~
- ~~(3) The annual facility goals and objectives; and~~
- ~~(4) Documentation that these statements have been approved by the OTP's governing authority.~~

~~(b) The OTP shall have documentation demonstrating the documents listed in section (a), (1) through (4) above are available and communicated to staff.~~

~~(c) The OTP shall have documentation demonstrating the documents listed in section (a), (1) through (4) above are available to the general public upon request.~~

~~(d) Each OTP shall have in writing, by program component or service, the following:~~

- ~~(1) A description of the program;~~
- ~~(2) The philosophy of the program;~~
- ~~(3) Program goals and objectives;~~
- ~~(4) Identification of service providers to provide these services; and~~
- ~~(5) Admission and exclusionary criteria to identify the type of patients for whom the services are primarily intended.~~

~~(e) A written statement of the procedures and plans for attaining the facility goals and objectives. These procedures and plans should define specific tasks, set target dates and designate staff responsible for carrying out the procedures and plans.~~

~~(f) Compliance with 450:70-4-5.2 shall be determined by:~~

- ~~(1) A review of the facility's target population definition;~~
- ~~(2) Facility policy and procedures;~~
- ~~(3) Mission statement;~~
- ~~(4) Written plan for professional services;~~
- ~~(5) Other stated required documentation; and~~
- ~~(6) Other facility documentation.~~

450:70-4-5.4. Organizational - Fee structure and exceptions

(a) The OTP shall have written policy and procedure establishing a standard fee for patients~~persons served~~ receiving methadone as part of a medication assisted treatment program that shall be inclusive of all regular and normal, clinical, administrative and medical services and procedures and be no more than \$65.00 per week, unless an exception is approved by ODMHSAS .

(b) Unless otherwise specified in this chapter, requirements, and exceptions, for each type of opioid treatment services shall apply, as required by 42 CFR, Chapter 1, Part 8.

(c) The fee for patients~~persons served~~ receiving buprenorphine as part of a medication assisted treatment program shall be set by the OTP medical director.

(d) Compliance with 450:70-4-5.4 may be determined by:

- (1) A review of policies and procedures,
- (2) Interviews with staff, and
- (3) Other facility documentation.

450:70-4-6. New program approval

(a) Determination of the need for new services shall be at the sole discretion of ODMHSAS as the designated state authority responsible for medication assisted opioid recovery services through information provided by the proposed new agency including:

- (1) Copies of all planned promotional materials, advertisements, and marketing strategies to publicize the proposed program;
- (2) Policies and procedures that will be used to identify if a ~~patient~~person served is enrolled in another clinic;
- (3) The source and adequacy of financial assets necessary to operate the program;
- (4) If applicable, the compliance history of the applicant, including any issues reported to ODMHSAS by SAMHSA, DEA or any other regulatory agency;
- (5) Adequate planning and organizational structure demonstrated by full and complete answers submitted to all questions in the application materials;
- (6) A written statement that the applicant has read, understood and agreed to follow all federal and state regulations concerning operation of an OTP signed by the program sponsor and the medical director;
- (7) Documentation of the need for new services in the area as demonstrated by providing ODMHSAS with waiting lists, numbers of opioid related emergency room visits, opioid related arrest data, and federal drug use forecasting data;
- (8) Demonstration of the general community acceptance by providing ODMHSAS with copies of letters of support from local authorities and local residents living near the site;
- (9) Additional information and documentation for medication units in accordance with SAMHSA guidelines and as requested by ODMHSAS, if applicable; and
- (10) Written documentation that ODMHSAS has received and accepted all the requirements listed above.

(b) Compliance with 450:70-4-7 may be determined by:

- (1) A review of policies and procedures,
- (2) On-site verification of hours posted,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-7. Operations - Hours

(a) The OTP shall have policy and procedure to define operations for a minimum of forty (40) hours per week, (excluding holidays and emergency closure) in outpatient settings and twenty-four (24) hours per day in inpatient and residential program settings.

(b) The OTP shall have written policy and procedure for medication dispensing available at least six (6) days per week in outpatient settings; and seven (7) days per week in inpatient and residential settings with approval from SAMHSA.

(c) The facility shall be publicly accessible and accommodate office space, individual and group therapy/rehabilitation service space, secure record storage, and protect consumer confidentiality, ~~and provide a safe, warm, welcoming, culturally and age appropriate environment.~~

(d) Hours of operation shall be during regularly scheduled times in which services are accessible to consumers and the general public, including those employed between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. To accomplish this, the OTP shall have written policy and procedure providing at least two (2) hours per day either prior to 9:00 a.m. or after 5:00 p.m. for dispensing medication and therapy/rehabilitation services.

(e) For facilities that do not provide twenty-four (24) hour services, the facility's hours of operation shall be conspicuously displayed on the outside of the building. For facilities in multi-office buildings, the hours shall be posted either on the building directory or the facility's office door.

(f) Clinical services shall be organized with scheduled treatment sessions that accommodate schedules of persons served who are employed and parenting patients' schedules, and offer treatment services during the day, evening, or weekends.

(g) Compliance with 450:70-4-7 may be determined by:

- (1) A review of policies and procedures,
- (2) Personnel records,
- (3) On-site verification,
- (4) Interviews with staff, and
- (5) Other facility documentation.

450:70-4-7.2. Operations - Dual enrollments

(a) The OTP shall have written policy and procedure stating ~~methadone or buprenorphine~~FDA-approved medications shall not be provided to a ~~patient~~person served who is known to be currently receiving ~~methadone or buprenorphine~~medications from another OTP. ~~Patients~~Persons Served who are known to be enrolled in more than one OTP at a time shall be required to choose one ~~clinic~~OTP for treatment. ~~That patient must then begin treatment as a new patient, including attending the clinic on a daily basis a minimum of six days per week, for a period of six months.~~ The ~~patient~~person served must also be reported to the SOTA.

(b) Compliance with 450:70-4-7.2 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-7.3. Operations - Dosing considerations

(a) The OTP shall have written policy and procedure stating that methadone shall be dispensed orally and in liquid form only. Non-oral forms and tablet form methadone are prohibited from use. Tablet and sublingual forms of buprenorphine are allowed.

(b) Each OTP shall develop written policies and procedures giving preference to the use of liquid and diskette forms of methadone. Diskettes shall be dissolved in liquid prior to being dispensed, or dissolved in liquid by the patient in full and clear view of OTP staff.

(c) OTPs shall have written policies and procedures adequate to ensure that each opioid agonist and partial agonist treatment medication used by the program is administered and dispensed in accordance with its approved product labeling.

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(d) Written policy and procedure shall reflect that dosing and administration decisions shall be made by a program physician familiar with the most up-to-date product labeling. These procedures must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's clinical record.

(e) The OTP shall have written policy and procedure stating the OTP shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration for use in the treatment of significant opioid use disorders and opioid dependence.

(f) The OTP shall be fully compliant with the protocol of any investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized under an investigational new drug application through all applicable Federal law for investigational use in the treatment of significant opioid use disorders and opioid dependence.

(g) Compliance with 450:70-4-7.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-7.4. Operations - Emergencies and exception for weekend dosing

(a) The OTP shall maintain written policy and procedures for handling medical emergencies; and an emergency medical number shall be posted for use by staff.

(b) Crisis intervention and therapy/rehabilitation services shall be available when indicated.

(c) If the OTP is closed on Sunday or for holidays, there shall be written policy and procedure describing the process for providing services to and dosing for those patients persons served who are not assessed as appropriate to receive a single take home dose. The medical director shall be responsible for determining whether a patient person served can safely be dispensed opioid treatment drugs medications for unsupervised use. The basis for the decision shall be, at a minimum, the nine criteria listed in 450:70-4-8 (g), (1) through (9).

(d) Compliance with 450:70-4-7.4 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-4-8. Drug testing

(a) Each OTP shall have written policy and procedure ensuring that an initial drug test is performed for each new patient person served, including permanent ~~transfer~~ transfers patients, before the initial or maintenance dose is administered. ~~At least monthly random tests are to be performed on each patient in comprehensive maintenance treatment for the initial year of treatment. A minimum of twelve (12) random drug~~

~~tests annually with no less than one (1) per quarter are required thereafter.~~ All drug testing shall be in accordance with all state and federal law and current drug screen standards. Unless federal opioid treatment standards at 42 CFR § 8.12 state otherwise, OTPs must provide drug tests that have received FDA marketing authorization for commonly used and misused substances that may impact safety, recovery, or otherwise complicate treatment. A minimum of eight (8) random drug tests shall be performed each year for each person served, with the exception of persons served with extenuating circumstances which are documented in the clinical record.

(b) Each OTP shall conduct drug testing in accordance with the following:

(1) When a sample is collected from each patient person served for such test or analysis, it must be done in a manner to produce timely and reliable results.

(2) The OTP must have and follow written procedures for the screening of test samples for all drugs. The procedures shall describe in sufficient detail a plan for collection, storage, handling and analysis of test samples. The procedures shall further describe the program's response to test results that include at least the following:

(A) training for staff members of the importance and relevance of reliable and timely drug abuse test procedures and reports, the purpose of conducting drug tests, and the clinical significance of the results;

(B) A protocol for collection of test samples that minimizes the opportunity for falsification and incorporates the element of randomness;

(C) A protocol for storage of test samples in a secure place to ensure chain of custody and avoid substitution;

(D) A requirement for disclosure of test sample results to the patient person served and documentation in the patient clinical record of program and patient the response to the test results of the program and person served;

(E) Policy and procedure designed to reduce the negative and/or stigmatizing aspects of drug test collection;

(F) Policy stating that if a patient person served refuses to provide a test sample, upon request from a staff member, such refusal shall be considered the same as a positive result for illicit drugs. Such refusals shall be documented in the patient clinical record; and

(G) There shall be no "grace period" allowed. Patients Persons served from which a UA is requested must submit a sample at that time or it will be considered a refusal.

(bc) Compliance with 450:70-4-7.8 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Staff training records,
- (4) Interviews with staff, and
- (5) Other facility documentation.

450:70-4-8.1. Drug testing - Withdrawal Management [REVOKED]

- (a) For patients in short term withdrawal management, the OTP shall perform at least one initial drug test.
- (b) For patients receiving long term withdrawal management, the OTP shall perform initial and monthly random tests on each patient as indicated in 450:70-4-8(a).
- (c) ~~If the patient has more than one positive urine drug screen in any twelve (12) month period then upon the second positive UA the facility will initiate at least one (1) of the following two (2) items;~~
 - (1) ~~Reduce the patient in Phase, or~~
 - (2) ~~Initiate an individualized written relapse prevention plan consisting of;~~
 - (A) ~~The patient continuing to receive medication assisted opioid recovery services as long as such treatment is medically necessary, acceptable to the patient and administrative withdrawal is not indicated,~~
 - (B) ~~Address and identify other behavioral issues consistent with relapse in the patient's service plan,~~
 - (C) ~~Review the patient's service plan and adjust, if necessary, at the first signs of the client's relapse or impending relapse, and~~
 - (D) ~~Ensure the client's family members are provided opportunities to be involved in the client's treatment.~~
- (d) Compliance with 450:70-4-8.1 may be determined by:
 - (1) ~~A review of policies and procedures,~~
 - (2) ~~Treatment records,~~
 - (3) ~~Interviews with staff, and~~
 - (4) ~~Other facility documentation.~~

450:70-4-8.2. Drug testing - Required substance identification

- (a) The OTP shall have written policy and procedure stating drug screens will follow federal guidelines and will, at a minimum, test for the following substances;
 - (1) Opioids;
 - (2) Methadone;
 - (3) Amphetamines;
 - (4) Cocaine;
 - (5) Benzodiazepines; and
 - (6) Barbiturates.
- (b) The OTP shall have written policy and procedure stating drug testing shall include other drugs as may be indicated by the patient's abuse patterns of the person served. In addition, if any other drug or drugs have been determined by a program to be abused in that program's locality, or as otherwise indicated, each test or analysis must include any such drugs.
- (c) The OTP shall have written policy and procedure stating that following admission, the results of a single drug test shall not be the sole basis to determine significant treatment decisions.
- (d) Compliance with 450:70-4-8.2 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records,
 - (3) Interviews with staff, and

- (4) Other facility documentation.

450:70-4-8.3. Unsupervised take-home doses Take-home doses, general criteria

- (a) The OTP shall have written policy and procedure stating that unsupervised ~~take-home~~take-home use shall be determined by the medical director. In determining which ~~patients~~persons served may be permitted unsupervised take-home use, the medical director shall consider the following criteria in determining whether a ~~patient~~person served is responsible in handling opioid ~~drugs~~medications for ~~unsupervised~~ use. The same criteria shall be considered when receiving a ~~patient~~person served from a transferring program verifying the amount of time the ~~patient~~person served has spent satisfactorily adhering to the criteria found below. This information will be used to determine if the ~~patient~~person served shall be allowed to continue the same frequency of clinic attendance permitted at the former program immediately before transferring to the new program. Criteria include but are not limited to:
 - (1) Absence of recent unapproved use of drugs (opioid or non-narcotic), including alcohol;
 - (2) Regular clinic attendance;
 - (3) Absence of serious behavioral problems at the clinic;
 - (4) Absence of known recent criminal activity, e.g., drug dealing;
 - (5) Stability of the ~~patient's~~person's home environment and social relationships of the person served;
 - (6) Length of time in comprehensive maintenance treatment;
 - (7) Assurance that take-home medication can be safely stored within the ~~patient's~~person's home of the person served;
 - (8) Whether the rehabilitative benefit the ~~patient~~person served derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion; and
 - (9) The ~~patients~~person's current phase in treatment of the person served.
- (b) ~~The OTP shall have written policy and procedure stating approval for unsupervised use and the basis for such determinations consistent with all criteria shall document such determinations in the patient's medical record.~~
- (b) Such determinations and the basis for such determinations consistent with the criteria above shall be documented in the clinical record.
- (c) The medical director, using reasonable judgment, may deny or rescind the take-home medication privileges of a person served.
- (d) No unsupervised or take-home doses shall be dispensed to persons served in short-term withdrawal management or interim maintenance treatment.
- (e) Compliance with 450:70-4-8.3 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records,
 - (3) Interviews with staff,
 - (4) Incident reports, and
 - (5) Other facility documentation.

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450:70-4-8.4. Take-home doses, general requirements

(a) The OTP shall have written policy and procedure describing practices in accordance with the principle that take-home doses of methadone and buprenorphine are a privilege given only to those persons served who will benefit from them and who have demonstrated responsibility in taking methadone or buprenorphine as prescribed including:

(1) Programs must educate the person served regarding safe transportation and storage of methadone, as well as emergency procedures in case of accidental ingestion.

(2) Before take-home privileges are allowed, the person served must have a lock box for transportation of methadone and home storage.

(3) The program shall address the responsibilities of persons served granted take-home medications. The policies shall include methods of assuring appropriate use and storage of medication by persons served.

(4) The program shall address the disposal of take-home bottles for methadone to include:

(A) Requiring take-home bottles to be returned to the OTP and to require labels to be intact and the consequences for not returning bottles described.

(B) Allowing disposal of take-home bottles to include procedures to insure the ability of the OTP to check for diversion by requiring persons served to submit used take-home bottles in "call backs."

(b) Compliance with 450:70-4-8.4 may be determined by:

(1) A review of policies and procedures,

(2) Treatment records, and

(3) Other facility documentation.

450:70-4-8.5. Take-home doses, limits

(a) With the exception of FDA-approved buprenorphine and buprenorphine combination products for opioid use disorder, take-home doses shall be limited, in accordance with 42 CFR § 8.12. Unless requirements at 42 CFR § 8.12 state otherwise, take-home doses shall be limited as follows:

(1) Any person served in comprehensive treatment may receive their individualized take-home doses as ordered for days the OTP is closed for business, including one weekend day and State and Federal holidays, regardless of length of time in treatment.

(2) During the first fourteen (14) days of treatment, the take-home supply (beyond that of (1) in this subsection) is limited to seven (7) days.

(3) Beginning at fifteen (15) days of treatment, the take-home supply (beyond that of (1) in this subsection) is limited to fourteen (14) days.

(4) Beginning at thirty-one (31) days of treatment, the take-home supply (beyond that of (1) in this subsection) is limited to twenty-eight (28) days.

(b) Compliance with 450:70-4-8.5 may be determined by:

(1) A review of policies and procedures,

(2) Treatment records, and

(3) Other facility documentation.

450:70-5-3. ODMHSAS advocate general

(a) The ODMHSAS Advocate General, in any investigation regarding consumer rights, shall have access to consumers, facility records and facility staff as set forth in Title 450, Chapter 15.

(b) Compliance with 70-5-3 may be determined by a review of the following:

(1) Policy and Procedures,

(2) Review of all facility records, and

(3) Investigations, site visits, treatment protocols, patient clinical records, clinical service manuals and certification reviews.

SUBCHAPTER 6. SUBSTANCE USE DISORDER TREATMENT SERVICES

PART 1. CASE MANAGEMENT

450:70-6-1. Case management, ~~adults~~ services

~~OTPs shall comply with all applicable rules in Title 450, Chapter 50. Standards and Criteria for Certified Behavioral Health Case Managers.~~

(a) Case management services shall be provided in accordance with Chapter 50 of this Title and shall include planned referral, linkage, monitoring and support, and advocacy assistance provided in partnership with a person served to support that individual in self-sufficiency and community tenure. Activities include:

(1) Completion of strengths based assessment for the purpose of individual plan of care development;

(2) Development of case management care plan which can be reflected as a part of the comprehensive service plan;

(3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources;

(4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc.;

(5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress;

(6) Follow-up contact with the persons served regarding missed appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and

(7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to prevent progression to a higher level of care.

(b) Individuals providing case management services shall be an LBHP, Licensure Candidate, CADC or certified as a behavioral health case manager pursuant to Chapter 50 of this Title.

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(c) Compliance with this Section may be determined by a review of clinical records, policy and procedures, and facility personnel records.

PART 2. LEVELS OF TREATMENT

450:70-6-5. Withdrawal Management

(a) Any OTP providing medication assisted recovery services shall provide both ~~short and long term~~short- and long-term withdrawal management as defined in 450:70-6-7 and 450:70-6-8.

(b) The OTP shall have written policy and procedure defining the protocols developed, implemented, and complied with for withdrawal management. Protocols shall:

- (1) Promote successful withdrawal management;
- (2) Require that dose reduction occur at a rate well tolerated by the patientperson served;
- (3) Require that a variety of ancillary services, such as mutual support groups, be available to the patientperson served through the agency or through referral;
- (4) Require that the amount of therapy/rehabilitation services available to the patientperson served be increased prior to discharge; and
- (5) Require that a patientperson served be re-admitted to the agency or referred to another agency at the first indication of relapse unless it is an administrative withdrawal process.

(6) There is no minimum time in treatment requirement for patientspersons served receiving buprenorphine when granting take-home privileges.

(c) Compliance with 450:70-6-5 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-6-5.1. Withdrawal management - Maintenance to withdrawal management

(a) The OTP shall have written policy and procedure stating patientspersons served involved in maintenance management will enter withdrawal treatment:

- (1) Only when initiated as administrative withdrawal or when requested by the patientperson served and approved by the OTP medical director; and
- (2) When planned and supervised by the medical director or a program physician.

(b) The OTP shall have written policy and procedure stating that before a patientperson served begins managed withdrawal, the patientperson served must be:

- (1) Informed by the agency medical director, a program physician or a staff member that:
 - (A) The patientperson served has the right to leave opioid treatment at any time,
 - (B) The risks of managed withdrawal and
 - (C) Signs and symptoms of relapse.

(2) The patientperson served will receive a schedule for medical withdrawal management developed by the

medical director or a program physician with input from the patientperson served.

(c) Compliance with 70-6-5.1 may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of treatment records, and
- (3) Any other supporting facility documentation.

450:70-6-5.2. Withdrawal management- Reentering maintenance treatment

(a) The OTP shall have written policy and procedure stating that if a patientperson served who is receiving managed withdrawal for reasons other than administrative withdrawal, appears to a staff member to relapse, the patientperson served is permitted to reenter maintenance treatment services, if otherwise eligible;

(b) The OTP shall have written policy and procedure stating that if a patientperson served who has completed managed withdrawal services within the past thirty (30) days appears to a staff member to relapse, the patientperson served may be re-admitted to treatment without physical examination or assessment unless requested by the medical director.

(c) The OTP shall ensure there shall be periodic consideration given to withdrawing from continued opioid treatment services, when appropriate to the patient's progress and goals of the person served.

(1) Consideration for withdrawal from continued medication assisted opioid recovery services shall be discussed at least once annually with the patientperson served.

(2) Such consideration and decisions shall be determined by the patientperson served, medical director, and the program staff as part of an individualized treatment planning process and treatment progress.

(d) Compliance with 70-5-2 may be determined by a review of the following:

- (1) Policy and Procedures,
- (2) Review of treatment records, and
- (3) Any other supporting facility documentation.

450:70-6-6. Administrative withdrawal

(a) The OTP shall have written policy and procedure stating an infraction of program rules by a patientperson served may result in administrative medical withdrawal from methadone or buprenorphine and termination from treatment services. All patientspersons served will be notified of this policy. The program shall develop specific program requirements to address noncompliance with program rules resulting in termination. The violation or noncompliance with rules shall be limited to;

- (1) Threats of violence or actual bodily harm to staff or another patientperson served, including abusive language or behavior;
- (2) Disruptive behavior, loitering;
- (3) Diversion of methadone, selling, distributing, using, or otherwise "dealing" in any illicit drug or chemical, including positive urine tests for non-prescribed medications and drugs;

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- (4) Continued unexcused absences from therapy/rehabilitation services and other support services;
 - (5) Involvement in criminal activities;
 - (6) Any other serious rule violations; and
 - (7) Non-payment of fees.
- (b) The OTP shall ensure administrative medical withdrawal shall be scheduled in such a way as to minimize the psychological and physical effects of such withdrawal.
- (1) Administrative medical withdrawal shall be completed in a manner appropriate to the client's level of medication and the circumstances justifying such action;
 - (2) Programs may facilitate a transfer to another program or referral to a medical facility in lieu of administrative medical withdrawal; and
 - (3) Administrative withdrawal resulting from non-payment of fees cannot be accomplished in less than fifteen (15) days.
- (c) The OTP shall have written policy and procedure stating a ~~patient~~person served experiencing administrative withdrawal shall be referred or transferred to an agency that is capable of, or more suitable for, meeting the ~~patient's~~needs of the person served. The referral or transfer is documented in the ~~patient~~clinical record and the following information is documented in the ~~patient~~clinical record:
- (1) The reason that the ~~patient~~person served sought medical withdrawal or was placed on administrative withdrawal; and
 - (2) The information and assistance provided to the ~~patient~~person served in managed withdrawal, medical withdrawal or administrative withdrawal.
- (d) Compliance with 450:70-6-6 may be determined by:
- (1) A review of policies and procedures,
 - (3) Treatment records,
 - (4) Critical incident reports,
 - (5) Interviews with staff, and
 - (6) Other facility documentation.

450:70-6-7. ~~Short-term~~Short-term managed withdrawal

- (a) The OTP shall have written policy and procedure regarding ~~short-term~~short-term managed withdrawal treatment services.
- (b) There shall be written policy stating a ~~patient~~person served may be admitted to short-term managed withdrawal regardless of age. ~~Patients~~Persons served under the age of eighteen (18) may be admitted with written parent or guardian approval.
- (c) The program physician shall document in the ~~patient~~clinical record the reason for admitting the ~~patient~~person served to short-term managed withdrawal.
- (d) Take-home medication is not allowed during short-term managed withdrawal.
- (e) A history of one year or more opioid dependence and an attempt at another form of treatment is not required for admission to short-term managed withdrawal.
- (f) No test or analysis is required except for the initial drug screening test, and a tuberculin skin test.

- (g) The initial treatment plan and periodic treatment plan evaluation required for ~~persons served in~~persons served in comprehensive maintenance ~~patients~~are required for persons served in short-term managed withdrawal ~~patients~~.
- (h) A primary LBHP, Licensure Candidate or CADC must be assigned by the program to monitor a ~~patient's~~progress toward the goal of short-term withdrawal management and possible drug-free treatment referral.
- (i) Methadone is required to be administered daily by the OTP in reducing doses to reach a drug-free state over a period not to exceed thirty (30) days. Buprenorphine shall be administered as determined by the OTP medical director.
- (j) All other requirements of comprehensive maintenance treatment apply.
- (k) Compliance with 450:70-6-7 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records,
 - (3) Interviews with staff, and
 - (4) Other facility documentation.

450:70-6-8. ~~Long-term~~Long-term managed withdrawal

- (a) There shall be written policy stating a person served may be admitted to long-term managed withdrawal regardless of age. ~~Patients under the age of eighteen (18) with written parent or guardian approval.~~Written approval from a parent or guardian for a person served under the age of eighteen (18) shall be obtained if required by law. If a minor is eligible to self-consent to treatment pursuant to state law, written approval from a parent or guardian is not required.
- (b) Methadone is required to be administered daily in reducing doses to reach a drug-free state over a period not to exceed one hundred and eighty (180) days. Buprenorphine shall be administered as determined by the OTP medical director.
- (c) The ~~patient~~person served is required to be under observation while ingesting the drug at least six (6) days a week. This is not required for buprenorphine.
- (d) Initial and random monthly drug screening tests must be performed on each ~~patient~~person served.
- (e) Initial service plans and monthly service plan reviews are required.
- (f) All other requirements of comprehensive maintenance treatment apply.
- (g) A history of one year of opioid dependence and an attempt at another form of treatment is not required for admission to long-term withdrawal management.
- (h) Compliance with 450:70-6-8 may be determined by:
- (1) A review of policies and procedures,
 - (2) Treatment records,
 - (3) Interviews with staff, and
 - (4) Other facility documentation.

450:70-6-9. Interim maintenance treatment services

- (a) The OTP shall have documentation before providing interim maintenance treatment services indicating the written approval of both SAMHSA and ODMHSAS.

(b) The OTP shall have written policy and procedure stating the program sponsor may place an individual who is eligible for admission to comprehensive maintenance services in interim maintenance services if the individual cannot be placed in comprehensive maintenance treatment services within a reasonable geographic distance and within fourteen (14) days of application for admission to comprehensive maintenance treatment services.

(c) The OTP shall identify the maximum length of stay in interim opioid services is one hundred and ~~twenty (120)~~eighty (180) days.

(d) The OTP shall provide ~~an initial and~~ a minimum of two (2) ~~additional drug screens shall be taken from~~persons served in interim patients maintenance during the one hundred and ~~twenty (120)~~eighty (180) days of interim services.

(e) The OTP shall have written policies and procedures outlining all criteria for transfer from interim maintenance to comprehensive maintenance services. These transfer criteria shall be in writing and shall include, at a minimum, a preference for pregnant women in admitting persons served to interim maintenance and in transferring persons served from interim maintenance to comprehensive maintenance treatment.

(f) The OTP shall have policy and procedure ensuring interim maintenance—services shall be provided in a manner consistent with all applicable Federal and State laws and regulations.

(g) The interim maintenance services program shall meet and/or possess all applicable Federal and State certifications, licensures, laws and regulations.

(h) The OTP shall have written policy and procedure stating all rules and requirements for comprehensive maintenance services apply to interim maintenance services with the exception of:

(1) Opioid agonist medication is required to be administered daily and under observation. Unsupervised or take home dosing is not allowed.

(2) A primary LBHP, Licensure Candidate or CADC does not need to be assigned.

(3) Interim maintenance is limited to ~~two (2)~~ one hundred and ~~twenty (120)~~ day episodes eighty (80) days in any twelve (12) month period.

(4) By day one hundred and twenty (120), a plan for continuing treatment beyond one hundred and eighty (180) days shall be developed and documented in the clinical record.

(45) Educational, rehabilitative and therapy services are not required. However, information pertaining to locally available, community-based resources for ancillary services shall be made available to persons served in interim maintenance.

(5) An initial treatment plan and periodic updates are not required.

(i) Compliance with 450:70-6-9 may be determined by:

(1) A review of policies and procedures,

(2) Treatment records,

(3) Interviews with staff, and

(4) Other facility documentation

450:70-6-10. Medication units, ~~long term care facilities and hospitals~~

(a) ~~Before providing medication assisted opioid recovery use disorder services through a stand-alone medication unit, long term care facility or hospital,~~ the program must receive the written approval of both SAMHSA and ODMHSAS, and ODMHSAS certification, OBNDD approval, and national accreditation.

(b) Certification as an OTP will not be required for the maintenance or managed withdrawal of a ~~patient~~person served who is admitted to a hospital or long term care facility for the treatment for medical conditions other than opioid addiction and who requires maintenance or withdrawal management during the stay in the hospital or long term care facility.

(c) Medication units, ~~long term care facilities and hospitals~~ shall be in compliance with the following:

(1) Currently licensed by the DEA; and approved by SAMHSA.

(2) Written policy and procedure stating the medical director shall make all recommendations for medication dosages according to best medical practice guidelines and all applicable rules contained in this chapter.

(3) Written policy and procedure stating all female consumers shall have a pregnancy test on admission and at least annually thereafter, unless otherwise indicated.

(4) Written policy and procedure to address the provision of all services in compliance with Federal Drug Administration Guidelines for opioid treatment programs in accordance with 42 CFR, Part 8.

(d) Compliance with 450:70-6-10 may be determined by:

(1) A review of policies and procedures,

(2) Certifications and licenses, and

(3) Other facility documentation.

450:70-6-10.1. Mobile medication units

(a) Before providing medication assisted opioid used disorder services through a mobile medication unit, the program must provide notification to SAMHSA, ODMHSAS Provider Certification, OBNDD, and the program's national accreditation entity. The mobile medication unit must have an associated OTP physical location for purposes of ODMHSAS certification.

(b) Mobile medication units shall have the following:

(1) Written policy and procedure stating the medical director shall make all recommendations for medication dosages according to best medical practice guidelines and all applicable rules contained in this Chapter.

(2) Written policy and procedure to address the provision of all services in compliance with Federal Drug Administration Guidelines for opioid treatment programs in accordance with 42 CFR, Part 8.

(c) Mobile medication units may provide the following services, in accordance with applicable state and federal requirements and applicable rules contained in this Chapter:

(1) Administering and dispensing medications for opioid use disorder treatment;

(2) Collecting samples for drug testing or analysis;

(3) Dispensing of take-home medications; and

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- (4) Initiating methadone or buprenorphine after an appropriate medical assessment has been performed.
- (d) Mobile medication units that provide appropriate privacy and adequate space may additionally provide the following services:
 - (1) Intake/initial biopsychosocial and appropriate medical assessments (with a full physical examination to be conducted within fourteen [14] days of admission); and
 - (2) Clinical services, such as therapy, provided in-person or when permissible through use of telehealth services.
- (e) Any required assessment or treatment services not provided by the mobile medication unit must be provided by the OTP in accordance with all requirements in this Chapter.
- (f) Compliance with 450:70-6-10.1 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Certifications and licenses, and
 - (3) Other facility documentation.

450:70-6-12. ~~HIV~~HIV/STD/AIDS education, testing and counseling services

- (a) All OTPs shall provide and document the provision of HIV education, testing, and counseling services for drug dependent persons. Every OTP shall:
 - (1) Provide educational sessions regarding HIV to such persons, and also make the sessions available to spouses or other sexual partners of the drug dependent person;
 - (2) Refer all drug dependent persons for HIV infection testing and counseling;
- (b) Compliance with 450:70-6-12 may be determined by:
 - (1) A review of policies and procedures, and
 - (2) Treatment records.
 - (3) Other facility documentation.
- (a) Every OTP shall provide or refer for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, testing, and counseling services for drug dependent persons in accordance with 43A O.S. § 3-425.1 and 42 CFR § 8.12. Every OTP shall:
 - (1) Provide or refer for educational sessions regarding HIV/STD/AIDS to persons served and the significant other(s) of persons served;
 - (2) Provide or refer all drug dependent persons, and their identified significant others, for HIV/STD/AIDS testing and counseling;
 - (3) Provide counseling on preventing exposure to, and the transmission of, HIV, viral hepatitis, and STDs and either directly provide services and treatments or actively link to treatment each person admitted or readmitted to treatment who has received positive test results for these conditions from initial and/or periodic medical examinations;
 - (4) Provide documentation of services described in (1) through (3) above, including refusal of these services; and
 - (5) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

- (b) Compliance with 450:70-6-12 shall be determined by a review of written policies and procedures, clinical records, and other supporting facility records and documentation.

PART 3. PHASES OF TREATMENT SERVICES

450:70-6-15. ~~Service~~Clinical Services

- (a) Each OTP shall use opioid agonists or partial agonists in conjunction with other treatment modalities services including, but not limited to, individual, family and group therapy; case management; Individual Placement and Support services; peer recovery support services; and other modalities services enhancing positive life style changes in the consumer.
 - (b) The OTP shall provide adequate and appropriate services to each person served as clinically necessary, including medical services, therapy/rehabilitation services, crisis intervention services, vocational/educational services, and other assessment and treatment services. These services must be available at the primary facility, except where the program sponsor has entered into a formal, documented agreement with a private or public agency, organization, practitioner, or institution to provide these services to individuals enrolled in the OTP. The program sponsor, in any event, must be able to document that these services are fully and reasonably available to all persons served.
 - (c) Services shall be provided by appropriately credentialed staff in accordance with state requirements, including Chapter 50 and Chapter 53 of this Title. Therapy shall be provided by a program LBHP or Licensure Candidate. Rehabilitation services must be provided by a LBHP, Licensure Candidate, CADC or Certified Case Manager II. Case Management services must be provided by a LBHP, Licensure Candidate, CADC, or Certified Case Manager I or II. Peer recovery support services must be provided by a Certified Peer Recovery Support Specialist. Individual Placement and Support (IPS) services must be provided by a provider trained and credentialed in IPS.
 - (d) The OTP shall have written policy and procedure stating there will be referral to adequate and reasonably accessible community resources, vocational rehabilitation, education, and employment services for consumers who either request such services or who have been determined through the assessment process to be in need of such services.
 - (e) The OTP shall have written policy and procedure stating consumers shall attend clinical services as prescribed in the individualized service plan and this Chapter.
 - (b)f) Compliance with 450:70-6-15 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.
- ### **450:70-6-15.1. ~~Service~~Dosing**
- (a) The OTP shall have written policy and procedure stating the medical director shall ensure the patient's daily medication dosage of persons served shall conform with all State and Federal guidelines, best medical practice and this chapterChapter.
 - (b) Compliance with 450:70-6-15.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-15.2. Service—Medical Director visits

(a) The OTP shall have written policy and procedure stating each patientperson served accepted for treatment as a patient at an OTP shall be assessed no less than annually by the medical director or an appropriately trained program physician as part of a process to determine the most appropriate combination of services and treatment.

- (b) Compliance with 450:70-6-15.2 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-15.3. Service - Clinical services [REVOKED]

~~(a) The OTP shall have written policy and procedure stating the OTP shall provide adequate medical, therapy/rehabilitation services, vocational, educational, and other assessment and treatment services. These services must be available at the primary facility, except where the program sponsor has entered into a formal, documented agreement with a private or public agency, organization, practitioner, or institution to provide these services to patients enrolled in the OTP. The program sponsor, in any event, must be able to document that these services are fully and reasonably available to all patients.~~

~~(b) Services shall be designed to provide a variety of professional diagnostic and primary medication assisted opioid treatment services for patients, and their families and significant others, whose emotional and physical status allows them to function in their usual environment.~~

~~(c) The OTP shall have written policy and procedure stating there will be referral to adequate and reasonably accessible community resources, vocational rehabilitation, education, and employment services for patients who either request such services or who have been determined through the assessment process to be in need of such services.~~

~~(d) The OTP shall have written policy and procedure stating patients accepted for opioid treatment shall attend prescribed therapy/rehabilitation services as mandated in the individualized service plan and this chapter.~~

~~(e) Time in treatment shall not be a requirement for patients receiving buprenorphine when granting take home privileges.~~

- ~~(f) Compliance with 450:70-6-15.3 may be determined by:

 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.~~

450:70-6-15.4. Service— Termination of treatment

(a) The OTP shall have written policy and procedure stating if a patientperson served misses appointments for two weeks or more without notifying the clinic, the episode of care is considered terminated and is to be so noted in the patient'sclinical record. An exception determination would be in circumstances where the patientperson served can provide documented proof of exceptional circumstances. The documentation must be

maintained in the patient'sclinical record. If the patientperson served does return for care and is accepted into the program, the patientperson served is considered a new patientperson served and is to be so noted in the patient'sclinical record.

- (b) Compliance with 450:70-6-15.4 may be determined by:
 - (1) A review of policies and procedures,
 - (2) Treatment records, and
 - (3) Other facility documentation.

450:70-6-16. Pregnant womenTreatment for persons served who are pregnant

(a) The OTP shall have written policy and procedure stating the OTP address the special needs of patientspersons served who are pregnant. Prenatal care for persons served who are pregnant patients—must be provided either by the OTP or by referral to appropriate healthcare providers.

(b) An OTP shall ensure that policies and procedures are developed, implemented, and complied with for the treatment of persons served who are pregnant patients, to include:

(1) Documentation that staff members are educated in the unique needs of persons served who are pregnant patients;

(2) An OTP shall ensure that a policy and procedures are developed, implemented, and complied with for the treatment of pregnant patients, to include:

(A) Priority is given to pregnant individuals seeking medication assisted opioid treatment;

(B) The reasons for a pregnant individual's denial of admission to an agency are documented;

(C) A pregnant patient is offered prenatal care either at the agency or through referral to a medical practitioner;

(D) The agency shall establish a written agreement with a medical practitioner who is providing prenatal care to a pregnant patient, to include a procedure for exchanging medication assisted opioid treatment and prenatal care information;

(E) A staff member shall educate a pregnant patient who does not obtain prenatal care services for prenatal care;

(F) A staff member shall obtain a written refusal of prenatal care services from a pregnant patient who refuses prenatal care services offered by the agency or a referral for prenatal care;

(G) A pregnant patient receiving comprehensive maintenance treatment before pregnancy shall be maintained at the pre pregnancy dose of opioid agonist or partial agonist medication, if effective;

(H) A pregnant patient shall be monitored if pregnancy induced changes in the elimination or metabolism of opioid agonist or partial agonist treatment medication may necessitate an increased or split dose;

(I) A pregnant patient discharged from the agency shall be referred to a medical practitioner and that a staff member document the name, address, and telephone number of the medical practitioner in the patient record; and

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(2) Priority for pregnant individuals seeking medication assisted opioid treatment medications for opioid use disorder;

(3) Documentation of the reasons for a pregnant individual's denial of admission to an agency;

(4) Availability of prenatal care for persons served who are pregnant either at the agency or through referral to a medical practitioner;

(5) Written agreement(s) with a medical practitioner who is providing prenatal care to a person served who is pregnant, to include procedures for exchanging medication assisted opioid treatment and prenatal care information regarding medications utilized for opioid use disorder and prenatal care;

(6) Education from agency staff to a person served who is pregnant who does not obtain prenatal care services for prenatal care;

(7) Procedures to obtain a written refusal of prenatal care services from a person served who is pregnant who refuses prenatal care services offered by the agency or a referral for prenatal care;

(8) Procedures to ensure a person served who is pregnant receiving comprehensive maintenance treatment before pregnancy shall be maintained at the pre-pregnancy dose of opioid agonist or partial agonist medication, if effective;

(9) Monitoring by an agency medical practitioner of a person served who is pregnant to determine if pregnancy induced changes in the elimination or metabolization of opioid agonist or partial agonist treatment medication may necessitate an increased or split dose; and

(10) Referral of a person served who is pregnant who is discharged from the agency to a medical practitioner and that a staff member document the name, address, and telephone number of the medical practitioner in the clinical record.

(c) Compliance with 70-6-11 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records,
- (3) Interviews with staff, and
- (4) Other facility documentation.

450:70-6-17. Service phases - Take home doses [REVOKED]

~~(a) The OTP shall have written policy and procedure describing practices in accordance with the principle that take home doses of methadone and buprenorphine are a privilege given only to those individuals who will benefit from them and who have demonstrated responsibility in taking methadone or buprenorphine as prescribed including:~~

~~(1) The requirement of time in treatment as outlined elsewhere in this rule shall be considered as a minimum reference point after which a patient may be considered for take home privileges.~~

~~(2) Programs must educate the patient regarding safe transportation and storage of methadone as well as emergency procedures in case of accidental ingestion.~~

~~(3) Before take home privileges are allowed, the patient must have a lock box for transportation of methadone and home storage.~~

~~(4) The program shall address the responsibilities of patients granted take home medications. The policies shall include methods of assuring patient's appropriate use and storage of medication.~~

~~(5) The program shall address the disposal of take home bottles for methadone to include;~~

~~(A) Requiring take home bottles to be returned to the OTP and to require labels to be intact and the consequences for not returning bottles described.~~

~~(B) Allowing patient disposal of take home bottles to include procedures to insure the ability of the OTP to check for diversion by requiring patients to submit used take home bottles in "call backs".~~

~~(6) Regardless of time in treatment, the medical director, using reasonable judgment, may deny or rescind the take home medication privileges of a patient.~~

~~(7) All take home privileges shall be made according to the rules of this section regarding the patients' current phase of treatment.~~

(b) Compliance with 450:70-6-17 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.1. Service phases - Take home doses, exceptions [REVOKED]

~~(a) The OTP shall have written policy and procedure stating the medical director may, based on reasonable judgment, grant emergency take home doses of methadone based on emergency circumstances related to medical, criminal justice, family or employment. The circumstances and basis for the action must be documented in the patient record and should address the concerns outlined in this section.~~

~~(1) Take home doses of methadone for instate emergencies is limited to a maximum of three (3) doses and out of state is limited to a maximum of six (6) doses.~~

~~(2) The medical director may, based on reasonable judgment, grant vacation take home doses of methadone for up to two (2) weeks per calendar year. The circumstances and basis for the action must be documented in the patient record and should address the concerns outlined in this section.~~

~~(3) All exceptions with take home medication must be authorized through the exception request process.~~

~~(4) All take home dosing considerations for patients receiving buprenorphine shall be at the discretion of the medical director and consistent with best medical practice.~~

(b) Compliance with 450:70-6-17.1 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.2. Service phases - General

(a) The OTP shall have written policy and procedure describing structured phases of treatment and rehabilitation to support patient progress of persons served and to establish requirements regarding patient attendance and service participation. The requirements listed below for each phase indicate minimum requirements and the frequency and extent of treatment and rehabilitation services may be increased, based on individual patient need and unless otherwise indicated in this chapter. The OTP shall utilize ASAM criteria to determine the appropriate level of care during each phase of treatment.

- (1) ~~Advancement in phase and/or increased take home privilege shall not occur without significant compliance with all current treatment plan goals.~~
- (2) ~~Advancement in phase and/or increased take home privilege shall not occur if there are consistent or consecutive positive urine drug screens.~~
- (3) ~~Reduction in phase and/or decreased take home privilege shall occur if there are consistent or consecutive positive urine drug screens and/or substantial non compliance with the individualized service plan.~~
- (4) ~~For patients to be eligible for Phase IV or above they must be;~~
 - (A) ~~be employed full time,~~
 - (B) ~~be a full time student (at least twelve (12) semester hours),~~
 - (C) ~~be retired, or~~
 - (D) ~~have proof of disability.~~
- (5) ~~Prior to the patient advancing in Phase and/or receiving take home medication, the patient shall demonstrate a level of stability as evidenced by:~~
 - (A) ~~absence of alcohol and other drug abuse,~~
 - (B) ~~regularity of program attendance,~~
 - (C) ~~absence of significant behavior problems,~~
 - (D) ~~absence of recent criminal activities, and~~
 - (E) ~~employment, actively seeking employment or attending school if not retired, disabled, functioning as a homemaker, or otherwise producing evidence of economic stability.~~
- (6) ~~If an OTP is providing doses to a patient receiving residential level of care (ASAM Level 3) substance use disorder services, the required minimum services listed for each phase may be delivered by the residential level of care substance use disorder provider. The OTP shall document the provision of these services and the provider delivering such services in the service plan.~~

(b) If an OTP is providing doses to a person served receiving residential level of care substance use disorder services, the required minimum services listed for each phase may be delivered by the residential level of care substance use disorder provider. The OTP shall document the provision of these services and the provider delivering such services in the service plan.

(bc) Compliance with 450:70-6-17.2 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.3. Service phases - Phase I

(a) ~~Phase I consists of a minimum ninety (90) day period in which the patient attends the program for observation of medication assisted opioid treatment daily or at least six (6) days a week. Phase I take home dosage privileges are limited to a single dose each week including take home dosages required due to regularly scheduled clinic closures. All approved holidays allow an additional take home dosage. The patient shall ingest all other doses under appropriate supervision at the clinic.~~ Phase I consists of the first ninety (90) days of treatment. During Phase I, a minimum of four (4) treatment sessions per month shall be provided. Available services shall include, but not exclusive be limited to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

(b) Compliance with 450:70-6-17.3 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.4. Service phases - Phase II

(a) ~~Phase II is designated for patients who have been admitted more than ninety (90) days, and who have successfully met all Phase I criteria.~~

- (1) ~~During Phase II, the program may issue no more than two (2) take home doses of methadone at a time including take home dosages required due to regular and/or holiday scheduled clinic closures. With the exception of any take home doses, the patient shall ingest all other doses under appropriate supervision at the clinic.~~
- (2) ~~For the first ninety (90) days of Phase II, a minimum of two (2) treatment sessions per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.~~
- (3) ~~After the initial ninety (90) days in Phase II, the patient shall participate in at least one (1) session of treatment service per month.~~

(a) Phase II consists of the second ninety (90) days of treatment. During Phase II, a minimum of two (2) treatment sessions per month shall be provided. Available services shall include, but not be limited to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

(b) Compliance with 450:70-6-17.4 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.5. Service phases - Phase III

(a) ~~Phase III is designated for patients who have been admitted more than six (6) months and who have successfully completed Phase II criteria.~~

- (1) ~~During Phase III, the program may issue no more than four (4) take home doses of methadone plus closed and holiday days.~~

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(2) A minimum of one (1) treatment session per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

(a) Phase III consists of the third ninety (90) days of treatment. During Phase III, a minimum of one (1) treatment session per month shall be provided. Available services shall include, but not limited to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

(b) Compliance with 450:70-6-17.5 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.6. Service phases - Phase IV

(a) ~~Phase IV is designated for patients who have been admitted more than nine (9) months and who have successfully met progressive Phase III criteria.~~

~~(1) During Phase IV, the program may issue one (1) week take home doses plus closed and holiday days.~~

~~(2) A minimum of one (1) treatment session per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.~~

(a) Phase IV consists of the last ninety (90) days of the first year of treatment. During Phase IV, a minimum of one (1) treatment session per month shall be provided. Available services shall include, but not limited to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

(b) Compliance with 450:70-6-17.6 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and
- (3) Other facility documentation.

450:70-6-17.7. Service phases - Phase V

(a) ~~Phase V is designated for patients who have been admitted for more than one (1) year.~~

~~(1) During Phase V, the program may issue two (2) weeks maximum take home doses.~~

~~(2) A minimum of one (1) treatment session per month shall be provided, including, but not exclusive to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.~~

(a) Phase V begins after one (1) year of continuous treatment. During Phase V, a minimum of one (1) treatment session per month shall be provided. Available services shall include, but not be limited to, therapy, rehabilitation, case management, Individual Placement and Support services, and peer recovery support services.

(b) Compliance with 450:70-6-17.7 may be determined by:

- (1) A review of policies and procedures,
- (2) Treatment records, and

(3) Other facility documentation.

450:70-6-17.8. Service phases - Phase VI

(a) ~~Patients who meet criteria for Phase VI, and who have been admitted to treatment for a minimum of one (1) year, and who are receiving thirty (30) days of take home doses on July 1, 2007 shall be allowed to continue to be eligible to receive thirty (30) days of take home doses of methadone after July 1, 2007.~~

~~(1) If this patient is reduced in phase, the privilege of thirty (30) days take home medication shall be withdrawn.~~

~~(2) Once lost, the privilege to receive thirty (30) days of take home medication shall not be available again.~~

~~(3) If patient with the privilege to receive thirty (30) days of take home medication changes clinics, it shall be the decision of the receiving clinic to either continue or ignore the continuation of the thirty (30) take home medication privilege.~~

(ba) ~~Phase VI is designated for patients who voluntarily seek medically supervised withdrawal and abstinence from all drugs, including methadone as prescribed. A patient may enter this phase at any time in the treatment and rehabilitation process. Phase VI begins after two (2) years of continuous treatment.~~

~~(1) During Phase VI, the medical director determines take home doses based on stability.~~

~~(2) During Phase VI, the LBHP, Licensure Candidate or CADC determines the frequency of therapy or rehabilitation service treatment sessions with input from the patient person served. At the onset of Phase VI, the patient person served may require an increased level of therapy or rehabilitation service and other support services.~~

~~(3) The LBHP or Licensure Candidate and patient person served develop a continuing care plan prior to the successful completion of treatment.~~

(c) ~~The OTP shall have written policy and procedure stating these guidelines when a patient is transferring to another clinic or level of care.~~

~~(1) The admitting program shall obtain from the patient an authorization for disclosure of confidential information, for the purpose of obtaining accurate and current information concerning the patient's treatment at the former program.~~

~~(2) The medical director or program physician shall not allow the patient to attend the clinic less frequently than the most recent schedule allowed at the former program unless:~~

~~(A) Copies of the patient's records are obtained to sufficiently document the patient's satisfactory adherence to all relevant federal and state regulations for the required time in treatment; and~~

~~(B) the physician has completed an evaluation of the patient.~~

~~(3) At a minimum, staff from the admitting program shall document in the patient record and staff from the~~

transferring program must provide the following information before the initial dose of methadone or buprenorphine is administered to a transfer patient:

- (A) The last date and amount of opioid treatment medication drug administered or dispensed at the former program;
(B) The length of time in continuous treatment;
(C) The most recent record of clinic attendance;
(D) The name, address, and telephone number of the program contacted;
(E) The date and time of the contact; and
(F) The name of the program employee furnishing the information.

- (db) Compliance with 450:70-6-17.8 may be determined by:
(1) A review of policies and procedures,
(2) Treatment records, and
(3) Other facility documentation.

PART 4. PEER RECOVERY SUPPORT SERVICES

450:70-6-18. Peer recovery support services

- (a) Peer recovery support services are an optional service within certified Opioid Treatment Programs. If provided, the facility shall have written policies specific to peer recovery support services. Peer recovery support services may be offered to individuals sixteen (16) and older with substance use disorders, including co-occurring disorders.
(b) Peer recovery support services shall be provided in accordance with OAC 450:53 and other provisions stipulated in OAC 450 and state statute and shall:
(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;
(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery; and
(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after a hospitalization or other institutional settings.
(c) Peer Recovery Support Services shall be provided only by staff certified as a Peer Recovery Support Specialist (PRSS) in accordance with OAC 450:53.
(d) The facility shall retain records to verify compliance with training and certification requirements of each provider of this service.
(e) Facilities offering these services shall have provisions in place for direct supervision and other supports for staff providing this service.
(f) Facilities offering peer recovery support services shall have written policies and procedures specific to the provision of these services.

(fg) Compliance with this Section shall be determined by a review of the following: clinical records, policy and procedures, and facility personnel records.

[OAR Docket #23-410; filed 6-5-23]

TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

[OAR Docket #23-448]

RULEMAKING ACTION: PERMANENT final adoption

- RULES:
Subchapter 5. Minimum Standards for Approved Nursing Education Programs
485:10-5-12. [AMENDED]
Subchapter 7. Requirements for Registration and Licensure as a Registered Nurse and Licensed Practical Nurse
485:10-7-2. [AMENDED]
Subchapter 11. Disciplinary Action
485:10-11-2 [AMENDED]
485:10-11-4. [AMENDED]
Subchapter 18. Prescriptive Authority for CRNA
485:10-18-2. [AMENDED]

AUTHORITY: Oklahoma Board of Nursing; 59 O.S. Sections 567.2(A); 567.3a, 567.4(F); 567.5a(B); 567.8; 567.21; 59 O.S. Section 4000.1

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Superseded rules: Subchapter 11. Disciplinary Action 485:10-11-4 [AMENDED]

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INCORPORATIONS BY REFERENCE: n/a

GIST/ANALYSIS: Title 485.Chapter 10 changes include the following. Revisions to Subchapter 5 clarify that individuals with a Registered Nurse or Licensed Practical multistate license in another compact party state meet the intent of having a license to practice in OK. Revisions in Subchapter 7 add the option for foreign credential evaluation for individuals educated in another country and expands options for those required to test English language proficiency. Subchapter 11 changes amend the time for issuance of a written order in consideration of Attorney General review and modify language to ensure compliance with Senate Bill 1691, which went into effect on November 1,

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2022. Emergency Rules reflective of Senate Bill 1691 [59 O.S. §4000.1 were filed on October 3, 2022, and approved by Governor Stitt on November 7, 2022. Revisions to Subchapter 18 clarify APRN CRNA prescriptive authority continuing education.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 5. MINIMUM STANDARDS FOR APPROVED NURSING EDUCATION PROGRAMS

485:10-5-12. Out-of-State nursing education programs conducting clinical experiences in Oklahoma

(a) Nursing education programs leading to initial licensure that wish to conduct clinical experiences in Oklahoma must obtain prior permission from the Board.

(b) To apply for permission from the Board, the program must submit a letter of request to the Board and provide evidence that the following standards will be met:

- (1) The program must be on full approval status with the board of nursing in another member board jurisdiction;
- (2) The program will provide for supervision of students while in the clinical area by a nursing faculty member with an unencumbered Oklahoma nursing license to practice nursing in Oklahoma;
- (3) A written clinical affiliation agreement with the clinical facility will be in place; and
- (4) If precepted clinical experiences are requested, the program will ensure they are conducted in accordance with the Board's policy.

(c) Registered Nurses enrolled in out-of-state advanced practice registered nursing education programs may participate in clinical experiences and clinical preceptorship in Oklahoma as part of the advanced practice registered nursing education program, under the following conditions:

- (1) The advanced practice registered nurse student has an unencumbered Oklahoma license to practice registered nursing in Oklahoma,
- (2) The faculty responsible for oversight of the clinical component of the nursing education program has an Oklahoma unencumbered license to practice nursing at the level of the education being taught or higher, and
- (3) The advanced practice registered nursing education program meets the requirements established by the Oklahoma Board of Nursing for education preparation of Advanced Practice Registered Nurses.

SUBCHAPTER 7. REQUIREMENTS FOR REGISTRATION AND LICENSURE AS A REGISTERED NURSE AND LICENSED PRACTICAL NURSE

485:10-7-2. Licensure by endorsement

(a) **Qualifications Registered Nurse.** An applicant for licensure by endorsement as a Registered Nurse shall:

- (1) Submit an application containing such information as the Board may prescribe;
- (2) Be a minimum of eighteen (18) years of age on or before the date the license is issued;
- (3) Meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.
- (4) If licensed in another state or U.S. territory since January 1, 1952, have successfully written the licensing examination adopted by the Board with a passing score as established by the Board. A license to practice nursing in Oklahoma will not be issued until this requirement is met.
- (5) Submit evidence of either:
 - (A) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or
 - (B) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.
- (6) In addition to meeting other requirements for endorsement established by the Board in these Rules, demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last five (5) years prior to receipt of the completed application in the Board office:
 - (A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;
 - (B) Successfully pass the National Council Licensure Examination for Registered Nurses;
 - (C) Cause submission of an official transcript, provided by an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts, verifying successful completion of at least six (6) academic semester credit hours of nursing courses which include classroom and clinical instruction;
 - (D) Present evidence of licensure as a registered nurse in another state, territory or country with employment in a position that requires nursing licensure with verification of at least 520 work hours during the past five (5) years;
 - (E) Submit evidence of completing at least twenty-four (24) contact hours of continuing education applicable to nursing practice;
 - (F) Submit current certification in a nursing specialty area.
- (7) Provide evidence of one of the following if initial licensure was obtained within the last two years:

- (A) Completion of the nursing education program within two years of initial application for licensure by examination; or
 - (B) At least six months work experience as a registered nurse in the state, U.S. territory, or country of licensure; or
 - (C) Successful completion of a Board-approved refresher course in accordance with the Board's policy; or
 - (D) Successful completion of nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.
- (b) **Qualifications Licensed Practical Nurse.** An applicant for licensure by endorsement as a Licensed Practical Nurse shall:
- (1) Submit an application containing such information as the Board may prescribe;
 - (2) Be a minimum of eighteen (18) years of age on or before the date the license is issued;
 - (3) Meet the requirements of the Oklahoma Nursing Practice Act. An evaluation of educational requirements may be completed to ensure the applicant meets educational standards.
 - (4) If licensed in another state or U.S. territory since June 30, 1954, have successfully written the licensing examination adopted by the Board. A license to practice practical nursing in Oklahoma will not be issued until this requirement is met.
 - (5) In addition to meeting other requirements for endorsement established by the Board in these Rules, demonstrate evidence of continued qualifications for practice through completion of one or more of the following requirements within the last five (5) years prior to receipt of the completed application in the Board office:
 - (A) Submission of an official transcript or certificate of completion verifying completion of a nurse refresher course with content consistent with Board policy;
 - (B) Successfully pass the National Council Licensure Examination for Practical Nurses;
 - (C) Cause submission of an official transcript, provided by an entity approved and recognized by the U.S. Department of Education as a primary source for providing education transcripts, verifying successful completion of at least six (6) academic semester credit hours or 105 contact hours of nursing courses in a state-approved practical or registered nursing education program, which includes classroom and clinical instruction;
 - (D) Present evidence of licensure as a practical nurse in another state, territory or country with employment in a position that requires practical nursing licensure with verification of at least 520 work hours during the past five (5) years;
 - (E) Submit evidence of completing at least twenty-four (24) contact hours of continuing education applicable to nursing practice;
 - (F) Submit current certification in a nursing specialty area.
- (6) Provide evidence of one of the following if the National Council Licensure Examination for Practical Nurses for initial licensure was obtained within the last two years:
 - (A) Completion of the nursing education program within two years of initial application for licensure by examination; or
 - (B) At least six months work experience as a Licensed Practical Nurse in the state, U.S. territory, or country of licensure; or
 - (C) Successful completion of a Board-approved refresher course in accordance with the Board's policy; or
 - (D) Successful completion of nursing didactic coursework and faculty-supervised clinical experience in a board-approved nursing education program at the appropriate educational level, to include at least 80 hours in classroom and skills laboratory review and at least 80 hours participating in patient care activities in the clinical setting.
- (c) **Applications.**
- (1) Applications must be completed and filed with the Board.
 - (2) Endorsement may be accepted from the original state or U.S. territory of licensure by examination.
 - (3) If the applicant has written the licensing examination adopted by the Board in a state other than the state or U.S. territory of original licensure, an endorsement will be requested from that state, also.
 - (4) If the application is not completed within one (1) year after receipt of fee, the application must be refilled.
- (d) **Fee for licensure by endorsement.**
- (1) The fee shall accompany the application.
 - (2) The fee is not refundable.
 - (3) If the application is not completed within one (1) year, a new application and new fee will be required for licensure.
- (e) **Qualifications for applicants educated in foreign countries or in a U.S. territory.** An applicant educated in a foreign country must meet the current educational requirements for licensure in Oklahoma. An applicant educated in a U.S. territory not recognized as a full member of National Council of State Boards of Nursing (NCSBN) must meet the requirements for applicants educated in foreign countries. An applicant educated in a U.S. territory that is a full member of NCSBN but in a nursing education program not included on the NCSBN state-approved programs of nursing list at the time of the applicant's graduation from the program must meet the requirements for applicants educated in foreign countries.
- (1) The registered nurse applicant must present evidence of:
 - (A) graduation from a government-approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign

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Nursing Schools (CGFNS) or Josef Silny & Associates, Inc., International Education Consultants (JS&A);

(B) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, maternal-infant nursing, psychiatric-mental health nursing as evidenced by:

(i) a translated transcript with certified proof of translation received directly from the nursing education program in the original country of licensure, or

(ii) a certified copy of original transcript obtained directly from the Commission of Graduates of Foreign Nursing Schools (CGFNS) or Josef Silny & Associates, Inc., International Education Consultants (JS&A).

(C) licensure or registration as required in country of graduation as evidenced by official verification received directly from the Commission of Graduates of Foreign Nursing Schools or Josef Silny & Associates, Inc., International Education Consultants (JS&A);

(D) competence in oral and written English as evidenced by receipt of scores directly from the approved testing service or from CGFNS verifying successful completion of:

(i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service, or

(ii) International English Language Testing System (IELTS), or

(iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service, or

(iv) Michigan English Test (MET); or

(v) Pearson PTE Academic.

(E) An evaluation of educational credentials as evidenced by:

(i) CGFNS Certificate Status or Visa Screen Certificate; or

(ii) CGFNS Credentials Evaluation Service Professional Report; or

(iii) JS&A foreign credential evaluation for state boards of nursing;

(iv) Reports received from CGFNS and JS&A must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.

(F) Evidence of either:

(i) successful completion of the National Council Licensure Examination for Registered Nurses since July 1, 1982; or

(ii) passing the State Board Test Pool Examination for Registered Nurse licensure prior to July 1, 1982.

(2) The practical nurse applicant must present evidence of:

(A) competence in oral and written English as evidenced by receipt of scores directly from the testing service or from CGFNS verifying successful completion of:

(i) Test of English for International Communication (TOEIC), to include the Listening and Reading Test, and the Speaking and Writing Test of the Educational Testing Service; or

(ii) International English Language Testing System (IELTS); or

(iii) Test of English as a Foreign Language Internet-based test (TOEFL iBT) of the Educational Testing Service; or

(iv) Michigan English Test (MET); or

(v) Pearson PTE Academic.

(B) graduation from a government approved post-secondary practical nursing education program or equivalent courses in a government approved post-secondary nursing education program, as verified from the Commission of Graduates of Foreign Nursing Schools (CGFNS) or Josef Silny & Associates, Inc., International Education Consultants (JS&A);

(C) licensure or registration as required in country of graduation as evidenced by official verification ~~completed within the last twelve (12) months immediately preceding the date of application for licensure by endorsement~~ received directly from the Commission of Graduates of Foreign Nursing Schools or Josef Silny & Associates, Inc., International Education Consultants (JS&A).

(D) completion of formal courses including theory and clinical experience in nursing care of the adult, nursing care of children, and maternal-infant nursing in a government-approved school of nursing as evidenced by:

(i) a translated transcript received directly from the nursing education program in the original country of licensure with certified proof of translation; or

(ii) a certified copy of the transcript received directly from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or Josef Silny & Associates, Inc., International Education Consultants (JS&A).

(E) An evaluation of educational credentials as evidenced by:

(i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service Professional Report, or

(ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate or Visa Screen Certificate status; or

(iii) JS&A foreign credential evaluation for state boards of nursing;

- (iv) Reports received from CGFNS and JS&A must have been completed within the five (5) years immediately preceding the date of application for licensure by endorsement. The five-year requirement is waived if the applicant holds a license in another state.
- (F) Successful completion of the licensing examination adopted by the Oklahoma Board of Nursing.
- (3) Verification by CGFNS and JS&A is waived for applicants currently licensed in another state when the state validates that the credential review report was prepared by an independent credentials review agency.
- (4) Evidence of competence in spoken and written English is waived for applicants who are:
 - (A) Graduates of nursing education programs taught in English in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, Trinidad, Tobago, Jamaica, Barbados, South Africa, and the United States.
 - (B) Licensed in another US State or Territory and have successfully completed the licensure examination approved by the Board.
- (5) Applicants must submit a completed application and the established fee.
- (f) **Temporary license for endorsement applicants.**
 - (1) A temporary license may be issued to the applicant on proof of:
 - (A) Current unrestricted licensure in another state, territory or country with no history of arrest or disciplinary action requiring further review;
 - (B) Evidence of having successfully passed the licensure examination adopted by the Oklahoma Board of Nursing;
 - (C) Evidence of meeting educational qualifications through completion of a state board-approved nursing education program meeting the educational standards established by the Board, or an evaluation of educational credentials and nursing licensure or registration as required in country of origin for the foreign-educated nurse as evidenced by:
 - (i) Commission on Graduates of Foreign Nursing Schools (CGFNS) Credentials Evaluation Service Professional Report with verification of equivalent educational credentials and unrestricted licensure in country of origin, or
 - (ii) Commission on Graduates of Foreign Nursing Schools (CGFNS) Certificate status or Visa Screen Certificate, accompanied by a verification of graduation from a government approved nursing education program, the translated transcript, and verification of unrestricted nursing licensure or registration as required in country of graduation; or
 - (iii) Josef Silny & Associates, Inc., International Education Consultants (JS&A) foreign credential evaluation for state boards of nursing.
 - (D) Payment of the fee for licensure by endorsement and temporary license;
 - (E) Proof by foreign educated applicants of evidence of competence in: oral and written English by meeting the requirements of 485:10-7-2(e)(1)(D) and 485:10-7-2(e)(2)(A), unless 485:10-7-2(e)(4) applies;
 - (F) Demonstrating evidence of continued qualifications for practice through meeting the requirements of 485:10-7-2(a)(6) or (7) for registered nurse applicants and 485:10-7-2(b)(5) or (6) for practical nurse applicants; and
 - (G) Submission of fingerprint images with the fee established by the Oklahoma State Bureau of Investigation and/or vendor for the purpose of permitting a state and national criminal history records search to be completed.
 - (2) The temporary license is issued for a period of ninety (90) days.
 - (3) The temporary license may be extended, but such period shall be no longer than one (1) year for any applicant.
- (g) **Licensure of active duty military or the spouse of an active military individual.** Applications must be completed and filed with the Board.
 - (1) Submit with the endorsement application a copy of the United States Uniformed Services Identification and Privilege Card and a copy of the Permanent Change of Station orders for the active military individual;
 - (2) The requested Oklahoma license and/or temporary license shall be issued within thirty (30) days for their currently held valid license from another state or territory provided the license from the other state is found to be in good standing and reasonably equivalent to the requirements of this state; and
 - (3) The fee for licensure, including temporary license, of active duty military or the spouse of an active duty military individual is waived with the license expiration date extended through the first renewal cycle.

SUBCHAPTER 11. DISCIPLINARY ACTION

485:10-11-2. Hearings

(a) **Conduct of hearing.** All hearings and notice thereof shall be conducted and governed in accordance with the provisions of the Oklahoma Administrative Procedures Act. [75 O.S. Section 309 *et seq.*]

(b) **Procedures before the Board.**

(1) Every individual proceeding shall be initiated by a sworn complaint containing a brief statement of the facts supporting the request for action by the Board.

(2) The respondent shall file with the Board a written response under oath to the Complaint by the date to be furnished. If no response is filed, the Respondent shall be considered in default and the Board may take whatever action it deems sufficient and appropriate. The Executive Director of the Board or designee may extend the time within which a response must be filed, but in no event may the time be extended beyond the hearing date.

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(3) Written requests for continuances shall be received in the Board office not less than four (4) business days prior to the date and time set for the hearing. The request shall state the reasons for the request and time period desired. The Board or its designee shall promptly rule on such requests.

(4) Discovery shall be conducted in accordance with the Administrative Procedures Act except that all discovery must be completed ten (10) days prior to the date set for hearing unless otherwise ordered by the Board.

(5) The order of procedure at the hearing shall be as follows: (1) presentation of evidence by both parties followed by cross-examination and rebuttal of witnesses, questions by State Board members; (2) closing arguments by legal counsel of both parties; and (3) submission of case to Board for decision.

(6) The admissibility of evidence shall be governed by the provisions of the Oklahoma Administrative Procedures Act [75 O.S. Section 310].

(7) The President of the Board or his/her designee shall rule on admissibility of evidence and objections to such evidence and shall rule on other motions or objections in the course of the hearing.

(8) The Board, its designee, attorney for the Board, the respondent or attorney for the respondent, may conduct examinations.

(9) A respondent who fails to appear, after having received proper notice, may be determined to have waived the right to present a defense to the charges in the complaint and the Board may declare the respondent in default and revoke, suspend or otherwise discipline respondent as it may deem necessary.

(10) Subpoenas for the attendance of witnesses and/or furnishing of information required by the Board staff and as requested by the respondent, and/or the production of evidence or records of any kind shall be issued by the Director of the Investigative Division or the Director's designee.

(A) In all cases where a party desires to have subpoenas or subpoenas duces tecum issued to compel the attendance of witnesses, or production of documents, a written request shall be filed with the administrative office of the Board by such party or his attorney, and directed to the Director of the Investigative Division or the Director's designee. The Director of the Investigative Division or the Director's designee shall have three (3) business days to process the request. The request shall specify the witness by name and address; and shall identify any documents to be subpoenaed. The request shall acknowledge that any expense associated with the subpoena process shall be paid by the party requesting the subpoena, including travel expense and daily attendance fees, in the amount as set by statute for other civil matters, at the time of the service of such subpoena.

(B) The Director of the Investigative Division or the Director's designee shall cause such subpoenas to be issued and mailed in conformity with said written

requests; provided, that in said subpoena the witnesses named therein shall be advised that they may demand their travel fees and daily attendance fees from the party, or his representative; and that neither the Board nor the State of Oklahoma shall be responsible for any traveling fees, daily attendance fees, or other expenses incurred by such witness in attending any proceeding.

(C) All requests for subpoenas and subpoenas duces tecum shall be filed with the Director of the Investigative Division or the Director's designee, no later than ten (10) business days prior to the date of the proceeding at which the presence of any such witness or documents would be required.

(D) A party requesting issuance of subpoenas and subpoenas duces tecum shall be responsible for obtaining service and for the cost of that service.

(11) The respondent is responsible for any expenses associated with witnesses, subpoenas and/or evidence presented on her/his behalf.

(12) Any pre-trial motions and/or discovery motions must be filed in the Board office not less than 20 days prior to the date set for hearing unless otherwise ordered by the Board.

(13) The respondent shall not communicate with any member of the Board concerning the matters alleged in the complaint before or during or after the hearing. This restriction does not apply to the presentation of testimony or evidence by the respondent in the course of the hearing.

(14) If for any reason a hearing is not completed and the Board finds that the public health, safety or welfare imperatively requires emergency action, the Board may take such emergency action with regard to the respondent's license as it deems necessary in order to protect the health, safety or welfare of the public.

(15) When a majority of the officers of the Board, those being the President, Vice President and Secretary/Treasurer, have summarily suspended an individual's license or certification pursuant to Title 59 Section 567.8(O) of the Oklahoma Statutes, none of the officers participating in the emergency summary suspension decision shall participate in the Board hearing at which the emergency summary suspension will be considered by the full Board.

(c) **Administrative Penalties.** When determining the amount of the administrative penalty to be imposed for a violation of the Oklahoma Nursing Practice Act the following additional factors shall be a part of the consideration by the Board when establishing the nature, circumstance, and gravity of the violation, the degree of culpability, the effect on the ability of the person to continue to practice and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act:

(1) evidence of actual or potential harm to patients, clients or the public;

(2) the seriousness of the violation, including the nature, circumstances, extent and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety and welfare of the public;

- (3) evidence of misrepresentation(s) of knowledge, education, experience, credentials or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;
- (4) evidence of practice history;
- (5) evidence of present lack of fitness;
- (6) evidence of prior disciplinary history by the Board or any other health care licensing agency in Oklahoma or another jurisdiction;
- (7) the length of time the licensee has practiced;
- (8) the actual damages, physical or otherwise resulting from the violation;
- (9) the deterrent effect of the penalty imposed;
- (10) attempts by the licensee to correct or stop the violation;
- (11) any mitigating or aggravating circumstances;
- (12) the extent to which system dynamics in the practice setting contributed to the problem;
- (13) evidence of a lack of truthfulness or trustworthiness;
- (14) any other matter that justice may require.

(d) **Orders.**

- (1) At the conclusion of the hearing, the Board ~~will~~shall announce its decision and a written order reviewed and signed by the Board President or other official who presided at the hearing ~~will~~shall be issued within the later of the following: twenty (20) days of the Board's decision
 - (A) Within twenty (20) days of the Board's decision; or
 - (B) Within twenty (20) days of review of the Board's decision by the Oklahoma Attorney General if review by the Oklahoma Attorney General is required.
- (2) A copy of the order shall be delivered or mailed to the Respondent and the Respondent's attorney of record.

(e) **Record of hearing.**

- (1) The record in an individual proceeding shall be as defined in the Oklahoma Administrative Procedures Act and shall also include the licensing history of the respondent.
- (2) All hearings shall be transcribed by a duly certified reporter, unless the presiding officer designates otherwise. A transcript of the proceedings shall not be made except in the event of an appeal of the decision of the Board, or upon written application accompanied by a deposit sufficient to cover the cost of transcription. Oral proceedings of the hearing shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review.

(f) **Appeals and reconsideration.** Requests for reconsideration and appeals of order in individual proceeding shall be in accordance with the Oklahoma Administrative Procedures Act.

485:10-11-4. Licensure or certification of individuals with criminal history

(a) This section establishes the criteria utilized by the Board in determining the effect of criminal history on eligibility for nursing licensure or Advanced Unlicensed Assistant (AUA) certification and implements the requirements of Oklahoma Statutes Title 59 Sections 567.1. *et seq.* and 4000.1 ~~(2019)~~(2022). This section applies to:

- (1) all currently licensed nurses and holders of an AUA certificate;
- (2) all individuals seeking to obtain a nursing license or AUA certificate; and
- (3) all individuals seeking ~~an initial~~a determination of their eligibility for nursing licensure or AUA certification.

(b) The felonies listed below in ~~subsection (e)~~subsections (d) and (e) disqualify an individual from retaining licensure or becoming licensed as a nurse or retaining certification or becoming certified as an AUA in Oklahoma. When making a determination the Board will give consideration as set forth within 59 O.S. § 4000.1(B). ~~However, subsection (e)~~ Subsections (d) and (e) are not an exhaustive or exclusive list of crimes, both felonies and misdemeanors resulting in a conviction or a deferred sentence, that may result in discipline from the Board of Nursing, up to and including revocation. The felonies listed in ~~subsection (e)~~subsections (d) and (e) disqualify an individual because they substantially relate to the practice of nursing and pose a reasonable threat to public safety for the reasons stated below.

(1) **The practice of nursing is a unique profession.** Licensees and certificate holders practice nursing autonomously in a wide variety of settings and provide care to patients who are, by virtue of their illness or injury, physically, emotionally, and/or financially vulnerable. These patients often include the elderly, children, those with mental or cognitive disorders, sedated or anesthetized patients, and/or disabled or immobilized individuals. Individuals who have engaged in criminal conduct place patients, healthcare employers and employees, and the public at risk of harm.

(2) **Crimes involving fraud and/or theft.** Licensees and certificate holders often have unfettered access to patients' privileged information, financial information, and valuables, including but not limited to medications, money, jewelry, credit cards/checkbook, and/or sentimental items. The practice of nursing continues 24 hours per day in all healthcare settings, including those where there is often no direct supervision of the individual. Patients in these healthcare settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a licensee or certificate holder. When an individual has engaged in criminal behavior involving fraud and/or theft, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk. As such, crimes involving any type of fraud and/or theft are highly relevant to an individual's ability to provide safe nursing care.

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(3) **Crimes involving sexual misconduct.** Licensees and certificate holders frequently provide nursing care to partially clothed or fully undressed patients, who are particularly vulnerable to exploitation. Due to the intimate nature of nursing care, professional boundaries in the practice of nursing are extremely important. When an individual has engaged in criminal behavior involving any type of sexual misconduct, the Board is mindful that similar misconduct may be repeated in healthcare settings. As such, crimes involving any type of sexual misconduct are highly relevant to an individual's ability to provide safe nursing care.

(4) **Crimes involving lying, falsification, and/or deception.** Licensees and certificate holders are required to accurately and honestly report and record information in a variety of places, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as to report errors in their own nursing practice. When an individual has engaged in criminal behavior involving lying, falsification, and/or deceptive conduct, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk of harm. As such, crimes involving any type of lying, falsification and/or deception are highly relevant to an individual's ability to provide safe nursing care.

(5) **Crimes involving drugs and/or alcohol.** Licensees and certificate holders have a duty to their patients to provide safe, effective nursing care and to be able to practice safely. Individuals who have a substance use disorder may have impaired judgment and motor skills and are at risk for harming their patients and/or the public. Licensees and certificate holders have access to many medications and drugs and those with substance use disorders may misuse or steal drugs. Individuals affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner, thus putting their patients at risk. This danger is heightened when the licensee or certificate holder works in an autonomous setting where other healthcare providers are not present to intervene for the patient or the public. As such, crimes related to the use or possession of drugs or alcohol are highly relevant to an individual's fitness to practice.

(6) **Crimes involving violence and/or threatening behavior.** Licensees and certificate holders provide care to the most vulnerable of populations, including patients who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the caregiver-patient relationship for their daily care. When an individual has engaged in violent or threatening criminal behavior, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, crimes involving violence and threatening behavior are highly relevant to an individual's fitness to practice.

(c) All crimes listed in this ~~subsection~~ subsections (d) and (e) are as described in Titles 21, 47 and 63 of the Oklahoma

Statutes. In addition, the Board recognizes and gives similar treatment to similar offenses charged in other jurisdictions.

(d) Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma include:

- (1) Crimes involving fraud, theft, lying and/or falsification.
 - ~~(A)~~ Robbery 21 O.S. § 791 et seq.
 - ~~(B)~~ ~~Falsely personating another to gain money or property 21 O.S. § 1532.~~
 - ~~(C)~~ ~~Identity theft 21 O.S. § 1533.1.~~
- (2) Crimes involving sexual misconduct.
 - (A) Human Trafficking 21 O.S. § 748.
 - (B) Trafficking in children 21 O.S. § 866.
 - (C) Incest 21 O.S. § 885.
 - (D) Forcible sodomy 21 O.S. § 888.
 - (E) Indecent exposure, indecent exhibitions, obscene material or child pornography, solicitation of minors 21 O.S. § 1021.
 - (F) Procure, cause the participation of a minor in any child pornography, buys, or knowingly possesses, procures, manufactures, or causes to be sold or distributed child pornography 21 O.S. §§ 1021.2 and 1024.2
 - (G) Commercial sale or distribution of pornography 21 O.S. § 1040.13.
 - (H) Soliciting/offering sex with minor 21 O.S. § 1040.13a.
 - (I) Offering or transporting one under 18 for sex 21 O.S. § 1087.
 - (J) Child Prostitution - unlawful detainment in prostitution house 21 O.S. § 1088.
 - (K) Lewd or indecent proposals to minor, sexual battery of minor 21 O.S. § 1123.
 - ~~(L)~~ ~~Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.~~
- (3) Crimes involving drugs and/or alcohol.
 - ~~(A)~~ ~~Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.~~
 - ~~(B)~~ ~~Drug Aggravated trafficking in subsection C of 63 O.S. § 2-415.~~
- (4) Crimes involving threats, violence and/or harm to another individual.
 - (A) Assault, battery, or assault and battery with a dangerous weapon 21 O.S. § 645.
 - (B) Aggravated assault and battery 21 O.S. § 646.
 - (C) Aggravated assault and battery on a law officer 21 O.S. § 650.
 - ~~(D)~~ ~~Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.~~
 - ~~(E)~~ Murder, first or second degree 21 O.S. §§ 701.7 and 701.8.
 - ~~(F)~~ Manslaughter, first degree 21 O.S. § 711.
 - ~~(G)~~ Kidnapping 21 O.S. § 741.
 - ~~(H)~~ ~~Extortionate kidnapping 21 O.S. § 745.~~

- ~~(I) Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.~~
- ~~(J) Desertion—abandonment of child under ten 21 O.S. § 851.~~
- ~~(K) Child endangerment by permitting child abuse 21 O.S. § 852.1.~~
- ~~(L) Rape by instrumentation and Rape, first or second degree 21 O.S. §§ 1111.1 and 1114.~~
- ~~(M) Peeping Tom—personally or electronically 21 O.S. § 1171.~~
- ~~(N) Stalking 21 O.S. § 1173.~~
- ~~(O) Endangering or injuring a person during arson or attempt 21 O.S. § 1405.~~
- ~~(P) Failure to stop after fatal accident 47 O.S. § 10-102.1.~~
- ~~(Q) Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.~~
- (5) Crimes involving harm to property.
 - (A) Violation of Oklahoma Antiterrorism Act 21 O.S. §§ 1268 et seq.
 - (B) Arson, first, ~~second or third~~ degree 21 O.S. §§ 1401, ~~1402, and~~ 1403.
 - (C) Burglary, first degree 21 O.S. § 1431.
- (e) Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma if a conviction or plea of guilty or nolo contendere for which less than five (5) years has elapsed since the date of conviction, plea, or release from incarceration, whichever is later, include:
 - (1) Crimes involving fraud, theft, lying and/or falsification.
 - (A) Falsely personating another to gain money or property 21 O.S. § 1532.
 - (B) Identity theft 21 O.S. § 1533.1.
 - (2) Crimes involving sexual misconduct. Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.
 - (3) Crimes involving drugs and/or alcohol.
 - (A) Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.
 - (B) Drug trafficking 63 O.S. § 2-415.
 - (4) Crimes involving threats, violence and/or harm to another individual.
 - (A) Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.
 - (B) Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.
 - (C) Desertion - abandonment of child under ten 21 O.S. § 851.
 - (D) Rape in the second degree 21 O.S. § 1114.
 - (E) Mistreatment of a mental patient, as provided for in 21 O.S. § 843.1.

- (F) Abuse of a vulnerable adult as defined in 43A O.S. § 10-103.
- (G) Endangering or injuring a person during arson or attempt 21 O.S. § 1405.
- (H) Failure to stop after fatal accident 47 O.S. § 10-102.1.
- (I) Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.
- (5) Crimes involving harm to property. Arson, second or third degree 21 O.S. §§ 1402, and 1403.
- (df) To obtain—~~an Initial~~ a Determination of Eligibility pursuant to 59 O.S. § 4000.1(G-J), the required form shall be completed and filed with the Board. The fee for—~~an Initial~~ a Determination of Eligibility shall be \$95.00 and shall be submitted with the required form.
- (eg) The Executive Director is authorized to close a file requesting—~~initial~~ determination of eligibility when the person seeking determination of eligibility for licensure or certification has failed to respond to a written request from the Board for information, within sixty (60) days of the written request.

SUBCHAPTER 18. PRESCRIPTIVE AUTHORITY FOR CRNA

485:10-18-2. Initial application

The Certified Registered Nurse Anesthetist (CRNA) who applies for authority to order, select, obtain and administer drugs shall:

- (1) hold a current R.N. license and licensure as a CRNA in Oklahoma;
- (2) submit the following:
 - (A) a completed application containing such information as the Board may prescribe for authority to order, select, obtain and administer drugs and the required fee. If the application is not completed within one (1) year, a new application and new fee will be required;
 - (B) evidence of satisfactory completion of a minimum of fifteen (15) units of continuing education in advanced pharmacology related to the administration of anesthesia as recognized by the American Association of Nurse Anesthetists or ~~with~~ successful completion of an approved nurse anesthetist education program within the two-year period immediately preceding the date of application;
 - (C) official transcript of CRNA education, if not on file with Board office; and
 - (D) verification of current national certification.

[OAR Docket #23-448; filed 6-7-23]

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TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-428]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
490:1-1-2. Definitions [AMENDED]
Subchapter 3. Oklahoma State Board of Examiners for Long Term Care Administrators
490:1-3-1. Organization [AMENDED]
Subchapter 7. Fees and deposits
490:1-7-2. Schedule of fees [AMENDED]
Subchapter 9. Continuing Education
490:1-9-4. Continuing education requirements [AMENDED]

AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators;
63 O.S., §§ 330.51 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND
CABINET SECRETARY:**
August 24, 2022

COMMENT PERIOD:
September 16, 2022 through October 16, 2022

PUBLIC HEARING:
October 19, 2022

ADOPTION:
October 19, 2022

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October 31, 2022

LEGISLATIVE APPROVAL
Approved May 31, 2023 by SJR22

FINAL ADOPTION:
May 31, 2023

EFFECTIVE:
August 15, 2023

SUPERSEDED EMERGENCY ACTIONS:
NA

INCORPORATIONS BY REFERENCE:
NA

GIST/ANALYSIS:
Proposed changes in Subchapter 1 has added definitions for clarity, particularly around licensure mobility issues. The definitions added are for "good standing," "licensure by endorsement" as well as "reciprocity" (because they are different) as well as a "registrant" which is a revolutionary way to help tear down barriers for licensed professionals from other states to come Oklahoma and we also believe this paradigm shift in how we view licensure mobility can be a catalyst for change not only in this profession but in other professions trying to wrestle with the issue of licensure mobility where "reciprocity" has been too long a misnomer.

The proposed change in Subchapter 3 was intended to set elections for the Board to a biennial event rather than an annual one. This was consistent with the previous statute. Proposed changes in Subchapter 7 do NOT add or change any of the fees but it does add clarity to the existing renewal fees as it relates to the registrant and reciprocity and uses the fee for eligibility determination regarding barrier offenses.

The proposed change in Subchapter 9 seeks to give the Board currently non-existent waiver authority for Continuing Education during something such as a pandemic. The proposed amendments, additions and deletions are necessary to clarify current language, to clarify policy and procedure.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE
DATE OF AUGUST 15, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

490:1-1-2. Definitions

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

"**Accredited college**" or "**university**" means a college or university that is domiciled within the United States and that is accredited by: the North Central Association of Colleges and Schools, The Higher Learning Commission; the Southern Association of Colleges and Schools, Commission on Colleges; the Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities; the New England Association of Schools and Colleges, Commission on Institutions of Higher Education; the Middle States Association of Colleges and Schools, Middle States Commission on Higher Education; or the Northwest Commission on Colleges and Universities.

"**Administrator-In-Training**" or "**AIT**" means an individual serving a Board-approved internship within the facility type for which he is seeking licensure/certification under the supervision of a preceptor 'certified' by the Board. Individuals serving an AIT internship may also be referred to herein as 'intern/trainee'.

"**Administrator**" means any individual duly licensed or certified by the Board regardless of the role or function he performs.

"**Administrator of Record**" or "**AOR**" means the administrator licensed by this Board who has the authority and responsibility for the total operation of the facility, subject only to the policies adopted by the governing authority.

"**Adult Day Care (ADC) Administrator**" means a long term care administrator (or director) duly licensed by the Board to serve in this capacity in an Adult Day Care Center. The scope of practice of an individual licensed as an Adult Day Care Administrator is limited to a licensed Adult Day Care Center.

"**Adult Day Care (ADC) Center**" shall have the same meaning as such term is defined in the Adult Day Care Act, Title 63 O.S. Section 1-870 *et seq.*

"**Adverse action**" means revocation or suspension of a license, reprimand, censure or probation; any other loss of or restriction placed upon the license, including, but not limited to the right to apply for, or renew a license; voluntary surrender in lieu of discipline, non-renewal (excluding nonrenewal due to non-payment of fees, or retirement); administrative fines and any other negative action or finding by the Board.

"**Assisted Living Center**" shall have the same meaning as such term is defined in the Continuum of Care and Assisted

Living Act, Title 63 O.S. Section 1- 890.1 *et seq.* Also known as an Assisted Living Facility (ALF).

"Board" means the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA) or its staff.

"Certification" contextually, prior to the effective date of these rules, means the authorization granting a person the privilege of serving as a long term care administrator and continues until licensed in accordance with these rules or until October 1, 2012, whichever occurs first. The exception is the certified assistant administrator (CAA) which this Board continues to certify. Certification after the effective date of these rules pertains to the completion of training at an approved institution of higher learning or other body conducting such training (except Administrator University for Nursing Home Administrators and Board conducted training for Adult Day Care administrators). The institution or body certifies that the individual has been properly and completely trained and is prepared, as a prerequisite, for the state standards exam and/or NAB RC/AL exam. Certification of training is a step in the licensure process for RC and RC/AL licensure.

"Certified Assistant Administrator (CAA)" or **"Assistant Administrator"** as used herein means an individual who has been 'certified' by the Board as having met the minimum qualifications established by the Board to be able to serve as a full-time, Certified Assistant Administrator in a licensed long term care nursing facility, and who acts under the direction, supervision and license of a licensed nursing home administrator

"Continuum of Care Facility" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 *et seq.*

"Degree equivalency evaluation" means an equivalency evaluation of a degree that was earned from a college or university not domiciled in the United States against a degree earned from an 'accredited college or university' (see definition earlier herein) that is performed by one of the following:

- (A) Educational Credential Evaluators (ECE)
- (B) Educational Records Evaluation Service (ERES)
- (C) International Education Research Foundation Credentials Evaluation Service (IERFCES)
- (D) World Education Services (WES)

"Formal Complaint" means a formal allegation by the Board that probable cause exists that an individual licensed as a long term care administrator has violated applicable statutes and/or rules. These allegations are written in a legal document filed with the Board by its prosecuting attorney.

"Good Standing" means a license/certification/registration is active and not expired, suspended, revoked, surrendered, conditioned or otherwise in status that in any manner restricts the activity of the holder under its authority. When there is any other history of disciplinary action taken by any jurisdiction against a license, certification or registration, the Board retains sole discretion of evaluating the magnitude of any such action in its determination of an applicant's eligibility for approval in Oklahoma.

"Health Services Executive" or **"HSE"** means a broad-based NAB verified qualification which exceeds this

Board's standards to be licensed as a nursing home administrator (NHA). It is not a license and it does not grant the holder of this qualification any additional privileges with the NHA license.

"Intermediate Care Facility for the Mentally Retarded (ICF/MR)" means a facility whose primary purpose is to provide health and rehabilitative services for persons with mental retardation or a related condition, and otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 *et seq.* ICF/MR is synonymous with the term ICF/IID (intermediate care facility for individuals with an intellectual disability).

"Intermediate Care Facility for the Mentally Retarded, 16 Beds and Less (ICF/MR-16)" means a facility with sixteen (16) or fewer licensed resident beds that serves persons with mental retardation or with related conditions and that otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 *et seq.*

"Lapsed License or Expired License" means a license that is no longer valid because the licensee failed to renew his/her license by the renewal deadline, causing the license to lapse or expire.

"License" means the written authorization of the Board granting a person the privilege of serving as a long term care administrator for a specific period of time, and further, a legal instrument obligating that person to adhere to the rules, regulations and statutes that govern the license.

"Licensing Year" shall mean the specific period of time a license/certification issued by the Board is valid. For purposes of these Rules, the term "licensing year" shall have the same meaning as "calendar year," the time period beginning at 12:01a.m., January 1, and ending as of 12:00 midnight, the same December 31.

"Licensure by Endorsement" refers to the process of a jurisdiction granting a license to an applicant who is licensed in good standing and upon proof of requisite experience, education and qualifications at an equivalent designation in another jurisdiction.

"Long Term Care" primarily for the purposes of this board, as used herein, includes care given at facilities where a licensed long term care administrator is required such as a nursing facility, assisted living facility, residential care facility or an adult day care center. It does not encompass temporary care situations such as a swing bed hospital.

"National Association of Long Term Care Administrator Boards" ("NAB") is composed of state boards or agencies responsible for licensing long term care administrators. The basic objective of the NAB is to assist these boards and agencies in carrying out their statutory and regulatory responsibilities in the licensure, re-licensure and regulation of long term care administrators. One of NAB's functions is the development and administration of the national long term care administrator or Nursing Home Administrator (NHA) examination, as well as the Residential Care/Assisted Living (RC/AL) examination.

"NAB Domains of Practice" refers to the tasks performed by a long term care administrator and the knowledge, skills and abilities identified by NAB as necessary to perform

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those tasks in its professional practice analysis. The NAB Domains of Practice can be found on the National Association of Long Term Care Administrator Boards (NAB) website at www.nabweb.org.

"**Notification by OSDH**" refers to the OSDH (Oklahoma State Department of Health) notifying the Board of survey results of a nursing facility that include a substandard quality of care citation. A notification may become a referral.

"**Nursing Home and Nursing Facility**" shall refer to both "Nursing Facility" and "Specialized Facility" as such terms are defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 *et seq.* and/or as defined at 42CFR §483.1 *et seq.*

"**Nursing Home Administrator (NHA)**" means a long term care administrator duly licensed by the Board to serve in this capacity in a nursing facility, nursing home, skilled nursing facility or any similarly worded facility type. Their scope of practice includes ICF/MR, RCF, ALF and Adult Day Care Centers and the term is synonymous with nursing facility administrator.

"**Preceptor**" means an individual qualified by training and experience, who is currently licensed as a long term care administrator in Oklahoma, is 'certified' by the Board as a qualified preceptor and is charged with coordinating the training of an AIT intern/trainee who is enrolled in a Board- approved Administrator-in-? Training (AIT) internship program.

"**Probation**" is a condition(s) imposed for a specified period of time at the initial issuance of a license or contained in an order resulting from a complaint against the administrator.

"**Provisional license**" means the temporary authority to serve as a long term care administrator as granted by the Board to an individual of good character who meets appropriate conditions and requirements prescribed by the Board.

"**RC/AL Administrator**" means a long term care administrator duly licensed by the Board to serve in this capacity in either an RCF or ALF. The scope of practice of an individual licensed as an RC/AL administrator is limited to either a licensed Residential Care Facility (RCF) or a licensed Assisted Living Facility (ALF).

"**Reciprocity**" refers to the acceptance of an actual license wherein a jurisdiction chooses to recognize the education, experience and qualifications that a licensee has obtained from another state. To have an out-of-state long-term care license accepted in Oklahoma, a licensee from another state is required to register with this Board and prove that equivalence. It is similar to licensure by endorsement but different in that with reciprocity, no new license is issued.

"**Referral or Report**" means an issue or concern regarding a long term care administrator that has been reduced to writing and is forwarded to the Board for a determination as to whether a violation of the Board's Rules has occurred. Such referral or report may be made by an individual or agency.

"**Registrant**" refers to a licensee from another jurisdiction who is registered in Oklahoma. They will have agreed to be held culpable for Oklahoma and federal laws relative to the facility(s) they are the administrator for and Oklahoma administrator rules and statutes, to include annual renewal of the registration. References to licensed administrators would include

a reference to a registrant as they are licensed administrators albeit from (an)other jurisdiction(s).

"**Residential Care (RC) Administrator**" means a long term care administrator duly licensed by the Board to serve in this capacity in only an RCF. The scope of practice of an individual licensed as a Residential Care Administrator is limited to a licensed Residential Care Facility (RCF).

"**Residential Care Home**" or "**Residential Care Facility (RCF)**" shall have the same meaning as such term is defined in the Residential Care Act, Title 63 O.S. Section 1-819 *et seq.*

"**Revocation or Revoked License**" is a sanction imposed upon a license/certificate by the Board that results in a complete loss of license/certificate and all privileges attendant thereto and requires holder to surrender his license/certificate, the annual license/certification renewal card and all other license or certificate-related documents to the Board.

"**Specialized facility**" shall have the same meaning as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 *et seq.*

"**Suspension or Suspended License**" is a sanction imposed upon a license/certificate by the Board. The licensee retains his license/certificate and his annual renewal card and therefore must renew the license, yet he shall not function in the capacity as a long term care administrator until the Board determines that conditions responsible for the suspension no longer exist, any or all other restoration requirements imposed by the Board have been met, and the Board has restored his status.

SUBCHAPTER 3. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS

490:1-3-1. Organization

The members of the Board shall elect from their membership a Chair, Vice- Chair and Secretary-Treasurer to serve ~~one (1)~~ (2) year terms beginning ~~July~~ November 1 of each ~~odd-numbered~~ year.

- (1) Nominations may be made by any member of the Board or a committee named by the Chair.
- (2) Each member of the Board may cast one (1) vote for each office for which an election is held.
- (3) Election shall be by majority vote of a quorum.
- (4) Board officer vacancies shall be filled in the same manner when the vacancy occurs.
- (5) A simple majority of the filled seats of the current Board shall constitute a quorum of the Board.

SUBCHAPTER 7. FEES AND DEPOSITS

490:1-7-2. Schedule of fees

- (a) Initial Long Term Care Administrator License- \$200.00
 - (1) This licensure fee applies to all original licensures, registrations/registration renewals and certifications.

- (2) The initial license will expire on December 31st of the year it was effective.
- (b) Renewal fees
 - (1) NHA License - \$200.00 per year;
 - (2) Certified Assistant - \$75.00 per year;
 - (3) RC/AL License - \$175.00 per year;
 - (4) RC License - \$100.00 per year;
 - (5) ADC License - \$100.00 per year;
- (c) Late Fee - \$100.00 for each calendar week, or portion thereof, a licensee fails to timely meet the requirements of a deadline or due date established or agreed to, in writing, by the Board.
- (d) Pre-Licensing File Origination and Maintenance fee - \$100.00
- (e) Provisional License (per application) - \$200.00
- (f) Name Change on "Certificate of License" (per request) - \$25.00 (documentation of a legal name change shall be required, such as a marriage certificate or other legal document)
- (g) Endorsement Licensure Questionnaire (per request) - \$50.00
- (h) Replacement "Certificate of License" (due to loss or damage) - \$25.00
- (i) State Standards Review (per person) - \$100.00
- (j) State Standards Examination Packet - \$50.00
- (k) State Standards Examination - \$100.00 per examinee (when administered by OSBELTCA)
- (l) State Standards Examination, unscheduled examination - \$500.00 per examinee (when administered by OSBELTCA)
- (m) Board-Sponsored Educational Workshop (per day) - up to \$1,000 per attendee.
- (n) Photocopies (per page) - \$0.25
- (o) Rules and Regulations (paper copy), per page - \$0.25
- (p) Administrator-In-Training (AIT) Program: Internship Permit (per intern/trainee) - 350.00
- (q) Continuing Education Program Approval Fee (per credit hour) - \$55.00
- (r) Mailing List on Plain Paper (per page) - \$0.25
- (s) Electronic Mailing List - \$10.00
- (t) Returned Check Fee or Fee related to Non-Sufficient Funds (NSF) to cover an Electronic Funds Transfer (EFT) - \$30.00
- (u) Late Fee for Failure to Provide Current Contact and/or Employment Information - \$75.00
- (v) Fee for Administrator University - Not to exceed \$200.00 per day
- (w) Convenience Fee for Online Licensure Renewal - Determined by Intermediary
- (x) Review by Board Staff in order to determine whether or not an individual applicant is eligible for licensure or certification relative to the barrier offenses listed in OAC 490:10-1-2.1 or other eligibility criteria ~~meets the minimum requirements to be able to serve as a Certified Assistant Administrator~~ - \$200.00
- (y) License Application processing fee - \$100.00 (valid for one year).
- (z) Temporary licensure fee - \$200.00 (wherein the Executive Director may issue a temporary license, upon request by the applicant and with all requirements being met, expiring

at the next Board meeting date when the Board would issue a license, enabling one who is qualified to work while waiting for the next Board meeting).

SUBCHAPTER 9. CONTINUING EDUCATION

490:1-9-4. Continuing education requirements

- (a) Each licensee shall be responsible for identifying his own continuing education needs, taking the initiative in seeking continuing professional education activities to meet those needs, and integrating new knowledge and skills into his duties.
- (b) Individuals who are newly licensed as a nursing home or ICF/MR administrators or certified as Assistant Administrators are required to successfully complete continuing education hours equivalent to a rate of two (2) hours per month, beginning with the month following the month his license/certificate is issued, for each month he holds the license/certificate during the current licensing year. For certified assistant administrators, this is a condition of employment.
 - (1) Individuals who are newly licensed as RC/AL administrators are required to successfully complete continuing education hours equivalent to a rate of one and one-half (1.5) hours per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.
 - (2) Individuals who are newly licensed as RC only administrators are required to successfully complete continuing education hours equivalent to a rate of 1.3 hours per month, rounded up to the next half hour increment (e.g., 1.3 = 1.5; 2.6 = 3), beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.
 - (3) Individuals who are newly licensed as Adult Day Care administrators are required to successfully complete continuing education hours equivalent to a rate of one (1) hour per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.
- (c) Licensees holding a nursing home administrator license and Certified Assistant Administrators shall successfully complete twenty-four (24) clock hours of continuing education (commonly referred to as CEUs or continuing education units) during each licensing year. For Certified Assistant Administrators this shall be a condition of employment.
 - (1) RC/AL administrators shall successfully complete eighteen (18) clock hours of continuing education during each licensing year.
 - (2) Residential Care administrators shall successfully complete sixteen (16) clock hours of continuing education during each licensing year.
 - (3) Licensed Adult Day Care Administrators shall successfully complete twelve (12) clock hours of continuing education during each licensing year.
- (d) Licensees/certificate holders are responsible for maintaining their own continuing education records.

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(e) Carry-over of continuing education hours earned in one licensing year that were in excess of the hours required for that year to a subsequent licensing year is not permitted.

(f) Licensed administrators who have attended and received credit for previously approved program content shall be denied credit for attending subsequent duplicate programs in the same calendar year.

(g) A licensee/certificate holder who cannot meet the continuing education requirement due to illness, emergency or hardship may petition the Board, in writing, requesting a waiver of the clock hour requirement. Any such waiver request must be received and acted upon by the Board prior to the end of the licensing period in which the CE requirement will not be met. The waiver request shall explain why compliance is not possible, and include appropriate documentation. Waiver requests will be evaluated and acted upon by the Board on a case-by-case basis. In the event of more broadly scaled events that, in the judgment of the Board, affect large groups or the whole of the profession, the Board may take action to temporarily alter or waive CE requirements for those larger groups or all licensees for a specified time period.

(h) In the event a licensee fails to provide the Board, upon request, with documentation that the continuing education requirements have been met, the licensee will be subject to sanction by the Board, which may include suspension or revocation of his license. This is considered a reportable offense on the first offense and will appear as a violation in the Registry and NPDB.

(i) A licensee whose license is suspended by the Board for disciplinary reasons is not exempt from the continuing education requirements, and must, therefore, successfully complete the required number of continuing education hours commensurate with his license/certificate type during any licensing year(s) in which his license is under suspension. Licensee shall, upon Board request, furnish documentation that the continuing education requirements have been met. Failure to provide such requested documentation shall subject licensee to sanction by the Board, including further suspension or revocation of his license.

(j) All CE hours earned for programs approved by the NCERS/NAB or approved by the Board may be utilized by a licensee for purposes of meeting the annual CE requirement in the licensing period in which the hours were earned.

[OAR Docket #23-428; filed 6-6-23]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 10. LONG TERM CARE ADMINISTRATORS

[OAR Docket #23-429]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Licensing of Long Term Care Administrators

490:10-1-2.1. General requirements that must be met by each applicant [AMENDED]

490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR/IRID) administrator (also known as nursing home administrator) [AMENDED]

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators [AMENDED]

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators [AMENDED]

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators [AMENDED]

490:10-1-4. Requirements for licensure by endorsement for long term care administrators [AMENDED]

490:10-1-4.1. Requirements for registration for licensure reciprocity for long term care administrators [NEW]

Subchapter 3. Application for Long Term Care Administrator Licensure

490:10-3-1. Application for initial licensure, licensure by endorsement, or provisional license [AMENDED]

490:10-3-5. Application for licensure/certification/registration renewal [AMENDED]

Subchapter 5. Discipline

490:10-5-3. Disciplinary action [AMENDED]

Subchapter 7. Administrator University

490:10-7-3. General provisions [AMENDED]

AUTHORITY:

Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

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NA

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NA

GIST/ANALYSIS:

Proposed changes in Subchapter 1 appears "busier" than it actually is where the same changes made are paralleled within the different license types and sections of the rules. There are some general guidelines regarding "barrier offenses" in 10-1-2.1 added and a "housekeeping" effort to rename ICF/MR to ICF/IID in the title of section 10-1-3 as well as some clarification for both the NHA and RCAL licenses that there are two (2) NAB exams required - the Core exam and the applicable (NHA or RCAL) line of service exam. That was just clarified. Other than that, you will see that the Board has presumptively approved NAB-approved entry level training for each of our license types and we have added a requirement for each of our license types to also take and pass the NAB Core exam which is the gold standard to know that our applicants have an entry level working knowledge of the profession and also enables them to climb the professional ladder more easily with this test already under their belt and not required for any future advances to other licenses. Prior to this change, we only required passing the state standards exam for our RC, Adult Day Care and Certified Assistant Administrators (CAAs) (addressed in Chapter 15 primarily).

In Subchapter 3, we have corrected an issue and made our applications expiration dates equivalent to our training expiration dates (where training is required for a license). That is probably a housekeeping change and was wholly logical. Where no training is required (endorsement or reciprocity applications), we left the application date expiration at one year. This section is also where we added the groundbreaking change to "register" people and accept their out of state licenses (closer to true reciprocity than ever - where we

are made aware that the licensee is working here and he/she agrees that they are culpable to be compliant with Oklahoma laws and subject to sanctions by this Board. We also added an "opt out" sort of option for people who choose not to renew their license, so they actively can tell us they're not renewing and we won't "nag" them with additional reminders TO renew even after the license has lapsed.

In Subchapter 5, we added that the disciplinary actions do apply to the registrants (reciprocal license holders) and we added a reference to 10-1-2.1 where the barrier offenses were added.

Subchapter 7's change simply reiterates that the Board presumptively approves NAB-approved entry level training in lieu of the Administrator University (AU) requirement for both NHA and CAA applicants

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF AUGUST 15, 2023:

SUBCHAPTER 1. LICENSING OF LONG TERM CARE ADMINISTRATORS

490:10-1-2.1. General requirements that must be met by each applicant

(a) Applicants shall not be less than twenty- one (21) years of age at the time the license is issued.

(b) Each applicant shall be a United States citizen, or be a qualified alien under the Federal Immigration and Naturalization Act and lawfully residing in the United States.

(c) Each applicant must establish to the satisfaction of the Board that the applicant is of reputable and responsible character.

(d) Each applicant shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere or no contest, or received a deferred ~~for~~ any felony or misdemeanor offense for any of the following offenses in any state or federal jurisdiction, the Board shall not issue a license or renew a previously issued license to this person and employers shall not hire or contract with the person; ~~to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved.~~

- (1) abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,
- (2) rape, incest or sodomy,
- (3) child abuse,
- (4) murder or attempted murder,
- (5) manslaughter,
- (6) kidnapping,
- (7) aggravated assault and battery,
- (8) assault and battery with a dangerous weapon, or
- (9) arson in the first degree.

(e) If less than seven (7) years have elapsed since the completion of sentence (meaning the last day of the entire term of the incarceration imposed by the sentence including any term

that is deferred, suspended or subject to parole), and the results of a criminal history check reveal that the subject person has been convicted of, or pled guilty or nolo contendere or no contest to, a felony or misdemeanor offense for any of the following offenses, in any state or federal jurisdiction, the Board shall not issue a license or renew a previously issued license to this person and employers shall not hire or contract with the person:

- (1) assault,
- (2) battery,
- (3) indecent exposure and indecent exhibition, except where such offense disqualifies the person as a registered sex offender,
- (4) pandering,
- (5) burglary in the first or second degree,
- (6) robber in the first or second degree,
- (7) robber or attempted robbery with a dangerous weapon, or imitation firearm,
- (8) arson in the second degree,
- (9) unlawful manufacture, distribution, prescription, or dispensing of a Schedule I through V drug as defined by the Uniform Controlled Dangerous Substance Act (noting that "possession" of a Schedule I through V drug as defined by the Uniform Controlled Dangerous Substance Act is no longer a barrier offense),
- (10) grand larceny, or
- (11) petit larceny or shoplifting.

(f) Each applicant shall report to the Board any adverse action taken by any licensing or certification entity in any jurisdiction. The Board shall examine the reasons for the action(s) and may consider this information in granting or denying a license. The applicant is required to report all jurisdictions where they've held a license and/or applied for licensure and been denied. Licensure denial is an adverse action and is required to be reported to the NPDB.

(g) Each applicant shall be in compliance with State income tax requirements pursuant to 68 O.S., 238.1.

(h) Each applicant shall remit any and all required fees associated with obtaining a license, including any outstanding fees or fines.

(i) Each applicant must have a working ability in the English language sufficient to communicate, both orally and in writing, with residents, family members, employees, the general public, and representatives of State and federal agencies and to engage in the practice of long term care administration.

(j) Each applicant shall meet all other appropriate conditions and requirements as may be prescribed by the Board.

(k) When the Board denies an application for licensure, the Board will not reconsider such denial. A person cannot reapply for licensure until one year of the date of denial.

(l) The application shall be considered incomplete until all requirements have been met, to include any additional requirements prescribed by the Board for each license type. Board conducted training includes Administrator University and any initial qualification training such as the optional reviews for exams or Adult Day Care training. Approved initial qualification training conducted externally, such as training approved for RC or RCAL licensure or other NAB approved

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entry level training, is not considered "Board conducted" and those applicants have to meet the prerequisites prior to testing or attending any "Review" courses the Board may offer.

(m) In accordance with the requirements detailed at 59 O.S. 4100.4(A), it shall be incumbent upon the applicant to bring any equivalent education, training and experience completed while in the Armed Forces to the attention of OSBELTCA staff during the application process. The staff shall accept and apply satisfactory evidence of this equivalent education, training and experience in a manner most favorable to the satisfying qualification requirements of the license and/or approval for license examination(s).

490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR/ID) administrator (also known as nursing home administrator)

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure shall meet the requirements in this Section.

(b) Each applicant shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) "Official Proof" [see 490:10-3-1.1. (relating to evidence requirements)] of successful completion of a formal program or program(s) of study, wherein applicant received, at a minimum, a bachelor's degree:

(A) applicant received a bachelor's degree from a college or university accredited by one of the regional accreditation organizations recognized by the U.S. Department of Education and the Board if the applicant's degree is from a school domiciled in the United States; or

(B) if the applicant received his degree from a college or university domiciled outside the United States [and, as such, the college/university does not fall under the accreditation purview of any of the six (6) regional accreditation organizations recognized by the U.S. Department of Education and by the Board], applicant shall, at applicant's expense, cause a degree equivalency evaluation of his degree to be performed and the results sent directly to the Board. The Board shall assess the results of this degree equivalency evaluation and, at its sole discretion, determine if applicant's education and/or degree are equivalent, at a minimum, to a bachelor's degree earned from a regionally accredited college or university;

(2) Receipt of a passing score on the national "NAB" NHA examinations (Core and NHA Line of Service (LOS)) conducted by the National Association of Long Term Care Administrator Boards (NAB) as discussed in paragraph 10-3-2 of this document.

(3) Receipt of a passing score on the Oklahoma State Standards examination within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to

pay all required fees and re-take the examination prior to any future licensing attempts;

(4) Successful completion of Administrator University or a presumptively approved NAB-approved entry level course for Nursing Home Administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take Administrator University prior to any future licensing attempts (if the candidate has a degree in long term care administration from an institution accredited by NAB, the Administrator University may be waived);

(5) Successful completion of the Administrator-in-Training (AIT) program (or documentation of an equivalent internship as part of a degree in long term care from an institution accredited by NAB) within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and complete another AIT program prior to any future licensing attempts; and

(6) Payment of the required fee(s).

(7) An applicant with the HSE credential/qualification will have been verified through/by NAB. This means the Board has been assured by NAB that the applicant has:

(A) met or exceeded the minimum education requirement,

(B) passed the NAB NHA exam as well as the NAB RCAL exam and NAB HCBS exam and

(C) met or exceeded the requirement for AU and AIT, either by experience or education, and shall only be required to take and pass our State Standards examination and pay the required fees to be licensed as a NHA in Oklahoma.

(c) The Board, at its sole discretion, may waive the Administrator University requirement and/or the Administrator-in-Training requirement if the applicant was previously licensed in Oklahoma as a long term care administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(d) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next regularly scheduled meeting of the Board when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC/AL

administrator shall meet the requirements in this Section. Administrators holding an RC/AL license may serve as an administrator in either an RCF or ALF.

(b) Each applicant for initial licensure as an RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of a high school diploma (or GED) or a higher level of education. When the applicant is providing proof of education beyond high school or GED, the same level of "proof" detailed in paragraph 10-1-3(b) is required.

(c) Each applicant for initial licensure as a RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification, where "current" is defined as being completed within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual:

(A) through training from an institution of higher learning whose program has been approved by the Board, to include presumptively approved NAB approved entry level courses completed within 24 months prior to licensure; or

(B) receipt of a nationally recognized assisted living certificate of training and competency for assisted living administrators that has been reviewed and approved by the Board;

(C) Sources of certification are required to be reviewed and approved by the Board. Approved training sources shall include an expiration date on their certification which shall be two years after the date of the completion of their training.

(D) Applicants for training shall provide or cause to be provided to the approved training entity evidence that they have met at least one of the following pre-requisites to enter training:

- (i) At least one (1) consecutive year of health care experience, OR
- (ii) At least thirty (30) college semester hours in a healthcare related field of study, OR
- (iii) A Bachelor's degree in any field of study.

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC/AL administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(3) Receipt of a passing score on the national "NAB" RC/AL examinations (Core and RCAL Line of Service (LOS)) conducted by the National Association of Long Term Care Administrator Boards (NAB) as discussed in paragraph 10-3-2 of this document, and

(4) Payment of the required fee(s).

(5) Training certification required in (c) (1) above is a prerequisite to being able to take the State Standards examination; a passing score on the State Standards exam is a prerequisite to take the NAB RC/AL Exam.

(d) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously licensed in Oklahoma as an RC/AL administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(e) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next regularly scheduled meeting of the Board when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC administrator shall meet the requirements in this Section. Administrators holding an RC license may serve as an administrator in an RCF and may not serve in any other facility type.

(b) Each applicant for initial licensure as an RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of a high school diploma (or GED) or a higher level of education. When the applicant is providing proof of education beyond high school or GED, the same level of "proof" detailed in paragraph 10-1-3(b) is required.

(c) Each applicant for initial licensure as a RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification (completed within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual) through training from an institution of higher learning whose program has been approved by the Board, to include presumptively approved NAB-approved entry level courses completed within 24 months prior to licensure;

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(3) Receipt of a passing score on the "NAB" Core examination conducted by the National Association of Long Term Care Administrator Boards (NAB) as discussed in paragraph 10-3-2 of this document,

(4) (Payment of the required fee(s); and

(5) Training certification required in (c)(1) above is a prerequisite to being able to take the State Standards examination.

(d) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously licensed in Oklahoma as an RC administrator, was in good

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standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(e) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next regularly scheduled meeting of the Board when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an ADC administrator shall meet the requirements in this Section.

(b) Each applicant for initial licensure as an ADC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) One of the following:

(A) A high school diploma (or GED) AND five (5) consecutive years supervisory experience (full-time or equivalent) in a long term care or geriatric setting; OR

(B) A Bachelor's degree AND one (1) year of supervisory experience, preferably in a social or health services setting; Each applicant for initial licensure as an ADC administrator under this provision shall provide, or shall cause to be provided, written evidence satisfactory to the Board of receipt of Bachelor's degree. The same level of "proof" detailed in paragraph 10-1-3(b) is required; OR

(C) An active Oklahoma Nursing license (either LPN or RN), in good standing, and two years of nursing experience.

(2) Successful completion of Board approved training for adult day care administrators (completed within the twenty-four (24) months preceding the month in which the Board will be taking action to license the individual), to include presumptively approved NAB-approved entry level courses completed within 24 months prior to licensure;

(3) Receipt of a passing score on the Oklahoma State Standards examination for adult day care administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this the twenty- four (24) month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; ~~and~~

(4) Receipt of a passing score on the "NAB" Core examination conducted by the National Association of Long Term Care Administrator Board (NAB) as discussed in paragraph 10-3-2 of this document, and

(45) Payment of the required fee(s).

(c) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may

apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and additional licensure fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-4. Requirements for licensure by endorsement for long term care administrators

(a) In addition to the general requirements found in this Chapter, each applicant for licensure by interstate endorsement as a long term care administrator shall meet the requirements of this Section.

(1) The Board permits licensure for candidates for Nursing Home Administrators from other jurisdictions who have met the following minimum requirements.

(A) Submission to the Board of "Official Proof" of successful completion of a formal program(s) of study and, at a minimum, receipt of a bachelors degree that meets the requirements set forth in 490:10-1-3.;

(B) Submission to the Board of evidence of current licensure, in good standing, as a long term care/nursing home administrator, and submission of proof that applicant has:

(i) served full time as the administrator-of-record for the past two (2) consecutive years in a jurisdiction regulated by a licensing authority.; or

(ii) been active as a licensed nursing home administrator in a jurisdiction regulated by a licensing authority for at least two (2) of the past three (3) consecutive years;

(C) Submission to the Board of proof of initial licensure as a long term care/nursing home administrator, including active NAB NHA Exam scores, and proof that such license is in ;

(D) Submission to the Board of full disclosure of any/all pending disciplinary actions or current investigations against applicant as well as any sanctions imposed against applicant's long term care/nursing home administrator license or against any professional license he presently holds or has ever held in any other State or jurisdiction, including, but not limited to: revocation; suspension; 'voluntary surrender'; other licensure restriction(s) that limited applicant's practice under such license; or the assessment of monetary penalties or fines or the assessment of additional CEUs by the licensing entity as a result of disciplinary proceedings. Loss of a professional license due to nonrenewal or failure to obtain the required number of annual CEU hours is excepted from the full and complete disclosure otherwise required herein;

(E) Documentation related to current or previous licensure shall be submitted directly to the Board by the state-appointed authority(ies) regulating the

respective license(s) OR by NAB when the applicant has the HSE credential/qualification; and

(F) Payment of the required fee(s).

(2) The Board, in its sole discretion, shall assess the magnitude of any disciplinary action taken by other licensing authorities in its determination of applicant's eligibility for an Oklahoma license.

(3) In accordance with provisions detailed in 59 O.S. 4100.5(B) and (C), the Board will expedite the approval process for endorsement applicants where the license requirements of the other state are substantially equivalent to Oklahoma requirements. All applicants determined eligible for Oklahoma licensure by endorsement, the spouse of an active duty military member, a spouse subject to a military transfer or someone who left employment in another state to accompany the person's spouse to Oklahoma shall be required to sit for and receive a passing score on the Oklahoma State Standards examination and pay the required license fee before a license is granted by the Board through approval of the Executive Director. Only those applicants to whom this applies with a record of any form of disciplinary action by another licensing authority or any other possible negative indicator shall be required to be approved by a vote of the Board. It shall be the sole responsibility of the applicant to notify staff if this expedited pathway to licensure per Title 59 provisions applies to them and to provide satisfactory evidence of the same. A Temporary License may be issued (fees shall not be waived) for those to whom this applies, at their request, upon a complete application and all qualifications being met except having passed the applicable State Standards Examination. The Temporary license shall expire after no more than sixty (60) days from the date of issuance and may only be issued one time per applicant.

(b) In addition to the general requirements found in this Chapter, each applicant for licensure by interstate endorsement as a residential care/assisted living (RCAL) administrator shall meet the requirements of this Section.

(1) The Board permits licensure for candidates for RCAL Administrators from other jurisdictions who have met the following minimum requirements.

(A) Submission to the Board of "Official Proof" of successful completion of a formal program(s) of study and, at a minimum, receipt of a high school diploma; meeting the requirements of proof for a bachelors degree meeting the requirements set forth in 490:10- 1-3 exceeds the high school diploma minimum requirement.;

(B) Submission to the Board of evidence of current licensure, in good standing, as a long term care/RCAL administrator, and submission of proof that applicant has:

(i) served full time as the administrator-of-record for the past two (2) consecutive years in a jurisdiction regulated by a licensing authority; or

(ii) been active as a licensed RCAL administrator in a jurisdiction regulated by a licensing

authority for at least two (2) of the past three (3) consecutive years;

(C) Submission to the Board of proof of initial licensure as a long term care/RCAL administrator, including active NAB RCAL Exam scores, and proof that such license is in good standing with that licensing authority;

(D) Submission to the Board of full disclosure of any/all pending disciplinary actions or current investigations against applicant as well as any sanctions imposed against applicant's long term care/RCAL administrator license or against any professional license he presently holds or has ever held in any other State or jurisdiction, including, but not limited to: revocation; suspension; 'voluntary surrender'; other licensure restriction(s) that limited applicant's practice under such license; or the assessment of monetary penalties or fines or the assessment of additional CEUs by the licensing entity as a result of disciplinary proceedings. Loss of a professional license due to nonrenewal or failure to obtain the required number of annual CEU hours is excepted from the full and complete disclosure otherwise required herein;

(E) Documentation related to current or previous licensure shall be submitted directly to the Board by the state-appointed authority(ies) regulating the respective license(s); and

(F) Payment of the required fee(s).

(c) There is typically no licensure by endorsement allowance for licensure for the RC license or the Adult Day Care License. All out of state licensure applications for these licensure types (except NHAs from other states applying for one these licenses) shall be treated as initial licensures with the exception of individuals who previously passed a required NAB sanctioned exam, shall not be required to re-take that exam, however these individuals must provide proof of having passed that exam if/when required to meet Oklahoma licensure requirements. However, a person licensed in another jurisdiction as a NHA or equivalent but who does not have a bachelor's degree may be eligible to apply for the RCAL, RC or Adult Day Care Administrators license (or to be certified as a CAA) in Oklahoma if they have met all other requirements (experience, license in good standing, NAB scores, fees paid).

(d) In accordance with requirements detailed in 59 O.S. 4100.5(A), it shall be incumbent on the applicant to notify OSBELTCA Staff during the application process if the applicant is the spouse of a military service member on active duty in Oklahoma, or is claiming permanent residency in the state for six (6) months prior to active duty or during the period of active duty. Staff will expedite the process to the extent possible. Approval of the license will be in accordance with OAC 490:10-1-4(a)(4) above.

490:10-1-4.1. Requirements for registration for licensure reciprocity for long term care administrators

(a) In addition to the general requirements found in this Chapter and upon the applicant fully proving eligibility

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for licensure by endorsement (they must meet all the same requirement as outlined in 10-1-4), each applicant registering their license from another state to work in Oklahoma with that license shall be required to pay an application fee to begin the process of registering their out-of-state license in Oklahoma. Registrants will be required to agree to comply with and culpable for Oklahoma and federal laws applicable to the facilities where they are employed as well as for the laws applicable to licensed Oklahoma long-term care administrators. Upon receipt of the required documents, and receipt of a registration fee equivalent to the licensure fee, the Executive Director may approve the registration so long as there are no negative indicators, or otherwise the application will have to be approved by the Board (similar to the licensure by endorsement process).

(b) Renewals of the registrations will also follow similar procedures to licensure renewals expiring at the end of the calendar year and being renewed with a renewal fee equivalent to licensure fees.

(c) Should the original license lapse or be vacated for any reason, the registration for use in Oklahoma will be considered invalidated.

(d) Any violations of Oklahoma law as determined by the Board through the probable cause process can result in the same penalties as well as being reported to the NPDB and/or the jurisdiction where the original license(s) is/are held.

SUBCHAPTER 3. APPLICATION FOR LONG TERM CARE ADMINISTRATOR LICENSURE

490:10-3-1. Application for initial licensure, licensure by endorsement, or provisional license

(a) Each applicant for licensure as a long term care administrator shall make a verified application on a form furnished by the Board stating the license type for which he is applying and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for initial license, ~~for licensure by endorsement~~ or for a provisional license is valid concurrent with the time constraints set for licensure following completion of training (see OAC 490:10-1-3 through 10-1-2.5 for requirements), for one year after the date of receipt by the Board.

(c) An applicant for licensure by endorsement or registering for reciprocity shall be deemed to have abandoned the application if he does not fulfill all requirements for licensure within one year from the date of application.

(d) An application for Administrators University (AU) shall be used as an application for initial licensure. However, if this application is over a year old when all requirements have been met, the Board shall require that the application be updated. Such an application shall be deemed abandoned if it has not been updated within the time restrictions for licensure.

(e) An application for licensure submitted subsequent to the abandonment of a former application shall be treated as a new application and the applicant must meet current requirements for licensure as a long term care administrator.

(f) Upon receipt of an application for licensure, the Board shall request that a criminal history background check be performed on the individual requesting licensure. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved and no further action will be taken on the application.

(g) An application is complete when:

(1) the application fee prescribed by the Board at OAC 490:1-7-2. has been remitted and deposited to the Board's credit with the State Treasurer (the date of payment of the application fee establishes the date of the application);

(2) all documentation required to be submitted along with or in support of the application has been received by the Board;

(3) the applicant has met all other requirements for an initial license, for licensure by endorsement, for a provisional license or a certification, as applicable, and

(4) the results of the criminal background check have been received by the Board.

(h) Upon verification of compliance with all requirements, an applicant shall be eligible for consideration by the Board for purposes of licensure as a long term care administrator.

(i) A license will not be issued until all fees are paid in full.

(j) The certificate of license shall be presented at the Board meeting when it is approved, if possible, or mailed to the applicant within seven (7) working days of Board's formal grant of license to the applicant. Applicants are encouraged to attend the Board meeting.

(k) A temporary license may also be applied for in accordance with the applicable provisions in paragraph 10-1-3(d), 10-1-3.1(e), 10-1-3.3(e), or 10-1-3.5(c) at the discretion of the applicant.

490:10-3-5. Application for licensure/certification/registration renewal

(a) Each applicant for a renewal of a license, certification or registration shall:

(1) File an application, on the form and in the manner as prescribed by the Board (online), prior to the expiration date of the current license/certification/registration.

(2) Submit evidence, upon request, satisfactory to the Board that the applicant has successfully completed the hours of continuing education as required for license renewal. During the renewal process, licensees certify that they have or will have accomplished the required continuing education requirements during the licensure year. The Board conducts random audits of this accomplishment each year per OAC 490:1-9-5(c).

(3) Be in compliance pursuant to 68 O.S. Section 238.1 with State income tax requirements. If a licensee whose license is on 'active' status is found to be in non-compliance with these State income tax requirements:

(A) such license shall not be renewed; and

(B) licensee shall not have recourse against the Board for non- renewal of his license.

(4) Submit to a criminal background check. Concurrent with the annual CE audits conducted per OAC 490:1-9-5(c), the Board will randomly select not less than a five (5%) percent sample from all renewed licenses against which sample the Board will perform criminal background checks. If the results of a criminal background check reveal that a licensee has been convicted of or pleaded guilty or *nolo contendere* to any misdemeanor involving moral turpitude or to any felony, or to any of the barrier offenses listed at OAC 490:10-1-2.1, the licensee will be subject to Board sanction(s), including license suspension or revocation.

(5) Remit the Annual License Renewal fee as prescribed by the Board at OAC 490:1-7-2 and ensure all outstanding fees and fines owed to the Board have been paid. If a licensee has outstanding fees or fines owed to the Board, licensee shall not be permitted to renew his license until the same have been paid in full to the Board, provided that such payment is made prior to the expiration of the current license. If such payment is not made prior to the expiration date of the current license, licensee no longer holds a valid license and licensee is considered to have abandoned his license and the practice of long term care administration, and the Board shall take action to formally vacate his license. If this occurs, and if he wishes to resume the practice of long term care administration, he must re-apply to the Board, fully satisfy any/all outstanding fees or fines owed to the Board, and meet current requirements for initial licensure as a long term care administrator.

(b) A suspended license is an 'active' license against which the Board has taken disciplinary action and suspended licensee's ability to engage in the practice of long term care administration. As such, a suspended license shall be subject to expiration and shall be renewed as provided in this Section. Renewal of a suspended license shall not entitle the licensee to engage in the practice of long term care administration until the suspension is removed by the Board and the privilege to practice long term care administration is restored by the Board.

(c) It is the personal responsibility of each licensee to renew his license prior to the expiration date of the current license and, further, to ensure that the information he provides for purposes of renewal is true and accurate.

(d) If the license is not renewed by the last day of the current licensing year, a late fee of \$100 per week shall be assessed wherein the first day equates to the first week (e.g., week 2 starts on the 8th day...) up until the first Board meeting of the year when all non-renewed licenses at that point shall be declared lapsed by the Board and those licensees shall be considered to have abandoned their licenses and do not hold a valid license as of 12:01 a.m. on the day after expiration and shall not hold a position or function in the capacity as a long term care administrator in Oklahoma.

(1) Credential holders (licensees, certificate holders, registrants) may actively opt out of renewing their credential for the following year by acknowledging that they have agreed to having their license vacated by the Board and are waiving the notices sent by Board staff regarding

late renewals. The decision to have the credential vacated in these cases is made by the credential-holder.

(2) Should the credential holder who actively opted not to renew later decide to renew after the expiration date but before the Board has taken action to vacate other credentials for the year, they will follow the same procedures to renew late as those who failed to renew but take responsibility to do so without notifications from Board Staff, having waived such notices upon actively opting to not renew.

(e) All lapsed licenses or certificate holders, following this declaration, (if he wishes to resume the practice of long term care administration) must re-apply to the Board and meet current requirements for initial licensure as a long term care administrator, provided that the individual petitioner can provide evidence to the Board that he complied with all lawful requirements for the retention or renewal of the license.

(f) All non-renewed licenses shall be presented to the Board at a meeting of the Board. The Board shall take formal action at that meeting to vacate all non-renewed licenses.

(g) Following this Board meeting, a listing of all licenses vacated by the Board shall be submitted to the Oklahoma State Department of Health, Long Term Care Services Division.

(h) An individual who practices after the expiration (lapsed or vacated) of his license is practicing without a license and is subject to disciplinary action and/or sanctions as determined by the Board.

(i) A license that is vacated with an open case is required to be reported to the National Practitioners Data Base (NPDB) and included in the Board's Complaint Registry.

(j) Title 59 O.S. 4100.6(A), (B), (C) and (D), notwithstanding any other statutes to the contrary, provides for the automatic extension of license or certification for active duty military service members. The licensee to whom this applies shall be required to notify OSBELTCA staff and provide satisfactory evidence they are active duty and the status of their license shall become "Military."

(1) The license must be in good standing at the time the status is changed.

(2) The licensee must keep the Board informed of address changes and any changes in their active duty status. Failure to keep the Board informed in a timely manner shall cause the status of the license to be vacated by an action of the Board.

(3) While the active duty member is deployed and circumstances with military duty prevent obtaining training, the license will be renewed annually by staff without the payment of renewal fees and without a continuing education requirement.

(4) The license or certificate issued/renewed pursuant to this paragraph may be continued as long as the licensee or certificate holder is a member of the Armed Forces of the United States on active duty and for a period of at least one (1) year after discharge from active duty.

SUBCHAPTER 5. DISCIPLINE

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490:10-5-3. Disciplinary action

(a) This subchapter applies to all long term care administrators (licensed and/or registered), certified assistant administrators (CAAs), any person applying for licensure, registration, or certification, unlicensed persons acting as administrators without a license or certification, and any person acting as administrator with a revoked, suspended, surrendered, lapsed or vacated license.

(b) The Board may take action against a licensed/registered administrator or an unlicensed person acting as administrator, and may deny an initial application; deny an application for reinstatement; deny a licensure by endorsement application; deny a renewal application; suspend or revoke a long term care administrator license or certification, a provisional license, a preceptor certification, an assistant administrator's certification, or an AIT internship training permit; warn; censure; reprimand; impose administrative fines and/or costs including attorney fees, impose probation or use other remedies that may be considered to be less than suspension or revocation upon satisfactory evidence of any of the following:

- (1) Obtaining or attempting to obtain a license, registration or certificate by fraud, deceit, or misrepresentation; or misrepresenting one's self as holding a license or certification when they do not.
- (2) Conviction of or a plea of guilty or *nolo contendere* to any felony or to any misdemeanor involving moral turpitude, or any barrier offense listed in OAC 490:10-1-2.1.
- (3) Use of legally-prescribed or illegal drugs (narcotics or other dangerous drugs) or alcohol or the dependence on legally-prescribed drugs or illegal drugs or alcohol, or gambling, if such use or dependence, or such gambling, or the behaviors related to or resulting from such use or dependence compromise the individual's ability or capacity to fulfill his duties or responsibilities in the long term care facility, or if the same constitute(s) a criminal offense.
- (4) Commitment to a mental institution or judicial determination of incompetence.
- (5) Gross negligence, or negligence that constitutes a danger to the health, welfare or safety of the residents or the public.
- (6) Physical or verbal abuse of a resident or misappropriation of a resident's funds or property; failure to report an allegation of physical or verbal abuse of a resident or misappropriation of a resident's funds or property to appropriate state authorities as required by law.
- (7) Fraudulent, deceptive or dishonest conduct in the management of a long term care facility, or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the long term care field, the long term care administrator profession and/or the public.
- (8) Except as otherwise permitted in this Chapter, concurrently serving or acting as the administrator of more than one nursing facility or assisted living facility; or exceeding the conditions placed on administrators of ICFs/MR with 16 beds or less as stated in this Chapter; or

otherwise serving as an administrator beyond the scope of their licensed authority.

- (9) Failure to comply with State or federal requirements applicable to the facility.
- (10) Failure to comply with rules and requirements for administrators established by the Board, including the Administrator Code of Ethics and Administrator Responsibilities adopted by the Board.
- (11) Evidence that the administrator has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of long term care facility patronage.
- (12) Intentional retaliation or discrimination against any resident or employee for contacting or providing information to any State official, licensing agency or regulatory agency.
- (13) Failure to provide verification of continuing education hours.
- (14) Sexual abuse, sexual harassment, or sexual exploitation of any resident, employee, trainee, volunteer, consultant, or visitor to the facility in which the licensee practices.
- (15) Falsification of any records or documents relating to the operation of a long term care facility; falsification of records or documents submitted to the Board or any other state or federal agency; falsification of a resident's records, or causing a resident's records to be falsified.
- (16) Use of the licensee's professional status, title, position, or relationship as a long term care facility administrator to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, employee, visitor, or any person served by or doing business with the facility that employs the administrator.
- (17) Interfering with, refusing to participate in, or impeding any investigation, inspection, or disciplinary proceeding authorized by Statute.
- (18) Violation of any disciplinary order, consent agreement, term of suspension, condition, stipulation, or any other limitation imposed on the licensee by the Board.
- (19) Unlicensed practice, practice on a revoked, suspended, or lapsed license; or practice on a provisional license without the use of an on-site consultant or practice as a Certified Assistant Administrator without the oversight of an Administrator-of-Record.
- (20) Failure to pay fees or fines established or imposed by the Board.
- (21) Knowingly aiding, assisting, or advising a person to unlawfully practice as an administrator without a required license/registration.
- (22) Failure to adequately supervise an assistant administrator and/or failure to assure that the assistant administrator complies with state and federal requirements applicable to the facility.
- (23) Conduct that violates the security of any licensure examination materials.

(24) Coercion or harassment, or the attempt to coerce or harass, or the use of any other form of uninvited solicitation directed toward a resident of a long term care facility or toward a member of the resident's family or the resident's guardian for the purpose of attempting to persuade the resident to change long term care facilities.

(25) Failure to notify the Board of a change of name, business or personal mailing address(es), or change of employment within fifteen (15) calendar days of the occurrence.

(26) Coercion or harassment of, or the attempt to coerce or harass, a member of the Board, a Board employee or an authorized agent or representative of the Board as related to any matter or issue over which the Board has jurisdiction.

(27) Exclusion by the Department of Health and Human Services Office of Inspector General from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act.

(c) When the Board places a license in probationary status, it may require the licensee to have a "consultant" administrator during the probationary period. The consultant shall agree to the terms of the consultant role as defined in 490:10-1-5(c) (2), meet the qualifications in 490:10-1-5(e), and agree to the requirements of a consultant as listed at 490:10-1-5(f)(1) and (2).

(d) The Board may stipulate requirements for reinstatement in disciplinary orders that are consistent with OAC 490:10-1-11 requirements for reinstatement from suspended status.

(c) Administrators who are already licensed in the State of Oklahoma as a nursing home administrator may enter Administrator University at their own expense for enhanced training if classroom space is available.

(d) Upon mutual agreement of the Board and licensee, specific classes or the entire Administrator University curriculum may be imposed as a penalty for the violation of rules and/or standards established by the Board.

(e) The Board may also designate certain days or classes within the curriculum as eligible for continuing education (CE) credit and may charge an appropriate fee (as a workshop) for administrators to attend on a space available basis.

(f) The application fee and Administrator University fee prescribed by the Board at OAC 490:1-7-2 shall be submitted during the online application process prior to admission to Administrator University.

(g) An applicant for licensure who successfully completes Administrator University (AU) will not have to repeat Administrator University if he is successfully licensed in Oklahoma as a long term care administrator within twenty-four (24) months after the completion of AU which is marked by the scheduled date of class for that particular class.

(h) If applicant fails to become licensed/certified as an Oklahoma long term care administrator during this 24-month time frame, applicant will have to pay all applicable fees and repeat Administrator University prior to any future licensing/certification attempts.

[OAR Docket #23-429; filed 6-6-23]

SUBCHAPTER 7. ADMINISTRATOR UNIVERSITY

490:10-7-3. General provisions

(a) The Board is committed to providing learning opportunities to individuals interested in pursuing a career in long term care administration, and enhancing the development of licensed administrators. To further this objective, the Board has established an Administrator University (AU) for nursing home administrator and Certified Assistant Administrator (CAA) applicants with curriculum designed specifically to educate individuals with knowledge and skills that may assist them in becoming a successful nursing home and/or ICF/MR administrator or CAA. The Board will periodically review and approve or establish training for residential care/assisted living and adult day care administrators as deemed necessary.

(b) Effective August 1, 2006, individuals applying to become nursing home administrators shall successfully complete Administrator University (AU) prior to being licensed. Effective January 1, 2019, individuals applying to become Certified Assistant Administrators shall successfully complete AU prior to being certified. The Board presumptively approves NAB-approved entry level training designed for Nursing Home Administrators for either the NHA or CAA requirement to complete AU.

**TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS
CHAPTER 15. LONG TERM CARE CERTIFIED ASSISTANT ADMINISTRATORS**

[OAR Docket #23-430]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Certification of Long Term Care Assistant Administrators
490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for a Certified Assistant Administrator (CAA) [AMENDED]

Subchapter 3. Application for Certification and Requirements for Continued Eligibility
490:15-3-1. Application process [AMENDED]

AUTHORITY:

Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Permanent Final Adoptions

LEGISLATIVE APPROVAL

Approved May 31, 2023 by SJR22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

August 15, 2023

SUPERSEDED EMERGENCY ACTIONS:

NA

INCORPORATIONS BY REFERENCE:

NA

GIST/ANALYSIS:

Proposed changes within in Subchapter 1 reflects the Board's acceptance of NAB-approved entry level training for NHAs in lieu of the Administrator University requirement which creates more options for people to be trained. It also adds a requirement for the applicants to pass the NAB "Core" exam before certification which also helps them to become NHAs later if they choose to follow that career ladder. Both of these changes parallel changes in other parts of the rules for other license types. Changes within Subchapter 3 is another change that parallels changes made elsewhere in our rules to make the application expiration consistent with the training expiration date.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O. S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 15, 2023:

SUBCHAPTER 1. CERTIFICATION OF LONG TERM CARE ASSISTANT ADMINISTRATORS

490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for a Certified Assistant Administrator (CAA)

(a) In addition to the general requirements for administrators found at OAC 490:10- 1-2.1, each applicant seeking certification as having met the minimum qualifications to be able to serve as a CAA shall meet the requirements in this Section.

(b) In order to qualify to receive certification from the Board that the individual met the minimum qualifications to be able to serve as CAA, each applicant must provide evidence satisfactory to the Board of the following:

- (1) Successful completion of a high school education and receipt of a high school diploma, or receipt of his G.E.D.;
- (2) Successful completion of Administrators University (AU), or presumptively approved NAB-approved entry level training for NHAs, completed within 24 months prior to certification;
- (3) Receipt of a passing score on the current Oklahoma State Standards examination; ~~and either~~
- (4) Receipt of a passing score on the national "NAB" Core examination conducted by the National Association of Long Term Care Administrator Boards (NAB) as discussed in paragraph 10-3-2 of this document; and either

(i) One (1) year of current management, leadership or supervisory experience in a long-term care facility; OR

(ii) Successful completion of Board sanctioned Administrator-in- Training (AIT) program.

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION AND REQUIREMENTS FOR CONTINUED ELIGIBILITY

490:15-3-1. Application process

(a) Applicants for approval as a certified assistant administrator (CAA) shall apply online, supplying all required documentation and shall pay a non-refundable application fee. Once the application is complete and the applicant has completed the required training and passed the appropriate examination(s), the applicant will be required to pay the non-refundable fee referenced at OAC 490:1-7-2(x) before being placed on the agenda for Board certification determination.

(b) An application for 'certifying' an individual to serve in the capacity of a CAA is valid consistent with the time constraints for NHA licensure following completion of training (see OAC 490:10-1-3 and 10-3-1). ~~for one year after the date the review fee is received.~~

(c) An application shall be determined complete when:

- (1) the criminal background check is received;
- (2) all documentation required for the application has been received; and
- (3) the application fee prescribed at OAC 490:1-7-2 has been remitted and the monies credited to the Board's account with the State Treasurer.

(d) Once an application is determined complete, the applicant must then meet the remaining requirements for certification found in this Chapter.

[OAR Docket #23-430; filed 6-6-23]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-431]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Fees

535:1-11-1. Annual licenses, permits and renewals [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11 - 353.20.1, 353.22, 353.24 - 354, 375.1-375.5; Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3).

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revision in 535:1-11-1 (16) - (19) add the fees set in statute for Durable Equipment Suppliers (DME) and for combined Medical Gas Distributors and Durable Medical Equipment Suppliers (DME + MGD) to our fee schedule for customer convenience. The fees in 535:1-11-1 (16) - (19) are set in statute and added to our fee schedule for customer convenience.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2023:

SUBCHAPTER 11. FEES

535:1-11-1. Annual licenses, permits and renewals

Annual license, permit and renewal fees, as set by the Board, shall be as follows:

- (1) Pharmacist renewal (active or inactive) - \$100
- (2) Senior inactive pharmacist renewal (age 65 or over, retired) - \$20
- (3) Pharmacy license
 - (A) Retail, hospital, non-resident, and remote medication order processing - \$150
 - (B) Charitable clinic - \$ 75
 - (C) Hospital drug room - \$ 40
- (4) Oklahoma licensed pharmacy emergency medication kit placed in an Oklahoma Facility [59 O.S. 367.8 (C)] remote site - \$50
- (5) Sterile compounding permit - \$ 75
- (6) Drug supplier permit - \$ 20
- (7) Wholesale distributor license - \$200
- (8) Repackager license - \$200
- (9) Manufacturer license - \$200
- (10) Medical gas supplier license - \$100
- (11) Medical gas distributor license - \$200
- (12) Outsourcing facility license - \$200
- (13) Third-party logistics provider license - \$200
- (14) Pharmacy technician permit - \$40
- (15) Duplicate renewal receipt, permit, or practical experience certificate:

(A) Duplicate for lost, destroyed or damaged original-\$10

(B) Duplicate or multiple location copy - \$10

(16) Durable Medical Equipment Supplier (DME), New - \$300

(17) Durable Medical Equipment Supplier (DME), Renewal - \$200

(18) Durable Medical Equipment Supplier + Medical Gas Distributor (DME+MGD), New - \$600

(19) Durable Medical Equipment Supplier + Medical Gas Distributor (DME+MGD), Renewal - \$300

[OAR Docket #23-431; filed 6-6-23]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; AND
INTERNS, PRECEPTORS AND TRAINING
AREAS**

[OAR Docket #23-432]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Pharmacists

535:10-3-4. Uniform pharmacy continuing education [AMENDED]

Subchapter 7. Pharmacist Licensure

535:10-7-10. Pharmacist reinstatements [AMENDED]

Subchapter 11. Pharmacist administration of immunizations

535:10-11-3. D.Ph. administering of immunizations, training and

CEadministering of immunization requirements [AMENDED]

535:10-11-5. D.Ph. training requirements for administration of immunizations [REVOKED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.30 and 364; Title 59 O.S. Sec. 6002; and Title 63 O.S. Section 2-312.25.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revisions in 535:10-3-4 update (d) post-graduate school / residency and they add to (f) regarding no job credit for CE. They update (l) for ACPE's name change, they explain that ACPE approved CE is accepted and should not be re-submitted to the Board Continuing Education Committee.

Permanent Final Adoptions

The revisions in 535:10-7.10 regarding pharmacist reinstatement clarify the rule and add process for pharmacists who had immunization permits to reinstate their pharmacist license and immunization permit. They establish a process for pharmacist who do not reinstate their immunization with their pharmacist reinstatement to later add a new immunization later if not done at reinstatement.

The revisions in 535:10-11-3 expand requirements to include training and add "Accredited Council for Pharmacy Education (ACPE)" to pharmacist immunization approved training. They expand the continuing education and require annual CE for immunizing pharmacists.

Section 535:10-11-5 is revoked. Training and CE requirements were simplified and added to 535:10-11-3.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2023:

SUBCHAPTER 3. PHARMACISTS

535:10-3-4. Uniform pharmacy continuing education

- (a) **Certification.** At the time of annual renewal of registration each pharmacist must certify that he has obtained at least 15 clock hours of continuing education credits through satisfactory completion of an accredited program during the previous calendar year (January 1 -December 31).
- (b) **Verification forms.** Verification forms of attendance and/or completion of continuing education programs shall be obtained and maintained by the pharmacist.
- (c) **Records.** Proof of continuing education will be maintained by the individual pharmacist for a period of two (2) years from renewal date and submitted to the Board only on request.
- (d) **Post-Graduate school/Residency.** Pharmacists in ~~post pharmacy~~ graduate school / residency will be allowed credit for the required fifteen (15) hours of continuing education.
- (e) **Military personnel.** Military personnel will not be exempt from the continuing education requirement because of the availability of correspondence courses, etc.
- (f) **Job credit.** No credit for continuing education will be granted for anything directly connected with the responsibilities and duties of a pharmacist, e. g., no credit will be given for Continuing Education (CE) while on duty, a pharmacist's job.
- (g) **Journals.** No credit will be allowed for reading, subscribing to or writing articles for various professional and trade journals.
- (h) **Meetings.** Requests for approval of credit for individual meetings will be submitted to the Committee on Continuing Education by the individual pharmacist for review and decision.
- (i) **Prior approval.** Prior approval of programs of continuing education shall be obtained by the program sponsor. Each program must be submitted in its entirety, including all materials, in order to be evaluated by the Continuing Education Committee. Continuing education programs sponsored by various drug companies may be acceptable, if the programs are

continuing education oriented and not promotional or product oriented.

- (j) **Approved programs notice.** Programs approved for credit by the Continuing Education Committee and the Board will be published on the Board's webpage as these programs are approved.
 - (k) **Colleges of pharmacy.** The two State colleges of pharmacy may review the various continuing education programs and make recommendations to the Continuing Education Committee.
 - (l) **Accreditation Council for Pharmacy Education/American Council on Pharmaceutical Education (ACPE).** The Board Continuing Education Committee accepts all ACPE approved continuing education programs (CE) for CE credit. Do not re-submit ACPE CE.
 - (m) **Continuing Education Committee.** The Continuing Education Committee will consist of up to six (6) pharmacist members appointed by the Board for a three (3) year minimum term. The committee will meet quarterly or as needed.
 - (n) **Live Continuing education recommended.** Pharmacists are encouraged to attain three (3) hours or more of live continuing education (CE) each year as part of the fifteen (15) hours required. Live CE is attained in the presence of other pharmacists with a presenter and the possibility of interaction with a peer group. Webinars are considered live CE if the pharmacist can ask questions and get answers from the presenter(s) or the moderator during the webinar.
 - (o) **Specific Continuing Education requirement.** The Board may, at its discretion, require up to three (3) hours of continuing education on a specific topic. Adequate notice shall be provided to registrants of any specific continuing education when required by the Board.
- ## SUBCHAPTER 7. PHARMACIST LICENSURE
- ### 535:10-7-10. Pharmacist reinstatement
- (a) A pharmacist reinstatement applicant shall be an individual who possesses a pharmacist certificate of registration that was cancelled at request or for failure to renew.
 - (1) A pharmacist who possesses a revoked certificate is not eligible for reinstatement.
 - (2) Cancelled pharmacists' records are kept for a limited time. If a pharmacist's record has been destroyed the applicant is not eligible for reinstatement. In this case the applicant shall follow the requirements in 535:10-7 to obtain pharmacist licensure.
 - (b) A pharmacist reinstatement applicant shall meet the requirements in the Oklahoma Pharmacy Act, this Title, 535:10-7-4, 535:10-7-9 and this section.
 - (c) A pharmacist reinstatement applicant shall send a written request to the Board.
 - (d) Reinstatement applicants shall submit a satisfactorily completed Board approved reinstatement application together with the requirements and fees.
 - (e) Applicants may be required to appear before the Board for interview as described in 535:10-7-4 (d).

- (f) Applicants may be required to take the Board approved law exam as described in 535:10-7-4 (e).
- (g) The applicant shall meet any additional requirements that the Board feels are necessary to protect public health.
- (h) Reinstatement will be required when the suspension of a non-current pharmacist's certificate ends or when the suspension is placed on probation.
- (i) An applicant who had an immunization permit must submit verification of 2 hours of immunization related ACPE Accredited CE with their pharmacist reinstatement application to also reinstate their immunization permit. If not done at reinstatement, a pharmacist may add an immunization permit later by completing a new immunization application.

**SUBCHAPTER 11. PHARMACIST
ADMINISTRATION OF IMMUNIZATIONS**

535:10-11-3. D.Ph. administered immunization, training and CE administering of immunization requirements

- (a) A D.Ph. must have completed an approved Accreditation Council for Pharmacy Education (ACPE) training course and received registration for immunizations with the Board as stated in 535:10-11-4 prior to administering immunizations.
- (b) The Board will maintain a register of those pharmacists who have been approved to administer immunizations.
- (c) A D.Ph. with immunization registration must maintain ongoing competency through required training, including at a minimum current CPR certification and 1 hour of immunization related ACPE accredited current continuing education annually.

535:10-11-5. D.Ph. training requirements for administration of immunizations [REVOKED]

- (a) ~~The following is a list of approved pharmacist training programs for administration of immunizations:~~
 - (1) ~~Programs that include training in immunizations offered by the two state colleges of pharmacy:~~
 - (A) ~~Southwestern Oklahoma State University (SWOSU) College of Pharmacy~~
 - (B) ~~University of Oklahoma (OU) College of Pharmacy~~
 - (2) ~~Immunization programs approved by the Accreditation Council for Pharmacy Education (ACPE).~~
 - (3) ~~Immunization programs offered by the American Pharmaceutical Association (APHA).~~
 - (4) ~~Immunization programs offered by the National Community Pharmacy Association (NCPA).~~
 - (5) ~~Immunization programs offered by the American Society of Health System Pharmacists (ASHP).~~
- (b) ~~Each D.Ph. must have successfully completed one of these training courses in immunization prior to registering with~~

~~the Board or administering immunizations prescribed by an Oklahoma licensed prescribing practitioner.~~

[OAR Docket #23-432; filed 6-6-23]

**TITLE 535. OKLAHOMA STATE BOARD OF
PHARMACY
CHAPTER 15. PHARMACIES**

[OAR Docket #23-433]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Pharmacies
 - 535:15-3-4. Physical requirements for pharmacies [AMENDED]
 - 535:15-3-12. Transfer of prescription refill information [AMENDED]
 - 535:15-3-16. Adequate staffing rules for pharmacists and pharmacies [AMENDED]
- Subchapter 5. Hospital Pharmacies
 - 535:15-5-9. Hospital pharmacy physical requirements [AMENDED]
 - 535:15-5-9.1. Hospital pharmacy library requirements [NEW]
- Subchapter 6. Hospital Drug Room
 - 535:15-6-6. Physical and library requirements [AMENDED]
 - 535:15-6-6.1. Hospital drug room library requirements [NEW]
 - 535:15-6-7. Drug distribution and control [AMENDED]
- Subchapter 10. Good Compounding Practices
 - PART 1. Good Compounding Practices for Non-Sterile Preparations [AMENDED]
 - 535:15-10-8.2. Beyond-use dating [AMENDED]
 - 535:15-10-13. Compounding veterinarian preparations [AMENDED]
 - 535:15-10-15. Compounding of non-sterile radiopharmaceuticals [REVOKED]
 - PART 3. Good Compounding Practices for Sterile Preparations [AMENDED]
 - 535:15-10-55. Drug compounding facilities [AMENDED]
 - 535:15-10-64.1. Compounding veterinarian sterile preparations [AMENDED]
 - 535:15-10-66. Compounding of sterile radiopharmaceuticals [REVOKED]
- Subchapter 13. Pharmacy supportive personnel
 - 535:15-13-4. Pharmacy technician qualifications and training [AMENDED]
 - 535:15-13-6.1. Technician rules for administering immunizations [NEW]
 - 535:15-13-15. Technician reinstatement requirements [NEW]
- Subchapter 17. Nuclear Pharmacy
 - 535:15-17-5. General requirements [AMENDED]
 - 535:15-17-11. Supervision of licensed pharmacy technicians in a licensed nuclear pharmacy [NEW]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 353.26 - 354, and 367.8.

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The revision in 535:15-3-1.1, 535:15-3-9 and 535:15-3-11 are withdrawn. Revised in 535:15-3-4. Physical requirements for pharmacies remove (3) for Balances. It renumbers (4) Library to (3), renumbers (5) - (7) to (4) - (6). It deletes (8) filing, (9) containers, and (10) Labels. Lastly it renumbers (11) EPCS to (7) and adds a new (8) security.

Documentation is simplified in 535:15-3-12 (a) (2) (B) and (a) (2) (B) (i). It also adds "non-CDS" in (i).

Revised in 535:15-3-16 Adequate staffing rules for pharmacists and pharmacies and include punctuation changes. This rule brings the old (f) into (e), renumbers (g) to (f), and adds a new (g) that restricts pharmacies from retaliating against an employee who reports suspected violations.

The revisions in 535:15-5-9. Hospital pharmacy physical requirements change insure to ensure. They change (a) (1) (A) to (a) (2) and add Sterile compounds tag line. They remove the library requirements (a) (1) (B) from this section and adds them to 535:15-5-9.1 Hospital pharmacy library requirements. The old (a) (2) - (5) are renumbered to (3) - (6).

Revisions in 535:15-6-6 Physical requirements make the same changes described in 535:15-5-9 except for Hospital drug rooms. They remove the library requirements (a) (1) (B) and (C) from this section and adds them to 535:15-6-6.1. Hospital drug room library requirements. While the old (a) (2) - (5) are renumbered to (3) - (6).

Revised 535:15-6-7 Drug distribution and control (e) adds the missing (1) and (2) back to this rule as well as correcting punctuation and grammar.

Revisions in 535:15-10-8.2. Beyond-use dating remove from (c) USP-NF and replace with Board rules and in (c) (1) removes USP-NF and listed above.

Revised in 535:15-10-13. Compounding veterinary preparations (b) the word "guidances" is changed to "guidance" to correct grammar. The old (e) is deleted and replaced with a new (e) and the old (f) is changed to conform with new FDA law and rules.

Rule 535:15-10-15 Compounding of non-sterile radiopharmaceuticals is revoked.

The changes in 535:15-10-55 Drug compounding facilities remove USP reference in (d).

The revision in 535:15-10-64.1 Compounding veterinary sterile preparation (b) the word "guidances" is changed to "guidance" to correct grammar. The old (e) is deleted and replaced with a new (e) and the old (f) is changed to conform with new FDA law and rules.

Rule 535:15-10-66. Compounding of sterile radiopharmaceuticals is revoked.

The revision in 535:15-13-4 Pharmacy technician qualifications and training (d) corrects the cite from "535.25" to the correct cite "535:25".

Rule 535:15-13-6.1 adds new technician rules for administering immunizations.

Rule 535:15-13-15 adds new technician reinstatement requirements.

The changes in 535:15-17-5 General requirements correct punctuation and grammar. The rule 535:15-17-5 (f) is revised and added are (1) and (2) under (f) to clarify the rule.

New rules in 535:15-17-11 for supervision of licensed pharmacy technicians in a licensed nuclear pharmacy are the same ratios as for hospital pharmacies. Nuclear medications are most often prepared, dispensed and repackaged so they often don't fall within the compounding rule for technician ratios. This establishes the same technician ratio for these tasks.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2023:

SUBCHAPTER 3. PHARMACIES

535:15-3-4. Physical requirements for pharmacies

The following are physical requirements for pharmacies:

(1) **Size.** The prescription department shall occupy no less than 125 square feet and shall be in a commercial location and not in a personal dwelling or residence.

(2) **Sanitary facilities.** There shall be installed the proper sanitary facilities which shall include a sink with hot (minimum 104 degrees F) and cold running water separate from the restroom facilities.

~~(3) **Balances.** There shall be one set of prescription balances with capacity from 1/10 grain to at least one (1) ounce. If the pharmacy proves to the Board that the practice of pharmacy at this particular site does not require weighing of drugs and/or ingredients, an exception may be made by the Executive Director of the Board to the balances requirement.~~

~~(4) **Library.** There shall be the necessary library which has been prescribed and standardized by the Board in Section 535:15-3-6.~~

~~(5) **Refrigeration.** There shall be sufficient refrigeration facilities to store all necessary biologicals, injectables, suppositories and other products requiring refrigeration. This refrigerator shall be entirely separate from the storage of any food products in open packages.~~

~~(6) **Exempt narcotic book.** There shall be a book suitable for the registration of all sales of exempt narcotics if such are sold or dispensed.~~

~~(7) **Poison Book.** There shall be a book suitable for the registration of all sales of poisons in accordance with applicable laws if such are sold or dispensed.~~

~~(8) **Filing.** There shall be a system of filing for all prescriptions which shall be kept for a period of not less than five (5) years.~~

~~(9) **Containers.** There shall be sufficient stock of containers suitable for the dispensing of all prescriptions both for internal and external usage.~~

~~(10) **Labels.** There shall be sufficient stock of labels both for the dispensing of prescriptions and the sale of medicines and chemicals. Label requirements are described in the Act.~~

~~(11) **E-Prescribing of Controlled Substances (EPCS).** Any pharmacy that dispenses controlled dangerous substances shall have computer software that supports EPCS by January 1, 2019.~~

(8) **Security.** There shall be an electronic alarm and video recording system in place to provide protection against theft and diversion.

535:15-3-12. Transfer of prescription refill information

For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(1) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies:

(A) For up to the number of originally authorized refills remaining on 'Rx Only' drugs that are not controlled; or

- (B) On a **one-time** basis only, for original prescriptions and refills for a controlled dangerous substance (CDS) listed in Schedules III, IV or V for the purpose of refill dispensing. However, pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization.
 - (C) CDS prescription transfers must be communicated directly between two licensed pharmacists and cannot be done by an intern.
 - (D) Non controlled prescription transfers must be communicated directly between two licensed pharmacists and /or licensed interns.
- (2) The transfer as allowed in 535:15-3-12 (1) (C) and (D) above must be:
- (A) Communicated orally directly between two licensed pharmacists and / or licensed interns; or,
 - (B) The prescription transfer information ~~may~~ shall be faxed from one pharmacy to another. ~~Upon receipt of the faxed information, a licensed pharmacist or licensed intern at the receiving pharmacy shall communicate receipt of the prescription transfer information orally directly with a licensed pharmacist or licensed intern at the originating pharmacy; and shall document the communication.~~ The original prescription transfer faxed information shall be printed and stored for:
 - (i) A non-controlled drug substance (non-CDS) prescription in the same manner as a non-controlled drug substance prescription or shall be electronically stored;_
 - (ii) A controlled drug substance prescription in the same manner as a controlled drug substance prescription;_
- (3) Both the original and the transferred prescription drug order must be maintained for a period of five years from the date of last refill;_
- (4) The pharmacist transferring the prescription drug order information shall:
- (A) Write the word "void" on the face of the invalidated prescription drug order;_ and,
 - (B) Record on the reverse of the invalidated prescription drug order the following information;_
 - (i) The name and address of the pharmacy to which such prescription drug order is transferred;_
 - (ii) The last name and registration number of the pharmacist receiving the prescription drug order information;_
 - (iii) The last name and registration number of the pharmacist transferring the prescription drug order information;_
 - (iv) The date of the transfer;_ and
 - (C) As required in federal DEA rules, exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.
- (5) The pharmacist receiving the transferred prescription drug order information shall:

- (A) write the word "transfer" on the face of the transferred prescription drug order, see 535:15-3-12 (8); and,
 - (B) Record on the transferred prescription drug order the following information:
 - (i) The date of the original prescription (refills are allowed only as prescribed for a one year maximum from original prescription date on non-scheduled, as stated in 535:15-3-11) (b) et seq. and up to five refills for no more than six months on Schedule III-V, as stated in 475:30-1-11 (a))-;_
 - (ii) The original prescription number and the number of refills authorized on the original prescription drug order;_
 - (iii) The number of valid refills remaining and the date of last refill;_
 - (iv) The name and address of the pharmacy from which such prescription information is transferred;_
 - (v) The last name and registration number of the pharmacist transferring the prescription drug order information;_ and
 - (C) As required in federal DEA rules, exchange and document the sending and receiving pharmacy DEA number on a controlled dangerous substance prescription transfer.
- (6) Transferring pharmacies with computer systems shall invalidate the prescription drug order in their system for purposes of filling or refilling ; but shall maintain the information for refill history purposes;_
- (7) If the computer system has the capacity to store all of the information required in (4) and (5) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order;_
- (8) The computer system used by the pharmacy receiving the transfer must be able to show that a CDS or scheduled prescription is a transferred prescription. (This is to prevent the possible second transfer of a Scheduled prescription in violation of federal law and 535:15-3-12 (1).)

535:15-3-16. Adequate staffing rules for pharmacists and pharmacies

- (a) Adequate staffing to safely fill prescriptions is the responsibility of the pharmacy, the pharmacy manager, and the pharmacist. If conditions exist that could cause prescriptions to be filled in an unsafe manner, each shall take action to correct the problem.
- (b) In order to ensure adequate staffing levels a staffing form shall be available in each pharmacy. A copy of this form, when executed, will be given to the immediate supervisor and a copy must remain in the pharmacy for Board inspection.
 - (1) Such form shall include, but not be limited to the following:
 - (A) Date and time the inadequate staffing occurred;_

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- (B) Number of prescriptions filled during this time frame;
 - (C) Summary of events;
 - (D) Any comments or suggestions.
- (2) Such forms are not to be sent to the Board.
- (c) A pharmacist shall complete the staffing report form when:
- (1) A pharmacist is concerned regarding staffing due to:
 - (A) inadequate number of support persons (cashiers, technicians, auxiliary supportive personnel, etc.); or
 - (B) excessive workload;
 - (2) Filling out the form may enable management to make a better decision concerning staffing.
- (d) If the pharmacy manager feels that the situation warrants earlier Board review, the pharmacy manager shall inform the Board.
- (e) Each pharmacy shall review completed staffing reports and address any issues listed as well as document any corrective action taken or justification for inaction to assure continual self-improvement. If the issue is not staffing related, measures taken to address the issue should be described. (f) Each pharmacy shall retain completed staffing reports until reviewed and released by the Board. Such reports requiring further review may be held by the Board and may become part of an investigation file.
- (g) A registrant, including a pharmacy, a pharmacy manager, or a pharmacist, shall not be subject to discipline by the employing pharmacy for completing a staffing report in good faith.
- (g) An employing pharmacy shall not retaliate against or discipline an employee for filing a complaint with the Board of Pharmacy or other licensing body or reporting a suspected violation of state or federal statute or any ordinance or regulation of a political subdivision. As used in this paragraph, retaliation or discipline of an employee includes, but is not limited to the following:
- (1) Removing or suspending the employee from employment.
 - (2) Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled.
 - (3) Transferring or reassigning the employee.
 - (4) Denying the employee, a promotion that otherwise would have been received, or
 - (5) Reducing the employee in pay or position.

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-9. Hospital pharmacy physical requirements

A hospital pharmacy shall have sufficient facilities to ensure that drugs are prepared in sanitary, well-lighted and enclosed places, and which meet the other requirements of this Chapter. The following are in addition to the equipment and library requirements listed in 535:15-3-4 and 535:15-3-6.

(1) **Equipment and materials.** Each hospital pharmacy shall have sufficient equipment and physical facilities for proper compounding, dispensing and storage of drugs.

~~(A2) **Sterile compounds.** For sterile compounded preparations, a hospital must comply with 535:15-10 Part 3.~~

~~(B) A library shall be maintained which includes four of the following current references (not more than 2 years old or most recent). Current electronic sources may be substituted for hard copy information sources:~~

- ~~(i) Drug interactions;~~
- ~~(ii) Drug compatibility;~~
- ~~(iii) Poison and antidote information;~~
- ~~(iv) Toxicology;~~
- ~~(v) Pharmacology;~~
- ~~(vi) Bacteriology;~~
- ~~(vii) Patient counseling;~~
- ~~(viii) Rational therapy;~~
- ~~(ix) Dispensing information; and,~~
- ~~(x) Applicable USP standards.~~

~~(C) The library shall include the latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.~~

~~(23) **Storage.** All pharmaceuticals bearing a federal legend such as "RX Only" and medications administered in the hospital shall be stored in designated areas within the hospital which are sufficient to insure proper sanitation, temperature, light, ventilation, moisture control, segregation and security. The storage shall be as directed by the Director of Pharmacy and shall remain under the direct supervision of a pharmacist.~~

~~(34) **Alcohol and flammables.** Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatiles and such other laws, ordinances or regulations as may apply.~~

~~(45) **Unattended areas.** In the absence of authorized personnel in a hospital medication area, such area shall be locked and inspected on a regular schedule of at least monthly as directed by the Director of Pharmacy.~~

~~(56) **Security.** All areas occupied by a hospital pharmacy shall be capable of being locked by key or combination to prevent access by unauthorized personnel.~~

535:15-5-9.1. Hospital pharmacy library requirements

A hospital pharmacy library shall contain the following current reference books or computer sources:

(1) Library menu. A recent copy of any two of the following:

- (A) USP/NF (3 years or latest edition),
- (B) Merck Manual (3 years or latest edition),
- (C) Remington (6 years),
- (D) A toxicology reference (3 years),
- (E) Mosby's Drug Consult (2 years).

- (F) Facts and Comparisons (2 years).
- (G) ASHP, American Hospital Formulary Service (AHFS) Drug Information (2 years).
- (H) Monthly Prescribing Reference (MPR) (2 years).
- (I) Drug Information Handbook (2 years).
- (J) Thomson Micromedex, USP-DI (2 years); and/or.
- (K) Current computer professional pharmacy reference program, approved by the Board (not duplicating a hard copy reference) e.g., one or two of the following:
 - (i) Thomson Micromedex, USP-DI
 - (ii) Clinical Pharmacology
 - (iii) Facts and Comparisons
 - (iv) Natural Medicines Comprehensive Database
 - (v) Trissel's 2 Clinical Pharmaceutical Database
 - (vi) Unlimited internet access to internet professional pharmacy reference program, e.g., WEB MD

(2) The required two reference sources must contain professional reference information on four of the following topics listed below:

- (A) Drug interactions.
- (B) Drug compatibility.
- (C) Poison and antidote information.
- (D) Toxicology.
- (E) Pharmacology.
- (F) Bacteriology.
- (G) Patient counseling.
- (H) Rational therapy.
- (I) Dispensing information; and.
- (J) Applicable USP standards.

(3) The library shall include the latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.

SUBCHAPTER 6. HOSPITAL DRUG ROOM

535:15-6-6. ~~Physical and library~~ requirements

A hospital drug room shall have sufficient facilities to ~~insure~~ensure that drugs are prepared in sanitary, well-lighted and enclosed places, and which meet the other requirements of this Chapter.

(1) **Equipment and materials.** Each hospital drug room shall have sufficient equipment and physical facilities for proper compounding, dispensing and storage of drugs.

(A2) **Sterile Compounds.** For compounded sterile preparations:

- (~~1A~~) If a laminar hood is used, a hospital drug room shall comply with 535:15-9-6 and 535:15-9-10, 1 through 5.

(~~1B~~) If a laminar hood is not used, a closed system for parenteral admixtures should be utilized. If sterile compounding must be done, an area must be designated for that activity. This area must be at least a counter used for only this purpose and be away from patient care areas. Acceptable aseptic techniques shall be used.

(B) ~~A library shall be maintained which includes four of the following current references (not more than 2 years old or most recent). Current electronic sources may be substituted for two hard copy information sources:~~

- (i) ~~Drug interactions;~~
- (ii) ~~Drug compatibility;~~
- (iii) ~~Poison and antidote information;~~
- (iv) ~~Toxicology;~~
- (v) ~~Pharmacology;~~
- (vi) ~~Microbiology;~~
- (vii) ~~Patient counseling;~~
- (viii) ~~Rational therapy;~~
- (ix) ~~Dispensing information; and,~~
- (x) ~~Applicable USP standards~~

(C) ~~The library shall include the latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.~~

(23) **Storage.** All drugs bearing a federal legend such as "RX Only" and medications administered in the hospital shall be stored in designated areas within the hospital which are sufficient to insure proper sanitation, temperature, light, ventilation, moisture control, segregation and security. The storage shall be as directed by the PIC and shall remain under the supervision of such pharmacist.

(34) **Alcohol and flammables.** Alcohol and flammables shall be stored in areas that shall, at a minimum, meet basic local building code requirements for the storage of volatiles and such other laws, ordinances or regulations as may apply.

(45) **Unattended areas.** In the absence of authorized personnel in a hospital medication area, such area shall be locked.

(56) **Security.** All areas occupied by a hospital drug room shall be capable of being locked by key or combination to prevent access by unauthorized personnel.

535:15-6-6.1. **Hospital drug room library requirements**

A hospital drug room library shall contain the following current reference books or computer sources:

- (1) Library menu. A recent copy of any two of the following:
 - (A) USP/NF (3 years or latest edition).
 - (B) Merck Manual (3 years or latest edition).
 - (C) Remington (6 years).
 - (D) A toxicology reference (3 years).
 - (E) Mosby's Drug Consult (2 years).
 - (F) Facts and Comparisons (2 years).

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(G) ASHP, American Hospital Formulary Service (AHFS) Drug Information (2 years).

(H) Monthly Prescribing Reference (MPR) (2 years).

(I) Drug Information Handbook (2 years).

(J) Thomson Micromedex, USP-DI (2 years); and/or.

(K) Current computer professional pharmacy reference program, approved by the Board (not duplicating a hard copy reference) e.g., one or two of the following:

(i) Thomson Micromedex, USP-DI

(ii) Clinical Pharmacology

(iii) Facts and Comparisons

(iv) Natural Medicines Comprehensive Database

(v) Trissel's 2 Clinical Pharmaceutical Database

(vi) Unlimited internet access to internet professional pharmacy reference program, e.g., WEB MD

(2) The required two reference sources must contain professional reference information on four of the following topics listed below:

(A) Drug interactions.

(B) Drug compatibility.

(C) Poison and antidote information.

(D) Toxicology.

(E) Pharmacology.

(F) Bacteriology.

(G) Patient counseling.

(H) Rational therapy.

(I) Dispensing information; and.

(J) Applicable USP standards.

(3) The library shall include the latest copy of Oklahoma State Laws and Rules Pertaining to the Practice of Pharmacy and a recent copy of Oklahoma State Bureau of Narcotics & Dangerous Drugs Control Rules.

535:15-6-7. Drug distribution and control

(a) **General.** The PIC shall establish written procedures for the safe and efficient distribution of medicine products. A copy of such procedures shall be on hand for inspection by the Board.

(b) **Responsibility.** The PIC shall be responsible for the safe and efficient distribution, control, and accountability of drugs, see 535:15-6-5 (b).

(c) **Labeling.** Hospital drug room labeling requirements shall be as follows:

(1) **Labeling for use inside the hospital facility.** All drugs outside of the drug room intended for use within the facility shall be adequately labeled by the pharmacist or in their original container.

(2) **Labeling for use outside the hospital facility.** All drugs labeled by the pharmacist or licensed practitioner for after-hours dispensing to discharge or emergency room patients shall be labeled with the following:

(A) Name and address of the hospital facility,

(B) Date and identifying number,

(C) Name of the patient,

(D) Directions for use to the patient,

(E) Name of the prescriber,

(F) Initials of the dispenser,

(G) Required precautionary information regarding controlled substances,

(H) Such other accessory or cautionary information as may be required or desirable for proper use and safety to the patient, and;

(I) the name of the drug, its strength, and the number of units dispensed.

(3) **Sterile compounded admixtures.** When any drugs are added to sterile solutions or suspensions, such admixtures shall be labeled whether within or outside the direct personal supervision of a pharmacist. This label shall indicate the name and amount of the drug added, date and time of such addition, expiration date and time of admixture, and the initials of the persons (preparer and the verifier) responsible for the admixture.

(d) **Discontinued and outdated drugs.** The PIC shall develop and implement policies and procedures to insure that discontinued and outdated drugs, and containers with worn, illegible or missing labels are returned to the drug room for proper disposition.

(e) **Prescriber's orders.** Hospital drug room requirement regarding prescriber's orders shall be as follows:

(1) Drugs may be dispensed to specific patients only upon the written or verbal order of an authorized prescriber. A pharmacist or other authorized individual in a patient care area of the hospital facility must commit verbal prescriber's orders to writing.

(A) **Authorization.** The appropriate hospital committee shall designate those prescriber's authorized to issue and accept orders for hospital patients.

(B) **Requirements.** Orders for drugs for use by inpatients of the facility shall, at a minimum, contain the patient's name and room number, drug name, strength, directions for use, any relevant stop date or time, order date and time, and prescriber's signature. A copy of the order is to be provided to the drug room from which the order is to be processed.

(2) Orders for drugs for outpatients shall be considered prescriptions and must fulfill all of the requirements of a prescription identified within the Pharmacy Practice Act, and state and federal law and rules.

(f) **Controlled drug accountability.** The hospital facility shall establish effective written procedures and maintain adequate records as required by law and rule regarding the use and accountability of controlled substances and such other drugs as the hospital may designate.

(g) **Drug recall procedures.** The PIC shall develop and implement a written recall procedure that can be readily activated which assures that drugs involved, inside or outside the facility, are returned to the hospital drug room for proper disposition. All actions taken in this area are to be properly documented.

(h) **Records and reports.** The PIC shall develop a mechanism for maintaining and submitting as appropriate, such

records and reports as are required to insure patient health, safety, and welfare. These should include the following:

- (1) Adverse drug reaction reports,
- (2) Floor stock inventories of night cabinets and emergency boxes,
- (3) Drug list or formulary of the hospital drug room as required by state health department rules,
- (4) Controlled substance inventory,
- (5) Ethyl alcohol inventory,
- (6) Pharmacy and therapeutics committee minutes; and
- (7) Reports and records as may be required by law, and the rules of this chapter.

SUBCHAPTER 10. GOOD COMPOUNDING PRACTICES

PART 1. GOOD COMPOUNDING PRACTICES FOR NON-STERILE PREPARATIONS

535:15-10-8.2. Beyond-use dating

- (a) Pharmacies engaging in compounding shall assign every compounded preparation an appropriate beyond-use date (BUD).
- (b) BUD may be assigned based on criteria different from those applied to assigning expiration dates to manufactured drug products.
- (c) BUD are to be assigned conservatively; and should be based on the following State Board of Pharmacy regulations USP-NF standards in (d) through (f) below.
 - (1) ~~The USP-NF-These standards listed above~~ may be exceeded when there is supporting scientific stability information that is directly applicable to the specific preparation (e.g., the same drug concentration range, pH, excipients, vehicle, water content, etc.)
 - (2) Information to be considered when assigning a BUD includes chemical, physical and microbiological stability; nature of the drug, its chemical degradation mechanism, the container in which it is packaged, expected storage conditions, and the intended duration of therapy.
- (d) Non-aqueous Formulations. The BUD for non-aqueous formulations is not later than the time remaining until the earliest expiration date of any ingredient utilized or 6 months, whichever is earlier.
- (e) Water-Containing Oral Formulations. The BUD for water-containing oral formulations is not later than 14 days when stored at controlled cold temperatures.
- (f) Water-Containing Topical / Dermal and Mucosal Liquid and Semisolid formulations. The BUD for water-containing topical / Dermal and Mucosal Liquid and semisolid formulations is not later than 30 days.
- (g) If water is not added to a topical compounded preparation itself then the compound could be considered anhydrous with a BUD of 6 months or the earliest expiration of products used, whichever is less.

535:15-10-13. Compounding veterinarian preparations

- (a) Prescriptions for animals may be compounded based on an order or prescription from a licensed prescriber.
- (b) Compounded preparations must comply with federal statutes, rules and FDA guidance guidances.
- (c) Caution should be taken as to not violate federal patent laws by duplicating an available product in inordinate quantities.
- (d) Compounding with bulk chemicals for food-producing animals is not permitted.
- ~~(e) It is acceptable for any licensed pharmacy to compound veterinary drug products to be used by veterinarians in their office for administration to clients for use in a single treatment episode, not to exceed 120 hours supply.~~
- (e) It is acceptable for any licensed pharmacy to compound animal drugs from bulk substances for office use without patient-specific prescriptions for nonfood-producing animals if:
 - (1) The drug is compounded by or under the direct supervision of a pharmacist in a state-licensed pharmacy or a federal facility.
 - (2) The drug is intended for use in a nonfood-producing species and is compounded from a bulk drug substance listed on FDA's "List of Bulk Drug Substances for Compounding Office Stock Drugs for Use in Nonfood-Producing Animals".
 - (3) The drug is compounded in full compliance with state laws and regulations governing drugs, pharmacy, and veterinary medicine. All bulk drug substances, inactive ingredients, and finished drug products used in compounding meet the standards set in any applicable USP-NF monograph and comply with other FD&C Act requirements for drug components.
 - (4) Upon becoming aware of any adverse event or product defect associated with an animal drug compounded from a bulk drug substance, the pharmacist that compounded the drug reports the event on Form FDA 1932a within 15 business days, and
 - (5) The labeling of the compounded drug includes all the following:
 - (A) Name of drug.
 - (B) Strength of drug.
 - (C) Species of the patient(s) and indication(s) for which the drug will be used.
 - (D) Name, address, and contact information for the compounding pharmacy.
 - (E) BUD.
 - (F) The statement, "Report suspected adverse reactions to the [pharmacist who compounded the drug] and to the FDA using online Form 1932a".
 - (G) The statement, "This is a compounded drug. Not an FDA approved or indexed drug."
 - (H) The statement, "Not for use in food-producing animals", and
 - (I) The statement, "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."
- (f) Veterinarians may dispense or not transfer compounded medications to: any other party. The transfer of compounded

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~~medications to another party is a violation of state and federal laws and rules.~~

- ~~(1) the Owner or caretaker of animal patient, or~~
- ~~(2) a veterinarian within the same practice.~~

535:15-10-15. Compounding of non-sterile radiopharmaceuticals [REVOKED]

~~(a) The unique circumstances and requirements for radiopharmaceutical preparations necessitate specific stipulations that must not only satisfy pharmaceutical drug quality, but also consider crucial radiation safety concerns to operators. Facility design and variation in certain chapter standards may be required and shall be 129 documented with supporting evidence upon request.~~

~~(b) Radiopharmaceuticals prepared for oral administration shall be designated as, and conform to, the standards for non-sterile preparations. Any variation in certain chapter standards may be required to meet radiation safety concerns to operators and shall be documented with supporting evidence upon request.~~

PART 3. GOOD COMPOUNDING PRACTICES FOR STERILE PREPARATIONS

535:15-10-55. Drug compounding facilities

(a) Pharmacies engaging in compounding shall have a specifically designated and adequate space for the orderly compounding of prescriptions, including the placement and storage of equipment and materials.

(b) The aseptic processing for sterile preparations shall be in an area separate and distinct from the area used for the compounding of non-sterile drug preparations. A primary engineering control (PEC), (laminar airflow workbench (LAFW), biological safety cabinet (BSC), compounding aseptic isolator (CAI) or compounding aseptic containment isolator (CACI)) will be used to prepare all sterile preparations, except those compounded for Immediate Use.

(c) The area(s) used for the compounding of drugs shall be maintained in a good state of repair. These area(s) shall also be maintained in a clean and sanitary condition. Adequate washing facilities are to be provided and sewage, trash and other refuse in the compounding area is to be disposed of in a safe, sanitary, and timely manner.

(d) Bulk drugs and other chemicals or materials used in the compounding of drugs must be stored as directed by the manufacturer, ~~or according to USP monograph requirements,~~ in a clean, dry area under appropriate temperature conditions (controlled room temperature, refrigerator, or freezer in adequately labeled containers.) Bulk drugs shall also be stored such that they are protected from contamination.

(e) Adequate lighting and ventilation shall be provided in all compounding areas.

(f) Potable water shall be supplied under continuous positive pressure in a plumbing system free of defects that could contribute contamination to any compounded drug preparation.

(g) Work area and equipment. Any pharmacy dispensing compounded sterile preparations shall meet or exceed the following requirements:

(1) A transition area from the general pharmacy (also called ante area or ante room) shall have a certified and inspected ISO Class 8 or better area which may contain a sink. All personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate-generating activities are performed in the ante area. Drugs and other materials, taken into the transition area shall be removed from corrugated cardboard and other particle-generating materials before being taken into the area.

(2) A separate controlled limited access area (also called a buffer area or buffer room) shall have a certified and inspected ISO Class 7 or better environment for compounding sterile solutions. The buffer room shall be of adequate space. Cleanliness of the area is of critical importance.

(3) A separate controlled limited access area (also called a buffer area or buffer room) for compounding sterile solutions, which shall be of adequate space for compounding, labeling, dispensing, and sterile preparation of the medication. This area shall have controlled temperature. Cleanliness of the area is of critical importance. Drugs and other materials, taken into the limited access area, shall be removed from cardboard and other particle generating materials before being taken into the area.

(4) The controlled limited access area shall have a certified and inspected ISO Class 5 environment. Such an environment exists inside a certified laminar airflow hood (clean room, biological safety cabinet or other barrier isolator meeting ISO Class 5 requirements) used for the preparation of all compounded sterile products. The ISO Class 5 environment device or area is to be inspected and certified semiannually. Barrier isolator workstations are closed systems and are not as sensitive to their external environment as laminar airflow equipment. It is recommended to place them in a limited access area with cleaning and sanitizing in the surrounding area on a routine basis.

(5) A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the clean room and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 and the general pharmacy area shall not be less than 5 Pa (0.02 inch water column). In facilities where low and medium risk level CSPs are prepared, differential airflow shall maintain a minimum velocity of 0.2 meters per second (40 feet per minute) between buffer area and ante-area.

(6) Hazardous drugs shall be prepared within a certified Class II, Type A (exhaust may be discharged to the outdoors) or Class II, Type B (exhaust may be discharged

to the outdoors) laminar flow biological safety cabinet. Hazardous drug compounding shall have negative pressure to adjacent positive pressure ISO Class 7 or better ante-areas, thus providing inward airflow to contain any airborne drug. All vented cabinets shall be vented through HEPA filtration, preferably to outside air or through use of suitable technology or equipment. Ventilation exhaust shall be placed as not to reenter the facility at any point.

- (7) The area shall be designed to avoid excessive traffic and airflow disturbances.
- (8) The area shall be ventilated in a manner not interfering with laminar flow hood conditions.
- (9) PECs should be left on continuously. If a PEC has been turned off, allow the blowers to run continuously for at least 30 minutes before using.
- (10) Daily procedures must be established for cleaning the compounding area. The pharmacy must keep cleaning logs consistent with the minimum cleaning frequency. Logs shall be kept for 2 years.
- (11) Minimum frequency of cleaning and disinfecting compounding areas are listed below:

- (A) ISO Class 5 [Primary Engineering Control (e.g., LAFW, BSC, CAI, CACI)] shall be cleaned and disinfected at the beginning of each shift, before each batch, not longer than 30 minutes following the previous surface disinfection when ongoing compounding activities occur, after spills, and when surface contamination is known or suspected.
- (B) Counters and easily cleanable work surfaces shall be cleaned and disinfected daily.
- (C) Floors shall be cleaned and disinfected daily.
- (D) Walls shall be cleaned and disinfected monthly.
- (E) Ceilings shall be cleaned and disinfected monthly.
- (F) Storage shelving shall be cleaned and disinfected monthly.

535:15-10-64.1. Compounding veterinarian sterile preparations

- (a) Prescriptions for animals may be compounded based on an order or prescription from a licensed prescriber.
- (b) Compounded preparations must comply with federal statutes, rules and FDA ~~guidance~~ guidances.
- (c) Caution should be taken as to not violate federal patent laws by duplicating an available product in inordinate quantities.
- (d) Compounding with bulk chemicals for food-producing animals is not permitted.
- ~~(e) It is acceptable for any licensed pharmacy to compound veterinary drug products to be used by veterinarians in their office for administration to clients for use in a single treatment episode, not to exceed 120 hours supply.~~
- (e) It is acceptable for any licensed pharmacy to compound animal drugs from bulk substances for office use without patient-specific prescriptions for nonfood-producing animals if:
 - (1) The drug is compounded by or under the direct supervision of a pharmacist in a state-licensed pharmacy or a federal facility.

(2) The drug is intended for use in a nonfood-producing species and is compounded from a bulk drug substance listed on FDA's "List of Bulk Drug Substances for Compounding Office Stock Drugs for Use in Nonfood-Producing Animals".

(3) The drug is compounded in full compliance with state laws and regulations governing drugs, pharmacy, and veterinary medicine. All bulk drug substances, inactive ingredients, and finished drug products used in compounding meet the standards set in any applicable USP-NF monograph and comply with other FD&C Act requirements for drug components.

(4) Upon becoming aware of any adverse event or product defect associated with an animal drug compounded from a bulk drug substance, the pharmacist that compounded the drug reports the event on Form FDA 1932a within 15 business days, and

(5) The labeling of the compounded drug includes all the following:

- (A) Name of drug.
- (B) Strength of drug.
- (C) Species of the patient(s) and indication(s) for which the drug will be used.
- (D) Name, address, and contact information for the compounding pharmacy.
- (E) BUD.
- (F) The statement, "Report suspected adverse reactions to the [pharmacist who compounded the drug] and to the FDA using online Form 1932a".
- (G) The statement, "This is a compounded drug. Not an FDA approved or indexed drug."
- (H) The statement, "Not for use in food-producing animals", and
- (I) The statement, "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

(f) Veterinarians may ~~not~~ transfer compounded medications to any other party. The transfer of compounded medications to another party is a violation of state and federal laws and rules.

- (1) the Owner or caretaker of animal patient, or
- (2) a veterinarian within the same practice.

535:15-10-66. Compounding of sterile radiopharmaceuticals [REVOKED]

~~(a) In the case of production of radiopharmaceuticals for positron emission tomography (PET), the USP general test chapter Radiopharmaceuticals for Positron Emission Tomography Compounding supersedes this part 3 of Subchapter 10 or applicable federal manufacturing regulations. Upon release of a PET radiopharmaceutical as a finished drug product from a production facility, the further handling, manipulation, or use of the product will be considered compounding, and the content of this section and chapter is applicable.~~

~~(b) For the purposes of this chapter, radiopharmaceuticals compounded from sterile components in closed sterile containers and with a volume of 100 mL or less for a single dose injection or not more than 30 mL taken from a multiple dose~~

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container shall be designated as, and conform to, the standards for 'Low Risk Level CSPs'

(c) The unique circumstances and requirements for radiopharmaceutical preparations necessitate specific stipulations that must not only satisfy pharmaceutical drug quality, but also consider crucial radiation safety concerns to operators. An integrated approach which addresses both aseptic and radiation safety techniques is necessary. Facility design and variation in certain chapter standards may be required and shall be documented with supporting evidence upon request.

(d) These radiopharmaceuticals shall be compounded using appropriately shielded vials and syringes in a properly functioning and certified ISO Class 5 PEC located in an ISO Class 8 or cleaner air environment to permit compliance with applicable state and federal regulations.

(e) Storage and transport of properly shielded vials of radiopharmaceutical CSPs may occur in a limited access ambient environment without a specific ISO class designation.

(f) Technetium 99m/molybdenum 99 generator systems shall be stored and eluted (operated) under conditions recommended by manufacturers and applicable state and federal regulations. Such generator systems shall be eluted in an ISO Class 8 or cleaner air environment.

(g) Direct visual inspection of radiopharmaceutical CSPs shall be conducted in accordance with ALARA.

(h) The handling of radiopharmaceuticals is controlled through the licensing of 'Authorized Users' by the Oklahoma Department of Environmental Quality. As such, limited numbers of distribution channels exist to obtain radiopharmaceuticals. It is recognized that there is a special population that is outside the daily distribution range of a commercial nuclear pharmacy and that radiopharmaceuticals are not reasonably available. For these facilities, if the PEC is a CAI, CACI, a LAFW or a BSC that cannot be located within an ISO Class 8 or better buffer area, then only low risk CSPs pursuant to a physician's order may be prepared, and administration of such CSPs shall commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. These Low risk level radiopharmaceutical CSPs with a 12 hour or less BUD shall be prepared in PECs (LAFWs, BSCs, CAIs, CACIs), which shall be certified and maintain ISO Class 5 and shall be in a segregated compounding area restricted to sterile compounding 148 activities that minimize the risk of CSP contamination. A line of demarcation defining the segregated compounding area shall be established. Materials and garb exposed in a patient care and treatment areas must be cleaned before being brought into controlled compounding area. Other requirements as dictated by Low Risk Radiopharmaceuticals shall be followed as described in this chapter.

(i) Preparation of radiopharmaceuticals for Immediate Use category is reserved for radiopharmaceuticals needed for emergency or immediate patient care. Radiopharmaceuticals under this exemption shall apply only to diagnostic radiopharmaceuticals and administration must begin no later than one hour following the start of preparing the CSP. Certain preparations may necessitate more than two punctures into the same septum, i.e. Technetium 99mTc Red Blood Cell labeling.

(j) Preparation of radio labeled leukocytes or blood products requires the procedure be performed in an ISO Class 5 PEC that is located in an ISO Class 8 or cleaner air environment. Blood manipulations shall be clearly separated from routine procedures and have specific standard operating procedures to avoid cross contamination.

(k) Labeling requirements for this chapter do not supersede the labeling requirements of 535:15-17-5.

SUBCHAPTER 13. PHARMACY SUPPORTIVE PERSONNEL

535:15-13-4. Pharmacy technician qualifications and training

(a) A pharmacy technician must have completed a high school education, HiSet Examination, or G.E.D. equivalence, and shall be of good moral character, be non-impaired (e.g., alcohol or drugs) and have adequate education to perform assigned duties.

(b) A pharmacy manager employing a currently permitted technician must document training of that technician within 10 days of hire.

(c) The pharmacy technician must, at a minimum, satisfactorily complete a pharmacy technician on-the-job training (OJT) program described in 535:15-13-13.

(d) To be eligible for a pharmacy technician permit, an applicant must maintain compliance with the requirements in this Title, ~~535:25535-25~~ and 535:15.

535:15-13-6.1. Technician rules for administering immunizations

(a) In order to obtain and maintain eligibility to administer immunizations, an applicant must be permitted as a pharmacy technician in Oklahoma and have successfully completed an Accreditation Council for Pharmacy Education (ACPE) accredited immunization training program for pharmacy technicians.

(b) A pharmacy technician with immunization registration must complete a minimum of 1 hour of immunization related ACPE accredited, or Board approved Continuing Education (CE) annually.

(c) A pharmacy technician must maintain current Cardiopulmonary Resuscitation (CPR) certification.

(d) The pharmacist in charge and pharmacy technician are responsible for maintaining training and education documentation.

(e) A pharmacy technician with proper training may administer vaccines delegated by the pharmacist on duty if:

(1) The vaccine is authorized, approved, or licensed by the Food and Drug Administration (FDA).

(2) The vaccine is ordered and administered according to Centers for Disease Control (CDC)/Advisory Committee on Immunization Practices (ACIP) recommendations.

(3) The delegating pharmacist is readily and immediately available to the immunizing pharmacy technician.

- (4) The delegating pharmacist is registered with the Board as an immunizing pharmacist and is current on all other requirements of the Board.
- (f) Prior to administering immunizations, each pharmacy technician shall obtain an immunization permit from the Board.
 - (1) Such pharmacy technician shall apply for and obtain an immunization permit by completing an application form furnished by the Board and paying the \$25 fee.
 - (2) The immunization permit must be displayed in the pharmacy where the pharmacy technician is performing immunizations.
 - (3) The Board will maintain a registry of pharmacy technicians that have been approved to administer immunizations.
 - (4) Duplicate immunization permits can be requested from the Board for a fee.
- (g) A pharmacy technician seeking reinstatement of a technician permit must complete and submit 2 hours of immunization related ACPE accredited CE to also reinstate a previously issued immunization permit.

535:15-13-15. Technician reinstatement requirements

- (a) A technician reinstatement applicant shall be an individual who possesses a technician permit that was cancelled at request or cancelled for failure to renew.
- (b) A technician whose permit was revoked is not eligible for a reinstatement without appearing before the Board and receiving Board permission to apply.
- (c) A technician desiring reinstatement must complete a technician reinstatement application.
- (d) A technician reinstatement applicant shall meet the requirements in the Oklahoma Pharmacy Act, this Title, and 535:10-13-4 regarding minimum requirements.
- (e) A technician reinstatement applicant shall complete the required Phase I and II training again as described in 535:10-13-13 if their technician permit has been lapsed for longer than one year.
- (f) Reinstatement applicants shall submit a satisfactorily completed Board approved reinstatement application together with the required documents and fees.
- (g) Applicants may be required to appear before the Board to request approval of their application.
- (h) Applicants shall complete the Pharmacy technician exam. Applicants may be required to take a Board approved law exam.
- (i) The applicant shall meet any additional requirements which the Board may feel necessary to protect public health.
- (j) After meeting the requirements of Board discipline, exception revocation, a technician may make application for reinstatement. Such applications may go before the Board for approval.
- (k) An applicant who had an immunization permit must complete and submit verification of 2 hours of immunization related ACPE accredited CE to also reinstate their immunization permit. If not done at reinstatement, a technician may add an immunization permit later by completing a new immunization application.

SUBCHAPTER 17. NUCLEAR PHARMACY

535:15-17-5. General requirements

- (a) A permit to operate a nuclear pharmacy shall only be issued to a person who is, or who employs a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals and ancillary drugs shall be under the direct supervision of a qualified nuclear pharmacist, who shall be in personal attendance when the pharmacy is open for business. The nuclear pharmacist-in-charge shall be responsible for all operations of the pharmacy.
- (b) The permit to operate a nuclear pharmacy is effective only so long as the pharmacy also holds a current Radioactive Material License issued by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency. Copies of inspection reports from Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission, or appropriate agreement state nuclear regulatory agency shall be available for Board inspection.
- (c) Nuclear pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. All pharmacies handling radiopharmaceuticals shall include, but not be limited to, the following areas: radiopharmaceutical preparation/dispensing area; radioactive material shipping / receiving area; radioactive material storage area; and radioactive waste decay area.
- (d) The nuclear pharmacy professional service area shall be secured from unauthorized personnel and must be totally enclosed and lockable.
- (e) Nuclear pharmacies shall maintain records of acquisition, inventory and disposition of all radioactive drugs and other radioactive materials in accordance with Board and Nuclear Regulatory Commission statutes and regulations.
- (f) ~~Nuclear pharmacies shall compound and dispense radiopharmaceuticals.~~ Radiopharmaceutical preparation, compounding, dispensing and repackaging shall be done in accordance with accepted standards of practice as defined in <USP 825>. ~~radiopharmaceutical quality assurance, including compounded sterile products.~~ The Board recognizes that the preparation of radiopharmaceuticals involves the compounding skills of the nuclear pharmacist to assure that the final drug product meets accepted professional standards.
 - (1) Immediate use. A preparation (including preparations with minor deviations) and/or dispensing of a sterile radiopharmaceutical that is limited for a single patient. Only sterile conventionally manufactured drug products (e.g., NDA, ANDA) or drugs produced under an approved IND or RDRC protocol may be used. Administration must begin within 4 hours of the first container puncture or exposure of any critical site involved (e.g., syringe tip, needle hub, or needle) to ambient air, whichever is first. Beyond use date may be 4 hours.
 - (2) Facility design and controls must be in place to minimize the flow of lower-quality air into the more controlled

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areas. Air supplied to the classified areas should be introduced through HEPA filters that are located in the ceiling. Returns should be low on the wall unless a visual smoke study demonstrates an absence of stagnant airflow where particulate will accumulate.

(g) A radiopharmaceutical shall be dispensed only to a licensed prescriber authorized by the Oklahoma Department of Environmental Quality Control, or if in another state the Nuclear Regulatory Commission or appropriate agreement state nuclear regulatory agency to possess, use and administer such drug. A radiopharmaceutical shall be dispensed only upon receipt of a prescription or medication order from such licensed prescriber. Otherwise, a radiopharmaceutical may be transferred to a person who is authorized to possess and use such drug for non-clinical applications as described in 535:15-17-5 subsection (k) below. Separate records will be kept for these transfers and sales, see drug supplier permit rules in 535:15-7.

(h) A nuclear pharmacy, upon receiving an oral prescription order for a radiopharmaceutical, shall immediately have the prescription order reduced to writing, or recorded in a data processing system.

(1) This writing or record shall contain at least the following:

- (A) the name of the institution and prescriber, or prescribers' agent;
- (B) the date of dispensing (or calibration) and the calibration time of the radiopharmaceutical;
- (C) the name of the procedure;
- (D) the name of the radiopharmaceutical;
- (E) the dose or quantity of the radiopharmaceutical;
- (F) the serial number assigned to the order for the radiopharmaceutical;
- (G) any specific instructions; and
- (H) the initials of the pharmacist who dispensed the order.

(2) Whenever an order is for a therapeutic or blood-product radiopharmaceutical, the patient's name must be obtained and recorded prior to dispensing.

(i) [RESERVED]

(1) The immediate outer container shield for a radiopharmaceutical to be dispensed, shall be labeled with:

- (A) the name and address of the pharmacy;
- (B) the name of the prescriber;
- (C) the date of dispensing (or calibration);
- (D) the serial number assigned to the order for the radiopharmaceutical;
- (E) the standard radiation symbol;
- (F) the words "Caution Radioactive Material";
- (G) the name of the procedure;

- (H) the radionuclide and chemical form;
- (I) the amount of radioactivity and the calibration date and time;
- (J) if a liquid, the volume;
- (K) if a solid, the number of items or weight;
- (L) if a gas, the number of ampules or vials;
- (M) the BUD and time; and
- (N) the name of the patient or the words e.g., "Per Physician's Orders" in the absence of a patient name.

(2) When the prescription is for a therapeutic or blood-product radiopharmaceutical, the patient's name shall appear on the label. The requirements of this sub-section shall be met when the name of the patient is readily retrievable from the physician upon demand.

(j) The inner container label of a radiopharmaceutical to be dispensed shall be labeled with, but not limited to:

- (1) the standard radiation symbol;
- (2) the identity of the radionuclide;
- (3) the amount of radioactivity and the calibration date and time;
- (4) the name of the procedure; and
- (5) serial number of the radiopharmaceutical.

(k) When a radiopharmaceutical is dispensed under the authority of an Investigational New Drug Application (IND), the nuclear pharmacy records shall include an investigator's protocol for the preparation of the radiopharmaceutical, a copy of the institutional radiation safety committee or equivalent radioactive use oversight committee approval, a copy of the Institutional Review Board approval form (or letter), and a letter from the manufacturer (sponsor) indicating that the physician requesting the radiopharmaceutical is a qualified investigator.

(l) Each nuclear pharmacy shall have an adequate library and a current copy of state and federal regulations governing the safe storage, handling, use, dispensing, transport and disposal of radiopharmaceuticals.

535:15-17-11. Supervision of licensed pharmacy technicians in a licensed nuclear pharmacy

(a) The ratio of pharmacy technicians to supervising pharmacists shall be set by the pharmacist in charge (PIC) and shall be a ratio that would be considered safe and reasonable by the certifying pharmacist.

(b) This ratio shall not exceed three pharmacy technicians to one supervising pharmacist. Such technicians shall be supervised as described in 535:15-13-5 (a) (b) (e) and (f).

[OAR Docket #23-433; filed 6-6-23]

**TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, REPACKAGERS, OUTSOURCING FACILITIES, WHOLESALERS, THIRD-PARTY LOGISTICS PROVIDERS, AND MEDICAL GAS SUPPLIERS AND DISTRIBUTORS, DURABLE MEDICAL EQUIPMENT SUPPLIERS (DME), AND COMBINED DME AND MEDICAL GAS DISTRIBUTORS (MGD)**

[OAR Docket #23-434]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 9. Medical gas suppliers and distributors
- 535:20-9-3. Medical gas suppliers [AMENDED]
- 535:20-9-4. Medical gas distributors [AMENDED]
- Subchapter 10. Durable medical equipment (DME) suppliers and combined DME and medical gas distributors (MGD) [NEW]
- 535:20-10-1. Purpose [NEW]
- 535:20-10-2. Definitions [NEW]
- 535:20-10-3. DME suppliers and combined DME+MGD suppliers [NEW]
- 535:20-10-4. Violations and penalties [NEW]
- 535:20-10-5. Prohibited conduct [NEW]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.11 - 353.20.1, 353.22, 353.24 - 354, 367.8, 375.1 - 375.5; Title 51 OS 24A et seq.; Title 75 OS, Sec 2-201, 2-208, and 2-210.

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Superseded rules:

- Subchapter 10. Durable medical equipment (DME) suppliers and combined DME and medical gas distributors (MGD) [NEW]
- 535:20-10-1. Purpose [NEW]
- 535:20-10-2. Definitions [NEW]
- 535:20-10-3. DME suppliers and combined DME+MGD suppliers [NEW]
- 535:20-10-4. Violations and penalties [NEW]
- 535:20-10-5. Prohibited conduct [NEW]

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n/a

GIST/ANALYSIS:

The revision in 535:20-9-3 Medical gas suppliers correct punctuation and grammar. They remove the references to manufacturer and replace them with medical gas suppliers. The revision in 535:20-9-3 (i) (6) corrects grammar.

The revision in 535:20-9-4 Medical gas distributors correct punctuation and grammar. They remove the references to manufacturer and replace them with medical gas distributors. The revision in 535:20-9-4 (i) (6) corrects grammar.

The revisions in 535:20-10-1 through 535:209-10-5 implement the Oklahoma Durable Medical Equipment Licensing Act in Title 59 OS Section 375.1 through 375.5.

New 535:20-10-1 describes the purpose of this subchapter. New 535:20-10-2 describes definitions. New 535:20-10-3 DME suppliers and combined DME suppliers and medical gas distributors describe requirements. New 535:20-10-4 describe violations and penalties. New 535:20-10-5 describes prohibited conduct.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 1, 2023:

SUBCHAPTER 9. MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

535:20-9-3. Medical gas suppliers

(a) **Licensing requirement.** Before conducting interstate and/or intrastate transactions in Oklahoma, a medical gas supplier shall register annually with the Board.

(1) A medical gas supplier license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location shall require a new medical gas supplier license.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g., manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas supplier license. A medical gas supplier license entitles the license holder to store and supply medical gas (prescription drugs) at the licensed location.

(4) A medical gas supplier shall not operate from a place of residence.

(5) A medical gas supplier shall not operate from a storage unit.

(b) **License issuance.** Licenses shall be issued only to those medical gas suppliers who satisfy the provisions of 59 O.S. Section 353.18 (B)(1)(2) et seq., and the requirements under the Act, this Title and the rules in 535:25 for applicants.

(c) **Compliance with federal requirements.** Medical gas supplier applicants and registrants shall meet the federal requirements to handle medical gas, the Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec.331 et seq.), and/or any other applicable federal, state, or local laws and regulations. Medical gas supplier applicants and registrants shall be registered with the federal Food and Drug Administration (FDA), if required.

(d) **Minimum required information for licensure.** The minimum required information for medical gas supplier licensure shall be as follows, medical gas supplier applicants must

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submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

- (1) The name, full business address, and telephone number;
 - (2) All trade or business names used by the medical gas supplier manufacturer applicant;
 - (3) Address, telephone numbers, and the names of contact persons for the medical gas supplier manufacturing facility;
 - (4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);
 - (5) The name(s) of the owner and/or operator of the medical gas supplier manufacturer applicant; and
 - (6) Any other information the Board deems necessary to protect the public health.
- (e) **Minimum qualifications.** Medical gas suppliers must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.
- (1) Medical gas suppliers must conform to all applicable federal, state or local laws and regulations.
 - (2) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in the supplying of medical gases:
 - (A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;
 - (B) Any felony convictions of the applicant under federal, state, or local laws;
 - (C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;
 - (D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;
 - (E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;
 - (F) Compliance with licensing requirements under previously granted licenses, if any;
 - (G) Compliance with requirements to maintain and/or make available to the State Board or to federal, state, or local law enforcement officials those records required under this section; and
 - (H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

(f) **Personnel.** Personnel employed by medical gas suppliers shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

(g) **Minimum requirements for storage, handling, and records.** Medical gas suppliers must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) The following shall describe the minimum requirements for the storage and handling of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.

(A) All medical gas suppliers of drugs shall conform to U. S. Food and Drug Administration FDA requirements for medical gas prescription drugs.

(B) All medical gas suppliers shall conform to the Act and the rules of this Title.

(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(i) Be licensed by the Board;

(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;

(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(v) Be maintained in a clean and orderly condition; and,

(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Medical gases housed by a medical gas supplier shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(h) **Prescription requirement.** Medical gas suppliers shall not supply medical gas without a drug order.

(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection

(i) **Minimum requirements for storage, handling, and records for medical gas.** The following shall describe the minimum requirements for the storage and handling of medical

gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.

(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well-lighted.

(C) Entry into areas where drugs are held shall be limited to authorized personnel.

(D) All medical gas suppliers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(E) All medical gas suppliers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(i) The medical gas supplier must not ship the customer's order if the order is confirmed as suspicious;

(ii) Each medical gas supplier shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(iii) Medical gas suppliers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia / National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas suppliers shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure

that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

(4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas supplier shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas suppliers in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

(5) **Recordkeeping.** Medical gas suppliers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas supplier should maintain an ongoing list of persons with whom they do business.

(6) **Written policies and procedures.** Medical gas suppliers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

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- (A) Medical gas suppliers shall include in their written policies and procedures the following ~~;~~ ~~A~~ procedure ~~to be followed~~ for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:
- (i) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board;
 - (ii) Voluntary action by the medical gas supplier to remove defective or potentially defective drugs from the market;
 - (iii) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.
- (B) A procedure to ensure that medical gas suppliers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.
- (C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.
- (i) This procedure shall provide for written documentation of the disposition of outdated drugs.
 - (ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.
- (7) **Responsible persons.** Medical gas suppliers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.
- (8) **Compliance with federal, state and local laws.** Medical gas suppliers shall operate in compliance with applicable federal, state, and local laws and regulations.
- (A) Medical gas suppliers shall permit the Board and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.
- (B) Medical gas suppliers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.
- (9) **Salvaging and reprocessing.** Medical gas suppliers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.
- (1) A medical gas distributor license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location shall require a new medical gas distributor license.
 - (2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g., manager, contact person, phone, etc.)
 - (3) Each location shall possess a medical gas distributor license. Medical gas distributor license entitles the holder to store and distribute medical gas (prescription drugs) at the licensed location.
 - (4) A medical gas distributor shall not operate from a place of residence.
 - (5) A medical gas distributor shall not operate from a storage unit.
- (b) **License issuance.** Licenses shall be issued only to those medical gas distributors who satisfy the provisions of 59, O.S. Section 353.18 (B)(1)(2) et seq., and the requirements under the Act, this Title and the rules in 535:25 for applicants.
- (c) **Compliance with federal requirements.** Medical gas distributor applicants and registrants shall meet the federal requirements to handle medical gas, the Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec.331 et seq.); and/or any other applicable federal, state, or local laws and regulations. Medical gas distributor applicants and registrants shall be registered with the federal Food and Drug Administration (FDA), if required.
- (d) **Minimum required information for licensure.** The minimum required information for medical gas distributors licensure shall be as follows, ~~Medical~~ medical gas distributor applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:
- (1) The name, full business address, and telephone number;
 - (2) All trade or business names used by the medical gas distributor ~~manufacturer~~ applicant;
 - (3) Address, telephone numbers, and the names of contact persons for the Medical gas distributing ~~manufacturing~~ facility;
 - (4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);
 - (5) The name(s) of the owner and/or operator of the medical gas distributor ~~manufacturer~~ applicant; and
 - (6) Any other information the Board deems necessary to protect the public health.
- (e) **Minimum qualifications.** Medical gas distributors must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.
- (1) Medical gas distributors must conform to all applicable federal, state or local laws and regulations.
 - (2) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in medical gas distribution:

535:20-9-4. Medical gas distributors

- (a) **Licensing requirement.** Before conducting interstate and or intrastate transactions in Oklahoma, a medical gas distributor shall register annually with the Board.

- (A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;
 - (B) Any felony convictions of the applicant under federal, state, or local laws;
 - (C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;
 - (D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;
 - (E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;
 - (F) Compliance with licensing requirements under previously granted licenses, if any;
 - (G) Compliance with requirements to maintain and/or make available to the Board or to federal, state, or local law enforcement officials those records required under this section; and,
 - (H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.
- (3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.
- (f) **Personnel.** Personnel employed by medical gas distributors shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.
- (g) **Minimum requirements.** Medical gas distributors must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.
- (1) The following shall describe the minimum requirements for the storage and handling of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.
- (A) All medical gas distributors of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.
 - (B) All medical gas distributors shall conform to the Act and the rules of this Title.
 - (C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:
 - (i) Be licensed by the Board;
 - (ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
 - (iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
 - (iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;
 - (v) Be maintained in a clean and orderly condition; and,
 - (vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.
 - (2) Medical gases housed by a medical gas distributor shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.
- (h) **Prescription requirements.** Medical gas distributors shall distribute only to an entity licensed to receive medical gas or upon a prescriber's drug order. A pharmacy, dentist, or licensed prescriber's license verifies their authority to receive Rx Only medical gases.
- (1) An original or copy of a prescription drug order must be kept at the licensed location distributing the medical gas.
 - (2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.
 - (3) Distributors that sell to licensed medical gas suppliers must keep an updated copy of each supplier's license on file.
- (i) **Minimum requirements for storage, handling and records for medical gas Rx Only drugs.** The following shall describe the minimum requirements for the storage and handling of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.
- (1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.
 - (A) Access from outside the premises shall be kept to a minimum and be well controlled.
 - (B) The outside perimeter of the premises shall be well-lighted.
 - (C) Entry into areas where drugs are held shall be limited to authorized personnel.
 - (D) All medical gas distributors shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
 - (E) All medical gas distributors shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

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- (i) The medical gas distributor must not ship the customer's order if the order is confirmed as suspicious;
 - (ii) Each medical gas distributor shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and
 - (iii) Medical gas distributors shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.
- (2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).
- (A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.
 - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.
 - (C) The recordkeeping requirement in this Chapter for medical gas distributors shall be followed for all stored drugs.
- (3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
- (A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.
 - (B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.
- (4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.
- (A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas distributors shall consider, among other things:
 - (i) The conditions under which the drug has been held, stored or shipped before or during its return; and
 - (ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.
 - (B) The recordkeeping requirements for medical gas distributors in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.
- (5) **Recordkeeping.** Medical gas distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.
- (A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.
 - (B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
 - (C) Each medical gas distributor should maintain an ongoing list of persons with whom they do business.
- (6) **Written policies and procedures.** Medical gas distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.
- (A) Medical gas distributors shall include in their written policies and procedures the following; A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:
 - (i) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board;
 - (ii) Voluntary action by the medical gas distributor to remove defective or potentially defective drugs from the market; or
 - (iii) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.
 - (B) A procedure to ensure that medical gas distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(7) **Responsible persons.** Medical gas distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(8) **Compliance with federal, state and local laws.** Medical gas distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(A) Medical gas distributors shall permit the Board and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(B) Medical gas distributors that deal in controlled substances shall register with the appropriate state-controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.

(9) **Salvaging and reprocessing.** Medical gas distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

SUBCHAPTER 10. DURABLE MEDICAL EQUIPMENT (DME) SUPPLIERS AND COMBINED DME AND MEDICAL GAS DISTRIBUTORS (MGD)

535:20-10-1. Purpose

(a) This subchapter implements 59 OS Sections 375.1 through 375.5, the Oklahoma Durable Medical Equipment Licensing Act.

(b) This subchapter is to establish rules specific to DME Suppliers and to set out the minimum requirements for licensure.

535:20-10-2. Definitions

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

"Durable medical equipment" or "DME" means equipment for which a prescription is required, including for repair and replacement parts, and that:

(A) can stand repeated use,

(B) has an expected useful life of at least three (3) years,

(C) is primarily and customarily used to serve a medical purpose,

(D) is not generally useful to a person in the absence of illness or injury,

(E) is appropriate for use in the home, and

(F) is intended for use by the consumer,

(G) Durable medical equipment includes, but is not limited to:

(i) ambulating assistance equipment,

(ii) mobility equipment,

(iii) rehabilitation seating,

(iv) oxygen care and oxygen delivery systems,

(v) respiratory equipment and respiratory disease management devices,

(vi) rehabilitation environmental control equipment,

(vii) ventilators,

(viii) apnea monitors,

(ix) diagnostic equipment,

(x) feeding pumps,

(xi) beds prescribed by physicians to alleviate medical conditions,

(xii) transcutaneous electrical nerve stimulators, and

(xiii) sequential compression devices.

535:20-10-3. DME Suppliers and combined DME+MGD Suppliers

(a) Licensing requirement. Before conducting interstate and/or intrastate transactions in Oklahoma, a Durable Medical Equipment supplier (DME) or a combined DME Supplier and Medical Gas Distributor (DME+MGD) shall register annually with the Board.

(1) A DME or DME+MGD license is only valid for the name, ownership and location listed on the license. Changes of name, ownership or location shall require a new DME supplier license.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g., manager, contact person, phone, etc.).

(3) Each location shall possess a DME or DME+MGD license. A DME or DME+MGD license entitles the license holder to store and supply DME at the licensed location.

(4) Each facility at which DME is stored, warehoused, handled, held, offered, marketed, or displayed shall be licensed by the Board and be of suitable size and construction to facilitate cleaning, maintenance, and proper operations.

(5) As allowed under 59 OS Section 375.3 (D) an out-of-state DME supplier will not be required to maintain a physical office or place of business within Oklahoma or within one hundred (100) miles of a resident of Oklahoma being served by the DME supplier if the following conditions are met,

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- (A) They are supplying a specialized DME product/device.
- (B) The specialized DME product/device is not available through standard local DME channels, and
- (C) They are accredited by an organization that is recognized by the Centers for Medicare and Medicaid Services.
- (6) A DME supplier shall not operate from a place of residence.
- (7) A DME supplier shall not operate from a storage unit.
- (b) **License issuance.** Licenses shall be issued only to those DME or DME+MGD who satisfy the provisions of 59 O.S. Section 375.1 through 375.5, and the requirements under the Act, this Title, and the rules in 535:25 for applicants.
- (c) **Compliance with federal requirements.** DME or DME+MGD applicants and registrants must comply with all applicable federal, state, or local laws and regulations. DME+MGD applicants and registrants shall be registered with the federal Food and Drug Administration (FDA), if required.
- (d) **Minimum required information for licensure.** The minimum required information for DME or DME+MGD licensure shall be as follows, applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:
- (1) The name, full business address, and telephone number.
- (2) All trade or business names used by the applicant.
- (3) Address, telephone numbers, and the names of contact persons for the facility.
- (4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship).
- (5) The name(s) of the owner and/or operator of the applicant; and
- (6) Any other information the Board deems necessary to protect the public health.
- (e) **Minimum qualifications.** DME and DME+MGD must conform to all applicable federal, state, or local laws and regulations.
- (1) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in the supplying of DME:
- (A) Any convictions of the applicant under any federal, state, or local laws relating to DME, devices, drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances.
- (B) Any felony convictions of the applicant under federal, state, or local laws.
- (C) The applicant's past experience in the handling, manufacture, packaging, or distribution of DME, devices, drugs, including controlled substances.
- (D) The furnishing by the applicant of false or fraudulent material in any application made in connection with DME, device, or drug handling, manufacturing, packing, or distribution.
- (E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any DME, devices, drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding DME, devices, or drugs.
- (F) Compliance with licensing requirements under previously granted licenses, if any.
- (G) Compliance with requirements to maintain and/or make available to the State Board or to federal, state, or local law enforcement officials those records required under this section; and,
- (H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.
- (2) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.
- (f) **Personnel.** Personnel employed by DME or DME+MGD suppliers shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state, and local licensing requirements. Personnel involved with the delivery, maintenance, and repair of DME shall complete annual continuing education.
- (g) **Minimum requirements for storage, handling, and records.** DME or DME+MGD suppliers must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for DME. The following shall describe the minimum requirements for the storage and handling of DME, and for the establishment and maintenance of DME records by DME or DME+MGD suppliers and their officers, agents, representatives, and employees.
- (1) **Security.** Each facility used for DME shall be secure from unauthorized entry.
- (A) Access from outside the premises shall be kept to a minimum and be well controlled.
- (B) The outside perimeter of the premises shall be well-lighted.
- (C) Entry into areas where DME are held shall be limited to authorized personnel.
- (D) All DME suppliers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
- (E) All DME suppliers shall establish and maintain a suspicious order monitoring program for DME.
- (i) The DME or DME+MGD supplier must not ship the customer's order if the order is confirmed as suspicious.

- (ii) Each DME or DME+MGD supplier shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,
 - (iii) DME or DME+MGD suppliers shall establish guidelines and procedures for identifying suspicious orders.
 - (2) **Storage.** All DME shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such DME.
 - (A) If no storage requirements are established for DME, the DME may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that it is not adversely affected.
 - (B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of DME, if required.
 - (C) Storage areas should be designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.
 - (D) Storage areas must have a quarantine area for storage of DME that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened.
 - (E) Storage areas must be maintained in a clean and orderly condition and, be free from infestation by insects, rodents, birds, or vermin of any kind.
 - (F) The recordkeeping requirement in this Chapter for DME suppliers shall be followed for all stored DME.
 - (3) **Examination of materials.** Upon receipt, each shipment of DME shall be visually examined for identity and to prevent the acceptance of damaged DME. This examination shall be adequate to reveal damage to the DME.
 - (A) Each outgoing shipment shall be carefully inspected for identity of the DME and to ensure that there is no delivery of DME that have been damaged in storage or held under improper conditions.
 - (B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing DME.
 - (4) **Returned, damaged, and outdated DME.** DME that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other DME until they are destroyed.
 - (A) If the conditions under which DME has been returned cast doubt on the DME's safety or quality, then the DME shall be destroyed, unless examination or other investigation proves that the DME meets appropriate standards of safety and quality. In determining whether the conditions under which DME has been returned cast doubt on the DME's safety and quality, the DME supplier shall consider, among other things:
 - (i) The conditions under which the DME has been held, stored, or shipped before or during its return; and,
 - (ii) The condition of the DME carton, or labeling, as a result of storage or shipping.
 - (B) The recordkeeping requirements for DME or DME+MGD suppliers in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated DME.
 - (5) **Recordkeeping.** DME or DME+MGD suppliers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of DME.
 - (A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the DME.
 - (B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
 - (C) Each DME or DME+MGD supplier should maintain an ongoing list of persons with whom they do business.
 - (6) **Written policies and procedures.** DME or DME+MGD suppliers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of DME, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.
 - (A) DME or DME+MGD suppliers shall include in their written policies and procedures the following: A procedure to be followed for handling recalls and withdrawals of DME. Such procedure shall be adequate to deal with recalls and withdrawals due to any:
 - (i) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board,
 - (ii) Voluntary action by the DME or DME+MGD supplier to remove defective or potentially defective DME from the market; or
 - (iii) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.
 - (B) A procedure to ensure that DME or DME+MGD suppliers prepare for, protect against, and handle a crisis that affects security or operation

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of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated DME shall be segregated from other DME and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated DME.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated DME.

(7) **Responsible persons.** DME or DME+MGD suppliers shall establish and maintain lists of officers, directors, managers, and other persons in charge of DME distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(8) **Compliance with federal, state and local laws.** DME or DME+MGD suppliers shall operate in compliance with applicable federal, state, and local laws and regulations. DME suppliers shall permit the Board and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(9) **Salvaging and reprocessing.** DME or DME+MGD suppliers shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to DME product salvaging or reprocessing.

(h) **Prescription requirement.** DME or DME+MGD suppliers shall not supply DME without a prescription order.

(1) An original or copy of a prescription order must be kept at the licensed location supplying the DME.

(2) A prescription DME order is only valid for one (1) year. Prescription DME orders shall be maintained for five years and be readily retrievable and available at inspection.

(i) **DME+MGD Compliance.** All DME+MGD must comply with the requirements in 535:20-9-4 for medical gas distributors.

535:20-10-4. Violations and penalties

(a) Penalties for violations of this Subchapter and of federal, state, and local laws and regulations are listed in 59 O.S. Section 353, et seq.

(b) Rules of conduct, violations of the rules of conduct and other requirements of applicants can be found in 535:25.

535:20-10-5. Prohibited conduct

(a) The following shall be considered prohibited conduct and be a violation of these rules: Failure to follow all applicable requirements of state and federal statutes and regulations, including, but not limited to, the Act, 59 O.S. Section 353, et seq. and the Board's rules, OAC 535.

(1) **Engaging in distribution of DME**

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required,

(B) destroying, altering, concealing, or failing to maintain complete and accurate records for any DME packaging, when required,

(C) knowingly purchasing or receiving DME from a person, not authorized to distribute DME, or,

(D) selling, bartering, brokering, or transferring DME to a person not authorized to purchase DME, under the jurisdiction in which the person receives the DME.

(2) Forging, counterfeiting, or falsely creating any label for DME or who falsely represents any factual matter contained in any label of DME.

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of DME or the commission of any other act with respect to DME, that results in the DME being misbranded.

(4) Supplying, packaging, purchasing, selling, delivering, or bringing into the state contraband DME or anyone who illegally possesses any amount of contraband DME; or,

(b) Any violation of the rules of registrant conduct listed in

[OAR Docket #23-434; filed 6-6-23]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #23-436]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Organization of the Department of Public Safety
- 595:1-1-3. Function of each division which deals directly with and affects the public [AMENDED]
- Subchapter 3. Rules of Practice
- 595:1-3-3. Administrative hearings [AMENDED]
- 595:1-3-7. Request for hearing [AMENDED]
- 595:1-3-13. Appearance by counsel [REVOKED]
- 595:1-3-19. Procedures for telephonic implied consent hearings [REVOKED]
- 595:1-3-20. Appeal [REVOKED]
- Subchapter 9. Inspection and Copying of Final Orders, Decisions, Opinions and Open Records
- 595:1-9-2. Inspection and copies of open records [AMENDED]
- 595:1-9-3. Records of the Department of Public Safety [AMENDED]
- 595:1-9-3.1. Retention and destruction of Department records [REVOKED]
- 595:1-9-4. Fees [AMENDED]
- 595:1-9-5. Obtaining open records [AMENDED]
- 595:1-9-6. Summary of Motor Vehicle Report [REVOKED]
- 595:1-9-7. Permanent storage [NEW]
- 595:1-9-8. Convenience copies [NEW]
- 595:1-9-9. In-office retention [NEW]
- 595:1-9-10. Retention and destruction of Department records [NEW]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 2-108

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Superseded rules:

- Subchapter 1. Organization of the Department of Public Safety
- 595:1-1-3. Function of each division which deals directly with deals directly with and affects the public [AMENDED]
- Subchapter 3. Rules of Practice
- 595:1-3-3. Administrative hearings [AMENDED]
- 595:1-3-7. Request for hearing [AMENDED]
- 595:1-3-13. Appearance by counsel [REVOKED]
- 595:1-3-19. Procedures for telephonic implied consent hearings [REVOKED]
- 595:1-3-20. Appeal [REVOKED]
- Subchapter 9. Inspection and Copying of Final Orders, Decisions, Opinions and Open Records
- 595:1-9-2. Inspection and copies of open records [AMENDED]
- 595:1-9-3. Records of the Department of Public Safety [AMENDED]
- 595:1-9-3.1. Retention and destruction of Department records [AMENDED]
- 595:1-9-4. Fees [AMENDED]
- 595:1-9-5. Obtaining open records [AMENDED]
- 595:1-9-6. Summary of Motor Vehicle Report [REVOKED]

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The Department of Public Safety is revoking portions of Chapter 1 of its Administrative Rules due to the passage of HB 3419 (2022), which transfers the Driver License Services Division and supporting administrative functions to Service Oklahoma. Other parts of Chapter 1 have been updated according to the operations of the Department.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT OF PUBLIC SAFETY

595:1-1-3. Function of each division which deals directly with and affects the public

(a) **Oklahoma Highway Patrol Division.** The Oklahoma Highway Patrol Division provides safety and protection for the citizens on the highways of Oklahoma. The headquarters of the Oklahoma Highway Patrol Division is located at the Department of Public Safety. Telephone: (405) ~~425-2424425-7283~~ [47 O.S. § 2-103]. The division is divided into the following field and specialty troops and sections located throughout the state:

(1) **Field troops.** Field troops of the Highway Patrol have primary law enforcement authority on state, federal, and interstate highways, excluding those portions within city limits. Following is a list of the field troops, the location of their headquarters, and their telephone numbers:

- (A) Troop A: Oklahoma City, (405) ~~425-2285686-9105~~
- (B) Troop B: Tulsa, (918) ~~627-38840440~~
- (C) Troop C: Muskogee, (918) ~~683-3256684-6401~~
- (D) Troop D: McAlester, (918) ~~423-3636420-4010~~
- (E) Troop E: Durant, (580) ~~924-2601916-4821~~
- (F) Troop F: Ardmore, (580) 223-8800
- (G) Troop G: Lawton, (580) 353-0783
- (H) Troop H: Clinton, (580) 323-2424
- (I) Troop I: Guymon, (580) ~~338-3366338-5129~~
- (J) Troop J: Enid, (580) 234-6147
- (K) Troop K: Perry, (580) ~~336-98809827~~
- (L) Troop L: Vinita, (918) ~~256-33887888~~
- (M) Troop M: Altus, (580) ~~477-27652764~~

(2) **Turnpike troops.** Turnpike troops of the Highway Patrol have sole law enforcement authority on the turnpikes of this state. Following is a list of the turnpike troops, the turnpike each patrol, and their telephone numbers:

- (A) Troop XA: Will Rogers, (918) 256-7476
- (B) Troop XB: Muskogee, (918) ~~683-4782355-9069~~
- (C) Troop XC: Indian Nation, (918) ~~548-3799420-4010~~
- (D) Troop XD: Cherokee, (918) ~~868-2372256-7476~~
- (E) Troop XE: Creek, (918) 355-9069
- (F) Troop YA: Cimarron, (405) ~~425-3683968-3000~~
- (G) Troop YB: Turner, (918) 968-3000
- (H) Troop YC: H.E. Bailey, (405) 222-3165
- (I) Troop YD: Chickasaw, (580) ~~223-8800222-3165~~
- (J) Troop YE: Kilpatrick, (405) ~~424-4616222-3165~~

(3) **Specialty troops.** Specialty troops of the Highway Patrol perform specialized law enforcement functions within the scope of the mission and operation of the Department of Public Safety. Following is a list of the specialty troops, their functions, and their telephone numbers:

- (A) Troop O: Aircraft, (405) ~~425-2335321-1831~~
- (B) Troop P: Public Information Affairs Office, (405) 425-7709. The Public Affairs Office acts as

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the liaison between the Department and the public, the media, and other city, county, state, and federal agencies. Information provided includes traffic safety campaigns, press releases, traffic statistics, road conditions, and services provided by each of the Department's divisions. It is further responsible for providing Department records pursuant to the provisions of the Open Records Act and Title 595, Chapter 1, Subchapter 9 of the Oklahoma Administrative Code. [see (j) of this Section]

(C) Troop R: Capitol Patrol Section, [see (4)(C) of this subsection] (405) 425-2410

(D) Troop S: (405) 521-6067:

- (i) Motor Carrier Safety, (405) 521-6060,
- (ii) Hazardous Materials Transportation, (405) 521-6060,
- (iii) Size and Weight Enforcement Section [see (4)(A) of this subsection]

(E) Troop SO: Special Operations, (405) 425-2473/2472

(F) Troop T: Training, (405) 425-2410

(G) Troop W: Lake Patrol Section, [see (4)(B) of this subsection] (918) 681-4959

(H) Troop Z: Investigations—Division, (405) 425-2137

(I) Troop BT: Bomb Squad Section, [see (4)(D) of this subsection] (405) 425-2462

(J) Communications Section: The link between the general public and public safety services provided by the Oklahoma Highway Patrol and other law enforcement agencies or emergency providers.

(i) Central Regional Communications Center, Oklahoma City, (405) 425-2323

(ii) Northeast Regional Communications Center, Tulsa, (918) 627-0440

(iii) Southeast Regional Communications Center, Durant, (580) 924-2601

(iv) Troop F, Ardmore, (580) 223-8800

(v) Southwest Regional Communications Center, Lawton, (580) 353-0783

(vi) Regional Communication Center, Enid, (580) 234-6431.

(4) **Troops created by statute.** Following are sections within the Highway Patrol Division which are created by statute:

(A) **Size and Weight Enforcement Section (Troop S).** The Size and Weight Enforcement Section has the primary duty of enforcing the provisions of the size, weight and load laws [47 O.S. §14-101, et seq.] rules [OAC 595:30]. Telephone: (405) 521-6060. [47 O.S. § 2-105.4A]

(B) **Lake Patrol Section (Troop W).** The Lake Patrol Section is created by 47 O.S. § 2-105.6 and has the primary enforcement duty related to state boat registration laws [63 O.S. §4001 et seq. and §4101 et seq.], boating and water safety laws [63 O.S. §4200 et seq., federal boating regulations, and Department

of Public Safety or Department of Wildlife Conservation administrative rules [OAC 595:45] pertaining to Oklahoma lakes, rivers and adjacent shores, and the duty of providing statutorily mandated boating safety education. The address for enforcement issues is 220 NE 38th Terr, Oklahoma City, OK 73105; telephone: (405) 522-1880. [47 O.S. § 2-105.6]

(C) **Capitol Patrol Section (Troop R).** The Capitol Patrol Section has the primary duty of providing law enforcement services to all state buildings and properties within Oklahoma County, including the State Capitol Park, and the Governor's mansion, Tulsa County, including the State Capitol Complex, and enforcing all parking, traffic, and criminal laws within the boundaries of Oklahoma and Tulsa Counties. Oklahoma City telephone: (405) 521-6040. Tulsa telephone: (918) 581-2000 [47 O.S. §2-105.7]

(D) **Bomb Squad Section (Troop BT).** The Bomb Squad Section has the primary duty of carrying out the duties prescribed in 63 O.S. §122.2. Telephone: (405) 425-2435 [47 O.S. § 2-105.4B]

(E) **Communications Section.** The Communications Section is the link between the general public and public safety services provided by the Department and other law enforcement agencies or emergency providers. These services may be obtained by telephone or in person at any of the thirteen Field Troop Headquarters statewide [see (1) in this subsection for telephone numbers]. [47 O.S. § 2-105.8]

(b) **Legal Division.** The Legal Division is created by 47 O.S. § 2-121 and provides legal services for the Department and administratively enforces Oklahoma's implied consent law [47 O.S. § 751 et seq.]. Specific legal advice is not made available to the general public. The division is located at the Department of Public Safety. Telephone: (405) 425-2148.

(c) **Records Management Division.** The Records Management Division is the designated repository for all official traffic accident reports and records required to be submitted by law enforcement officers of municipal, county and state agencies, and for court abstracts and other records concerning motor vehicle and related convictions and offenses required to be reported by municipal and district courts. This division also ensures that appropriate entries from the above documents are made to the respective individual driver's record master file. This division is also responsible for providing certain records pursuant to the public under the provisions of the Open Records Act [see 595:1-9-5 and 595:1-9-6 (relating to obtaining open records)]. The division is located at the Department of Public Safety. Telephone: (405) 425-2192. [47 O.S. § 2-103]

(d) **Size and Weight Permit Division.** The Size and Weight Permit Division issues appropriate permits for eligible oversize and overweight vehicles and loads. The central location of the division is located at 2401 Northwest 23rd Street, Suite 45, Oklahoma City, OK 73107. For information concerning operation and for addresses and telephone numbers of branch offices, call (405) 522-9006 or toll free (877) 425-2390 or see OAC 595:30-3-3. [47 O.S. § 2-103]

~~(e) **Driver License Services Division.** The Driver License Services Division issues permits for driver education instructors, administers tests for the purpose of issuing driver licenses, commercial driver credentialing, including driver qualification, HAZMAT Security Threat Assessment program and the licensing of truck driver training institutions, provides administrative services related to the issuance and renewal of driver licenses and identification cards, and coordinates the issuance of driver licenses and identification cards with motor license agents. The division is located at the Department of Public Safety. Telephone: (405) 425-7745. [47 O.S. § 2-106]~~

~~(f) **Driver Compliance Division.** The Driver Compliance Division provides driver improvement and financial responsibility services, and may suspend, deny, cancel, revoke, or disqualify individual driving privileges, subject to statutory authorization. The division administers rules relating to the point system and discretionary suspensions [OAC 595:10-7], medical aspects [OAC 595:10-5], alcohol and drug substance abuse courses [595:10-5-12], mature driver accident prevention [OAC 595:10-5], and issues parking permits for the physically disabled [OAC 595:50-3]. It also administers the *Driver License Compact* [47 O.S., § 781 et seq.] and the *Nonresident Violator Compact* [47 O.S., §§ 789 and 790]. This division is also charged with enforcement of the provisions of the financial responsibility laws of this state (47 O.S. §7-101 et seq.) and the Compulsory Insurance Law (47 O.S. §7-600 et seq.). The division is located at the Department of Public Safety. For information concerning operation and the availability of branch office services, call (405) 425-2098. [47 O.S. § 2-106]~~

~~(g) **Identify Verification Fraudulent Documents Unit.** The Fraudulent Documents Unit, also known as the Identify Identification Verification Unit is created by 47 O.S. §2-106.3 and responsible for investigating identify fraud and theft. The division is located at the Department of Public Safety. Telephone: (405) 425-2477.~~

~~(hd) **Wrecker Services Division.** The Wrecker Services Division is responsible for the licensing and governance of wrecker or towing services pursuant to Chapter 72 of Title 47 of the Oklahoma Statutes and Chapter 30 of Title 595 of the Oklahoma Administrative Code. [47 O.S. § 951 et seq.]. The division provides notification to owners and lien holders of the location of vehicles impounded at the request of law enforcement agencies within the state and receives and maintains records of vehicles impounded from private property and of vehicles stored over thirty (30) days by wrecker or towing services. The division is located at the Department of Public Safety. Telephone: (405) 425-2312. [47 O.S. § 2-103]~~

~~(i) **Public Affairs Office.** The Public Affairs Office acts as the liaison between the Department and the public, the media, and other city, county, state, and federal agencies. Information provided includes traffic safety campaigns, press releases, traffic statistics, road conditions, and services provided by each of the Department's divisions. Telephone: (405) 425-7707-7709. [47 O.S. § 2-103]~~

~~(je) **Oklahoma Highway Safety Office.** The Oklahoma Highway Safety Office (OHSO) is created in 47 O.S. § 2-106.2A statewide plan (Highway Safety Plan) to decrease~~

fatalities and injuries on Oklahoma roadways. Each state has a highway safety program under the direction of the state governor. The OHSO administers federal highway safety funds in the form of highway safety projects with state and local agencies, nonprofit organizations, and private contractors. Project applications are normally due in February or March of each year for the following federal fiscal year, which begins on October 1. ~~The OHSO is located at 3223 N. Lincoln, Oklahoma City, OK 73105. Telephone: 405-523-1570. Fax: 405-523-1586. [47 O.S. § 2-106.2A et seq.]~~

~~(kh) **Oklahoma Law Enforcement Telecommunications System.** The Oklahoma Law Enforcement Telecommunications System (OLETS) is created by 47 O.S. § 2-124 and is at the statewide telecommunications network which serves city, county, state, federal, and military law enforcement, and criminal justice agencies in Oklahoma. Additionally, OLETS provides direct computer interfaces to the computer systems of the Department of Public Safety, the Oklahoma Tax Commission, the Oklahoma State Bureau of Investigation, the National Crime Information Center (NCIC), the National Law Enforcement Telecommunications System (NLETS), and the National Weather Service Computer System and Network in Oklahoma City, Oklahoma. OLETS is managed and operated by the Department of Public Safety. ~~The division is located at the Department of Public Safety. Telephone: (405) 425-2224. [47 O.S. § 2-124]~~~~

~~(li) **Transportation Division Unit.** The Transportation Division Unit is created by 47 O.S. § 2-103 and is responsible for the purchase, repair, and disposal of all Department vehicles. Repairs may be done at private facilities or at the Department garage with funding coordinated by the Division Unit. Department vehicles are disposed of by sale to other law enforcement agencies in Oklahoma or by public auction. ~~The location of the Transportation Division is at 2300 N.E. 36th Street at the Department of Public Safety. Telephone: (405) 425-2129. [47 O.S. § 2-103]~~~~

~~(mj) **Finance Division Unit.** The Finance Division Unit is created by 47 O.S. § 2-103 and is responsible for paying the bills the accounts receivable and accounts payable of the Department of Public Safety within its approved budget and accounting for and depositing receipts collected for fees, fines, penalties, and other monies as provided by law. The Division Unit also processes sales of surplus and forfeited property as provided in Subchapter 15 of this Chapter. ~~The location of the Finance Division is at the Department of Public Safety. Telephone: (405) 425-2833. [47 O.S. § 2-103]~~~~

SUBCHAPTER 3. RULES OF PRACTICE

595:1-3-3. Administrative hearings

(a) All hearings of the Department of Public Safety shall be conducted according to the rules of this Chapter to the extent not otherwise provided for by statute or other rule.

(b) A person has the right to request a hearing before the Department of Public Safety whenever he or she has been aggrieved or adversely affected by an act or refusal to act, or by the issuance of an order or decision by the Department which is

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subject to review under any applicable statute. Hearings before the Department fall into four categories:

(1) **Hearings under Title 47.** Hearings which are specifically provided for and follow those procedures set forth under Title 47 of the Oklahoma Statutes:

(A) ~~Implied consent hearings.~~ ~~Implied consent hearings, involving driving privilege revocation for refusal to take or failure of a breath or blood test for alcohol concentration, are specifically provided for and follow the procedures of the Oklahoma statutes. [47 O.S. § 751 et seq.].~~

(B) ~~Impounded vehicle hearings.~~ Impounded vehicle hearings follow the procedures specifically provided for under 47 O.S. § 903A.

(C) ~~Parking violations on certain state property.~~ Hearings involving parking violations on certain state property, as set forth under 47 O.S. § 11-1009, are conducted according to state law.

(2) **Hearings under the Administrative Procedures Act - Wrecker or towing service hearings.** Wrecker or towing service hearings resulting in wrecker license cancellation, revocation, or refusal to issue or renew the license, follow the procedures set forth under the Administrative Procedures Act, ~~[75 O.S. Art. III]~~ 47 O.S. § 250, *et seq.*, except for those hearings related to vehicles impounded by public agencies which are specifically provided for and conducted according to 47 O.S. § 903A.

(3) **Hearings under ~~Department rules~~ the Oklahoma Motor Carrier Safety and Hazardous Materials Act.** Hearings provided for by ~~the specific rules set forth by divisions within the Department:~~

(A) ~~Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act.~~ Hearings involving ~~involve~~ penalties for violation of the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, ~~[47 O.S. § 230.1 et seq.] et seq.~~, and are conducted as set forth ~~in pursuant to OAC 595:35-1-9. [47 O.S. § 230.9(F)]~~

(B) ~~Oversize and overweight vehicles.~~ Hearings involving the denial or suspension of a permit for oversize and overweight vehicles are conducted as set forth in 595:30-5-3.

(4) **Hearings set forth in this Chapter.** Hearings conducted according to the rules of this Chapter:

(A) ~~Points violations.~~ Hearings on points violations resulting in suspension of driving privileges [47 O.S. § 6-206].

(B) ~~Medical aspects.~~ Hearings on medical aspects relating to a driver's affliction with physical or mental ailments which may cause loss or partial loss of control of or incapability of properly controlling a vehicle [47 O.S. § 6-119 et seq.].

(C) ~~Financial responsibility hearings.~~ Financial responsibility hearings involving the suspension of driving privileges for an owner or driver of a motor vehicle involved in a collision resulting in personal injury, death, or property damage of over three hundred

dollars (\$300.00) where there is no security (liability insurance) [47 O.S. § 7-101].

(D) ~~Other hearings.~~ Other hearings conducted within the discretion of the Commissioner of Public Safety [47 O.S. § 2-115].

595:1-3-7. Request for hearing

A request for a hearing must be in writing, ~~on a form prescribed by the Department of Public Safety.~~ This A form is available at the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. The request shall be submitted to the Department of Public Safety. Hearing requests may only be submitted in person at the Department's principal place of business, or by mail to the address below. Hearing requests submitted other than in person or by mail will not be accepted and a hearing will not be granted. Hearing request forms mailed via the U.S. Postal Service shall be addressed to the Department of Public Safety, Legal Division, P.O. Box ~~441553004~~, Oklahoma City, OK ~~7313673152-9998~~.

595:1-3-13. Appearance by counsel [REVOKED]

(a) ~~Any party to a proceeding may appear and be heard in person or accompanied by an attorney.~~

(b) ~~Counsel for parties in any proceeding should make appearances in appropriate attire as befits practitioners of the profession and contributes to the dignity of the proceedings.~~

595:1-3-19. Procedures for telephonic implied consent hearings [REVOKED]

(a) ~~Opportunity for hearing.~~ An Administrative Hearing will only be provided to a person whose driving privileges are subject to revocation pursuant to the Implied Consent law relating to a test result or test refusal. The hearing shall be conducted by a Hearing Officer designated by the Commissioner of Public Safety.

(b) ~~Exemptions.~~ Hearings for persons whose driving privileges are subject to revocation pursuant to the Implied Consent law relating to a test result or test refusal shall be exempt from and not subject to the provisions of the Oklahoma Administrative Procedures Act and the Oklahoma Pleading and Discovery Codes. The rules of this chapter shall govern the administration of such hearings.

(c) ~~Hearing request.~~ The form to request an implied consent hearing may be obtained at the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. Hearing requests shall only be submitted as provided in 595:1-3-7.

(d) ~~Primary method.~~ The primary method of conducting implied consent hearings shall be by telephone. All persons participating in the hearing must be able to participate, as determined by the Hearing Officer. The Hearing Officer may designate an alternate method of conducting the hearing, if deemed necessary.

(e) ~~Responsibilities of the party requesting the hearing.~~

(1) A party requesting a hearing shall make a timely written hearing request on a form prescribed by the Department and the party shall provide the Department the following information:

- (A) the telephone number that will be used to contact the party for the hearing;
- (B) the name, mailing address, and telephone number of the party's attorney, if any;
- (C) the name of any witness appearing on behalf of the party requesting the hearing, along with a brief statement of the testimony to be offered by the witness.

(2) The party is responsible for ensuring the Department receives the required information no later than three (3) business days prior to the date of the scheduled hearing.

(3) A party shall provide any other information or records if requested by the hearing officer.

(f) Responsibility of hearing officer.

(1) The Hearing Officer will call the party or the party's attorney, if any, at the telephone number provided by the party. If the party requesting the hearing, or the party's attorney, fails to answer or participate in the hearing after two (2) attempts by the Hearing Officer, the hearing will be terminated.

(2) The Hearing Officer will call the witnesses, if any, at the telephone number provided by the party requesting the hearing. If the witness fails to answer or participate in the hearing after two (2) attempts by the Hearing Officer, the Hearing Officer may exclude the witness and continue with the hearing.

(3) All persons providing testimony will be sworn in by the Hearing Officer prior to giving testimony.

(g) Rescheduling.

(1) Once the hearing has been scheduled, it may be continued or reset only at the discretion of the Hearing Officer or the Hearing Officer's designee.

(2) Any request for continuance or reset must be in writing on a form prescribed by the Department. The form may be obtained at the Department's principal place of business at 3600 North Martin Luther King Avenue, Oklahoma City, OK or at www.ok.gov/DPS. Requests shall be submitted in accordance with 595:1-3-7.

(3) The request for continuance or reset must be received by the Department no later than 12:00 P.M. on the first business day prior to the date of the scheduled hearing.

(4) Any request that does not comply with this subchapter or that is not received by 12:00 P.M. on the first business day prior to the date of the scheduled hearing, will not be considered. Emergency situations will be considered by the Hearing Officer on a case by case basis.

595:1-3-20. Appeal

Appeal to district court is statutorily provided under Title 47 of the Oklahoma Statutes for the areas of law set forth below:

- (1) Implied consent [47 O.S. § 6-211 and 755]

- (2) Financial responsibility [47 O.S. § 7-102]
- (3) Security verification [47 O.S. § 7-102]
- (4) Medical aspects [47 O.S. § 6-120]
- (5) Wrecker or towing service [75 O.S. § 318]
- (6) Vehicle impoundment [47 O.S. § 903A(C)]
- (7) Points [47 O.S. § 6-211]
- (8) Driver license cancellation, suspension, denial, or revocation, except where mandatory under the law [47 O.S. § 6-211].

SUBCHAPTER 9. INSPECTION AND COPYING OF FINAL ORDERS, DECISIONS, OPINIONS AND OPEN RECORDS

595:1-9-2. Inspection and copies of open records

(a) Records of the Department may be obtained pursuant to the fee schedule as set forth in 595:1-9-4 and as posted in the office of the County Clerk, Oklahoma County, Oklahoma, as required by 51 O.S. § 24A.5(3)(4)(b).

(b) Any record that is open to a person for examination, as provided in 47 O.S. § 10-115 (B), shall be available to that person by copying or reproduction in the same medium as the record is available to the person for examination and for the fee required to be charged for the record.

(c) For the purposes of 47 O.S. § 40-102 (A)(2)(b), "legal representatives of a party involved in the collision" shall mean persons who have a blood, marital, or legal relationship with the person involved in the collision, including but not limited to:

- (1) a spouse, widow, or widower,
- (2) an executor of the person's estate,
- (3) an adult child,
- (4) the biological or adoptive parent,
- (5) a person given authority by a notarized affidavit from a person described in (1), (2), (3), or (4) of this subsection,
- (6) an adult sibling, or another adult relative who can provide proof to the satisfaction of the Department that such relative is actively involved in the care of or is responsible for the person, the person's estate, or the person's family,
- (7) the medical service provider, or
- (8) any other person, at the discretion of the Commissioner or the Director of the Records Management Division of the Department.

595:1-9-3. Records of the Department of Public Safety

(a) **General.** The Department of Public Safety ("Department") is a "law enforcement agency", as defined under the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq., and also is a "state department of motor vehicles," as used in the Drivers Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721 et. seq. Both of these Acts place restrictions on the access to and disclosure of Department records.

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(b) **Exemptions.** Pursuant to Section 2-111 of Title 47 of the Oklahoma Statutes, records of the Department shall not be subject to the provisions of:

- (1) Sections 305 through 317 of Title 67 of the Oklahoma Statutes or be transferred to the custody or control of the State Archives Commission;
- (2) Section 590 of Title 21 of the Oklahoma Statutes; or
- (3) The Records Management Act, Sections 201 through 215 of Title 67 of the Oklahoma Statutes.

(c) **Definitions.** In addition to terms defined in 47 O.S. § 1-101, ~~et seq~~ *et seq.*, the following words or terms, when used in this subchapter, shall have the following meaning, unless otherwise defined or where the context clearly indicates otherwise. Use of the singular term includes the plural, and use of the plural term includes the singular.

(1) **"Agency" or "Agencies"** means the Department of Public Safety.

(2) **"Ancillary record"** means any record that is routine in nature, ~~having no material connection with a motor vehicle record,~~ that identifies a transaction of public business, the expenditure of public funds or the administering of public property. Such records have neither evidential value nor being necessary for the transactions of the Department and has no informational value beyond the immediate use for which the record was created or received.

(3) **"Commissioner"** means the Commissioner of Public Safety.

(4) **"Department"** means the Department of Public Safety.

(5) **"Investigative record"** means all records pertaining to, documenting, or reflecting efforts to detect and investigate criminal activity. **"Investigative record"** does not include phone logs, radio logs, phone memos, records generated by the investigating division of the agency or other business records of the agency not reduced to an investigative report or memorandum. This definition applies only to these rules regarding record retention and destruction and, in no way, limits the rights of the agency to claim a record of the agency as confidential and not open to the public pursuant to 51 O.S. § 24A.8 or other statutes.

(6) **"DPPA"** means the Driver's Privacy Protection Act of 1994, 18 U.S.C. § 2721 et seq.

(7) **"Motor vehicle report."** Pursuant to 47 O.S. § 6-117(D), a motor vehicle report ("MVR") is defined as:

(A) A summary of the driving record of the person, including the enumeration of any motor vehicle collisions, reference to convictions for violations of motor vehicle laws, and any action taken against the privilege of the person to operate a motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. [Ref. 47 O.S. § 6-117(D)]

(B) A MVR shall also include a report which indicates that no driving record is on file with the Department of Public Safety based on the information in the request for a Motor Vehicle Report.

(C) A MVR shall not include any driving index required to be prepared and maintained by the Department pursuant to 47 O.S. § 6-117(A).

(64) **"Personal information"** means information that identifies a person [47 O.S. § 2-110 and 18 U.S.C. § 2725], including, but not limited to the person's:

- (A) photograph or image,
- (B) signature,
- (C) social security number,
- (D) residence or mailing address,
- (E) medical or disability information,
- (F) driver identification number
- (G) name, and
- (H) telephone number.

(75) **"Record"** means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record, or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of the Department of Public Safety, or its representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. Any document or other material specifically excluded from the definition of "Record" in the Oklahoma Open Records Act, 51 O.S. § 21A.1, et seq., shall not be considered a "record" under this definition.

(d) **Records open for inspection.** Records of the Department, as defined herein, other than records declared by law to be confidential, or any record or information not subject to the Oklahoma Open Records Act, or any record to which access has been denied pursuant to the Department's statutory authority, shall be open to public inspection, copying, or mechanical reproduction during regular business hours.

(e) **Records not open for inspection.** Records that are required by law to be confidential shall not be disclosed or open to inspection. In addition, the Department may deny access to law enforcement records, except where a court finds that the public interest or the interest of an individual outweighs the reason for denial, and may deny access to records where disclosure is discretionary pursuant to state and/or federal law. Records not open for inspection include, but are not limited to:

- (1) Nongovernmental personal effects;
- (2) ~~Except where authorized by state and/or federal law, any record in connection with a Motor Vehicle Report issued by the Department of Public Safety;~~
- (3) ~~Except where authorized by state and/or federal law, personal information within the driving record;~~
- (4) Records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges;
- (5) Records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301, et seq., of Title 25 of the Oklahoma Statutes;

(64) Personal notes and personally created materials other than department budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project;

(75) Information relating to investigation of an act of terrorism, or a plan or scheme to commit an act of terrorism, including, but not limited to:

- (A) assessments of the vulnerability of government facilities;
- (B) details for deterrence or prevention of or protection from an act or threat of an act of terrorism;
- (C) any response or remediation after an act of terrorism.

(86) ~~Personnel records~~ Certain records pertaining to personnel, including, but not limited to:

- (A) internal personnel investigation;
- (B) examination and selection material for employment, hiring, appointment, promotion, demotion, discipline or resignation;
- (C) disciplinary action that does not result in loss of pay, suspension, demotion of position, or termination;
- (D) home address, telephone numbers and social security numbers of any person employed or formerly employed by the Department.

(97) Department records relating to training, lesson plans, teaching materials, tests, and test results;

(108) Policies, procedures, and operations, any of which are of a tactical nature or where disclosure would pose a risk to the safety of Department personnel;

(119) Within radio logs, all telephone numbers, addresses, other than the location of incidents to which officers are dispatched, and personal information;

595:1-9-3.1. Retention and destruction of Department records [REVOKED]

(a) **General.** Records that are no longer of value to the Department in carrying out the powers and duties of the Department may be destroyed pursuant to the conditions specified in this subsection; provided, nothing in this subsection shall compel the Department to destroy any record. In the event there is uncertainty or ambiguity regarding what category or retention period applies to a particular record, the Commissioner of Public Safety, or the Commissioner's designee, shall make the final determination.

(b) **Records retention and disposal schedule.**

(1) **Conviction.**

(A) Any record of conviction of a holder of a Class D license or of an unlicensed operator of a Class D motor vehicle shall be retained for ten (10) years after the date of conviction.

(B) Any record of conviction of a holder of a Class A, B, or C commercial driver license or of an operator of a Class A, B, or C commercial motor vehicle who is not licensed to operate such vehicle shall be retained for ten (10) years; provided, any conviction for a major offense, as defined in 47 O.S. § 6-205.2,

shall be retained for fifty five (55) years after the date of conviction.

(2) **Department action.** A record of Department action against any operator of a motor vehicle shall be retained for ten (10) years after the date of reinstatement or similar action; provided, any Department action against a holder of a Class A, B, or C commercial driver license or against an operator of a Class A, B, or C commercial motor vehicle who is not licensed to operate such vehicle shall be retained for fifty five (55) years after the date of reinstatement or similar action.

(3) **Collision reports and incident reports.** A collision report or an incident report created or submitted by a law enforcement officer shall be retained for five (5) years after the date the investigation of the collision or incident is completed.

(4) **Other records related to driving privileges.** Any other record related to the driving privileges of a person shall be retained for ten (10) years after the date of the last activity relating to the record.

(5) **Personnel records.** Personnel records of a Department employee shall be retained for the term of employment plus an additional ten (10) years, unless a different time period is specified.

(A) **Applications, resumes and materials submitted for Employment Not Hired.** Records shall be retained for one (1) year after receipt by the Department.

(B) **Applicant/Employee Drug Testing Records.** Records shall be retained for five (5) years after the date the test was administered to the applicant/employee.

(C) **Discipline Records.** Records of the final imposition of informal and formal discipline shall be retained for the term of employment plus an additional ten (10) years.

(D) **Graded examinations.** Examinations administered to Department employees, and the results of such examinations, shall be retained for the term of employment of the person tested plus an additional five (5) years.

(6) **Fitness for Duty Evaluations.** Records shall be retained for the term of employment plus an additional ten (10) years.

(7) **Audio and video recordings of the Department.**

(A) Audio or video recordings of, or created solely for (1) training events, (2) maintenance or testing purposes, or (3) capability demonstrations, may be destroyed when no longer of value to the Department.

(B) Other than records subject to (A) above, any audio or video recordings depicting (1) use of force, (2) vehicle pursuit pursuits, (3) custodial arrest arrests, (4) discharge of a firearm, or (5) any felony offense shall be maintained for three (3) years after the event was recorded.

(C) Any audio and video recordings not identified in (A) or (B) above shall be maintained for ninety (90) calendar days after the event was recorded.

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- (8) **Ancillary records.** Ancillary records may be destroyed when no longer of immediate value to the Department.
- (9) **Records relating to aircraft.** Records specified in 17 CFR § 91.417, such as records of maintenance, preventive maintenance, and inspections, shall be retained for the life of the aircraft.
- (A) All records specified in 14 CFR § 91.417(a)(1) shall be retained until the work is repeated or superseded by other work or for one (1) year after the work performed.
- (B) All records specified in 14 CFR § 91.417(a)(2) shall be retained and transferred with the aircraft at the time the aircraft is sold. The Department shall retain a copy of such records for five (5) years after the date of sale.
- (10) **Property records.**
- (A) **Inventory.** Records relating to physical property, equipment, and materials shall be retained until the property is properly transferred or disposed of, plus an additional five (5) years.
- (B) **Evidentiary or Asset Forfeiture.** Records shall be retained until the case is closed plus an additional ten (10) years.
- (C) **Seized/confiscated property.** Records shall be retained until all seized property has been disposed of plus an additional one (1) year.
- (11) **Use of Force Reports.** Records shall be retained for three (3) years after the date the report is created.
- (12) **Administrative investigations.** Records relating to administrative or internal investigations conducted by the Department shall be retained until the investigation is closed plus an additional three (3) years.
- (13) **Criminal investigative files.** Records relating to criminal investigations conducted by the Department shall be retained until the investigation is closed plus an additional five (5) years.
- (14) **Commercial motor vehicle enforcement records.** Records shall be retained for three (3) years after the date the record is created.
- (15) **Driver license/identification card.** Records relating to the application or issuance of a driver license or identification card, to include original application, issuance and history related information, compliance and enforcement actions, driver license photo files, driver license updates, medical and vision files; waivers, etc. shall be retained for fifty five (55) years from the date of the last activity relating to the record.
- (16) **Training records.** Instructional materials, such as curricula, outlines, syllabuses, audio or visual training aids, handouts, computer presentations and other records associated with in-house training of Department personnel on policies and procedures, operations, job performance and other activities relating to the Department's programs, services, or projects, shall be retained until superseded plus an additional ten (10) years.
- (17) **Instructor certification.** Records shall be retained for the term of employment of the instructor plus an additional five (5) years.
- (18) **Graded examinations.** Examinations administered to the public by the Department, whether graded or in the nature of a pass/fail examination, shall be retained until no longer needed by the Department.
- (19) **Policies and procedures.** Records relating to any internally posted or distributed manuals, guidelines, or similar records concerning the personnel, activity and operations of the Department, shall be retained until the record is superseded plus an additional ten (10) years.
- (20) **Speed trap.** Records relating to the investigation of a speed trap shall be retained for three (3) years after the investigation is complete.
- (21) **Grant administration information for federal Grant awards.** Grant awards, sub-recipient agreements, expenditure details and approvals, reimbursement details and approvals, federal waiver requests, monitoring reports, and all other grant-related documentation shall be retained for the current federal fiscal year plus three (3) years.
- (22) **Contracts and leases.** Records relating to contracts, leases and other binding instruments to include bid specifications, affidavits of publication of calls for bids, accepted and rejected bids, performance bonds, contracts, purchase orders, inspection reports, and correspondence, shall be retained until expiration or termination of the instrument according to its terms plus an additional seven (7) years.
- (23) **Correspondence.** Records or copies of general or administrative correspondence shall be retained for one (1) year after the creation, receipt or transmittal of the record, whichever is a longer period of time.
- (24) **Meeting agenda, minutes and notes.** Administrative records relating to meetings held or attended by Department personnel, to include personally created notes, shall be retained for one (1) year after the meeting is held.
- (25) **Government Publications.** Internal Department publications and publications of the state or other governmental entities shall be retained until superseded or when obsolete.
- (26) **Material safety data sheets.** Records shall be retained until superseded or when the hazardous item is no longer stored by the Department.
- (27) **Open record requests.** Requests for records and all related correspondence shall be retained until such request is fulfilled or denied plus an additional two (2) years. The original of any record provided in response to a record request shall be retained for the time period specified in these rules for that particular record, or for two (2) years after the request is fulfilled, whichever is longer.
- (28) **Subpoenas.** Subpoenas and all related correspondence shall be retained until the subpoena has been routed to the correct custodian of records, fully complied with, withdrawn by the issuing entity, or quashed by a court. The original of any record provided in response to a subpoena shall be retained for the time period specified in

these rules for that particular record, or for two (2) years after the subpoena is complied with, whichever is longer.

(29) **Public relations records.** Media or press releases issued by the Department shall be retained for three (3) years after being issued.

(30) **Other records.** Any other record of the Department not identified specifically herein, shall be retained for ten (10) years after the last activity related to the record.

595:1-9-4. Fees

(a) **General.** A fee shall be assessed for each individual record, or portion thereof, and for the recovery of the reasonable, direct costs of mechanical reproduction, copies of records, materials, certification, searches, and other activities relating to records as allowed by law and in accordance with these rules.

(b) **Search fees.** If a request for records is either solely for commercial purposes or would clearly cause excessive disruption of the essential functions of the Department, a search fee may be charged to recover the direct cost of record search and copying. The amount of the fee shall be for the cost of materials and labor directly attributable to fulfilling the request. [51 O.S. § 24A.5]; Okl. Atty. Gen. Opinion 1996 OK AG 26]

(c) **Fee amounts.** Fees and charges may be collected for copies, materials, certification, searches, and other activities relating to records as allowed by law and in accordance with these rules. A schedule of fees is posted at the Department of Public Safety's principal place of business, 3600 North Martin Luther King Avenue, Oklahoma City, OK or the Oklahoma County Court Clerk's Office, 320 Robert S Kerr Ave, STE 203, Oklahoma City, OK, and is posted on the DPS website at www.ok.gov/DPS.

(1) A record produced on a single sheet of paper with dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller: \$0.25 per page. [51 O.S. § 24A.5(3)]

(2) ~~Motor vehicle report: \$25.00 per report. [47 O.S. § 6-117(D)]. Persons sixty five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or tag agent.~~

(3) ~~Certified Motor Vehicle Report: \$28.00 per report. [47 O.S. §§ 2-110(B) and 6-117(D)]~~

(4) ~~Collision report on file with the Department: \$7.00 per report. [47 O.S. § 6-117(C)]~~

(5) ~~Certified collision report on file with the Department: \$10.00 per report. [47 O.S. §§ 2-110(B) and 6-117(C)]~~

(6) ~~Certified copy of a record, other than a Motor Vehicle Report or a Collision report: \$3.00 per report. [47 O.S. § 2-110(B)]~~

(7) Compact disc (CD), DVD or similar optical storage disc: \$5.00 per disc.

(8) ~~Search fee: The amount of the fee shall be for the cost of materials and labor directly attributable to fulfilling the request. [51 O.S. § 24A.5(3)(b); Okl. Atty. Gen. Opinion 1996 OK AG 26]~~

(9) For any other record not specified herein, a fee may be assessed for recovery of the reasonable, direct costs of record copying or mechanical reproduction.

(10) ~~Persons sixty five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or motor license agent.~~

595:1-9-5. Obtaining open records

(a) **General guidelines.** ~~A schedule of fees stated herein shall be posted at the Department of Public Safety's principal place of business, 3600 North Martin Luther King Avenue, Oklahoma City, OK, and at the Oklahoma County Court Clerk's office. Records of the Department, as defined in 595:1-9-3, will be made available in accordance with rules 595:1-9-1 through 595:1-9-6~~595:1-9-10. All requests for records must be in writing and submitted using a form prescribed by the Department. The forms are available at the Department's principal place of business or at www.ok.gov/DPS. Fees and charges may be collected for copies, materials, certification, searches, and other activities relating to records as allowed by law and in accordance with these rules. Requests that do not comply with these rules may not be fulfilled.

(b) **Principal place of business.** Records may only be obtained from the principal place of business of the Department of Public Safety, located at 3600 North Martin Luther King Avenue, Oklahoma City, OK 73111. ~~However, a Motor Vehicle Report may be obtained from either the Department, from a motor license agent, or at www.ok.gov/DPS.~~

(c) **Availability.** Requests will be processed, and records will be made available, ~~only~~ during regular business hours. Regular business hours shall include only those dates and times that the Department is open to the public. Requests are processed in the order they are received by the Department; however, prior to release, records may not be available until they have undergone a review by the Department's Legal Division.

(d) **Written requests.** A request for any Department record made pursuant to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq., shall be submitted in writing using a form prescribed by the Department available from either the Department's principal place of business or at www.ok.gov/DPS.

(1) The request shall include sufficient information for the Department to conduct a focused, time-efficient search.

(2) The request should not be in the form of a question. The Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq., does not require public bodies to answer questions; it requires agencies to provide copies of records under their control.

(3) Requests that are not in writing or that fail to provide sufficient information to allow the Department to identify the record will not be fulfilled. Requests may be submitted by one of the following methods:

(A) **Email.** Information for obtaining records can be found on the Department's website at www.ok.gov/DPS or by contacting the ~~Records Management Division~~ Public Affairs Office or the Legal Division.

(B) **In-person.** Requests may be presented in-person to the Department of Public Safety, 3600 North

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Martin Luther King Avenue, Oklahoma City, OK 73111.

(C) **United States mail.** Requests may be mailed to: Department of Public Safety, P.O. Box 1141553004, Oklahoma City, OK 73136-041573152-9998.

(D) **Other delivery methods.** Requests may be delivered to the Department of Public Safety via United Parcel Service (UPS) or FedEx or other third-party delivery services using the physical address: Department of Public Safety, 3600 North Martin Luther King Avenue, Oklahoma City, OK 73111. The Department can receive from but cannot respond by delivery services other than the United States Postal Service.

(4) When the Department is asked to produce records, the Department will search for records within a default timeframe. The default timeframe will be from the date of the request and end on the date the search for records is commenced; however, a party seeking records may specify a different date-range for the records sought.

(5) Once records have been identified, those records shall undergo a legal review before releasing them to the requesting party.

(e) **Delivery of records.**

(1) Any applicable costs or fees charged pursuant to these rules shall be paid prior to the delivery/release of any Department record. ~~The Department will not fulfill a request until all applicable fees and costs have been paid.~~

(2) Records responsive to a request may be picked up in person at the Department of Public Safety, 3600 N. Martin Luther King Avenue, Oklahoma City, OK 73111.

(3) ~~If delivery by mail is preferred, the requesting party shall provide a self-addressed, postage pre-paid envelope or container. Excess postage shall not be refunded to the requesting party. Upon request, the Department will mail records via USPS only. Records will not be delivered to the requesting party via UPS, FedEx, or other 3rd party mail-delivery service. The Department of Public Safety will mail records only in the envelope or container provided by the requesting party.~~

(4) At its discretion, the Department may make certain records available via electronic delivery. For the purpose of this subsection, "electronic delivery" shall mean delivery of a digitized or electronic file to the requesting party via email or by providing access to the record through a hyperlink.

(5) Some records may be made available to authorized recipients through a third-party web service at the discretion of the Department. Use of this service may require payment of a fee or charge that is separate from any fee or charge imposed by the Department.

(6) The final format in which a record will be produced shall be determined by the Department. If the Department does not maintain a record in an electronic or computerized format, the Department ~~shall is not be~~ required to convert a record to any particular electronic format for the

convenience of the person requesting record. [Okl.Atty. Gen. Opinion 2006 OK AG 35].

595:1-9-6. Summary of Motor Vehicle Report [REVOKED]

(a) **In general.** ~~As required by the Drivers Privacy Protection Act of 1994 ("DPPA"), 18 U.S.C. § 2721 et seq., the Department or any motor license agent shall not knowingly disclose or otherwise make available to any person or entity personal information, as defined in OAC 595:1-9-3(c)(4), about any individual obtained by the Department in connection with the motor vehicle record except as permitted in the DPPA.~~

(b) **Request by an individual for a motor vehicle report.** An individual requesting a motor vehicle report must submit the following to the Records Management Division of the Department or to a motor license agent for each report requested:

(1) ~~"Records Request" form.~~ This form must be completed by the individual, filling in all required information, checking all applicable statements regarding the request, and signing the request.

(2) **Photo identification.** ~~The requesting party must produce a government issued photo identification to allow the Department to establish the requesting party's identity at the time the request is made.~~

(3) **Consent to Release.** ~~If the individual requesting the driving record is not the person about whom the record has been compiled, the person about whom the record has been compiled must sign the consent to release portion of the "Records Request" form.~~

(4) **Fee.** ~~The individual requesting the driving record shall make payment of the fee required by law [47 O.S. § 6-117(D)].~~

(c) **Entities requesting Motor Vehicle Reports in volume.**

(1) **Written requests.** ~~Certain entities, as authorized in (2) of this subsection, may request Motor Vehicle Reports in volume from the Department by submitting a request in writing to the Director of the Records Management Division of the Department of Public Safety:~~

(A) ~~in person at 3600 North Martin Luther King Avenue, Oklahoma City, OK, or~~

(B) ~~by mail to: Records Management Division, Department of Public Safety, P.O. Box 11415, Oklahoma City, OK, 73136-0415.~~

(2) **Obtaining Reports in Bulk Quantity.** ~~Only the following entities are authorized to obtain Motor Vehicle Reports from the Department in bulk quantities:~~

(A) ~~courts,~~

(B) ~~federal, state, and local governmental agencies,~~

(C) ~~insurance companies for the limited purpose of determining eligibility for insurance coverage or underwriting, or~~

(D) ~~any other person or entity as authorized by the Commissioner or designee.~~

(3) **Fee.** ~~An entity requesting motor vehicle reports in volume shall pay the required fee per request as required by law [47 O.S. § 6-117 (D)] unless otherwise exempted from the fee by the Commissioner as authorized by 47 O.S. § 2-110.~~

- (d) **Obtaining forms.** All forms may be obtained:
- (1) in person at the Department of Public Safety, 3600 North Martin Luther King Avenue, Oklahoma City, OK 73111;
 - (2) by mail from the Department of Public Safety, P.O. Box 11415, Oklahoma City, OK, 73136-0415;
 - (3) by telephone by calling (405) 425-2262, or
 - (4) at www.ok.gov/DPS.

595:1-9-7. Permanent storage

Records kept in permanent storage pursuant to these administrative rules shall be kept in a manner to ensure their availability for continued use and reference if necessary, including, but not limited to, computer hard disk drive, magnetic tape drive, optical disk format, microfilm, and microfiche and in a manner reasonably designed to keep them safe from damage by natural elements, fire, deterioration over time or other natural disaster.

595:1-9-8. Convenience copies

Should the Department maintain multiple copies of a record subject to these administrative rules for convenience in review and distribution, only one such copy shall be required to be retained and/or stored pursuant to these rules. All other copies may be retained or destroyed at the discretion of the Commissioner.

595:1-9-9. In office retention

At any point these administrative rules require or refer to records being retained "in office" or "in-house" the records shall be retained in a form and manner readily accessible to authorized employees during the regular exercise of the daily business of the Department including, but not limited to, on-site use of paper hard copy records, use of on-site document scanning and storage in computer systems, or other electronic storage systems as long as the records are readily accessible.

595:1-9-10. Retention and destruction of Department records

- (a) **General.** Records that are no longer of value to the Department in carrying out the powers and duties of the Department may be destroyed pursuant to the conditions specified in this subsection; provided, nothing in this subsection shall compel the Department to destroy any record. In the event there is uncertainty or ambiguity regarding what category or retention period applies to a particular record and provided no legal action is pending, the Commissioner or Commissioner's designee shall make the final retention or destruction decision. If legal action involving the records is pending, the record(s) shall be retained until the exhaustion of all legal remedies, then retained or destroyed at the discretion of the Commissioner or Commissioner's designee.
- (b) **Records retention and disposal schedule.**
- (1) **Human Capital Management.** Records of DPS personnel shall be retained for the term of employment

plus an additional ten (10) years unless a different time period is specified.

(A) **Applications, resumes, and materials submitted for Employment-Not Hired.** Applications for employment and supporting documentation such as transcripts, resumes, and letters of recommendation; notes and other records pertaining to employment applications and job interviews shall be retained for one (1) year after the receipt by the Department.

(B) **Personnel records of regular state employees (active).** Record copies of applications, hiring, promotional date, and other personnel records pertaining to state employment of active regular state employees shall be retained in office until end of employment with the Department plus ten (10) years.

(C) **Personnel records of temporary state employees.** Record copies of application, hiring, promotional date, and all other personnel records pertaining to state employment of temporary state employees shall be retained in office or in permanent storage for three (3) years after the employee leaves the employ of the Department. At that time the employment application, Request for Personnel Action (OPM Form 14), Longevity Certification Form (OPM Form 52 or Equivalent), employment history cards, Individual Leave Record (OPM Form 1 or equivalent), INS Form I-9, correspondence relating to leave without pay, and Department of Defense Form DD214 shall be retained in office until the end of employment with the Department plus three (3) years.

(D) **Contractual employment records.** Records other than copies of contracts and payment information pertaining to contractual employment shall be retained in office for five (5) years after final payment, provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(E) **Applicant/Employee Drug Testing Records.** Records shall be retained for five (5) years after the date the test was administered to the applicant/employee.

(F) **Discipline Records.** Records of the final imposition of informal and formal discipline shall be retained for the term of employment plus an additional ten (10) years.

(G) **Graded examinations.** Examinations administered to Department employees, and the results of such examinations, shall be retained for the term of employment of the person tested plus an additional five (5) years.

(H) **Fitness for Duty Evaluations.** Records shall be retained for the term of employment plus an additional ten (10) years.

(I) **Organizational Charts.** At least one current organizational chart indicating overall administrative structure of the Department to the unit level shall

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be retained in office until superseded by subsequent charts, then permanently stored for perpetuity.

(J) Payroll financial records. Unless specifically provided otherwise by administrative rule, the following records shall be retained in office for ten (10) years.

(i) The following records shall be retained in office until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state.

(I) Copies of OSF Form 41, Payroll Funding Sheet-Record Type C and Tape Layout; OSF Form 41, Payroll funding Detail Listing-Record Type S and Tape Layout; and any required supporting documents submitted to the Office of State Finance for payment of employee wages and salaries

(II) Copies of OSF Form PWC, "Request for Payroll Warrant Cancellation" submitted to the Office of State Finance.

(III) Quarterly computer printouts from the Office of State Finance listing employee wages and tax deductions.

(IV) Reports listing employee salary and wage deductions for insurance, credit union dues, and annuities, as well as billing documents from insurance companies for premium payments and copies of applicable miscellaneous claims sent to the Office of State Finance.

(V) Overtime reports and payroll data for seasonal employees used to compile agency payrolls submitted to the Office of State Finance.

(VI) Copies of reports submitted to the State Insurance Fund that are the basis for premium calculations.

(VII) Copies of monthly computer printouts from the Office of State Finance.

(VIII) Records used to transmit each employee's monthly and supplemental payroll warrants and any applicable correspondence.

(IX) Records of claims by which the Department remits state employees' voluntary payroll deductions for supplemental insurance and retirement plans.

(ii) Prelists, copies of employee withholding data, payroll cancellation information, and other documents used to compile agency payroll shall be retained in office until superseded then retained or destroyed at the discretion of the Commissioner.

(iii) Records pertaining to deductions from employee salaries and wages for the purchase of U.S. Savings Bonds shall be retained in office for seven (7) years then retained or destroyed at the discretion of the Commissioner provided no legal action is pending. If legal action involving the records

is pending, the records shall be retained until the exhaustion of all legal remedies, then retained or destroyed at the discretion of the Commissioner.

(iv) Cumulative monthly computer printouts from the Office of State Finance showing the gross pay, deductions and net pay on a calendar year basis shall be retained as follows:

(I) All monthly reports shall be retained in office until no longer needed for administrative purposes then retained or destroyed at the discretion of the Commissioner.

(II) All calendar year end reports shall be retained for two (2) years then retained or destroyed at the discretion of the Commissioner.

(K) Requests for certification records. Copies of requests submitted to the Office of Personnel Management for lists of qualified applicants for Merit System Positions shall be retained in office until two (2) years after the making of the records or the personnel action involved, whichever occurred later.

(L) Office of Personnel Management correspondence. Incoming letters and copies of outgoing responses to the Office of Personnel Management shall be reviewed on an annual basis. Duplicate and ancillary records as well as substantive records two (2) years old or more shall then retained or destroyed at the discretion of the Commissioner.

(M) Reduction in force plans. Copies of plans filed with the Office of Personnel Management outlining how the agencies will proceed in the event of an ordered reduction in force shall be retained in office until superseded by new plan then retained or destroyed at the discretion of the Commissioner one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state.

(N) Affirmative action records. Records pertaining to agency affirmative action policies, including but not limited to, all information received and sent regarding the Affirmative Action Plan, EEO reports, and directives from the Governor or Affirmative Action Plan Coordinator for the State, as well as annual reports, semiannual reports, and progress reports pertaining to agency affirmative action plan and policies and procedures implemented to insure that hirings, promotions, and terminations are carried out in full compliance with all applicable laws and rules and regulations shall be retained in office until superseded by subsequent plan then retained for three (3) years after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(O) Agency promotional plans. Copies of required plans submitted to the Office of Personnel Management shall be retained in office until superseded by subsequent plan, then retained in office for three (3) years after all audits have been completed and all applicable audit reports have been accepted

and resolved by all applicable federal and state agencies.

(P) Salary administration plan. The Salary Administration Plan for positions used by the Department shall be retained in office for three (3) years provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(Q) Current employee rosters. A roster of employees shall be retained in the office until superseded by a subsequent roster then retained or destroyed at the discretion of the Commissioner.

(R) Unemployment compensation claims records. Copies of unemployment compensation claim forms, correspondence, and supporting documentation relating to claims, appeals, and decisions for unemployment compensation shall be retained in office for two (2) years.

(S) Worker's Compensation quarterly report. Quarterly reports received from the State Insurance Fund pertaining to workers' compensation insurance coverage of agency personnel and related correspondence shall be retained in office for two (2) years.

(T) Worker's Compensation accident records. Copies of Form 2, Form 3, Form 4, Form 5, Form 6, Form 7, Form 19, and other forms filed with the Worker's Compensation Court shall be retained in office in hard copy paper form until the employee leaves the Department plus ten (10) years.

(U) Job descriptions - merit. Copies of Office of Personnel Management job descriptions for various classified positions shall be retained in office or in permanent storage.

(V) Job descriptions- non-merit. Copies of present job descriptions for non-merit positions shall be kept permanently in office. A copy of all changes/updates to such job descriptions shall be kept permanently in office or in permanent storage.

(W) Grievance procedures records. Copies of records concerning the resolution of employee grievances submitted to the Office of Personnel Management shall be retained in office until the subject employee leaves the Department plus ten (10) years.

(X) Merit Protection Commission or Civil Service Division cases. Copies of materials relating to hearings or appeal requests under investigation by the Merit Protection Commission or Civil Service Division for alleged violations of the Oklahoma Personnel Act shall be retained in office until the subject employee leaves the Department plus ten (10) years.

(Y) Equal Employment Opportunity Commission complaint records. Copies of material relating to charges of discrimination or harassment filed with the Equal Employment Opportunity Commission against the Department shall be retained in office until the subject employee leaves the Department plus ten (10) years.

(Z) Access badges. Access badges to certain work areas, storage areas, or other areas where access is restricted shall be retained or destroyed at the discretion of the Commissioner upon resignation, retirement, or termination of employment of the employee.

(AA) Benefit information. Copies of records relating to benefits available to state employees shall be retained in office for one (1) year after superseded by subsequent information.

(BB) Position description questionnaire. Copies of OPM Form 39, (Position Description Questionnaire) used to describe each position within the Department and for possible reclassification shall be retained in office for one (1) year after being superseded by subsequent.

(CC) Garnishment records. Copies of salary records filed with county clerks pursuant to a garnishment shall be retained in office for one (1) year after notification by the court of payment of obligation or release of payment of obligation.

(DD) Internal Revenue Service levies records. Orders issued by the Internal Revenue Service requiring deductions from employee salaries for the payment of taxes owed to the federal government shall be retained in office for one (1) year after notification of payment of obligation and final release of payment of obligation.

(EE) Department of Justice Immigration and Naturalization Service form I-9. Department of Justice Immigration and Naturalization Service Form I-9 (Employment Eligibility Verification) and supporting documentation shall be retained in office for one year after the person is no longer employed by the Department provided the records are at least three (3) years old.

(FF) Work activity sheets. Weekly timesheets, timecards, or equivalent which may be signed by the employee and his/her immediate supervisor indicating actual hours worked, leave status hours, and total hours for the week shall be retained in office for three (3) years provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(GG) Selection procedure and recruitment records. Records pertaining to internal recruitment to fill position vacancies within the Department including but not limited to, position vacancy announcements; position descriptions; salary and benefits information; applications; supporting documentation including resumes, transcripts, and letters of recommendation; interview notes; correspondence with applicants and other materials relating to internal recruitment to fill position vacancies shall be retained in office for two (2) years after the position is filled.

(HH) Employee mediation records. Forms, incoming memoranda, copies of outgoing memoranda, and other records pertaining to the resolution of

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employee mediation disputes shall be retained in office for five (5) years.

(II) OSHA log and summary of occupational injuries and illnesses. U.S. Department of Labor OSHA Form No. 200 or equivalent maintained as a log and summary record of "recordable" injuries as defined in 29 CFR, '1904.1, et seq., shall be retained in office for five (5) years "following the end of the year to which they relate" (29 CFR, §1904.6).

(JJ) OSHA supplementary record. U.S. Department of Labor OSHA Form No. 101 or equivalent maintained to record supplementary information about "recordable" injuries and illnesses as defined in 29 CFR, §1904.1, et seq., shall be retained in office for five (5) years "following the end of the year to which they relate" (29 CFR, §1904.6).

(KK) Oklahoma log of summary of occupational injuries and illnesses. Oklahoma Department of Labor Form OK No.200 or equivalent maintained as a log and summary record of occupational injuries and illnesses as required by the Rules and Regulations of the Oklahoma Department of Labor shall be retained in office for five (5) years following the year to which they.

(LL) Personnel transaction freeze exception request. Records submitted with a Request for Personnel Action form to the Office of Personnel Management by an agency requesting that a job be filled despite a mandated freeze on jobs shall be retained in office one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(MM) Other personnel records. Unless specifically provided otherwise by administrative rule, all other personnel records shall be retained in office for a period of five (5) years.

(2) Audio and video recordings of the Department.

(A) Audio or video recordings of, or created solely for training events, maintenance or testing purposes, or capability demonstrations, may be destroyed when no longer of value to the Department.

(B) Other than records subject to (A) above, any audio or video recordings depicting the use of force, vehicle pursuit, custodial arrest, discharge of a firearm, or any felony offense shall be maintained for three (3) years after the event was recorded.

(C) Any audio and video recordings not identified in (A) or (B) above shall be maintained for ninety (90) calendar days after the event was recorded provided no legal action is pending. If legal action involving the records is pending.

(3) Aircraft records. Records specified in 17 CFR §91.417, such as records of maintenance, preventive maintenance, and inspections, shall be retained for the life of the aircraft.

(A) All records specified in 14 CFR §91.417(a)(1) shall be retained until the work is repeated or superseded by other work or for one (1) year after the work performed.

(B) All records specified in 14 CFR §91.417(a)(2) shall be retained and transferred with the aircraft at the time the aircraft is sold. The Department shall retain a copy of such records for five (5) years after the date of sale.

(4) Property records.

(A) Inventory. Records relating to physical property, equipment, and materials shall be retained until the property is properly transferred or disposed of, plus an additional five (5) years.

(B) Evidentiary or Asset Forfeiture. Records shall be retained until the case is closed plus an additional ten (10) years.

(C) Seized/confiscated property. Records shall be retained until all seized property has been disposed of plus an additional one (1) year.

(D) Real property files. Records containing deeds, titles, inspection reports, loan agreements, promissory notes, and related records dealing with ownership of property shall be retained in office until five (5) years after the final disposition of property provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(E) Risk Management Certificate of Self-Insurance. Copies of Certificates of Self-Insurance issued by the Risk Management Division of Central Services verifying liability insurance shall be retained in office until superseded by subsequent Certificate then retained or destroyed at the discretion of the Commissioner.

(F) Property inventory/surveys. Original property inventories/property surveys conducted for Risk Management and computer printouts received from Risk Management with notations concerning comprehensive insurance coverage shall be retained in office until superseded by subsequent.

(G) Incident reports. Incident reports completed when an incident has occurred where the State might be liable for damages including, but not limited to, Standard Liability/Standard Incident Report, In Case of Accident Report or related reports completed at the time of the incident and records of reports of incidents and/or occurrences involving the Department employees which do not result in risk management or worker's compensation claims shall be retained in office for five (5) years.

(H) Safety Audits. Safety Audits conducted by Risk Management Safety Engineer, the Department of Labor, the Department, or others, plus follow-up reports and correspondence shall be retained in office until the next safety audit.

(I) Safety correspondence. Correspondence from the Risk Management Division, the Department

of Labor, the Department, or others concerning tips on safety and avoiding accidents shall be kept until no longer needed for administrative purposes.

(J) Building facility inspection reports. Inspection reports and allied documents of inspections of all building facilities of the Department shall be retained in office one (1) year from the date of inspection or until the following inspection, whichever is longer.

(K) Capital improvement projects records. Department capital improvement project records, including but not limited to, information to bidders, bid form proposals, bid affidavits, pertinent Senate and House bills, public construction contracts, and Construction Contract Forms for Use by Public Agencies shall be retained in hard copy paper form for not less than three (3) years.

(L) Material safety data sheets. Material Safety Data Sheets (MSDS) listing each hazardous substance that has been identified by the Chemical Information List (CIL) shall be retained in accordance with the Department of Labor requirements for these documents.

(5) Administrative records.

(A) Policies and procedures. Records relating to any internally posted or distributed manuals, guidelines, or similar records concerning the personnel, activity, and operations of the Department, shall be retained until the record is superseded plus an additional ten (10) years.

(B) Grant administration information for federal Grant awards. Grant awards, sub-recipient agreements, expenditure details and approvals, reimbursement details and approvals, federal waiver requests, monitoring reports, and all other grant-related documentation shall be retained for the current federal fiscal year plus four (4) years.

(C) Contracts and leases. Records relating to contracts, leases, and other binding instruments including bid specifications, affidavits of publication of calls for bids, accepted and rejected bids, performance bonds, contracts, purchase orders, inspection reports, and correspondence, shall be retained until expiration or termination of the instrument according to its terms plus an additional seven (7) years.

(D) Meeting agenda, minutes, and notes, desk calendars, and appointment books. Administrative records relating to meetings held or attended by Department personnel, including personally created notes, shall be retained for one (1) year after the meeting is held.

(E) Administrative investigations. Records relating to administrative or internal investigations conducted by the Department shall be retained until the investigation is closed plus an additional three (3) years.

(F) Correspondence. Records or copies of general or administrative correspondence shall be retained for one (1) year after the creation, receipt,

or transmittal of the record, whichever is a longer period of time. The Commissioner's, Assistant Commissioner's, and Chief of Patrol's incoming correspondence and copies of outgoing correspondence shall be stored for perpetuity. A review may be conducted on an annual basis. After the review, all duplicate and ancillary records and substantive records three (3) years old or older and no longer needed by the Department for administrative purposes may be destroyed.

(G) Government publications. Internal Department publications and publications of the state or other governmental entities shall be retained until superseded or when obsolete.

(H) Legislative files. Reference copies of pending legislation bills that may have an effect upon the Department shall be retained in the office until passed into law or no longer required for administrative purposes.

(I) Reports. Record copies of reports submitted by Divisions, Departments, or Sections documenting activities to the Administration shall be retained in office for three (3) years.

(J) Mailing lists. Material used to create, maintain, and generate mailing lists shall be retained in office until no longer needed for administrative purposes.

(K) Policies and procedures file. A copy of the Department's Policy and Procedures Manual, including all updates/changes shall be kept permanently in office.

(L) Rulemaking and Oklahoma Administrative Code. Records regarding emergency, permanent, and preemptive rules and revocations of rules proposed in accordance with 75 O.S. §250, et seq., including but not limited to notice documents, rule documents, proposed rules, rule revocations, and other submissions for publication in the *Oklahoma Register* and the *Oklahoma Administrative Code*; written statements and petitions received during the comment period or during public hearings; stenographic notes; video tapes and audio tapes made during public hearings; petitions for exceptions to rules; summary statements of public hearings prepared by the Department, copies of attestations, liaison verifications, rule impact statements, transmittal letters to the governor and the legislature; notices of gubernatorial and legislative approval/disapproval; and any other records required by the Administrative Procedures Act (75 O.S. §250, et seq.) and the Administrative Rules on Rulemaking shall be retained in permanent storage for perpetuity.

(M) Public relations file. Copies of news releases and clippings, cassette recordings of broadcast announcements, and other public relations materials shall be retained in-house for three (3) years and then permanently stored for perpetuity.

(N) Insurance documentation excluding Risk Management, employee insurance and State

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- Insurance Fund documentation.** Records of or pertaining to auto, fire, insurance, and other insurance policies excluding Risk Management, employee insurance, and State Insurance Fund documentation shall be retained in office until five (5) years after the expiration of the policy.
- (O) **Other administrative records.** All other administrative records not specifically referred to in these rules shall be retained for two (2) years.
- (6) **Records relating to law enforcement.**
- (A) **Use of Force Reports.** Records shall be retained in office for three (3) years after the date the report is created and then permanently stored for perpetuity.
- (B) **Criminal investigative files.** Records relating to criminal investigations conducted by the Department shall be retained in office for ten (10) years after the investigation is closed and then permanently stored for perpetuity.
- (C) **Training records.** Instructional materials, such as curricula, outlines, syllabuses, audio or visual training aids, handouts, computer presentations, and other records associated with in-house training of Department personnel on policies and procedures, operations, job performance, and other activities relating to the Department's programs, services, or projects, shall be retained in office until superseded plus an additional ten (10) years.
- (D) **Instructor certification.** Records shall be retained in office for the term of employment of the instructor plus an additional five (5) years.
- (E) **Speed trap.** Records relating to the investigation of a speed trap shall be retained in office for five (5) years after the investigation is complete.
- (F) **Telephone logs.** Records of telephone logs of incoming calls shall be retained in office until no longer needed for administrative purposes. When telephone logs are critical to a criminal investigation, the telephone logs will be retained according to OAC 595:1-9-10(6)(B).
- (G) **Radio logs.** Records of radio logs, including a chronological listing of the calls dispatched shall be retained in office until no longer needed for administrative purposes. When radio logs are critical to a criminal investigation, the radio logs will be retained according to OAC 595:1-9-10(6)(B).
- (H) **OLETS.** Records regarding the Oklahoma Law Enforcement Telecommunication System shall be retained in office for five (5) years.
- (7) **Commercial motor vehicle enforcement records.** Records shall be retained in office for five (5) years after the date the record is created.
- (8) **Litigation records.**
- (A) **Litigation files - Attorney General is attorney of record.** Records concerning litigation to which the Department is a party where the Attorney General is the attorney of record, including but not limited to petitions, motions, pleadings, depositions, orders, opinions, and related material shall be retained in office for two (2) years after the exhaustion of all legal remedies
- (B) **Litigation files - staff or private attorney is attorney of record.** Records concerning litigation to which the Department is a party where a staff or private practice attorney is the attorney of record, but the Attorney General is not, including, but not limited to petitions, motions, pleadings, depositions, orders, opinions, and related material shall be retained in office until the exhaustion of all legal remedies, then maintained in permanent storage for at least a further ten (10) years.
- (C) **Litigation files - the Department not a party.** Records concerning litigation to which the agency is not a named party, but is a real party in interest or interested in an embedded issue within the litigation shall be retained in office until no longer needed for administrative purposes
- (D) **Court orders.** Court orders issued by judges requiring that certain actions be taken by the Department shall be retained in office for two (2) years after the exhaustion of all legal remedies.
- (9) **Financial records.**
- (A) **Accounting records.** Records generated, received, or utilized by any of the financial divisions of the Department shall be retained in accordance with the following schedule.
- (i) Unless specifically provided otherwise by administrative rule, all accounting records shall be retained in office until placed in permanent storage. Such documents shall be held in permanent storage for perpetuity.
- (ii) The following records shall be retained in office for three (3) years until placed in permanent storage. Such documents shall be held in permanent storage for perpetuity.
- (I) Copies of OSF Form 3, "Notarized Claim Form"; OSF Form 15A, "Claim Jacket Form"; OSF Form 15B, "Inter/Intra Payment"; OSF Form 19, "Travel Voucher"; Affidavit-Actual and Necessary Unreceipted Travel Expenses; and OSF Form 19A, Travel Voucher Attachment submitted to the Office of State Finance for payment of financial obligations other than payrolls.
- (II) Copies of OSF Form 14, "Claim for Disbursement of Payroll Withholdings" and OSF Form 9, "Imprest Cash Form",
- (III) Copies of affidavits submitted to the State Treasurer's Office requesting the issuance of warrants to replace warrants that have been lost, stolen, or destroyed.
- (IV) Copies of affidavits submitted to the Office of State Finance requesting the issuance of warrants to replace warrants issued in error.

(V) Copies of OSF Form 20A and 2-20 requesting the issuance of warrants to replace ones which have been statutorily canceled.

(VI) Copies of OSF Form MWC, "Request for Miscellaneous Warrant Cancellation", submitted to the Office of State Finance.

(VII) Copies of OSF Form 6 or any form used to acquire goods and services when it is not feasible or required to go out on competitive bid.

(VIII) Records of Accounts receivable by the Department, billing on those accounts receivable, and any supporting documents.

(IX) Copies of monthly computer printouts from the Office of State Finance listing all miscellaneous warrants issued during the reporting period.

(X) Correspondence from the Department and Stop Payment Forms completed by Treasurer's office employees when the Department request that warrants not be redeemed for payment.

(XI) Copies of forms submitted to the State Treasurer's Office along with deposits of funds to Treasury Fund Accounts and supporting information.

(XII) Copies of documents, including Agency Summary/Activities Statements and reconciliation of Official Depository Balance as per Statement Rendered by the State Treasurer's Office, used to reconcile the Department's accounting with those compiled by the State Treasurer's Office.

(XIII) Copies of OSF Form 18 submitted to the Office of State Finance requesting permission to establish special accounts.

(XIV) Copies of letters submitted to the State Treasurer's Office requesting the establishment of an Agency Clearing Account.

(XV) Invoices, vouchers and supporting documentation for payment of obligations from the Department Special or Clearing Accounts.

(XVI) Vouchers written on special accounts that are ultimately returned to the Department and not to the State Treasurer.

(XVII) Copies of OSF Form 11, "Agency Clearing Account Report" and OSF Form 11A, "Agency Special Account Report" detailing transactions through clearing and special accounts.

(XVIII) Records pertaining to deposits previously credited to Department accounts by the State Treasurer's Office that have been 'charged back' because of checks that were returned by banks for insufficient funds, closed accounts, or other reasons, including but not limited to, checks returned and Charge Back Slips listing

agency names, account numbers, amounts being charged back and transaction dates.

(XIX) Records of both corporate and individual bankruptcy filings, notices of creditors meetings, and related incoming and copies of outgoing correspondence.

(XX) Annual year-end GAAP reports and supporting information.

(B) Budget records.

(i) Unless specifically provided otherwise by administrative rule, all budgeting records shall be retained in office house until placed in permanent storage. Such documents shall be held in permanent storage for perpetuity.

(ii) The following records shall be retained in office for three (3) years until placed in permanent storage. Such documents shall be held in permanent storage for perpetuity.

(I) Department budget requests submitted to the Office of State Finance for development of Executive budget and materials submitted from various divisions and other working papers used to compile the agency budget.

(II) Copies of OSF Form 55, Capital Outlay Projects; OSF Form 47, Detail of Personnel by Sub-Activity; PSF Form 47.1, Detail of Exempted Personnel by Sub-Activity; OSF Form 47.2, Detail of Professional Services by Sub-Activity; OSF Form 16, detail of Expenditures by Sub-Activity; OSF Form 22, Summary of Sub-Activities within an Activity; OSF Form 17, Detail of Expenditures by Activity; OSF Form 21, Summary of Activities within an Agency; OSF Form 33, Estimate of Income To Agency Funds; OSF Form 48, Request for Allotment and/or Appropriation Transfer; OSF Form 47, Detail of Personnel by Sub-Activity-Revision; OSF Form 47.2, Detail of Professional Services by Sub-Activity-Revision; OSF Form 16, Detail of Expenditures by Sub-Activity- Revision; OSF Form 22, Summary of Sub-Activities within an Activity-Revision; OSF Form 21, Summary of Activities Within an Agency-Revision; OSF Form 33, Estimate of Income to Agency Funds-Revision budget requests and materials submitted from various divisions and working papers used to compile the Department's budget work program.

(III) Copies of OSF Form 24A requesting that revolving and appropriated funds be posted to agency accounts.

(IV) Copies of OSF Form 48 requesting that appropriate funds be transferred to different line items.

(V) Copies of letters submitted to the Office of State Finance requesting the establishment of treasury fund accounts.

(C) State finance reports.

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(i) Unless specifically provided otherwise by administrative rule, all state finance report records shall be retained in office house until placed in permanent storage. Such documents shall be held in permanent storage for perpetuity.

(ii) The following records shall be retained in office for three (3) years until placed in permanent storage. Such documents shall be held in permanent storage for perpetuity.

(I) Monthly computer printouts from the Office of State Finance listing the closing balances of all treasury accounts.

(II) Monthly computer printouts from the Office of State Finance showing beginning account balances, receipts, disbursements, transfers, and ending balances for each Department fund.

(III) Computer printout from Office of State Finance listing deposit totals for the current month and fiscal year.

(IV) Computer printout from Office of State Finance listing all deposits.

(V) Copies of OSF Form PFT submitted to the Office of State Finance showing transfer activity between budgetary funds and the payroll fund (data includes fund, agency, account, sub-activity, transfer, debit and credit).

(VI) Journal entries by agency and fund.

(VII) Monthly computer printouts from the office of State Finance listing expenditures by object of expenditure sequence.

(VIII) Computer printouts from the Office of State Finance listing agency expenditures by object code in fund sequence.

(IX) Monthly computer printouts from the Office of State Financing listing expenditures incurred within each agency fund and the amount.

(X) Computer printouts from the Office of State Finance listing processed warrantless claims.

(XI) Computer printouts from the Office of State Finance listing expenditures pertaining to contractual services, i.e., legal, architectural, administrative, and consulting.

(XII) SEFA Transactions Report.

(XIII) Computer printouts from the Office of State Finance listing statutory cancellation of warrants.

(XIV) Monthly printout generated by Office of State Finance listing outstanding Purchase Orders.

(XV) Lapse Fund Advance Notice/Continuing Funds.

(XVI) Cumulative quarterly computer print-out from the Office of State Finance listing Department travel claims.

(XVII) Cumulative monthly computer print-out forms the Office of State Finance listing expenditures against authorizations.

(D) Procurement and other costs related records.

(i) Unless specifically provided otherwise by administrative rule, all procurement and communication costs records shall be retained in office for not less than seven (7) years from the date of purchase.

(ii) The following documents shall be retained in office until no longer needed for administrative purposes.

(I) Correspondence and materials from Risk Management Division concerning policies and rules and regulations regarding Risk Management.

(II) Records containing inventory and sales reports (FMD-1) for Department owned vehicles, including vehicle number, make, model and year, purchase date, cost, license tag number, location and whether owned, loaned or leased by the Department.

(III) Monthly summaries turned into Fleet Management Division reporting fuel cost and usage, maintenance done and cost and related information.

(IV) Records containing correspondence and reports detailing Fleet Management policies and rules and regulations.

(V) Postal Service Form 3083-Trust Accounts and Withdrawal Receipts-Postal Service form received daily by agency showing balance for Business Reply Mail (Permit 601) and Record of Registered, Insured, C.O.D., Certified, and Express Mail-U.S. Postal Service PS Form 38877, used in conjunction with special mail services records shall be retained in office house for one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(VI) Copies of procurement documents including, but not limited to, correspondence, forms, bid documents, and bid responses, completed in office or by the Department of Central Services for acquisition of products and/or services will be retained in accordance with the OMES rules for record retention.

(VII) Monthly telephone bills and applicable attachments sent by the Office of State Finance.

(VIII) Memos, worksheets, and invitations to bid on surplus property shall be retained in office for ten (10) years after sale or transfer provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(IX) Contracts for leasing of space for office, warehouse, or storage and contracts for the leasing of equipment shall be retained in accordance with the OMES rules for record retention.

(X) Reports of auctions conducted by the Department, including but not limited to letters to the Central Purchasing Division of OMES requesting permission for auction, lists of items to be auctioned, letter from OMES authorizing sale, buyer sign-in sheets, sales tickets, amounts recorded by buyer (net sales, tax, gross), report to OMES on items sold and price of each, and other miscellaneous supporting documents, and copies of reports to Oklahoma Tax Commission (Schedule 83-13, Series 3-1) on sales tax derived from the auction shall be retained in office for five (5) years provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(XI) Records of detailed vehicle maintenance for Department owned vehicles shall be retained in office until the vehicle is sold or otherwise disposed provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies.

(10) **Electronic records.**

(A) **Data processing, planning, development, and evaluation records.** Records consisting of planning, development, and evaluation records relating to selection, including feasibility studies, planning documents, and justification supporting materials; implementation; upgrading, modification, or conversion of systems and equipment; procedures; and manuals pertaining to the acquisition and use of data processing equipment shall be retained in accordance with the OMES rules for records retention.

(B) **Systems documentation records.** Records consisting of record layouts, code books, technical specifications, flow charts, job control records, test data, and all other records pertaining to systems operations shall be retained in office until one (1) year after applicable equipment or program has been disposed of or discontinued provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies

(C) **Internal systems usage logs.** System Usage Logs and all allied records used to record system usage within the Department shall be retained in office for ninety (90) days.

(D) **Federal Bureau of Investigation systems usage logs.** System Usage Logs and all allied records used to record system usage involving contact or use with the electronic systems of the Federal Bureau of Investigations shall be retained in office for one (1) year.

(E) **E-Mail.** All communications transmitted through the email system that are made in connection with the transaction of official business, the expenditure of public funds, or the administration of public property are considered state records subject to the Records Management Act, 67 O.S. §§ 201 through 217 and the Open Records Act, 51 O.S. § 24A.1, *et seq.*

(11) **Information services records.**

(A) **Criminal history information request forms.** Criminal History Information Request Forms used to request copies of a criminal history from the Department and all other correspondence relating to such requests shall be retained in office for sixty (60) days

(B) **Uniform crime reporting documents.** Reports from contributing agencies used by the Department in furtherance of an investigation shall be retained in accordance with OAC 595:1-9-10(6)(B).

(C) **Open record requests.**

(i) Requests for records and all related correspondence shall be retained in office until such request is fulfilled or denied plus an additional two (2) years.

(ii) All other records pertaining to requests for information under provisions of the Oklahoma Records Act [51 O.S., §24A1, *et seq.*], shall be retained in office for two (2) years.

(iii) The original of any record provided in response to a record or information request shall be retained in office for the time period specified in these rules for that particular record, or for two (2) years after the request is fulfilled, whichever is longer.

(D) **Subpoenas.** Subpoenas and all related correspondence shall be retained until the subpoena has been routed to the correct custodian of records, fully complied with, withdrawn by the issuing entity, or quashed by a court. The original subpoena and of any record provided in response to a subpoena shall be retained in office for the time period specified in these rules for that particular record, or for two (2) years after the subpoena is complied with, whichever is longer.

(12) **Wrecker and Towing Services.** Records relating to Title 595, Chapter 25 of the Oklahoma Administrative Code shall be retained in office for a minimum of ten (10) years from the date of last action.

(13) **Audit reports.** 375:8-3-27. Reports of audits conducted by the Department, State of Oklahoma, the Federal Government, or private auditing firms shall be retained in office for ten (10) years.

(14) **Other records.** Any other record of the Department not identified specifically herein, shall be retained in office for ten (10) years after the last activity related to the record.

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(15) **Ancillary records.** Ancillary records may be destroyed when no longer of immediate value to the Department.

[OAR Docket #23-436; filed 6-6-23]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 25. WRECKERS AND TOWING SERVICES

[OAR Docket #23-437]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Wrecker License

595:25-3-1. General requirements [AMENDED]

595:25-3-2. Applications [AMENDED]

595:25-3-3. Renewal [AMENDED]

595:25-3-4. Trade name [AMENDED]

Subchapter 5. All Wrecker Operators

595:25-5-1. Physical requirements for storage facility [AMENDED]

595:25-5-2. Equipment requirements for all classes of wrecker vehicles [AMENDED]

595:25-5-3. Operation [AMENDED]

595:25-5-7. Tow request and authorization forms [AMENDED]

Subchapter 11. Denial, Suspension, Revocation or Cancellation of License; Denial or Removal of Class AA Operators from Rotation Log of the Oklahoma Highway Patrol

595:25-11-2. Violation of rules [AMENDED]

595:25-11-3. Procedure [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 2-108

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

December 22, 2022

COMMENT PERIOD:

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ADOPTION:

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May 31, 2023 by SJR 22

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May 31, 2023

EFFECTIVE DATE:

August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 11. Denial, Suspension, Revocation or Cancellation of License; Denial or Removal of Class AA Operators from Rotation Log of the Oklahoma Highway Patrol

595:25-11-2. ~~Violation of rules~~ Violations [AMENDED]

Gubernatorial approval:

September 7, 2022

Register publication:

40 OK Reg 70

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22-725

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

The proposed rules clarify definitions. The proposed rules clarify various procedures under the rules. Archaic language and quotations of statute are

removed from the rules. Additional requirements for the release of vehicles are included in the proposed rules. The rules clarify the agency will take adverse action against the license of a licensed wrecker service for violations of any applicable Oklahoma law. Previously the rule was limited to those actions in contravention of Title 47.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 3. WRECKER LICENSE

595:25-3-1. General requirements

The following are the requirements for obtaining an original or renewal of a wrecker license:

(1) **License required.** No operator as defined by law, regardless of storage location, shall operate a wrecker vehicle upon any public street, road, or highway of this state for the offering to tow vehicles or the actual towing of vehicles without first obtaining from the Department a license as provided in this Chapter. Any wrecker vehicle being operated on any public street, road, highway, or turnpike in violation of Oklahoma law, or these rules may be removed from service by Oklahoma law enforcement officers.

(2) **Display and use.** An operator's wrecker service license shall be personal to the holder thereof and a wrecker vehicle license shall be unique to the vehicle. Each license shall be issued only to a person, a corporation, or some definite legal entity. The licenses are non-transferable and any change in ownership, whether of a wrecker service or wrecker vehicle, shall cancel the applicable license. The wrecker service license shall be conspicuously displayed at the primary place of business. The license shall be valid only at the place of business as shown on the license. Additional or satellite places of business shall not be permitted or approved on the same license but shall require a separate application and license.

(3) ~~**Reason for application.** No showing of public convenience or necessity need to be made in support of an application for a wrecker or towing license.~~

(4) **Issuance.** No license for operation of a wrecker or towing service shall be issued until:

(A) The wrecker operator has a minimum of one towing/wrecker vehicle,

(B) Certificates of insurance as prescribed by the Department are on file with the Department,

(C) Each wrecker vehicle has been inspected by an officer of the Department to verify that equipment requirements of this Chapter have been met, and

(D) Each wrecker operator and driver of a wrecker/towing vehicle has successfully completed a minimum of 16 hours of Department approved course

of training or have a minimum of 2 years of experience on the following:

- (i) Traffic incident management
- (ii) Wrecker vehicle recovery controls
- (iii) Connecting or loading vehicle onto wrecker
- (iv) Tie down and secure vehicle to wrecker
- (v) Wrecker operation safety
- (vi) Annually complete 4 hours of continuing education approved by the department

(54) **Carry license.** A copy of the wrecker vehicle license issued by the Department shall be carried at all times in the wrecker vehicle for which the license was issued.

~~(65) **Return license to Department.** Any wrecker operator that disposes of or deletes any wrecker vehicle from operation shall return the license and window decal issued for that particular vehicle and window decal to the Department of Public Safety. When an unlicensed wrecker vehicle is observed with decals identifying it as a licensed wrecker vehicle, law enforcement personnel may remove the decals and seize the cab card license and return both to the Department. Disposition of wrecker vehicles.~~ Any operator that ~~cancel/removes~~ its last remaining wrecker vehicle from operation will have thirty (30) days to have another wrecker vehicle inspected, approved, and licensed or the wrecker license issued to that operator will be cancelled.

(76) **Additional wreckers.** Any wrecker operator that adds a wrecker vehicle shall:

- (A) Register the wrecker vehicle with the Oklahoma Tax Commission, in the name of the operator or the name of the wrecker service, and properly display a current license plate. A leased wrecker vehicle shall show the owner information and the name of the lessee on the vehicle registration.
- (B) Notify the Department of the make, model, GVW and serial number of the vehicle.
- (C) Send notification to the Department from the insurance carrier of the wrecker operator that the vehicle has been added to present insurance coverage.
- (D) Have the vehicle inspected and approved by an employee of the Department.
- (E) A wrecker license plate, or a proportional license plate, must be purchased and affixed to the wrecker vehicle after the vehicle has been inspected and approved and before the vehicle can be used by the operator to tow vehicles.

(87) **License number and business name.**

(A) The DPS number issued to the operator by the Department for the operation of a wrecker or towing service, along with the name of the wrecker service, shall be clearly visible at all times and shall be conspicuously displayed and vertically centered on each side of every tow vehicle used by the operator in the wrecker or towing service. All wrecker services will display AA or G designation at the end of the DPS number. Example: DPS 12345W AA or DPS 12345WG.

(B) On wrecker vehicles in use the DPS number and business name shall be at least three inches (3") in height. The font shall not be a font which is highly decorative or difficult to read. The lettering shall be in a color that will contrast with the color of the tow vehicle in order to be readily noticed and legible.

(C) The signage required by this paragraph shall be permanent in nature and shall not contain any misleading or false information. The wrecker vehicle shall not have more than one wrecker service name on the vehicle.

(D) Magnetic signs are not approved; provided, if requested of and approved by the Commissioner's designee, a magnetic sign may be used for a period of thirty (30) days in an emergency situation.

(98) **Service of notice.** Any notice required by law or by the rules of the Department served upon any holder of a wrecker or towing license shall be served personally or mailed to the last known address of such a person as reflected by the records on file with the Department. It is the duty of every holder of a certificate or license to notify the Department of Public Safety, Wrecker Services Division, in writing as to any change in the address of such person or of the place of business.

(409) **License prohibited.**

(A) No person under eighteen (18) years of age shall be licensed or employed as a wrecker operator.

(B) No person shall be licensed as a wrecker/towing service operator or employee who has been convicted of:

- (i) a felony offense ~~constitution~~ constituting a violent crime as defined in 57 O.S. § 571, larceny, or theft. Felony convictions expunged through deferred sentencing will not be considered as convictions; or
- (ii) any provision of Title 21 O.S. § 1029 while providing wrecker services; or

(C) No person shall be licensed as a wrecker/towing service or be employed by a wrecker/towing service until completion of the sentence for the conviction, including probation or supervised release.

(D) Any person who is required to register as a sex offender, as required by 57 O.S. § 582, shall be prohibited from owning or working for a wrecker service for the period of time the person is or is required to be registered.

(E) Nothing in this section prohibits the Commissioner of Public Safety or his or her designee from approving, denying, suspending, cancelling, or not renewing a wrecker license if it is determined to be in the best interest of public safety.

~~(410)~~ **One Class AA license per place of business.** Wrecker operators shall be issued no more than one Class AA wrecker license for any one place of business.

~~(411)~~ **One Class AA wrecker service on Oklahoma Highway Patrol's rotation log in same rotation area.** An operator shall be permitted to rotate no more than one Class AA wrecker service in the same Highway Patrol

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rotation area on the Highway Patrol 's rotation log. For purposes of this paragraph, "Class A wrecker service" shall include those services with a Class AA-TL wrecker vehicle.

(1312) **Business telephone number.** Each wrecker service shall have a telephone number published that is accessible to the public twenty-four hours a day. The operator shall provide in writing to the Department notice of any permanent business telephone number change prior to the new telephone number being placed in service.

(4413) **Business sign.** Each AA Wrecker Service and each G Wrecker Service with storage shall have a business sign at the business location. The sign shall be at least 2 feet by 4 feet with letters at least 3 inches in height with contrasting background and shall display, at a minimum, the name of the wrecker service as shown on the license and a telephone number accessible to the public twenty-four (24) hours a day.

(1514) **Wrecker drivers.** Wrecker services shall notify the Wrecker Services Division within ten (10) days of hiring or termination of employment of any wrecker driver.

595:25-3-2. Applications

(a) Every applicant shall file with the Department a written application on a form prescribed by the Department and shall tender with the application a fee pursuant to 47 O.S. §953 in the form of ~~cash, check (business, personal, or cashier), or money order, or debit/credit card.~~ Checks and money orders should be made payable to the Department of Public Safety. The application shall be completed using the applicant's legal name and include every alias and nickname by which the applicant is or has been known. Every applicant shall submit with the application a current original Oklahoma State Bureau of Investigation (O.S.B.I.) criminal record check for each individual, partner or corporate officer as shown on the application. If any owner, partner, or officer has not lived in Oklahoma for the immediately preceding five (5) years, he or she shall submit a criminal record check from the agency responsible for keeping criminal history in the state or states of residence for the immediately preceding five (5) years. Upon the return of any dishonored check the application shall be canceled.

(b) Upon receipt and approval of the application, the Department shall assign to the operator a permanent identification number for all matters relating to the approved wrecker and towing service. The Wrecker Services Inspector/Trooper will issue a contact report for the operator to present to the Oklahoma Tax Commission or a motor license agent for the purpose of being issued a wrecker license plate pursuant to 47 O.S. § 1134.3.

(c) The filing of an application for a license does not authorize wrecker or towing service operations by the applicant. Operation may commence only after all requirements have been met and proper authorization has been issued by the Department.

(d) The application shall be an affidavit containing the following information together with any additional information the Department may require.

(1) The trade name (business name) of the wrecker service. If the business name is registered with the Oklahoma Secretary of State, such registered name shall be used. A copy of the Certificate of Limited Liability Company, a Certificate of Authority, a Certificate of Limited Partnership, or a Certificate of Incorporation from the Secretary of State must be submitted with the application.

(2) The name of the individual (owner/applicant) or, in the event of a legal entity such as a corporation, limited liability company, partnership or limited partnership, the names of any two of the following:

(A) President,

(B) Vice-President,

(C) Another officer, such as—~~a~~ Secretary, or the name of the person responsible for the day-to-day operation of the legal entity. The legal entity shall notify DPS immediately in the event any officer or the person responsible should change.

(3) A statement substantially as follows: "Under oath, I affirm the information submitted in this application is true and I further affirm that I have read the rules of the Department of Public Safety and hereby agree in good faith to abide by the applicable laws and rules governing the wrecker and towing services for which this application is made."

(4) Date of application.

(5) Signature of the individual applicant or of each company officer, as named on the application.

(6) For each driver, the name, date of birth and driver license number.

(7) ~~If an officer of the Department of Public Safety or a law enforcement officer of any political subdivision may have an interest, financial or otherwise, in or may be employed by a wrecker or towing service, the wrecker service shall affirm that its sole purpose and only business is to perform repossessions of vehicles which are subject to lien and are being repossessed by the lien holder of record~~ [47 O.S. §956(C)] an officer of the Department of Public Safety or a law enforcement officer of any political subdivision may have an interest, financial or otherwise, in or may be employed by a wrecker or towing service, the wrecker service shall affirm that its sole purpose and only business is to perform repossessions of vehicles which are subject to lien and are being repossessed by the lien holder of record, operating as a Class G Wrecker. If a determination is made that the wrecker service performs services other than repossessions, it shall be grounds for revocation of the wrecker license.

(e) If, within ninety (90) days of receipt of an application, the Department is unable to verify all information as required by these rules, the application shall be denied. Such applicant may reapply.

(f) It is within the Department's discretion to disallow the licensing of a wrecker operator should it appear, by a preponderance of the evidence, that the identity of the business is substantially the same as that of one that is currently under suspension by the Department.

595:25-3-3. Renewal

- (a) Title 47 O.S. §953, provides the wrecker license shall expire on the 31st day of December of each year. The renewal shall be truthfully and completely filled out.
- (b) The operator shall complete and submit a renewal application with the renewal fee prescribed in 47 O.S. §953 in the form of cash, check (business, personal, or cashier), money order, or debit/credit card, to the Department ~~not later than December 31 of the same year~~ between October 1 and December 1, each year. Checks and money orders should be made payable to the Department of Public Safety.
- (c) ~~Any Class AA wrecker service which fails to renew its wrecker license on or before December 31 shall be removed from the rotation log on the immediately following January 1.~~
- (d) ~~Any wrecker service which fails to renew its wrecker license submit a renewal application on or before December 31 shall be considered cancelled, revoked, or suspended and removed from the rotation log, if applicable, as of January 1 the following year.~~ An application for an original or reinstatement license may be submitted, but not be effective until on or after February 1 with all procedures and fees to apply.

595:25-3-4. Trade name

- (a) Each operator shall use a unique trade name, ~~approved by the Department~~, which shall be printed and appear on the license and shall be clearly distinguishable from the trade name of any other operator.
- (b) Upon written request by the operator, the Department may change the trade name of a wrecker or towing service if there is no change in ownership. The identifying number shall be retained and no license fee shall be assessed.
- (c) Any change in ownership due to sale, merger, dissolution, or any other reason, except as provided in subsection (d), shall reserve the wrecker service trade name for a period of ~~sixty (60) ninety (90) days~~, during which time the successor or owner shall apply for a wrecker license using the same trade name or another trade name. However, the successor may not operate as a licensed wrecker service until the application has been accepted and approved by the Department.
- (d) When the owner of a sole-proprietorship wrecker service dies, the wrecker license shall be considered cancelled by the Department effective upon the date of the death of the owner. Upon the death of the wrecker service owner, the wrecker service shall be immediately removed from Oklahoma Highway Patrol rotation. The heirs shall apply for a reinstatement of the wrecker service license using the same name and the same Department-assigned number; provided, the application shall be treated by the Department as a new application, and all procedures and fees shall apply.

SUBCHAPTER 5. ALL WRECKER OPERATORS

595:25-5-1. Physical requirements for storage facility

- (a) **General Requirements.** All wrecker operators, who, in conjunction with or as part of a licensed wrecker operation, store, park or maintain possession of a towed vehicle, shall

store such vehicle in a storage facility which shall meet the minimum physical requirements prescribed in this Section. No vehicle shall be stored in any facility or area which has not been inspected and approved by the Department except in case of exceptional circumstances such as natural disasters or at the direction of law enforcement officers at the scene of an incident.

- (1) An operator shall not store vehicles:
 - (A) At their home,
 - (B) In another operator's storage lot; or
 - (C) Any other location unknown to the Department.
- (2) The entrance to the storage facility shall be separate from any other business entity.
- (3) A vehicle accepted for storage may not be altered without consent of the vehicle owner or their authorized representative.
- (4) No stored vehicle may be used for personal or business use without the prior written consent of the vehicle's owner.
- (b) **Outdoor Storage Facilities.**
 - (1) Every primary outdoor storage facility:
 - (A) Shall be designed to be minimum of 5000 square feet for small truck and minimum of 15000 square feet for large truck in size. A previously licensed proprietor, partnership or corporation business will be allowed to renew the DPS license for their location unless they are changing locations of business.
 - (B) Shall be surrounded completely by a fence. Construction material for fences shall be of wood, metal, chain link or masonry and be at least six feet (6') in height built solid, firmly, and securely to provide the best protection for restricted access. Live-stock paneling (welded wire) shall not be used unless the wire diameter is equal to or larger than 8 gauge (0.160 diameter) with horizontal panels no larger than 4" x 4". T-post construction shall not be approved. Outdoor storage facilities, effective July 1, 2014, shall meet new standards or if facilities previous of date, upon a failed inspection, if found the fence did not meet previous standards, new standards will be imposed.
 - (C) Shall have at least one (1) gate of the same quality of material and height of the fence and must be locked if not attended.
 - (D) The storage lot area:
 - (i) Shall be maintained, including but not limited to removal of tall weeds, overgrown vegetation and debris;
 - (ii) The lot surface shall be an all-weather surface such as concrete, asphalt, blacktop, gravel, or any ~~materials~~ equivalent materials;
 - (iii) And cover the complete area of the storage lot that enables the safe and effective movement of stored vehicles upon all portions of the storage lot.
 - (2) If the construction requirements in paragraph (1) of this subsection are in violation of municipal zoning ordinances or other laws, regulations, or ordinances, the

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operator may ~~file with the Department a petition for request an exemption in writing and submit a proposed security plan in lieu of the requirements, which the Department may approve.~~ The operator shall attach a copy of such zoning ordinance or other laws, regulations, or ordinances with the petition.

(c) **Facility Location and Number.**

(1) A minimum of one (1) primary storage facility shall be located within a two (2) mile radius of the place of business address as reflected on the wrecker license and, effective January 1, 2005, shall be located within Oklahoma. Secondary storage facilities may be located outside the two (2) mile radius.

(2) Each vehicle stored must be initially stored and held at the primary storage facility. After thirty (30) days from date of initial storage, vehicles may be moved to a secondary storage facility. The provisions of this paragraph shall not apply to junk vehicles.

(d) **Alternate Primary Storage Facility.** In lieu of or in addition to the primary storage facility described in this Section, a wrecker operator that tows a vehicle pursuant to a contract with a municipality or county may store such vehicle in a facility meeting the requirements set forth in such contract; provided, that:

(1) A copy of the proposed contract is furnished to the Department, along with documentation that requirements specified in this Section will be or have been met.

(2) Only vehicles towed at the request of the municipality shall be stored in such facilities unless such facility meets all the requirements of this Section.

(3) The wrecker operator shall have assumed reasonable responsibility with respect to the owner of such towed vehicle for any damages or loss of contents occurring during such time as the towed vehicle is stored in the facility.

(4) If the storage facility is not owned by the operator, the owner of such storage facility shall also assume joint responsibility for damages or loss of contents to the vehicle secured during such time as the vehicle is stored at such facility.

(5) Such storage facility must meet or exceed the requirements of this Section.

(6) If such storage facility is not operated by the operator, the operator shall have made arrangements with the owner of such storage facility to enable the owner of the vehicle to make full payment for towing and storage costs at the storage facility location and thereby obtain full release of the vehicle.

(7) A wrecker operator may not store any vehicle in a facility which has not been inspected and approved by the Department.

(e) **Indoor storage facility.** An operator may also provide an indoor storage facility as either a primary or secondary storage facility. Due to a special situation such as, but not limited to, a pending fatal collision, asset forfeiture or criminal investigation, law enforcement may select without regard to rotation, an operator nearest to the incident with appropriate indoor storage. The facility must meet the requirements of the Oklahoma Highway Patrol and the operator must comply

with any special instructions. An indoor storage facility shall be a permanent structure that meets the following minimum physical requirements.

(1) A solid roof,

(2) A solid hard-surface floor,

(3) Solid walls which fully enclose all sides, i.e., reach from corner to corner on each side and from the floor to the roof on all sides so there is no public access. The walls may be penetrated by windows and doors which must be fully operable so as to make the facility fully enclosed when the windows and doors are closed, and

(4) Must be a minimum of 500 square feet in size.

(f) **Each Wrecker Service is a Separate Entity.** Each wrecker service shall be licensed as a separate legal entity. Any wrecker service with storage shall maintain a primary storage facility that is physically separated from any other entity's storage facility as determined by the Department, so that the responsibility and accountability of the operator relating to compliance with these rules is maintained.

(g) **Shared Storage Prohibited.** Shared use of any outdoor or indoor storage facility by two (2) or more wrecker services is not permitted, except as may be determined by the Commissioner.

(h) **Leased or rented building, office, or storage.** Wrecker operators intending to lease or rent any building, office or storage facilities shall file such plan of lease or rent with the Department for approval. Such plan shall be signed and approved by the owner of the property or representative of the owner and be of at least one year in duration and include specific terms therein delineating the responsibility of the operator relating to compliance with the rules of this Chapter and assurance that accountability is maintained.

(i) **Accessibility.** Any primary storage facility used to store vehicles at the request of law enforcement shall be accessible to the public by way of an all-weather road. This provision shall not apply to primary storage facilities which have been approved prior to July 14, 2003.

~~(i) **Accessibility.** Any primary storage facility used to store vehicles at the request of law enforcement shall be accessible to the public by way of an all-weather road. This provision shall not apply to primary storage facilities which have been approved prior to July 14, 2003.~~

595:25-5-2. Equipment requirements for all classes of wrecker vehicles

(a) **All Wrecker Vehicles.** Each wrecker which is used by an operator in the performance of a wrecker or towing service shall be equipped with the following:

(1) **Fire Extinguisher.** One (1) or more dry chemical, B.C. rating, fire extinguisher having a minimum of ten pounds (10 lbs.) total capacity, which shall be mounted and readily accessible.

(2) **Flashing light.** At least one (1) amber rotating or flashing light, mounted and centered above the cab of the vehicle, visible from 360 degrees or on a light bar, and approved by an officer of the Department. The amber rotating light is for use only at the scene of an emergency or where a traffic hazard exists and there is the necessity

to warn approaching vehicles, such as at a routine vehicle pickup [47 O.S. §12-218.1]. In addition to the required amber rotating light, the wrecker may be equipped with a red or blue flashing light, or a combination of red and blue flashing lights, for use only at the scene of an emergency [47 O.S. §12-218.1]; provided, on any wrecker vehicle approved after July 15, 2005, the red or blue light, or the combination of red and blue flashing lights, shall be on a separate switch from the amber light. Under no circumstances are any of the rotating or flashing red or blue lights intended for use when traveling on the streets or highways [47 O.S. §12-218.1]. White rotating lights are not authorized under Oklahoma statutes.

(3) **Chains.** Two (2) chains of sufficient grade to assist in securing the towed vehicle.

(4) **Broom.** One (1) push-type broom, suitable for clearing debris from the road.

(5) **Shovel.** One (1) shovel, suitable for clearing debris from the road.

(6) **Tire Chains.** One (1) set of tire chains, mud and snow tires or other device to assist wrecker to maintain traction in mud, snow, or ice.

(7) **Warning Devices.** Warning devices, applicable to trucks as required in 47 O.S. § 12-407, capable of protecting the scene of a collision by day or night.

(8) **Lighting for Towed Vehicle.** Wreckers must be equipped to operate a towed vehicle's stop, turn and clearance lights (if applicable), or be equipped with a light bar or other lighting equipment to ~~provide the highway comply with~~ lighting requirements for vehicles. When used, the light bar or tow lights shall be affixed securely to the towed vehicle to assure a minimum of movement while traveling on the highway and to prevent any damage to the towed vehicle.

(9) **Safety Chains or Straps.** Two (2) safety chains or wheel straps of sufficient capacity to keep the towed vehicle attached to the wrecker in the event of disengagement.

(10) **Additional Equipment.** Each operator of a roll back wrecker shall secure towed vehicles with four-point tie downs. ~~Operator~~ Operators of other wrecker vehicle types shall secure towed vehicles in accordance with wrecker vehicle chassis recommendations.

(11) **Approved dolly use.** When a wrecker dolly is used as the lift or towing device, both the wrecker dolly and the wrecker shall first be approved and licensed as a unit by the Department. In addition to the requirements in (a) of this Section for all wreckers, a wrecker dolly towing vehicle shall also be equipped at a minimum with the following:

(A) A ball or pintle hook of sufficient size and capacity to safely control the wrecker dolly, securely fastened to the appropriate frame member of the wrecker.

(B) Two safety chains of sufficient capacity to keep the wrecker dolly attached to the wrecker in the event of hitch failure.

(12) **Safety Apparel.** A minimum of (1) one high-visibility safety apparel (vest, jacket or shirt), per wrecker vehicle, in compliance with 2009 MUTCD section 6D.03.

(13) **Safety Apparel while in right-of-way.** Each wrecker operator or driver shall wear high visibility safety apparel, in compliance with 2009 MUTCD section 6D.03, when working in any highway right-of-way.

(b) **Class AA Wrecker Vehicles.** Each Class AA wrecker vehicle, in addition to the equipment required by subsection (a), shall be equipped with the following:

(1) **Scotch Blocks.** Two (2) scotch blocks, or similar devices, capable of adding stability to the wrecker during winching. Scotch blocks shall be constructed of steel plate with a chain or cable of sufficient grade and quality to attach to the frame or body of the wrecker. Hydraulic stabilizing equipment shall be approved. (NOTE: Roll-back wrecker vehicles are exempt from this requirement.)

(2) **Dollies.** Dollies for the purpose of providing a method of towing a disabled vehicle which is otherwise incapable of being towed safely on either axle. (NOTE: Roll-back wrecker vehicles are exempt from this requirement.)

(3) **Axe.** One (1) axe.

(4) **Pry-bar.** One (1) pry-bar or wrecking bar capable of prying open doors.

(5) **Sling and Stay-bar.** One (1) sling and stay-bar, wheel lift device, or other type of device capable of safely loading and protecting the disabled vehicle while being towed.

(6) **Dual Rear Wheels.** At least one (1) set of dual rear wheels for stability in towing another vehicle.

(7) **Winch.** A winch or winches permanently mounted at the rear of the vehicle with a minimum factory rated capacity of eight thousand pounds (8,000 lbs.) and equipped with a cable to be compatible with manufacturer's specifications and be of sufficient length based on the design of the wrecker vehicle.

(8) **Absorbent.** An adequate supply of an absorbent capable of absorbing liquid spills from vehicles (not including cargo spills); provided, the wrecker service or wrecker operator shall not be required to pick up or dispose of the used absorbent. The Department recommends keeping at least four (4) gallons of absorbent on each wrecker vehicle.

(9) **Hydraulic Jack.** One (1) hydraulic bottleneck jack or floor jack with a minimum two and a half ton rating.

(10) **Basic equipment list:**

(A) First Aid kit
(B) Trash bags (33 gal. min.) or 5-gallon buckets

(2)
(C) Flashlight
(D) Wire/Cable cutter pliers (8")
(E) Jumper cables or Jumper Box
(F) Safety glasses (1pr)
(G) Traffic cones (3) MUTCD compliant
(H) Adjustable pliers
(I) Rubber gloves and or work gloves (PPE gear)

(c) **Class AA-TM Wrecker Vehicles.** Each Class AA-TM wrecker (medium truck wrecker), in addition to the equipment required by subsection (a and b), shall be equipped with the following:

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- (1) **Minimum Vehicle Requirements.**
 - (A) **Air Brakes.** Factory or certified installed full air brakes with a full tractor package (hand control, in line foot valve, air hoses and trailer emergency valve) capable of releasing the air brakes on a tractor-trailer and capable of operating the brakes of the towed vehicle with the same application as the towing vehicle.
 - (B) **Parking Brake.** Air-activated spring parking brake.
 - (C) **GVWR Compatibility.** Wrecker body and equipment shall be compatible with the chassis GVWR in size and shall be suitable by design to operate under emergency conditions.
 - (i) Vehicle body must be capable of safely anchoring scotch blocks.
 - (ii) Vehicle must be designed to adequately anchor snatch blocks.
 - (2) **Equipment Requirements.**
 - (A) **Winch.** A winch or winches permanently mounted at the rear of the vehicle with a minimum factory rated capacity of thirty thousand pounds (30,000 lbs.) and be equipped with a cable to be compatible with manufacturer's specifications and be of sufficient length based on the design of the wrecker vehicle.
 - (B) **Boom.** A boom or booms constructed so as to be compatible with winch rating.
 - (C) **Snatch Blocks.** A minimum of two (2) snatch blocks compatible with winch cable size and cable rating.
 - (D) **Sling and Stay-bar.** One (1) sling and stay-bar, wheel lift device, or other type of device capable of safely loading and protecting the disabled vehicle while being towed.
 - (d) **Class AA-TL Wrecker Vehicles.**
 - (1) **Minimum Vehicle Requirements.**
 - (A) **Air Brakes.** Factory-installed or certified installed full air brakes with a full tractor package (hand control, in-line foot valve, air hoses, and trailer emergency valve) capable of releasing the air brakes on a tractor-trailer and capable of operating the brakes of the towed vehicle with the same application as the wrecker.
 - (B) **Parking Brake.** Air-activated spring parking brake.
 - (C) **Axle and Suspension.**
 - (i) Minimum front axle and suspension of twelve thousand pounds (12,000 lbs.). (Note: GVWR rating are altered or affected by tires, springs and axles.)
 - (ii) Minimum rear axle and suspension combination of thirty-two thousand pounds (32,000 lbs.).
 - (iii) Be equipped with full-driven tandem axle (NOTE: A drag axle or pusher axle is not acceptable).
 - (D) **Wheel Base:** Chassis must have a minimum Wheel base of 280 (two hundred and eighty) inches. 200 inches will be allowed on vehicles previously licensed if they have a hydraulic wheel lift, spades and an additional operator.
 - (E) **GVWR Compatibility.** Wrecker body and equipment shall be compatible with chassis GVWR and size and shall be suitable by design to operate under emergency conditions.
 - (i) Body must be capable of safely anchoring scotch blocks.
 - (ii) Must be designed to adequately anchor snatch blocks.
- (2) **Equipment Requirements.**
 - (A) Winches must be maintained with at least 75% capacity of the manufactures recommended length of wire or synthetic rope. Must have at least 2 (two) winches with a minimum combined capacity of 40,000 (forty thousand) lbs.
 - (B) **Boom(s):** Wrecker unit must have a factory built or certified 25 (twenty-five) minimum ton boom rating that is an elevating and telescoping recovery boom.
 - (C) Wrecker unit must have a factory built or certified hydraulic telescoping wheel lift.
 - (D) Large truck requirements:
 - (i) 2 or more air hoses 3/8", with combined minimum length of 100' (feet)
 - (ii) Cage Bolts (8)
 - (iii) Two Air outlets on the wrecker for emergency and service line activation
 - (iv) Metric and Standard end wrench sets with minimum 3/8" 1/4" to 1" and 8mm to 19mm
 - (v) Metric and Standard 1/2" drive socket set and ratchet with minimum 1/4" to 1" and 8mm to 19mm
 - (vi) Hydraulic or pneumatic jack with 10-ton min. rating
 - (vii) 10 gallons of absorbent material
 - (viii) 2.5 lb. Sledge/shop hammer
 - (ix) 2 pr. Locking pliers
 - (x) 4 axle covers
 - (xi) 5 traffic cones (MUTCD compliant)
 - (xii) Saddle Tank fluid mitigation compound (Plug and Dyke or other similar product).
 - (xiii) Minimum of 4 (four) snatch blocks that are recommended for the size of rope contained on the winches.
 - (xiv) Minimum of sixty feet (60') of one-half inch (1/2 1/2") Grade 80 Recovery Chain with hooks.
 - (xv) 2 (two) - one-inch (1") screw pin clevises.
 - (xvi) 2 (two) - one-half inch (1/2") screw pin clevises

595:25-5-3. Operation

All operators using the public roads and highways within the State of Oklahoma shall comply with the following:

- (1) All operators shall require each driver of a wrecker vehicle be proficient in the operation thereof and be properly licensed for the type of vehicle operated.

(2) No operator shall knowingly permit any operator of a wrecker vehicle to consume beer, wine, intoxicating beverages, drugs or other stimulants or depressants while subject to call nor knowingly permit any operator to come on duty after having inhaled or consumed any such beverage, drug or other stimulants or depressants.

(3) No operator shall proceed to the scene of a collision or traffic tie-up without being requested to do so by a law enforcement agency or the owner or driver of a vehicle involved.

(4) Any operator traveling on the roads and highways of the State of Oklahoma during the normal course of his business may, upon arriving at the scene of a collision or traffic tie-up, stop and assist in rendering emergency aid. However, the operator shall not solicit business directly or indirectly from the owner or drivers at the scene.

(5) An operator at the scene of a collision or traffic tie-up is subject to the same traffic-control directions issued by an officer to the motoring public.

(6) An operator shall not use the rotating or flashing light while traveling on the roadway en route to any location. The use of the flashing or rotating light is authorized only in the vicinity of hook-up or at the scene of an incident to protect the scene and the vehicle involved. Only amber flashing lights may be used when leaving the scene of a wrecker service call for the purpose of warning the operators of other vehicles to exercise care in approaching, overtaking, or passing. [47 O.S. § 12-218.1]

(7) Each operator must be a person of good moral character and reputation in his community, as determined by the Commissioner of Public Safety, and conduct the operation of the storage facilities and towing service in a responsible manner so as not to endanger the public safety of persons or property of others in the custody of the operator.

(8) No operator shall tow a vehicle when the combined weight of the wrecker vehicle and the wrecker supported weight of the towed vehicle exceeds the factory gross vehicle weight rating of the wrecker vehicle, regardless of the weight for which the wrecker vehicle is licensed.

(9) No wrecker service shall suspend, or abandon said service without prior written notice to this Department of such intent and returning of all wrecker licenses issued.

(10) Wrecker services and operators shall be responsible for the removal of any glass or other injurious substances dropped upon the highway or highway right-of-way at the location of an accident as required by title 47 O.S. § 11-1110(C).

(11) Upon payment of the reasonable cost of removal, and storage of a stored vehicle, whether stored at the request of law enforcement or a private property owner and recorded by the wrecker service as provided in OAC 595:25-5-5(b), the vehicle shall be released to:

(A) the owner, upon presentation of one (1) of each of the following: ~~proof of ownership, identification, and insurance (if required by law): Evidence of ownership may be:~~

(i) Proof of ownership:

(i) A valid certificate of title, to show proof of purchase and ownership to include tribal and other state titles; or

(ii) Registration Receipt (Digital or Electronic verification shall be accepted); or

(iii) Title properly assigned by the seller, dated, notarized (if required on title) and the owner's name filled out on the title; or

(iv) Written verification from a local law enforcement agency as to the identity of the owner; or

(v) Other appropriate documentation sufficient to establish ownership. ~~Proof of identification may be:~~

(ii) Proof of identification:

(I) Oklahoma driver license; or

(II) Oklahoma identification card; or

(III) Other state driver license; or

(IV) Other state or federally issued photo identification; or

(v) Other documentation sufficient to establish identity.

(iii) ~~Proof of Insurance may be: (Insurance may not be in owner's name, as required in Title 47 955A; or;~~

(vi) Valid insurance verification form, not expired with VIN of vehicle listed; or

(vii) Valid insurance policy not expired with VIN of vehicle listed; or

(ix) Valid affidavit of non-use and vehicle cannot be driven from facility. ~~(Digital or Electronic verification shall be accepted).~~

(B) a person representing the owner, upon presentation of, a notarized letter from the owner permitting said person to act on behalf of the owner, with year, make, model and vehicle identification number of the vehicle and proof as listed in paragraph A.

(C) a lien holder or a duly authorized agent of a lien holder, upon presentation to the wrecker operator proof of being a lien holder [47-904.1], hold harmless letter and a notarized letter from the lien holder permitting said person to act on behalf of the lien holder that includes year, make, model and vehicle identification number; or

(D) the insurer of or the representative of the insurer accepting liability for or purchasing a motor vehicle as provided in 47 O.S., ~~Section~~ §§ 904, 953.1, or 953.2, must provide a hold harmless letter and a letter from the insurer permitting said person to act on behalf of the insurer that includes year, make, model and vehicle identification number.

(E) a legal representative or family member within the first or second degree of consanguinity or affinity upon presentation of a notarized affidavit describing the relationship between the legal representative or family member and the owner, in the event the owner is incapacitated or deceased.

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(12) Personal property, which shall include everything in a stored vehicle except the vehicle and its attached or installed equipment, vehicle keys, or devices to start and unlock the vehicle, and the spare tire and tools to change the tire, shall be released, upon request, to the owner or owner's representative, upon showing of proof as described in (11) of this section. Wrecker operators shall allow the vehicle owner or owner's representative to have access to the vehicle for the sole purpose of retrieving ownership documentation, such as title or registration. [47 O.S. § 955(E)] Personal property shall not be removed from the vehicle unless the operator has a written company policy or procedure for the intended safekeeping of any personal property removed from a vehicle. Personal property may not be removed from vehicles with law enforcement investigative holds for evidence or vehicles with biohazards. Personal property stored at the operator's business office must be secured under lock and key or with an attendant on-duty twenty-four (24) hours per day. Any personal property removed from the vehicle shall be released, to the owner or owner's representative, upon showing of proof as described in (11) of this section.

(13) Each operator shall require each wrecker driver to maintain the appropriate driver license for the type of vehicle being operated.

(14) Each operator shall prohibit any known thief or felon from loitering, visiting, or otherwise being on the premises of the place of business or any storage facility of the wrecker service.

(15) Each operator shall secure vehicles on roll back wreckers with four (4) point tie down. Other wrecker vehicles shall secure vehicles in accordance with wrecker vehicle chassis recommendations.

(16) A wrecker operator or driver responding to the scene of a motor vehicle collision in the capacity of a first responder, fireman, or volunteer fireman shall not respond to the scene in a wrecker vehicle.

(17) Operator shall not take photos of a crash scene that would include bodies, personal information of anyone or any personal identifiers, including but not limited to, license plates or names on vehicles. Any photo of a crash scene that includes bodies, personal information, or any identifiers of any person must not be posted on any form of social media.

(18) During normal business hours, the operator shall provide access to the vehicle for the purposes of inspection, identification, or assessment to any person or entity to whom release is authorized by these rules.

595:25-5-7. Tow request and authorization forms

(a) Only Class AA wreckers are authorized to remove abandoned vehicles from real property. [47 O.S. § 954A] Wrecker services shall complete the Tow Request and Authorization Form prior to removal of abandoned vehicles from real property.

(b) One copy of the Tow Request and Authorization Form shall be forwarded to the Department of Public Safety, Wrecker

Services Division, P. O. Box ~~44415~~53004, Oklahoma City, Oklahoma 73136, and the local law enforcement agency with jurisdiction over the area where the vehicle was removed, within seventy-two (72) hours from time of removal. A facsimile or email of the *Tow Request and Authorization Form shall be considered the original form if a printed or digital confirmation of the facsimile transmission is available.* [47 O.S. § 954A- F]

(c) The Tow Request and Authorization Form can be obtained from the Wrecker Services Division, Department of Public Safety, Oklahoma City, Oklahoma 73136. Disposition of copies are as follows:

(1) Original copy to the Department of Public Safety. Facsimile in lieu of the original will be accepted.

(2) One copy to the local law enforcement agency.

(3) One copy to be retained by the wrecker service.

(4) One copy to the real property owner, legal possessor, or agent.

(d) Each wrecker operator shall be responsible for verifying the identity of the person signing the tow request and authorization form and shall put the driver license number or state-issued identification card number of that person on the tow request and authorization form.

(e) No licensed Class AA wrecker service or operator of a licensed Class AA wrecker service shall tow or cause to be towed a vehicle from the real property until this form has been appropriately completed by the parties.

(f) *The Tow request and authorization form shall be completed with the following information:*

(1) *A description of the vehicle, including the type of vehicle, year of manufacture, name of the manufacturer, vehicle color or colors, identification number and license tag number;*

(2) *The name, address and business telephone number of the licensed Class AA wrecker service;*

(3) *The name, address, telephone number and driver license number or state-issued identification card number of the real property owner, legal possessor or authorized agent;*

(4) *Inventory of personal property within the vehicle to be towed, if no inventory is completed, the reason shall be clearly stated on the form;*

(5) *Time and date the form is completed; and*

(6) *Signatures of the driver of the wrecker vehicle and of the owner, legal possessor or authorized agent of the real property. They shall jointly, and each in the presence of the other, inventory personal property found within or upon the vehicle.*

(g) *A copy of the completed Tow Request and Authorization Form shall be retained by the signatories and the licensed Class AA wrecker service shall maintain the wrecker vehicle driver's copy for not less than one (1) year.*

(h) *Upon completion of the tow the Class AA wrecker service shall perform the following:*

(1) *Within three (3) business days of the time indicated on the form, request the Oklahoma Tax Commission or other appropriate motor license agent to furnish the name*

and address of the current owner and/or lien holder of the vehicle.

(2) Within seven (7) days from receipt of the requested information from the Oklahoma Tax Commission or other motor license agent, send a notice of the location of the vehicle by certified mail, postage prepaid, at the addresses furnished, to the owner and any lien holder of the vehicle.

(3) If the licensed Class AA wrecker service has not complied with the notification procedures required in this section the owner or lien holder shall not be required to pay for storage of the vehicle per Title 47 § 954A (G).

SUBCHAPTER 11. DENIAL, SUSPENSION, REVOCATION OR CANCELLATION OF LICENSE; DENIAL OR REMOVAL OF CLASS AA OPERATORS FROM ROTATION LOG OF THE OKLAHOMA HIGHWAY PATROL

595:25-11-2. Violation of rules

(a) The Department may deny, suspend, cancel, or revoke the license, and/or remove from the Rotation Log, ~~as the case may be,~~ any operator who has committed a violation of ~~the rules of this Chapter or the laws of 47 O.S.~~ any applicable laws of the State of Oklahoma, any applicable rules of the Department of Public Safety, and any applicable rules and orders of the Corporation Commission.

(b) The Department may ~~institute, when circumstances warrant for offenses which occur within four (4) years of each other and as prescribed in OAC 595:25-11-3,~~ a system of progressive discipline of any wrecker service which shall consist of:

- (1) ~~for a first offense as provided in (a), a letter of reprimand,~~
- (2) ~~for a second offense as provided in (a), a suspension of the wrecker service license from the OHP rotation log for ten (10) days if applicable, and~~
- (3) ~~for a third offense as provided in (a), a suspension of at least thirty (30) days and no more than ninety (90) days.~~ consider the following factors when determining the sanction for a violation as described in this section:

- (1) The severity of the alleged violation.
- (2) The Wrecker Service's history of compliance or non-compliance.
- (3) The Wrecker Service's demonstrated willingness and ability to avoid future violations.

(c) If the Commissioner, upon review of a report of the Commissioner's Designee related to a violation as described in this section determines the public health, safety, or welfare requires emergency action, summary suspension of the Wrecker Service license may be ordered pending a hearing. A hearing will be scheduled within three (3) business days of the date of the order of summary suspension.

595:25-11-3. Procedure

In the event ~~that~~ the Department has determined that a license should be denied, suspended, revoked, or canceled, or that an operator should be denied or removed from the Rotation

Log for any reason, or both, the following procedures shall apply in accordance with the Administrative Procedures Act, 75 O.S. § 309, et seq. This section does not apply to summary suspensions.

(1) The Department shall send by first-class mail Notice of Department Action containing all information required by 75 O.S. § 309, et seq., to the concerned applicant or operator at the last known address as reflected by the records of the Department. ~~The Department shall follow up the mailed Notice with a documented telephone call to the telephone number on file with the Department for the wrecker service to ensure the wrecker service has received and understands the Notice.~~

(2) The notice shall provide ~~that the effective date of the Department action shall become effective fifteen (15) days after date of mailing to the applicant or operator, unless the applicant or operator timely files a written request for a hearing with the Department of Public Safety, Wrecker Services Division as determined by the Commissioner or Commissioner's Designee, based upon the seriousness of the infraction. When an applicant or operator requests a hearing in writing with the Wrecker Services Division, the Department action may be suspended until a hearing is held.~~ Such request for hearing shall be timely when filed prior to the effective date of the Department Action.

(3) If a timely hearing is requested, the hearing shall be scheduled within forty-five (45) days from the date the Department receives the request.

(4) The Department hearing officer shall be designated by the Commissioner, and each party shall be afforded an opportunity to be heard and to present evidence.

(5) The hearing officer shall render a decision based upon the law and the evidence presented and shall enter an appropriate final order regarding the matter. Each party shall be promptly notified either personally or by mail.

(6) Unless the hearing officer timely receives a written request for a rehearing, reopening or reconsideration of the decision as provided by the Administrative Procedures Act, the final order will become effective ten (10) days after the entry of the decision.

(7) If an applicant operator fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date prescribed in (2) of this Subsection, in lieu of the decision and final order as prescribed in (5) and (6) of this Subsection. Each party shall be promptly notified thereof either personally or by mail.

(8) If the Department representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order of dismissal of the Department Actions. The order of dismissal shall be without prejudice if the basis for the action constitutes noncompliance or a continuing violation of these rules. Each party shall be promptly notified thereof either personally or by mail.

(9) Where a timely written request for a rehearing, reopening or reconsideration of the case is received, the Department Action shall be stayed until ten (10) days after

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an order is issued concerning the request for rehearing, reopening or reconsideration of the case.

(10) Notwithstanding (2) through (9) of this Subsection, Department Action shall become effective immediately where:

(A) An original application for a license or placement on the Rotation Log is denied for failure to qualify under this Chapter.

(B) The Department finds that the health, safety, or welfare of the public imperatively requires such action and finding to that effect is incorporated in its order, pursuant to the Administrative Procedures Act, 75 O.S. § 314(c).

(11) Where the Department has determined that a minor disqualification and/or violation exists which may be readily rectified by the applicant or operator, the Department of Public Safety may informally notify such party by mail or telephone of such minor disqualification or violation, with a request for compliance with a specified period of time. If such party fails to rectify the minor disqualification or violation, the Department may proceed according to other provisions of this Subchapter.

(12) If the applicant or operator is organized as a corporation, a limited liability company, or a partnership, it must be represented by an attorney through all stages of the proceeding. See *Massongill v. McDevitt*, 1989 OK CIV APP 82, *Allen v. City of Chickasha*, 2009 OK CIV APP 52, *Cf. Rowland v. Calif. Men's Colony*, 506 U.S. 194, 202-203 (1993).

[OAR Docket #23-437; filed 6-6-23]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 30. SIZE AND WEIGHT PERMITS

[OAR Docket #23-438]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [REVOKED]
- 595:30-1-1. Purpose [REVOKED]
- 595:30-1-2. Applicability; adoption by reference [REVOKED]
- Subchapter 3. Size and Weight Permit Load [REVOKED]
- 595:30-3-1. When a permit is required [REVOKED]
- 595:30-3-2. A permit is a legal document; permit types [REVOKED]
- 595:30-3-3. Requesting, obtaining, and paying for a permit [REVOKED]
- 595:30-3-4. Conditions and restrictions [REVOKED]
- 595:30-3-5. Method of placing permit in suspension where conditions exist beyond the control of the permittee [REVOKED]
- 595:30-3-7. Establishing a monthly billing account [REVOKED]
- 595:30-3-13. Governmental agencies [REVOKED]
- 595:30-3-16. "Oversized Load" sign and warning flags [REVOKED]
- 595:30-3-17. Requirements for escort vehicles and escort vehicle operators [REVOKED]
- 595:30-3-17.1 Certification of operators of escort vehicles for hire [REVOKED]
- 595:30-3-18 Oversize vehicles and loads [REVOKED]
- 595:30-3-19. Manufactured homes and industrialized housing [REVOKED]

- 595:30-3-20. Portable building [REVOKED]
- 595:30-3-21. Industrialized housing, houses, and buildings [REVOKED]
- 595:30-3-22. Agriculture permits [REVOKED]
- 595:30-3-25. Unitized equipment [REVOKED]
- 595:30-3-26. Special mobilized machinery [REVOKED]
- Subchapter 5. Special Combination Vehicles [REVOKED]
- 595:30-5-1. General [REVOKED]
- 595:30-5-2. Issuance of permits [REVOKED]
- 595:30-5-3. Denial, modification, suspension and revocation of permits [REVOKED]
- 595:30-5-4. Equipment requirements [REVOKED]
- 595:30-5-5. Operation of special combination vehicles [REVOKED]
- 595:30-5-6. Stability [REVOKED]
- 595:30-5-7. Weight [REVOKED]
- 595:30-5-8. Load sequence [REVOKED]
- Subchapter 9. National and Regional Permits [REVOKED]
- 595:30-9-1. Regional permits [REVOKED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 2-108

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

GIST/ANALYSIS:

HB4008 was passed in the second session of the 58th Legislature (2022). This bill transferred the administration of the Size and Weights Permits division of the Department of Public Safety to the Oklahoma Department of Transportation effective July 1, 2022. These proposed rules revoke the Department's authority over the permitting of oversized or overweight loads.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

595:30-1-1. Purpose [REVOKED]

~~(a) The Department of Public Safety issues permits for oversize, overweight vehicles. The purpose of this chapter is to set forth the guidelines and procedures for obtaining size and weight permits. [47 O.S., §§ 2-108(b) and 14-116(A), 14-118(A), 14-118.1, 14-120(C), 14-120.1(D), and 14-121(B)]~~

(b) For purposes of this chapter, the term "oversize, overweight" shall mean oversize or overweight or both oversize and overweight.

595:30-1-2. Applicability; adoption by reference [REVOKED]

(a) ~~Permits authorizing the movement of oversize, overweight vehicles upon the roads and highways of the State of Oklahoma are issued in harmony with the Size, Weight and Load laws contained in Title 47, Oklahoma Statutes, Chapter 14 and Department of Transportation Rules OAC 730:30-9.~~

(b) ~~This Chapter shall apply to all roads and highways of this state which are subject to the permit provisions of the Oklahoma Statutes, and which direct the Commissioner of Public Safety in the issuance of such permits. The provisions of OAC 730:30-9, which regulate the movement of oversize and/or overweight vehicles and/or loads on roads or highways not a part of the Dwight D. Eisenhower System of Interstate and Defense Highways and four lane divided highways, are hereby adopted as regulatory provisions for roads and highways in this state which are not a part of the state highway system or toll facilities, but which are subject to the permit provisions of the Oklahoma Statutes, and permit issuing authority of the Commissioner of Public Safety. Copies of this Chapter may be obtained from the from the website of the Department of Public Safety or from the website from the Secretary of State, Office of Administrative Rules.~~

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD [REVOKED]

595:30-3-1. When a permit is required [REVOKED]

~~A permit is required when a vehicle or load which exceeds legal size or weight limits, or both, is to be moved upon the roads and highways of the this state. [47 O.S. §14-101 et seq.]~~

595:30-3-2. A permit is a legal document; permit types [REVOKED]

(a) **Permit defined.** ~~A permit is a legal document authorizing the permittee to move a vehicle or load, which is oversize, overweight, or both, upon the roads and highways of this state when the route constitutes the safest practical routing. The document shall be carried in the driver's possession and consist of:~~

- ~~(1) the information furnished by the applicant contained in the permit,~~
- ~~(2) the conditions and restrictions stated in the permit, and~~
- ~~(3) the applicable provisions of this Chapter, OAC 730:30-9, Oklahoma law, or any combination of provisions.~~

(b) **Annual permits.** ~~Annual permits, as authorized by 47 O.S. §14-101 et seq. and by OAC 730:30-9, shall be on a form and in a manner prescribed by the Commissioner of Public Safety. Annual permits shall comport to 23 U.S.C. §127 for interstate applications, to other state statutes relating to size and~~

~~weight of vehicles and combinations of vehicles, and to OAC 730:30-9 for all roads and highways of this state. Annual permits shall be for a duration of one calendar year from the date of issuance. Annual permits for the movement of vehicles, loads, or both which exceed the size or weight provisions, or both, of 47 O.S. §14-101 et seq., but do not exceed the provisions of OAC 730:30-9 or state statutes relating to maximum allowable permit limits, shall be applied for and issued, using the procedures established in this Chapter, through the Size and Weight Permit Division of the Department of Public Safety. Annual permits shall not be restricted to nondivisible vehicles or loads and shall be specific to the towing vehicle of any vehicle operating as a combination of vehicles.~~

~~(1) Fees for annual permits shall be in accordance with the fee schedule contained in 47 O.S. §14-101 et seq.~~

~~(2) Annual permits shall be subject to suspension, revocation or cancellation by the Commissioner of Public Safety or an authorized representative upon due process, as outlined in this Subchapter.~~

(c) **Single trip permits.** ~~Single trip permits, as authorized in OAC 730:30-9 (2), shall be on a form and in a manner prescribed by the Commissioner of Public Safety. Single trip permits shall be applied for and issued, using the procedures established in this Chapter, through the Size and Weight Permit Division of the Department of Public Safety. All single trip permits shall comport to OAC 730:30-9 and related state statutes and shall be for a duration of up to, but not to exceed, five (5) consecutive calendar days. Single trip permits shall be issued for nondivisible vehicles or loads, as defined in 23 C.F.R. § 658, which exceed the provision of state statutes but do not exceed the provisions of OAC 730:30-9 or state statutes relating to maximum allowable permit limits. All or any permits may be revoked by any duly qualified law enforcement officer of the Department of Public Safety after having observed any violation of any of the provisions of the permit. The revocation shall be final and no further movement of the vehicle or load shall be authorized until the vehicle or load is authorized by a proper permit.~~

~~(d) **Multi-trip oversize permits.** A multi trip oversize permit may be issued for a specific motor vehicle, which can be identified by a vehicle identification number or serial number, for movement as set forth in 730:30-9(a)(1) and (j).~~

~~(e) **Annual envelope vehicle permit.** An annual envelope vehicle permit shall be issued by the Department in conformity with 730:30-9-16. In addition to the requirements of 730:30-9-16:~~

~~(1) An annual envelope permit shall not be used in conjunction with any other permit.~~

~~(2) An annual envelope permit shall be void if used for the movement of houses or modular or manufactured homes.~~

~~(3) An annual envelope permit shall be void if laminated.~~

~~(4) Reasonable access to and from terminals for fuel, food, repairs and rest shall not exceed five (5) statute miles from the roadways authorized by the Oklahoma Department of Transportation.~~

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- (5) A vehicle being moved under an envelope permit shall not be moved on turnpikes except on non-interstate turnpikes. Non-interstate turnpikes are:
- (A) Indian Nation
 - (B) Cimarron
 - (C) Cherokee
 - (D) Chickasaw
 - (E) Creek
 - (F) Muskogee
 - (G) Kilpatrick
 - (H) Kickapoo
- (6) The operator of a vehicle in excess of 9 feet and 6 inches in width which is moving under an envelope permit shall use a valid PikePass to travel on any turnpike listed in paragraph (5) and shall travel only in a PikePass lane when in the area of any tollbooth or turnpike entrance or exit.
- (f) ~~Special overheight trailer permit for limited travel.~~ A Special Overheight Trailer Permit for Limited Travel (SOTPLT), in accordance with 47 O.S. § 14-103(B)(1), shall be issued in a manner and on a form prescribed by the Commissioner of Public Safety.
- (1) An SOTPLT shall be for a duration as determined by the Commissioner of Public Safety, but under no circumstance shall the permit exceed one (1) calendar year.
- (A) The fee for a single trip SOTPLT shall be Forty Dollars (\$40.00) and shall be nonrefundable.
 - (B) The fee for a thirty (30) day SOTPLT shall be Five Hundred Dollars (\$500.00) and shall be nonrefundable.
 - (C) The fee for a one (1) year SOTPLT shall be Two Thousand Dollars (\$2000.00) and shall be nonrefundable.
- (2) An SOTPLT shall not be restricted to nondivisible loads and shall be specific to the trailer being permitted.
- (3) In addition to these requirements:
- (A) An SOTPLT shall not be used in conjunction with any other permit.
 - (B) A trailer being moved under an SOTPLT shall not access nor be moved on any part of the National System of Interstates and Defense Highways or four-lane divided Federal Aid Primary System Highways, state highways or turnpikes.
- (4) An SOTPLT shall comply with 595:30-3-18(b)(3), unless otherwise waived by the Commissioner of Public Safety.
- (5) An SOTPLT applicant shall submit a detailed application to the Commissioner of Public Safety containing:
- (A) Physical features of the route, including but not limited to:
 - (i) applicable speed limits,
 - (ii) specifications and description of any bridges,
 - (iii) infrastructure,
 - (iv) public or private utility overhead wire lines,
 - (v) traffic control devices,
 - (vi) road signage, and
 - (vii) any potential for pedestrian traffic.
 - (B) The duration of time the SOTPLT permit is needed.
 - (C) Trailer information including, but not limited to, VIN, tag number, height and specifications of the trailer.
 - (D) A certification from the permittee stating the permittee has contacted the effected City Street Department and/or County Commissioner and referenced any possible restrictions or obstacles within their jurisdiction that may impact the permittee's ability to travel.
- (g) ~~Multiple trailer or semitrailer permits.~~ To obtain a permit for multiple trailers or semitrailors pursuant to 47 O.S. 14-116 (F) an affidavit must:
- (1) be submitted to the Department of Public Safety Size and Weight Permits Division containing:
 - (A) license plate number of each trailer or semitrailer;
 - (B) vehicle identification number of each trailer or semitrailer;
 - (C) US DOT Number of power unit pulling a trailer or semitrailer;
 - (D) Make and Model of trailer or semitrailer; and
 - (h) Any violation of any part of this section shall result in the permit being voided.
 - (i) ~~Prima facie evidence.~~ Undertaking the movement of the vehicles and loads specified in the permit is deemed prima facie evidence of an unequivocal allegation that the permit is accepted by the permittee. Acceptance of the permit by the permittee will be deemed prima facie evidence of an unequivocal allegation by the permittee that:
 - (1) Permittee is in compliance with all operational requirements;
 - (2) All dimension and weight limitations specified in the permit will not be exceeded;
 - (3) All operation, registration, and license requirements have been met;
 - (4) All financial responsibility obligations and other legal requirements have been met. The permittee assumes all responsibility for injury to any person or for damage to public or private property, including the permittee's own, or to the load being transported, caused directly or indirectly by the transportation of vehicles and loads authorized under the permit.
- 595:30-3-3. Requesting, obtaining, and paying for a permit [REVOKED]**
- (a) ~~Requesting and obtaining a permit.~~ A permit shall be applied for and obtained from the Size and Weight Permit Division of the Department of Public Safety, by contacting a permit office either in person, by telephone, or from the Department website. A permit for movement of a manufactured home shall be applied for and obtained in accordance with 68 O.S. §2813 and 47 O.S. §14-103D. The permit office shall make a determination as to whether the permit can be issued based upon the size of load, weight of load, the route to be traveled, the

clearance of overhead structures, weather conditions, and traffic conditions.

(b) **In-person permit application.** All permit offices are open Monday through Friday, except on state holidays. Location and office hours of permit offices are:

(1) Oklahoma City (main office), 2401 Northwest 23rd Street, Suite 45, Oklahoma City, OK 73107. Office hours: 8:00 a.m. to 12:00 p.m. (noon) and 1:00 p.m. to 4:30 p.m.

(2) Offices at Oklahoma Highway Patrol district headquarters:

(A) Enid, 5725 West Garriott Road. Office hours: 8:00 a.m. to 12:00 p.m. (noon) and 1:00 p.m. to 4:00 p.m.

(B) Tulsa, 9191 East Skelly Drive. Office hours: 8:00 a.m. to 4:00 p.m.

(3) Field Offices:

(A) Elk City, Merritt Road at the west junction of U.S. Highway 66 and State Highway 6. Office hours: 8:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:00 p.m.

(B) Woodward, 2411 Williams Ave. Suite 112A. Office hours: 7:00 a.m. to 12:00 p.m. (noon), and 1:00 p.m. to 4:00 p.m.

(c) **Telephone permit application.** Telephone applications may be made by calling, toll free, 405 425 7012, Monday through Friday, except on state holidays, between 8:00 a.m. and 4:30 p.m.

(d) **Website permit application.** Website applications may be made through swpermitsok.com.

(e) **Payment for a permit.** Payment for a permit is to be made by one of the following methods:

(1) Cash (exact change is required). Please do not mail cash.

(2) Certified cashier's check. Make checks payable to "Oklahoma Department of Public Safety."

(3) Money order. Make money orders payable to "Oklahoma Department of Public Safety."

(4) Personal or company check. Make checks payable to "Oklahoma Department of Public Safety." If a personal or company check is not honored by the bank upon which it is drawn, the Department of Public Safety reserves the right to refuse all further checks from the person or company who issued the check.

(5) Credit card. Discover, MasterCard, American Express or Visa will be accepted for payment.

(6) Monthly billing account. [See 595:30 3 7 regarding monthly billing accounts.]

595:30-3-4. Conditions and restrictions [REVOKED]

The following conditions and restrictions shall apply to the issuance of permits for the operation of oversize and overweight vehicles:

(1) **Travel time.** Movement shall be permitted in accordance with the dates and times provided in 47 O.S. §14 101 and in this Section.

(A) **Oklahoma County.** Movement of oversize permitted loads is not allowed on the National System of Interstate and Defense Highways in Oklahoma

County from 7:00 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m., Monday through Friday.

(B) **Tulsa County.** Movement of oversize permitted loads is not allowed on the National System of Interstate and Defense Highways in Tulsa County from 7:00 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m., Monday through Friday.

(C) **Cleveland County.** Movement of oversize permitted loads is not allowed on the National System of Interstate and Defense Highways in Cleveland County from 7:00 a.m. to 9:00 a.m., and from 3:30 p.m. to 6:30 p.m., Monday through Friday. The two (2) mile section of Interstate 35 between State Highway 9 East (Exit 108) and State Highway 9 West (Exit 106) shall be exempt from this restriction.

(2) **Required signs and flags.** All oversized equipment requires the regulation "Oversize Load" sign and flagging, as provided in 595:30 3 16.

(3) **Exceptions.** The restrictions in this paragraph shall not apply to special combination vehicles, longer combination vehicles, and vehicles which are overweight only.

(4) **Weather, traffic, road and atmospheric conditions.** Extreme caution in the operation of permitted vehicles and loads shall be exercised during hazardous conditions, including, but not limited to, snow, ice, sleet, fog, mist, rain, dust, smoke, excessive wind, or any weather, traffic, or road condition which would adversely affect traction or braking capabilities. When conditions become dangerous, the company or the operator shall discontinue operations, and operations shall not resume until the vehicle and load can be moved with reasonable safety. The state may restrict or prohibit operations during periods, when, in the state's judgment, weather, traffic, road, or other conditions exist which make such operations unsafe or inadvisable. [See OAC 730:30 9 12(c)(2) regarding driving conditions.]

(5) **Overweight load route review.** Requests for permits for overweight loads which require a load route review shall be submitted to ensure they are received by the Oklahoma Department of Transportation Bridge Division a minimum of five (5) working days prior to the date of movement [730:30 9 7(k)].

(6) **Brakes, drawbars, and lighting requirements.** Equipment requirements for this Paragraph are found in 47 O.S. §§12 201 through 12 415, and in the Federal Motor Carriers Safety Regulations, Part 393, Subchapters B, C, B, and H.

(7) **Accuracy of information.** It is the responsibility of the applicant to ensure accuracy of information contained in company profile and on the application when submitting for a permit. Sharing your password with anyone is a violation of our agreement, as it may compromise the account holder's confidential information and could result in outside charges on your account for which you will be responsible and liable. The charges incurred on your account are the responsibility of the owner as described in the profile, no matter who makes the actual charge. Permits will not be revised to alter the load description or the

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vehicle or load dimensions. Multi trip or annual permits cannot be changed, except the vehicle registration (tag) number may be updated, provided the vehicle identification number is not changed on the application. Any other revisions shall be at the discretion of the permit office and only one (1) revision will be allowed per permit.

595:30-3-5. Method of placing permit in suspension where conditions exist beyond the control of the permittee [REVOKED]

(a) A permit may be placed in suspension by the permit holder for a maximum of two (2) weeks for inclement weather, road conditions due to weather and equipment breakdown. To place a permit in suspension the permit holder shall:

(1) Contact the permit office within the trip dates. If the permit expires when the permit office is closed, contact the permit office the next working day;

(2) Provide the permit number and trip dates;

(3) Before the permit may be reinstated due to equipment breakdown proper documentation must be submitted to swpermits@dps.ok.gov.

(b) If the permit office is not contacted by the permit holder to remove the suspension of the permit within two (2) weeks of placing the permit in suspension, the permit shall become void, and the permit shall be required to apply for a new permit. Only one (1) suspension shall be granted by the Department per permit.

595:30-3-7. Establishing a monthly billing account [REVOKED]

The Size and Weight Permit Division may authorize monthly billing accounts for individuals, companies, and corporations to defer payment of special permits issued for oversize and overweight vehicles. A monthly billing account will be established in accordance with the following provisions:

(1) Posting of bond.

(A) A bond must be posted in an amount sufficient to cover the monthly billing. The minimum amount of such bond shall be Five Thousand Dollars (\$5,000.00).

(B) The bonding company must be approved by the Oklahoma Insurance Commissioner to do business in Oklahoma and maintain such approval during the term of the bond.

(C) The bond must be on a form prepared by the Department of Public Safety. The completed original form must be submitted to the Department for final approval. The form may be obtained by contacting the Size and Weight Permit Division of the Department of Public Safety.

(D) The surety company must notify the Department by written notice a minimum of thirty (30) days prior to cancellation or reduction of the amount of coverage and state the effective date of the change in coverage. The surety company shall send the notice

by certified mail to the Size and Weight Permit Division.

(E) It is the responsibility of the company holding the bond to give the monthly billing account number only to persons qualified to use the account. Establishing an account implies full agreement to the terms of the account and any related activities thereof. Sharing your password with anyone, is a violation of our agreement, as it may compromise the account holder's confidential information and could result in outside charges on your account for which you will be responsible and liable. The charges incurred on your account are the responsibility of the owner as described in the profile, no matter who makes the actual charge. Once the bond has been approved by the Department of Public Safety, notification of the monthly billing account number will be given. Information concerning accounts may be obtained by calling (405) 522-9004 or 405 522 2290.

(2) **Payment of account.** Each monthly billing account will be invoiced at the first of each month. Payment must be received by the Department of Public Safety at 2401 Northwest 23rd Street, Suite 45, Oklahoma City, OK 73107 by the fifteenth (15th) day of the invoice month. Accounts which are not paid will not be issued permits until the account is paid. Accounts not paid by the twentieth (20th) day of the invoice month will be sent to the bonding company for collection. The Department may close any account for which the deferred payment is habitually delinquent.

595:30-3-13. Governmental agencies [REVOKED]

(a) Military moves.

(1) **Special permission.** All movements by the Armed Forces and the National Guard must be in compliance with the size and weight limits contained in 47 O.S. §§ 14-103 and 14-10, unless an authorization has been issued by the Size and Weight Permit Division, or an emergency has been officially declared by the President or the Governor. In the event an official emergency is declared, telephone contact should be made with the Oklahoma City Size and Weight Permit Office by calling toll free 405 425 7012 during regular office hours or the Oklahoma Highway Patrol Communications Center by calling 405 425 2323 at other times.

(2) **No cost authorization.** If it is necessary to move a vehicle or load which cannot be reasonably dismantled or disassembled and transported within the legal size and weight limits, an application for authorization to make the movement must be submitted to the Oklahoma City Permit Office. Application may be on Department of Defense standard forms, by letter, or by electronic communications. If the Oklahoma City Permit Office determines the move can be made in safety without damaging the highway system, a no cost authorization will be issued.

(3) **No-Cost authorization.** The Oklahoma City Permit Office will review requests for routine military convoy movements, which are submitted on standard military forms, and issue a Military No-Cost Authorization for all approved oversize and overweight vehicles and loads which are included. These authorizations do not relieve the Armed Forces or National Guard from overall responsibility for the convoy movement.

(b) **City, county, state and federal agencies.**

(1) **Compliance.** City, county, state and federal agencies must comply with the provisions of 595:30-3-13(a)(1).

(2) **No-cost authorization.** If it is necessary to move a vehicle or load which cannot be reasonably dismantled or disassembled and transported within the legal size and weight limits, an application for authorization to make the movement must be submitted to the Oklahoma City Permit Office. If the Oklahoma City Permit Office determines the move can be made safely without damaging the highway system, a no-cost authorization will be issued.

(3) **ODOT and OTA No-Cost Authorization.** The Oklahoma Department of Transportation and the Oklahoma Turnpike Authority may obtain an annual no-cost oversize overweight fleet permit for vehicles moving to, from and engaged in highway maintenance and construction activities.

595:30-3-16. "Oversize Load" sign and warning flags
[REVOKED]

(a) **"Oversize Load" sign.** All oversize vehicles and loads moving under permit must have the regulation "Oversize Load" sign attached to the front of the towing vehicle and on the rear of the load or towed vehicle, whichever extends the farthest. The "Oversize Load" signs shall not be displayed on a vehicle that is of legal dimensions. Regulation "Oversize Load" signs must meet the following requirements:

(1) **Color.** The sign shall consist of a yellow background with black lettering.

(2) **Size.** The sign shall be at least five (5) feet long and at least fourteen (14) inches high. The letters shall be legible from a distance of at least fifty (50) feet and shall be at least eight (8) inches high using a one and one eighth (1 1/8) inch wide brush stroke.

(3) **Placement of sign.** The sign mounted on the rear of the load or the towed vehicle whichever extends the farthest must be as high as practicable from ground level. For manufactured homes, the sign must be no lower than five (5) feet from ground level. If an escort vehicle is required, the regulation "Oversize Load" sign shall be mounted either on the roof or on the front of the escort vehicle, if movement is on two lane highways or super two lane roadways, or on the rear or on the roof of the escort vehicle, if movement is on multi lane roadways.

(4) **Wording.** The wording shall state "Oversize Load" or "Wide Load".

(5) **Sign material.** The sign shall be made of a durable material.

(b) **Warning flags.** All overwidth and overlength vehicles and loads moving under permit, excluding extra length vehicle combinations, shall be marked by warning flags. All loads which overhang the rear of the vehicle or trailer by four (4) feet or more shall be marked by warning flags. Warning flags must meet the following requirements:

(1) **Color.** Each flag shall be a solid red or fluorescent orange.

(2) **Size.** Each flag shall be at least eighteen (18) inches by eighteen (18) inches.

(3) **Placement of flags.** Flags shall be placed at the four (4) corners of the vehicle or load and on the extremities of the vehicle or load, if applicable, in the following manner:

(A) **Front.** Two (2) flags required: a flag shall be fastened to each front corner or extremity of the vehicle or load, whichever extends the farthest, if the width requires the vehicle or load to be permitted.

(B) **Rear.**

(i) Two (2) flags required: a flag shall be fastened to each rear corner or extremity of the vehicle or load, whichever extends the farthest, if the width requires the vehicle or load to be permitted.

(ii) If the rear overhang of the load extends beyond the end of the vehicle by four (4) feet or more:

(I) One (1) flag required: a flag shall be fastened at the extreme rear of the load if the width of the load projection is two (2) feet or less.

(II) Two (2) flags required: a flag shall be fastened to each rear corner of the load if the width of the load projection is more than two (2) feet.

(C) **Side.** Flags required: A flag shall be fastened in such a manner so as to mark any extremity of size which is wider than the front or rear of the vehicle or load, whichever is wider.

595:30-3-17. Requirements for escort vehicles and escort vehicle operators [REVOKED]

(a) **General requirements for escort vehicles.** Any vehicle to be used as an escort vehicle must be either a pickup truck of not less than one quarter (1/4) ton rated load capacity or an automobile of not less than 2,000 pounds. The escort vehicle must be properly licensed under the statutes of the State of Oklahoma [47 O.S. § 1101 et seq.] or properly licensed in another state. If commercially licensed, an escort for an intrastate move must obtain a temporary registration from the Oklahoma Tax Commission Motor Vehicle Registration Division.

(b) **Identification of escort vehicles.** The owner of an escort vehicle must have displayed on each side of the escort vehicle the name, city and state of the escort vehicle company or operator, or the owner of the escort vehicle, or both. Such identifying markings must be:

- (1) Plainly legible and visible to the motoring public.
- (2) Readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.

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- (3) Kept and maintained in a manner to preserve legibility.
- (4) In a color or colors which sharply contrast with the background on which they are placed.
- (e) **Equipment of escort vehicles.** An escort vehicle must carry the following items of equipment at all times when escorting an oversize/overweight vehicle or load:
- (1) **Flags.** Red flags shall be at least twelve (12) inches square and shall be attached to standards angled upward to the left and right at forty five (45) degrees and mounted on the top of the cab. No flags shall be displayed unless the escort vehicle is actually engaged in escorting.
- (2) **Mirrors.** The vehicle shall be equipped with an outside rear view mirror on each side of the vehicle.
- (3) **Radio.** Escort and towing vehicles shall be equipped with a two way radio which is capable of transmitting and receiving voice messages over a minimum distance of one (1) mile and which is compatible with radios in the escorted vehicle and any other escort vehicle(s).
- (4) **Fire extinguisher.** One (1) ten pound or two (2) five pound ABC fire extinguishers. Extinguishers shall be checked annually to ensure they are operational.
- (5) **Flares or reflectors.** Four (4) LED type flares, three (3) traffic cones or three (3) portable triangle reflector units.
- (6) **Sign.** The regulation "Oversize Load" sign, as provided in 595:30-3-16(a), except that sign shall be at least ten (10) inches high, shall be mounted either on the front or the roof of front escort vehicles and on the rear or on the roof of the rear escort vehicle while escorting an oversize vehicle or load. The sign shall be clearly visible without an obstruction. No signs shall be displayed unless the escort vehicle is actually engaged in escorting.
- (7) **Warning lights.** One AAMVA approved rotating or flashing amber beacon or a flashing amber light bar system shall be mounted on top of the escort vehicle and shall be of sufficient intensity when illuminated to be visible from five hundred (500) feet in normal sunlight, and shall rotate, oscillate or flash through 360 degrees. Blue lights are strictly prohibited and, red, or white rotating lights are not authorized under Oklahoma statutes. In addition:
- (A) Headlights of escort vehicles shall be lighted at all times during movement.
- (B) Warning lights in conformance with 47 O.S. § 12-220(D) and § 12-227(C) may be used in conjunction with the headlights.
- (C) No warning lights shall be displayed unless the escort vehicle is actually engaged in escorting.
- (8) **Measuring pole.** A current height measuring pole made of non-conductive, flexible, non-fragile material when escorting a load or vehicle which is fifteen (15) feet and nine (9) inches or more in height.
- (9) **Traffic control sign.** Two (2) "STOP" and "SLOW" paddle signs at least 18" inches in diameter with letters at least 6" high with a reflective surface which meets standards set by the Manual on Uniform Traffic Control Devices.
- (10) **Safety clothing.** A hard hat and a jacket or vest, both of which meet standards set by the Manual on Uniform Traffic Control Devices, for each person who may be assigned to traffic control, setting reflectors or any other duties conducted on or near a roadway.
- (11) **Flashlight.** A flashlight equipped with and powered by at least two (2) D cell batteries.
- (12) **Spare tire.** A full size spare tire for the escort vehicle, tire jack and lug wrench.
- (d) **Prohibitions when operating escort vehicles.** The escort vehicle shall not:
- (1) Carry any item, equipment or load in or upon the vehicle which:
- (A) Exceeds the height, length or width of the vehicle, overhangs the escort vehicle; or otherwise impairs its immediate recognition as an escort vehicle by the motoring public.
- (B) Impairs the view of the operator of the escort vehicle or the escorted vehicle.
- (C) Obstructs the view of signs or flags used by the escort vehicle or causes safety risks to the motoring public.
- (D) Impairs the performance of the escort vehicle.
- (2) Tow any trailer or other vehicle, except that an escort vehicle operator not required to be certified by the Department may tow a trailer when escorting a manufactured home. Such trailer shall not exceed eight and one half (8 1/2) feet in width and twenty (20) feet in length with siding not to exceed four (4) feet in height measured from the bed of the trailer. The trailer may only be used to transport supplies and equipment necessary to carry out the mission of escort vehicle operators [47 O.S. § 14-120.1(C)] and shall not be used to carry other supplies, equipment, or cargo.
- (3) The operator of the escort vehicle shall not perform as a tillerman or steerman while performing escort operations. A passenger in the escort vehicle may act as a steerman. For purposes of this paragraph, "tillerman" means a person who is physically located on the CMV, has a valid commercial driver license and who operates by remote control or other means any axle of the CMV; "steerman" means a person who is not physically located on the CMV, not required to have a valid commercial driver license, and who operates by remote control or other means any axle of the CMV.
- (e) **Duties of escort vehicle operators.**
- (1) **Traffic control.** In the performance of duties as the operator of an escort vehicle, the operator is authorized to direct traffic to stop, slow down or proceed in situations where such direction is necessary to allow traffic or the escorted vehicle or load to continue moving safely. Pilot/Escort operators must be trained and certified to perform the above duties according to MUTCD (Section 6E.01 Qualifications for Flaggers.
- (A) The operator of the escort vehicle shall require the escorted vehicle or load to stop, and the escorted

vehicle shall move as far off of the roadway as practicable and stop to allow other traffic to pass, under the following conditions:

- (i) When the escorted vehicle or load becomes disabled.
- (ii) When the movement of the escorted vehicle or load on a particular section of roadway presents a safety risk or unreasonable risk to or unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the escorted vehicle or load, roadway, volume of traffic, limited visibility or mountainous terrain.
- (iii) When driving conditions for the escorted vehicle or load are hazardous for any reason including weather.

(B) When the escorted vehicle or load stops, the escort vehicle operator shall direct other traffic past the escorted vehicle or load as necessary until such time as the escorted vehicle or load can reenter the roadway and continue moving without presenting a safety risk or unreasonably interfering with efficient movement of other traffic.

(C) Escort vehicle operators when performing escort duties shall have their drivers license and escort certification on their person and present them for inspection at the request of any law enforcement officer.

(2) **Escort vehicle operation.**

(A) The operator of an escort vehicle must comply with all applicable traffic laws of this state and with the requirements of this Chapter when escorting a vehicle on all routes of the state highway system, including but not limited to the Dwight D. Eisenhower National System for Interstate and Defense Highways, all turnpikes, and such other roads, streets, or public ways that the Commissioner of Public Safety and the Oklahoma Department of Transportation shall deem appropriate.

(B) On two lane highways, the first escort vehicle will travel far enough to the front and the second escort vehicle, if required, will travel far enough to the rear of the escorted vehicle or load to timely warn approaching motorists. On multi lane highways, the first escort vehicle will travel far enough to the rear of the escorted vehicle or load to timely warn motorists approaching from the rear.

- (C) The operator of an escort shall not:
- (i) possess, use, or be under the influence of alcohol, or have any measureable alcohol concentration within four (4) hours before or at any time while operating or in actual physical control of any escort vehicle.
 - (ii) use alcohol or be under the influence of alcohol within 4 hours before going on duty or while operating or having actual physical control of an escort vehicle; or
 - (iii) use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or

detected presence of alcohol, while on duty, or operating, or in physical control of an escort vehicle.

(iv) Operate an escort vehicle and be in possession of wine, beer, or distilled spirits.

(v) be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

- (I) Any Title 63 O.S. §2-204 Schedule I substance;
- (II) An amphetamine or any formulation thereof;
- (III) A narcotic drug or any derivative thereof; or
- (IV) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

(f) **Insurance.** Each certified escort vehicle operator who operates in interstate commerce, and on and after August 1, 2012, each certified escort vehicle operator, shall maintain a valid insurance policy issued by an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma, and proof of insurance shall be carried in the escort vehicle at all times. The insurance policy shall protect the public against loss of life, bodily injury to persons, and damage to property, as evidenced by a current certificate of insurance, including any applicable endorsement, which indicates that the operator, or the operator's employer, has in full force and effect insurance coverage for bodily injury or property damage, or both, as a result of the operation of the escort vehicle or of the actions of escort vehicle operator, or of both, causing the bodily injury or property damage, or both, arising out of an act or omission by the escort vehicle operator relating to the escort duties required by this chapter. The insurance shall be no less than \$1,000,000 combined single limit or \$1,000,000 per occurrence, or both, of commercial liability coverage, as applicable, and must be maintained at all times during the term of the certification.

595:30-3-17.1. Certification of operators of escort vehicles for hire [REVOKED]

(a) **Requirements.** Every person who drives an escort vehicle for hire to escort a permitted over dimensional load or vehicle in this state must be certified by the Department of Public Safety. To be certified, the person must meet the following requirements:

- (1) Be at least eighteen (18) years of age.
- (2) Possess a valid driver license from the state or jurisdiction in which the person is a resident.
- (3) Submit an application for certification to the Size and Weight Permit Division of the Department of Public Safety on the form provided by the Department. The application must contain all required information including a driving record issued within the immediately preceding thirty (30) days.
- (4) Attend a course in escort vehicle certification, as prescribed by the Department, and successfully pass the escort vehicle certification examination.

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(b) **Course and examination.** The course will be taught by the Oklahoma State University Center for Local Government Technology. Courses will be taught at locations throughout the state. Class size shall be determined by Oklahoma State University Center for Local Government Technology. Locations, times, and enrollment information are available by calling (405) 744-6049, or online at clgt.okstate.edu.

(c) **Certification.** The Department of Public Safety will grant a certification card to any person who completes an escort vehicle course prescribed by the Department, passes the escort vehicle certification examination with a score of seventy five percent (75%) or higher, and satisfies all other requirements.

(1) The term of the certification shall be for a maximum period of five (5) years, subject to subsection (d), and shall expire automatically five (5) years after the date of issuance. Upon expiration of the certification, the operator must again comply with the requirements in (a)(1), (a)(2), (a)(3), and (a)(4) of this Section before the Department of Public Safety will issue a new certificate.

(2) Operators must notify the Department of Public Safety, Size and Weight Permit Division in writing within thirty (30) days of any change of address or name.

(3) Until July 31, 2012, operators who operate only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted may apply for a restricted certification. Such certification shall be exempt from the insurance requirements of OAC 595:30-3-17(f). On and after August 1, 2012, each operator shall meet the insurance requirements of OAC 595:30-3-17(f).

(d) **Denial or withdrawal of certification.** The following circumstances shall result in denial or withdrawal of certification:

(1) Failure to satisfy the requirements of or failure to give required or correct information on the application for certification as an escort vehicle operator, or the commission of any fraud in making the application.

(2) Violation of rules established by the certifying state.

(3) Suspension, revocation, cancellation, or denial of the driver license of the certified operator. The certified operator shall notify the Department of Public Safety, Size and Weight Permit Division, within five (5) days of any such suspension, revocation, cancellation, or denial, and shall provide the Division a copy of the Order of the Department.

(e) **Hearing.** Any party aggrieved by the denial or withdrawal of certification under this Section may request a hearing, in writing, with the Department pursuant to OAC 595:1-3.

(f) **Certification by other states.** An escort vehicle operator shall possess an Oklahoma certification, unless the escort vehicle operator is a resident of a state other than Oklahoma which has a reciprocal agreement with Oklahoma recognizing escort vehicle operator certifications issued by that state [47 O.S., §14-120.1(E)] and is in possession of a current escort vehicle operator certification issued by that state. Under all

circumstances, an escort vehicle operator who is an Oklahoma resident shall have an Oklahoma certification.

595:30-3-18. Oversize vehicles and loads [REVOKED]

(a) **General.** Permitted oversize vehicles and loads shall be subject to the following conditions and restrictions:

(1) The applicant for a permit must provide the length, height, and width of the vehicle or combination of vehicles and load requiring a permit.

(2) Date and time of travel shall be permitted as provided for in 47 O.S. §14-101 and in 595:30-3-4(1).

(3) Certain highways and areas may be designated for use or prohibited from use for a limited time, due to events which would impede traffic conditions.

(4) Unless a vehicle is exempt from escort requirements under the Oklahoma Statutes, an escort vehicle or vehicles will be required as provided in (b) of this Section or as provided in 595:30-3-19 for manufactured homes.

(b) **Escorts for oversize loads.**

(1) Loads greater than twelve (12) feet in width but not more than fourteen (14) feet in width are required to be accompanied by a front escort vehicle on two lane highways and on super two lane highways and by a rear escort on multi lane highways with the required "Oversize Load" sign and flagging on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest.

(2) Loads more than fourteen (14) feet in width are required to be accompanied by two escort vehicles, one in the front and one in the rear, on two lane highways or super two lane highways. A rear escort is required on all multi lane highways. All loads more than sixteen (16) feet in width are required to be accompanied by two escort vehicles, one in the front and one in the rear, on all roads and highways. The required "Oversize Load" sign and flagging is required on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest.

(3) Loads with an overall height of fifteen (15) feet and nine (9) inches or more are required to be accompanied by two escort vehicles, one in the front and one in the rear. The required "Oversize Load" sign and flagging is required on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest. All public utilities and railroads along the route must be contacted in advance of the move by the permittee. Measuring Pole (Height Pole) shall be meet the requirements as provided by 595:30-3-17(8).

(4) A truck tractor/semi-trailer combination which is more than eighty (80) feet in overall length is required to be accompanied by one front escort on two lane highways. A combination other than a truck tractor/semi-trailer which is more than eighty (80) feet in overall length is required to be accompanied by one front escort on two lane highways or super two lane highways.

(5) A truck tractor/semi-trailer combination or any other combination of vehicles which is more than one hundred (100) feet in overall length is required to be

accompanied by two escort vehicles, one in the front and one in the rear, on two lane highways and super two lane highways.

595:30-3-19. Manufactured homes and industrialized housing [REVOKED]

(a) **General provisions for manufactured homes.** Permits for movement of manufactured homes and industrialized housing shall require the "Oversize Load" sign and flagging in accordance with 595:30-3-16, and the travel. Other requirements are:

- (1) Oversize movement is subject to the provisions of 47 O.S. §14-101 and 595:30-3-4(1).
- (2) The towing vehicle must be at least fourteen (14) feet from bumper to bumper, or have a wheel base of at least one hundred eighteen (118) inches to tow a manufactured home or industrialized housing at least twelve (12) feet but not more than sixteen (16) feet in width. All towing vehicles must have dual wheels on the drive axles. If the manufactured home is less than twelve (12) feet wide, the towing vehicle must be a truck of at least three quarter (3/4) ton capacity. If the manufactured home is twelve (12) feet wide or more, the towing vehicle must be of at least two (2) ton capacity.
- (3) Red flags and the "Oversize Load" sign are required as provided in 595:30-3-16.

(b) ~~Manufactured homes not more than ten (10) feet wide.~~ Manufactured homes not more than ten (10) feet wide and with an overall length which exceeds seventy (70) feet are required to have an overwidth permit. The towing vehicle must a truck with a rated capacity of three quarter (3/4) ton or more. The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16. An "Oversize Load" sign shall be placed on the front of the towing vehicle and the rear of the manufactured home.

(c) ~~Manufactured homes at least twelve (12) feet wide but not more than fourteen (14) feet wide.~~ For manufactured homes at least twelve (12) feet wide but not more than fourteen (14) feet wide, the towing vehicle must be a truck of at least two (2) ton rated capacity, with dual rear wheels. A front escort is required on all two lane and super two lane roads and highways. A rear escort is required on all multi lane highways. The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16. An "Oversize Load" sign shall be placed on the front of the towing unit and the rear of the manufactured home. The towing vehicle must maintain a minimum speed of 40 mph on all multi lane highways, if conditions are favorable. The load must not extend more than one foot on each side at the eaves.

(d) ~~Manufactured homes more than fourteen (14) feet wide but not more than eighteen (18) feet wide.~~ Manufactures homes more than fourteen (14) feet wide but not more than eighteen (18) feet wide will be issued permits in accordance with 47 O.S. §14-103A. The towing vehicle must be a truck of at least two (2) ton rated capacity, with dual rear wheels. Both front and rear escorts are required on all two lane and super two lane roads and highways. A rear escort is required on all multi lane highways. The regulation

"Oversize Load" sign and flagging are required, as provided in 595:30-3-16. An "Oversize Load" sign shall be placed on the front of the towing unit and the rear of the manufactured home. Manufactured homes of this width will not be permitted to travel on any turnpike but will be permitted on the Dwight D. Eisenhower System of Interstate and Defense Highways. The towing vehicle must maintain a minimum speed of 40 mph on all multi lane highways, if conditions are favorable. The load must not extend more than one foot on each side at the eaves.

(e) ~~Manufactured homes more than eighteen (18) feet wide.~~ Manufactured homes more than eighteen (18) feet will be issued permits in accordance with 47 O.S. §14-103A. Manufactured homes more than eighteen (18) feet shall not be permitted for movements on the Dwight D. Eisenhower System of interstate and defense highways. The towing vehicle must be a tandem axle truck of not less than two hundred twenty (220) horsepower. Both front and rear escorts are required on all two lane and super two lane roads and highways. A rear escort is required on all multi lane highways. The regulation "Oversize Load" sign and flagging are required on the front of the towing unit and the rear of the manufactured home. Manufactured homes of this width will not be permitted to travel on any turnpike. The towing vehicle must maintain a minimum speed of 40 mph on all multi lane highways, if conditions are favorable. The load must not extend more than one foot on each side at the eaves.

595:30-3-20. Portable building [REVOKED]

Movement of portable buildings requires the following:

- (1) The towing vehicle for portable buildings not exceeding fourteen (14) feet in width shall be any type of truck. For portable building exceeding fourteen (14) feet in width, but not exceeding sixteen (16) feet in width, the towing vehicle must be a 3/4 ton truck.
- (2) Portable buildings must meet the same provisions for escorts and the regulation "Oversize Load" sign and flagging, as provided in 595:30-3-16, as are required for manufactured homes [see 595:30-3-19 regarding these provisions].

595:30-3-21. Industrialized housing, houses, and buildings [REVOKED]

Permits for house or building movement will be issued in accordance with 47 O.S. §14-103C.

- (1) The maximum width will not exceed thirty two (32) feet at the base and thirty four (34) feet at the top. The height shall not exceed twenty one (21) feet on any state or federal highway.
- (2) Travel shall be on highways and at times and dates determined by the Department and consistent with public convenience and safety, as specified on the permit. Permits will be issued in accordance with 47 O.S. §14-101 et seq.; provided, the structures shall not be moved on Saturday or Sunday.
- (3) Loads which are fourteen (14) feet or more in width, or in excess of eighty (80) feet in overall length must have two escorts with a flag person.

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- (4) House movers will be required to notify any railroad company across whose railroad a house or building is to be moved of the date, time of the anticipated crossing and obtain the train schedule. In all cases when overhead lines are present and the load is fifteen (15) feet and nine (9) inches or more in height, the house mover will be required to notify any affected utility or railroad company in advance of the anticipated move, so overall safety measures can be taken and flag person(s) can be provided.
- (5) Any structure in excess of sixteen (16) feet in width, the towing unit shall be a tandem axle truck of no less than two hundred twenty (220) horsepower.

595:30-3-22. Agriculture permits [REVOKED]

Agriculture permits shall be governed by 47 O.S. §14-118(e).

- (1) Transporting of raw forest products shall not be permitted on the National System of Interstate and Defense Highways and shall require:
- (A) An annual permit with a fee of Twenty five Dollars (\$25.00)
 - (B) Truck and trailer information shall be given to the Size and Weight Permit Division of the Department of Public Safety.
 - (C) The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16.
- (2) Transporting of round baled hay requires:
- (A) An annual permit with a fee of Twenty five Dollars (\$25.00).
 - (B) Truck and trailer information shall be given to the Size and Weight Permit Division of the Department of Public Safety.
 - (C) The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16.
- (3) Transporting of soil conservation equipment requires:
- (A) An annual permit with a fee of Twenty five Dollars (\$25.00).
 - (B) Truck and trailer information shall be given to the Size and Weight Permit Division of the Department of Public Safety.
 - (C) Travel on the National System of Interstate and Defense Highways shall not be permitted.
 - (D) The regulation "Oversize Load" sign and flagging are required, as provided in 595:30-3-16.

595:30-3-25. Unitized equipment [REVOKED]

- (a) To obtain unitized equipment permit or endorsement to an oversize permit, the following information is required:
- (1) make and model of vehicle,
 - (2) vehicle length (truck),
 - (3) wheelbase measurement,
 - (4) protrusion measurements (front and rear),
 - (5) measurement of lowest point of protrusion above road surface.
- (b) The protrusion shall bear luminous tape sufficient to warn the public of the extent of the protrusion.

595:30-3-26. Special mobilized machinery [REVOKED]

- (a) Permits for special mobilized machinery as defined in 47 O.S. §1-165 and authorized by 47 O.S. §14-118 shall be issued upon application and approval, when such application is accompanied by a certificate of registration or receipt of ad valorem fees paid for such special mobilized machinery. Permit holders shall operate in accordance with the safety requirements of the Oklahoma statutes relating to motor vehicle operations and required equipment found in 47 O.S., Chapters 11, 12, and 74 and any related provision of this subchapter.
- (b) Permits for oversize and/or overweight special mobilized machinery shall be issued upon proper application and approval, under authority of 47 O.S., §§ 14-103, 14-118 and OAC 730:30-9. Machines that exceed twelve (12) feet in width and fifteen (15) in height shall not be authorized an annual oversize permit. All oversize equipment shall display the regulation "Oversize Load" sign on the front and rear of the equipment.

SUBCHAPTER 5. SPECIAL COMINATION VEHICLES [REVOKED]

595:30-5-1. General [REVOKED]

- (a) **Defined.** Special combination vehicles are defined and subject to 47 O.S. § 14-121, and the Department of Transportation rules pertaining to the movement of oversized and/or overweight vehicles and loads within this state. Annual permits issued shall be specific to the power unit.
- (b) **Return to Department of Public Safety.** Any operator that disposes of or removes a Special Combination Vehicle from operation shall return the issued permit for that particular vehicle to the Department.
- (c) **Service of notice.** Any notice required by law or by the rules of the Department of Public Safety to be served upon any holder of a Special Combination Vehicle Permit shall be served personally or mailed to the last known address of such person as reflected by the records on file with the Department. Notice is deemed complete ten (10) days after mailing. It is the duty of every permit holder to notify the Department of Public Safety, Size and Weight Division, in writing, as to any change in the address of such person or his principle place of business.

595:30-5-2. Issuance of permits [REVOKED]

The requirements for issuance of special combination vehicle permits are the following:

- (1) **Where to apply.** Application shall be made to the Director of the Size and Weight Permit Division, Department of Public Safety, 2401 Northwest 23rd Street, Suite 45, Oklahoma City, Oklahoma, 73107, on a form prescribed by the Department.
- (2) **Cost.** A completed and signed application will be accompanied by a tender of an annual fee of Two Hundred Forty Dollars (\$240.00) for each permit issued.
- (3) **Number.** One permit is required for each special combination vehicle.

- (4) **Expiration.** Permits will expire one year from the date of issuance.
- (5) **Refunds.** Refunds for unused portions of issued permits will not be made.
- (6) **Renewal.** The filing of an application for permit or renewal of same does not authorize operation. Operation may only commence after the issuance of a permit by the Department of Public Safety.

595:30-5-3. Denial, modification, suspension and revocation of permits [REVOKED]

- (a) **Failure to qualify.** The Department of Public Safety may deny or cancel a permit of any applicant or current permit holder who fails to qualify for the issuance of a permit as provided in this Chapter, Oklahoma Tax Commission rules or State Law.
- (b) **Violation.** The Department of Public Safety may deny, cancel, modify, suspend or revoke a permit of any holder who has committed a violation of any of the provisions of this Chapter.
- (c) **Minor disqualification.** Where the Department of Public Safety determines that minor disqualification and/or violation exists which may be readily rectified by the applicant, holder or driver, the Department may informally notify such party by mail or telephone of such minor disqualification or violation, with a request for compliance within a specified period of time. If such party fails to rectify the minor disqualification or violation, the Department may proceed according to other provisions of this Subchapter, and OAC 730:30-9-12(f) which states: *Failure to comply with any of the provisions of this Section shall constitute grounds for the immediate suspension or revocation of the Annual Operating Permit in a manner prescribed by the Commissioner of Public Safety. Any suspension of said permit shall remain in effect for a period of not less than six (6) months. Any revocation of said permit shall be for a period of not less than one (1) year. [OAC 730:30-9-12(f)].*
- (d) **Denial.** In addition to all other provisions of this Subchapter any Special Combination Vehicle Permit may be denied, suspended, revoked or modified, in whole or in part when:
 - (1) The applicant makes a false statement on the application for a permit.
 - (2) The applicant fails to provide valid and applicable information on the application for a permit.
 - (3) The applicant fails to submit the applicable permit fee as required.
 - (4) The Department of Public Safety determines that the applicant cannot comply with the requirements of this Chapter, Oklahoma Tax Commission rules or State Law.
 - (5) The applicant failed to comply with or obtain a previous Special Combination Vehicle Permit.
- (e) **Procedures.** In the event that the Department of Public Safety has determined that a permit should be denied, suspended, revoked or canceled for any reason, the following procedures shall apply. [75 O.S. §301 et seq.]:
 - (1) The Department shall send written notice containing all information required [75 O.S. §309] to the concerned applicant or permit holder. Notice will be made as provided in 47 O.S. §2-116. Notice will set forth the

- specific reasons for and the particular action which will be taken.
- (2) The notice shall provide that the Department action shall become effective twenty (20) days after mailing unless the licensee timely files a written request for a hearing with the Department's Size and Weight Permit Division. Such request shall be timely when filed prior to the effective date of the Department action.
- (3) If a timely hearing is requested, such hearing shall be scheduled not less than seven (7) days nor more than fifteen (15) days from the date the Department receives the request. The hearing will be held at the Size and Weight Permit Division in Oklahoma City or at another location set by the Department and agreeable to all parties.
- (4) A hearing officer shall be designated by the Commissioner and each party shall be afforded an opportunity to be heard and to present evidence. [75 OS Section 304, et seq.]
- (5) The scope of the hearing shall be confined to the specific reasons for the particular action, all of which will be set forth in the notice letter.
- (6) The hearing officer shall render a decision thereon based upon the law and evidence presented.
- (7) The decision of the hearing officer becomes final after ten (10) days from the date of its entry, unless written request under the provisions of 75 O.S. §317, is timely made.
- (8) If applicant or permit holder fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter an order reflecting the effective date.
- (9) If the Department representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter an order of dismissal of the Department action; such order of dismissal shall be without prejudice if the basis for the action constitutes noncompliance or a continuing violation of the rules of this Chapter.
- (10) Where a timely written request for a rehearing, reopening or reconsideration of the case is received, the Department action shall be stayed until a final order has been entered, except as provided in (11) of this Subsection.
- (11) Department action shall become effective immediately where:
 - (A) An original application for a permit is denied for failure to qualify.
 - (B) The Department finds that the health, safety or welfare of the public imperatively requires such action and a finding to the effect is incorporated in its order. [75 O.S. §314].
- (12) Each party shall be notified of each action taken by the hearing officer.

595:30-5-4. Equipment requirements [REVOKED]

Each licensee shall insure that the operation of special combination vehicles complies with the following rules in addition to other equipment requirements established by state or federal laws or rules:

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(1) **Power.** All truck tractors shall be powered to provide adequate acceleration and hill climbing ability under normal operating conditions, and to operate on level grades at speeds compatible with other traffic. The ability to maintain a minimum speed of 40 mph under normal operating conditions on any grade over which the combination is operated is required.

(2) **Traction.** All truck tractors shall have adequate traction to maintain a minimum speed of 20 mph under normal operating conditions on any grade over which the combination is operated and to be able to resume a speed of 20 mph after stopping on any such grade and, except in extreme road or weather conditions, to negotiate at any speed all grades encountered.

(3) **Tires.** Stiff sidewall tires are recommended. Adequate tread and safe condition is required.

(4) **Fifth wheel.** A heavy duty fifth wheel is required. All fifth wheels must be clean and lubricated with a light duty grease at all times while operating in this state.

(5) **Pick-up plates.** Pick-up plates must be of equal strength to the fifth wheel.

(6) **King pin.** The king pin must be of a solid type and permanently fastened. Screw-out or folding type king pins are prohibited.

(7) **Pintle hook and eye.** All hitch connections must be of a no slack type, preferably air actuated ram. Air actuated hitches which are isolated from the primary air transmission system are recommended.

(8) **Drawbar.** The length of the drawbars (a beam which serves as a point of connection for some trailers) shall be consistent with the clearance required between trailers for turning and backing maneuvers.

(9) **Axles.** Axles must be those designed for the width of the body.

(10) **Brakes.** All braking systems must comply with state and federal requirements. In addition, fast air transmission and release valves must be provided on all trailers, semitrailers and converter dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve may be provided on the steering axle if Federal Motor Carrier Safety regulations would so allow. Indiscriminate use of engine retarder brakes is prohibited.

(11) **Mud flaps or splash guards.** As required by state law. [47 O.S. §12-405(j)]

595:30-5-5. Operation of special combination vehicles [REVOKED]

The procedures established below shall be followed when operating a special combination vehicle in this state:

(1) **Minimum distance.** A minimum distance of 500 feet shall be maintained between Special Combination Vehicles and other vehicles except when overtaking and passing. Except when passing another vehicle in the same direction, or when emergency conditions exist, a Special Combination Vehicle shall remain at all times in the right hand outside lane.

(2) **Disabled vehicle.** In the event a Special Combination Vehicle is disabled for any reason other than an accident, it shall be parked as far off the travelled roadway as possible and proper warning devices displayed as required by state law.

(3) **Explosives, poisons and radioactive materials.** Transportation by Special Combination Vehicles of Class A and B explosives, Class A poisons and Class 1, 2 and 3 radioactive material or any other Material deemed to be unduly hazardous by the Department is prohibited. This prohibition does not include the transportation of gasoline, fuel, oil or heating oil, or such petroleum products.

595:30-5-6. Stability [REVOKED]

All multiple trailer combinations must be stable at all times during normal braking and normal operation. A multiple trailer combination when traveling on a level, smooth, paved surface must follow in the path of the towing vehicle without shifting or swerving more than three inches to either side when the towing vehicle is moving in a straight line.

595:30-5-7. Weight [REVOKED]

The total weight on any single axle shall not exceed 20,000 pounds. The total axle weight on any tandem axle shall not exceed 34,000 pounds. The total weight on any group of two or more consecutive axles shall not exceed the amounts shown in 23 U.S.C Section 27. All Special Combination Vehicles must be properly registered.

595:30-5-8. Load sequence [REVOKED]

The heaviest trailer or semitrailer should be placed in front and the lightest at the rear whenever possible and practicable. In no case shall either trailer or semitrailer be placed ahead of another trailer or semitrailer which carries an appreciably heavier load. An empty trailer or semitrailer shall not precede a loaded trailer or semitrailer.

SUBCHAPTER 9. NATIONAL AND REGIONAL PERMITS [REVOKED]

595:30-9-1. Regional Permits [REVOKED]

(a) The Department of Public Safety adopts by reference the agreement entered into between the Department of Transportation and the Western Association of State and Highway Transportation Officials (WASHTO), as well as the Guide for Uniform Laws and Regulations Governing Truck Size and Weight Among the WASHTO States, for the future issuance of multi-state permits for single trip non-divisible loads in accordance with said agreement. A summary of procedures and restrictions within the current WASHTO agreement is available at the Department of Public Safety Size and Weight Permit Division, 2401 Northwest 23rd Street, Suite 45, Oklahoma, Oklahoma City, Oklahoma, or by calling 405-425-7012.

(b) The Department of Public Safety adopts by reference the agreement entered into between the Department of Transportation and SASHTO, as well as the Agreement on Multi State Permitting of Oversize and Overweight Vehicles to consider a single, routine, uniform mechanism for processing multi state single trip permits for oversize and/or overweight vehicle combinations which are within the standards and specifications of the agreement. A summary of procedures and restrictions within the current SASHTO agreement is available at the Department of Public Safety Size and Weight Permit Division, 2401 Northwest 23rd Street, Suite 45, Oklahoma City, Oklahoma, or by calling 405-425-7012.
(c) Regional permits may be obtained only at the Oklahoma City Office described in OAC 595:30-3-3.

[OAR Docket #23-438; filed 6-6-23]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 40. DRIVER TRAINING AND IMPROVEMENT**

[OAR Docket #23-439]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 7. Impaired Driver Accountability Program [REVOKED]
- 595:40-7-1. Impaired Driver Accountability Program - Purpose [REVOKED]
- 595:40-7-2. Definitions [REVOKED]
- 595:40-7-3. Request for participation - Departmental review - IDAP agreement [REVOKED]
- 595:40-7-4. Program enrollment - calculation of time - IDAP agreement [REVOKED]
- 595:40-7-5. Ignition interlock device monitoring - interlock violations - program extensions - informal hearings [REVOKED]
- 595:40-7-6. Graduation from IDAP - requirements [REVOKED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 2-108

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 7. Impaired Driver Accountability Program [REVOKED]
- 595:40-7-1. Impaired Driver Accountability Program - Purpose [REVOKED]
- 595:40-7-2. Definitions [REVOKED]
- 595:40-7-3. Request for participation - Departmental review - IDAP agreement [REVOKED]

- 595:40-7-4. Program enrollment - calculation of time - IDAP agreement [REVOKED]
- 595:40-7-5. Ignition interlock device monitoring - interlock violations - program extensions - informal hearings [REVOKED]
- 595:40-7-6. Graduation from IDAP requirements [REVOKED]

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N/A

GIST/ANALYSIS:

The Department of Public Safety has adopted these emergency rules due to the passage of SB 366, which transfers the administration of the Impaired Driver Accountability Program to the BOT.

CONTACT PERSON:

Kimberly Dammen, kimberly.dammen@dps.ok.gov, 405-425-2148.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 7. IMPAIRED DRIVER ACCOUNTABILITY PROGRAM [REVOKED]

595:40-7-1. Impaired Driver Accountability Program - Purpose [REVOKED]

The Impaired Driver Accountability Program (IDAP) is created for the purpose of enhancing public safety and to assist impaired driving offenders in mitigating the personal and financial costs of the offense of impaired driving through the administration of a monitored ignition interlock program implementing compliance based removal of the ignition interlock device.

595:40-7-2. Definitions

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

"IDAP phase 1" means the period of time in IDAP in which the participant is subject to remedial measures other than program extension as a result of ignition interlock violations or program violations:

- (A) Six (6) month IDAP: the first 120 days after enrollment.
- (B) Twelve (12) month IDAP: the first 245 days after enrollment.
- (C) Thirty six (36) month IDAP: the first 365 days after enrollment.

"IDAP phase 2" means the period of time in IDAP in which the participant is subject to program extension as a result of ignition interlock violations or program violations.

- (A) Six (6) month IDAP: the last 60 days of the original program length, and any extensions imposed by these rules.

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(B) Twelve (12) month IDAP: the last 120 days of the original program length, and any extensions imposed by these rules.

(C) Thirty six (36) month IDAP: the last 365 days of the original program length, and any extension imposed by these rules.

"One (1) year" means 365 days.

"Six (6) months" means 180 days.

"Three (3) years" means 1,095 days.

"Verified ignition interlock violation" means a record received by the Department from the Board of Tests for Alcohol and Drug Influence indicating the review and verification of an ignition interlock violation in accordance with the rules of the Board. These include:

(A) Three (3) penalty fails, at startup, within a fifteen (15) minute time frame;

(B) Three (3) retest violations constitute a reportable violation. Each retest violation thereafter constitutes a reportable violation.

"Verified program violation" means a record received by the Department from the Board of Tests for Alcohol and Drug Influence indicating the review and verification of an ignition interlock program violation. These include:

(A) A circumvention

(B) Removal of the device except:

(i) Upon receipt of documentation from the Installation Authority or Monitor authorizing said removal

(ii) The vehicle is being repaired. The program participant must inform the licensed service center at least every eight (8) days as to the anticipated date of completion of repairs, or

(iii) The vehicle is being replaced. In the event the vehicle is being replaced by another vehicle, the removal and reinstallation of the device in the subsequent vehicle must be accomplished within eight (8) days of the removal

(C) Tampering

(D) Missed service appointment

595:40-7-3. Request for participation - Departmental review - IDAP agreement [REVOKED]

(a) Requests for participation in IDAP must be received within thirty (30) days of the notice of revocation, pursuant to 47 O.S. §2-116, as reflected by the records of the Department. Upon receipt of the request for participation, the Department shall enter a temporary stay of the subject revocation until the expiration of seventy five (75) days from the date of the notice of revocation to the participant, or until the participant is fully enrolled in IDAP, whichever comes first. Exceptions to the thirty (30) day requirement to request IDAP may be approved by the Director of the Driver License Services Division, or a designee, or General Counsel, or a designee.

(b) The customer cannot enroll in IDAP if a District Court appeal is pending on behalf of the customer for the same incident referenced in the customer's request for IDAP participation.

(c) Requests for participation in IDAP will be reviewed immediately if presented in person to a Hearing Officer.

(d) Requests for participation in IDAP mailed to the Department will be reviewed within three (3) business days of receipt and approved, denied, or returned for more information.

(e) Review of the Request for Participation will include, at a minimum:

(1) Examination of the driving record for the purpose of determining program length and eligibility;

(2) Confirmation of the License class. Only customers who were class D license holders at the time of the impaired driving arrest may participate in IDAP.

(3) Confirmation that alcohol was a factor in the associated impaired driving arrest.

(4) Confirmation that the offense does not involve the operation of a commercial motor vehicle.

(f) Upon approval of the Request to Participate in IDAP the participant will execute an IDAP Agreement with the Department outlining the respective roles and responsibilities of the participant and the Department.

(g) IDAP request documents received by U.S. Mail shall be considered received on the date the documents were post-marked.

595:40-7-4. Program enrollment - calculation of time - IDAP agreement [REVOKED]

(a) The participant must fully enroll in IDAP within seventy five (75) days of the day of notice of revocation as reflected by the records of the Department. Exceptions to the seventy five (75) day requirement to enroll in IDAP may be approved by the Director of the Driver License Services Division, or a designee, or the General Counsel, or a designee.

(b) Fully enrolling in IDAP consists of:

(1) Payment of the IDAP fee of \$200.00 to the Department;

(2) Presentation of an Ignition Interlock Installation Verification Form;

(3) Execution of an IDAP Agreement by the Participant;

(4) Acknowledgement of receipt and review of the "IDAP Participant's Guide";

(5) Obtaining a Restricted Driver License with an Ignition Interlock Restriction.

(c) Whatever the Participant's required program length, as calculated by the Department:

(1) The day enrollment in IDAP is complete counts as the Participant's first day of the program.

(2) All program restrictions, including the ignition interlock requirement, continue through the last day of the program as calculated by the Department. The participant is responsible for ensuring completion of IDAP before removing the ignition interlock device.

(3) Program periods shall run consecutively.

(4) Participants may enroll in more than one (1) IDAP. In the event a Participant is enrolled in more than one (1) IDAP, they must complete the program in which they are currently participating before commencing any subsequent program period. In no instance will a Participant's

credit for time in one (1) IDAP be credited toward any other IDAP.

(d) The IDAP Agreement will be signed by the Participant and shall include the following information:

- (1) Participant's full name;
- (2) Participant's correct address. In the event Participant's address on record is not correct, it will be updated;
- (3) Participant's preferred phone number;
- (4) Participant's email address (if applicable);
- (5) The date upon which the IDAP Agreement was signed;
- (6) A list of Ignition Interlock Violations as defined by the Board of Tests for Alcohol and Drug Influence;
- (7) An explanation of the consequences of violations of the Ignition Interlock Program.

(e) IDAP enrollment documents received by U.S. mail shall be considered received on the date the documents were post marked.

595:40-7-5. Ignition interlock device monitoring - interlock violations - program extensions informal hearings [REVOKED]

(a) The participant is responsible for ensuring the ignition interlock is monitored on a regular basis in accordance with the rules of the Board of Tests for Alcohol and Drug Influence.

(b) Upon receipt of a report of a verified program violation during any phase of IDAP the participant must appear before the Department to provide proof the program violation has been remedied.

(c) Upon receipt of a report of a verified ignition interlock violation, or verified program violation, during Phase 2 of IDAP, the Department will extend the participant's program length in accordance with 47 O.S. §212.3, and issue notice of the extension to the participant.

(d) In Phase 1 or Phase 2 of IDAP, when the Department receives a report of a verified program violation, or a verified ignition interlock violation, the following remedial measures may be imposed:

- (1) Retraining with the manufacturer, at the expense of the participant, if applicable;
- (2) Installation of an ignition interlock device with a camera;
- (3) Restrictions on the days and times of the participant's driving;
- (4) Referral for re-assessment; and
- (5) Removal from IDAP which will result in a driver license revocation.

(e) The participant may appear before a hearing officer within fifteen (15) days of receipt of the notice of any violation to contest the violation. The hearing officer may sustain or set aside the violation. The participant's failure to contest a violation within the time allowed will waive any future right to contest the violation.

(f) The Department will not credit any time toward the participant's required program length for any period in which an ignition interlock is not installed as reflected by an approved Installation Verification Form, whether or not an ignition interlock violation has been reported.

(g) In the event the Department receives documentation from a Court of record, or documentation pursuant to 47 O.S. §6-205, that requires a mandatory revocation, the Department will toll the participant's IDAP until completion of the mandatory revocation except if the mandatory revocation is a result of the conviction of the offense that led to the participation in IDAP.

595:40-7-6. Graduation from IDAP - requirements [REVOKED]

Graduation from IDAP occurs when the participant presents to the Department:

- (1) Completion form from the Board of Tests for Alcohol and Drug Influence verifying no ignition interlock violations have occurred in Phase 2 of IDAP;
- (2) Certificate of completion of requirements of the ADSAC assessment;
- (3) The Department will verify it has not received any additional officer's affidavits and notices of revocation related to the participant.
- (4) The Department will update the Driver Index of the participant to reflect the completion of the IDAP program.

[OAR Docket #23-439; filed 6-6-23]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 65. OKLAHOMA TRAFFIC COLLISION REPORT**

[OAR Docket #23-440]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

595:65-1-2. Collision report forms [AMENDED]

595:65-1-4. Collisions resulting in deaths [AMENDED]

AUTHORITY:

Commissioner of Public Safety; 47 O.S. § 2-108

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595:65-1-2. Collision report forms [AMENDED]

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N/A

GIST/ANALYSIS:

The Department of Public Safety is implementing these emergency rules due to the passage of HB 3419, which transfers the Driver License Services Division and supporting administrative functions to Service Oklahoma.

CONTACT PERSON:

Kimberly Dammen, kimberly.dammen@dps.ok.gov, 405-425-2148.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

595:65-1-2. Collision report forms

(a) All motor vehicle accidents and collisions, required to be reported by law, shall be reported by the investigating law enforcement agency on the "Official Oklahoma Traffic Collision Report". The latest version of ~~blank forms are the~~ "Official Oklahoma Traffic Collision Report" is available from the Department of Public Safety on its website at <https://oklahoma.gov/dps/forms/handwritten-collision-report-form.html>.

(b) ~~All completed forms shall~~ Official Oklahoma Traffic Collision Reports may be submitted by the investigating law enforcement agency to the ~~Department of Public Safety Service Oklahoma~~, Records Management Division, PO Box 11415, Oklahoma City, OK 73136.

595:65-1-4. Collisions resulting in deaths

(a) It shall be the responsibility of the investigating law enforcement agency to appropriately report collisions resulting in death, whether the death occurs at the scene of the collision or the death is a delayed fatality. A delayed fatality is a death which occurs as a result of injuries sustained in the collision within thirty (30) days after the date of the collision ~~at any time after the person who died has been removed from the scene of collision but no more than thirty (30) days after the date of the collision~~.

(b) When a delayed fatality occurs, a medical examiner will investigate the death as provided in 63 O.S., § 931 et seq. and provide the investigating agency or agencies a copy of the medical examiner's report. ~~After which [c]opies of reports shall be furnished by the Chief Medical Examiner to investigating agencies having official interest therein~~ [63 O.S., § 942].

(c) If a delayed fatality occurs after a collision report has already been submitted to ~~the Department of Public Safety Service Oklahoma~~ by the investigating law enforcement agency, the investigating agency shall submit to ~~the Department~~ a revised collision report documenting the death.

[OAR Docket #23-440; filed 6-6-23]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #23-402]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Future Teachers' Scholarship Program [REVOKED]

610:25-9-1. Program purpose [REVOKED]

610:25-9-2. Eligibility [REVOKED]

610:25-9-3. Grants and payments [REVOKED]

610:25-9-4. Maximum limitations [REVOKED]

610:25-9-7. Nomination procedures [REVOKED]

Subchapter 41. Oklahoma Future Teacher Scholarship and Employment

Incentive Program ("Inspired to Teach") [NEW]

610:25-41-1. Purpose [NEW]

610:25-41-2. Definitions [NEW]

610:25-41-3. Eligibility requirements [NEW]

610:25-41-4. Application procedure [NEW]

610:25-41-5. Certifications of compliance [NEW]

610:25-41-6. Disqualification [NEW]

610:25-41-7. Participant eligibility for scholarship payments [NEW]

610:25-41-8. Participant eligibility for employment incentive payments [NEW]

610:25-41-9. Incentive benefits to be disbursed under the program [NEW]

610:25-41-10. Fiscal limitations of the program [NEW]

610:25-41-11. Verification and notification requirements [NEW]

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Oklahoma State Regents for Higher Education; 70 O.S. §§ 698.1 and 3206

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Subchapter 41. Oklahoma Future Teacher Scholarship and Employment

Incentive Program ("Inspired to Teach") [NEW]

610:25-41-1. Purpose [NEW]

610:25-41-2. Definitions [NEW]

610:25-41-3. Eligibility requirements [NEW]

610:25-41-4. Application procedure [NEW]

610:25-41-5. Certifications of compliance [NEW]

610:25-41-6. Disqualification [NEW]

610:25-41-7. Participant eligibility for scholarship payments [NEW]

610:25-41-8. Participant eligibility for employment incentive payments [NEW]

610:25-41-9. Incentive benefits to be disbursed under the program [NEW]

610:25-41-10. Fiscal limitations of the program [NEW]

610:25-41-11. Verification and notification requirements [NEW]

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n/a

GIST/ANALYSIS:

The Oklahoma Future Teacher Scholarship and Employment Incentive Program (also known as "Inspired to Teach") was created by House Bill 3564 during the 2022 legislative session (70 O.S. § 698.1). "Inspired to Teach" is a program to support the teacher pipeline and the preparation of public school teachers for prekindergarten through 12th grade. As legislatively appropriated funding is available, "Inspired to Teach" provides a scholarship to eligible students majoring in teacher education at an accredited teacher preparation program at an Oklahoma public or private university or a student majoring in a pre-teacher education program at an Oklahoma public community college that has an approved "Inspired to Teach" Program articulation agreement with an accredited Oklahoma university teacher preparation program, and incentivizes those individuals to enter the workforce as Oklahoma public school teachers for at least five (5) consecutive years upon graduation.

The scholarship will help defray the cost of obtaining a baccalaureate degree. To the extent that funds are available, scholarships, renewable for up to three (3) additional years for qualified students meeting satisfactory academic progress standards in completing a teacher preparation degree program leading to a standard teaching certificate, shall be awarded to cover costs of tuition, general enrollment fees, other fees, books, materials, and services provided by the institution, including room and board. Scholarships shall be One Thousand Dollars (\$1,000.00) per academic year for up to three (3) academic years for eligible full-time students who have earned less than ninety (90) credit hours and Two Thousand Five Hundred Dollars (\$2,500.00) for the final academic year for eligible full-time students who have earned ninety (90) or more credit hours. Each scholarship participant, prior to entry into the program, shall have agreed to teach in an Oklahoma public prekindergarten through 12th grade school for a minimum of five (5) consecutive years upon graduation and licensure as a teacher.

The employment incentive will assist graduates as they enter the workforce as teachers in this state. To the extent that funds are available, program participants who are employed as traditionally certified teachers in Oklahoma public prekindergarten through 12th grade schools following graduation shall receive Four Thousand Dollars (\$4,000.00) per year for up to five (5) years, not to exceed a total of Twenty Thousand Dollars (\$20,000.00) per participant.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 9. FUTURE TEACHERS' SCHOLARSHIP PROGRAM [REVOKED]

610:25-9-1. Program purpose [REVOKED]

~~(a) Senate Bill No. 228 of the 1986 Oklahoma Legislature authorized the Oklahoma State Regents for Higher Education...to establish and maintain an incentive scholarship program to encourage the preparation of teachers in critical shortage areas for the public schools at one or more of the Oklahoma public or private higher education institutions. Prospective teachers, whether planning to pursue an undergraduate teacher education program or to become qualified to teach after earning a bachelor's degree in a critical shortage area, shall be considered if they have graduated from high school with a grade point average ranking them in the top fifteen percent (15%) of their graduating class. To the extent that funds are available, scholarships of One Thousand Five~~

~~Hundred Dollars (\$1,500.00) per year, renewable for up to three (3) additional years, shall be awarded to cover costs of general enrollment fees, other fees, books, materials, and services provided by the institution, including room and board. [70:698.1]~~

~~(b) The purpose of the Future Teachers' Scholarship Program is to address teacher shortages in critical areas of the public schools in Oklahoma by making scholarships available to undergraduate and graduate students who meet the eligibility criteria and demonstrate an interest in teaching in those fields.~~

610:25-9-2. Eligibility [REVOKED]

~~(a) Individuals who are residents of Oklahoma who have demonstrated a commitment to obtain the necessary credentials to teach in a critical shortage area shall be eligible for consideration if they have:~~

- ~~(1) Graduated from high school with a cumulative grade point average which ranks them in the top fifteen percent (15%) of their high school graduating class; OR~~
- ~~(2) Scored at or above the eighty-fifth (85th) percentile on the ACT or other similar acceptable battery of tests; OR~~
- ~~(3) Been admitted to a professional education program at an accredited Oklahoma institution of higher education; OR~~
- ~~(4) Achieved an undergraduate record of outstanding success, as defined by the institution.~~

~~(b) Scholarship recipients must maintain no less than a 2.5 cumulative grade point average to remain eligible for renewal of the scholarship; it is expected, however, that renewal recipients will attain a 3.0 cumulative grade point average or better.~~

~~(c) Each scholarship recipient shall have agreed to teach in a shortage area in the public schools in Oklahoma for a minimum of three (3) consecutive years upon graduation and licensure as a teacher.~~

~~(d) Either full or part-time students may be eligible; however, highest priority will be given to full-time students.~~

610:25-9-3. Grants and payments [REVOKED]

~~(a) Provided that funds are available, the scholarship award for students pursuing study under the Future Teachers' Scholarship Program will be based on the following scale:~~

Enrollment	Hours Completed Toward Baccalaureate Degree	Maximum Award
Full time	60 hours and above	\$1,500
Full time	Less than 60 hours	\$1,000
Part time	60 hours and above	\$ 750
Part time	Less than 60 hours	\$ 500

~~(b) For purposes of this policy, full-time enrollment means not less than 12 hours per semester for undergraduates and not less than 9 hours per semester for graduate students. Part-time enrollment means not less than 6 hours per semester.~~

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(e) Upon enrollment verification by the institution, the first payment of each recipient's entitlement will be distributed during the fall semester, and the second distribution will be during the spring semester.

(d) The award will be paid directly to the institution on the student's behalf with appropriate restrictions and conditions that such monies be expended only for the purposes authorized by State Statute.

610:25-9-4. Maximum limitations [REVOKED]

Recipients may receive the Future Teachers' Scholarship Program grant, which is to be awarded annually on a competitive basis, for not more than four years or the equivalent of four years of full-time study.

610:25-9-7. Nomination procedures [REVOKED]

(a) Applicants shall complete the required application form and submit it to the institution.

(b) Institutions shall review applications and nominate candidates for the scholarship to the State Regents. Institutions shall rank candidates in priority order and recommend an award amount for each candidate.

(c) Institutions may submit alternate candidates, also ranked in priority order.

(d) Institutions must certify that first-time applicants meet the eligibility criteria (610:25-9-2) and provide supporting documents when submitting the applications.

(e) Institutions shall certify that renewal nominees have:

- (1) demonstrated scholarship and continued professional growth. In general, a 3.0 cumulative grade point average is expected; any student failing to maintain a 2.5 cumulative grade point average shall be disqualified; and
- (2) enrolled in an approved program of study; and
- (3) demonstrated progress in meeting requirements for licensure and certification.

(f) Institutions shall provide to the State Regents documentation of the method of candidate selection used.

(g) The State Regents shall convene an advisory committee to recommend scholarship recipients to the Regents.

(h) The State Regents shall notify both recipients and institutions of the award.

SUBCHAPTER 41. OKLAHOMA FUTURE TEACHER SCHOLARSHIP AND EMPLOYMENT INCENTIVE PROGRAM ("INSPIRED TO TEACH")

610:25-41-1. Purpose

(a) The Oklahoma Future Teacher Scholarship and Employment Incentive Program (also known as "Inspired to Teach") was created by House Bill 3564 during the 2022 legislative session.

(b) "Inspired to Teach" is a program to support the teacher pipeline and the preparation of public school teachers for prekindergarten through 12th grade. As legislatively appropriated funding is available, the program provides a scholarship

to eligible students majoring in teacher education at an accredited teacher preparation program at an Oklahoma public or private university OR a student majoring in a pre-teacher education program at an Oklahoma public community college that has an approved "Inspired to Teach" program articulation agreement with an accredited Oklahoma university teacher preparation program, and incentivizes those individuals to enter the workforce as Oklahoma public school teachers for at least five (5) consecutive years upon graduation.

(c) The bill requires that the Oklahoma State Regents for Higher Education (OSRHE) establish and maintain an incentive scholarship program and teacher employment incentive program, as funding is available. [70 O.S §698.1 (A)].

(d) The purpose of the "Inspired to Teach" program is to address teacher shortages in Oklahoma by making scholarships available to undergraduate students and providing employment incentives for participants who meet eligibility criteria and major in teacher education, obtain a traditional teaching certificate, and serve as teachers in the public schools of this state for at least five (5) consecutive years.

(e) The scholarship will help defray the cost of obtaining a baccalaureate degree and the incentive will assist graduates as they enter the workforce as teachers in this state.

610:25-41-2. Definitions

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

"Full-time student" means:

(A) an undergraduate student enrolled in 12 or more semester credits toward teacher education degree requirements;

(B) an undergraduate student who is a teacher education major who is enrolled in or has completed an internship or student teaching credit hours in order to complete their degree program prior to certification and who has been approved by the institution to take less than twelve credit hours; or

(C) an undergraduate student who is a teacher education major with an approved reasonable accommodation from Student Accessibility Services at the institution due to a documented disability and who has been approved to take less than twelve credit hours.

"Inspired to Teach" means the Oklahoma Future Teacher Scholarship and Employment Incentive Program created by House Bill 3564 during the 2022 legislative session.

"Internship" or "Student teaching" means: A minimum of 12 weeks or 360 hours of full-time student teaching or its equivalent completed by all initial candidates prior to teacher education program completion. The student teaching internship must be completed in an accredited Oklahoma PK-12 school to fulfill the mandatory requirement for a teacher education degree at an accredited Oklahoma institution.

"OSRHE" means the Oklahoma State Regents for Higher Education.

"SAP" means satisfactory academic progress according to the standards of the Oklahoma educational institution in which the student is enrolled.

610:25-41-3. Eligibility requirements

(a) In order to participate in the "Inspired to Teach" program and be eligible for a scholarship, prospective teachers must meet the following requirements:

- (1) Graduate from an Oklahoma high school;
- (2) Meet higher education admission standards at 1) a public or private Oklahoma university with an accredited Oklahoma teacher education program or 2) a public community college with an approved articulation agreement with an accredited Oklahoma university teacher education program;
- (3) Declare a major at an accredited Oklahoma university teacher education program in a degree leading to a standard teaching certificate or declare a major at a community college with an approved "Inspired to Teach" Program articulation agreement with an accredited Oklahoma teacher education program leading to a standard Oklahoma teaching certificate;
- (4) Maintain enrollment as a full-time student at a participating higher education institution during each semester of scholarship eligibility until a baccalaureate degree for teaching is obtained;
- (5) Maintain SAP and a minimum 2.5 GPA throughout matriculation; and
- (6) Prior to entry into the "Inspired to Teach" Program, agree to complete the program and to teach in an Oklahoma public prekindergarten through 12th grade (PK-12) school for a minimum of five (5) consecutive years upon graduation and certification as a teacher.

(b) Traditionally certified teachers who graduated from a teacher education program without participating in the "Inspired to Teach" program during undergraduate study are not eligible for the "Inspired to Teach" program.

610:25-41-4. Application procedure

(a) OSRHE will distribute "Inspired to Teach" Participation Agreement forms to postsecondary institutions in Oklahoma that are eligible to participate in state and federal financial aid programs and have an approved program of professional teacher preparation or an approved articulation agreement on file with a state institution that has a professional teacher preparation program.

(b) Participation Agreement forms may be obtained from the "Inspired to Teach" coordinator at each postsecondary institution or from OSRHE.

(c) A Participation Agreement must be signed by the student while enrolled in a major course of study in teacher education at the undergraduate level.

(d) The completed Participation Agreement must be submitted to the "Inspired to Teach" coordinator upon declaring teacher education as a major or, at the latest, before beginning the final semester prior to graduation; however, a student who has declared teacher education as a major at least one semester before the final semester will be allowed to submit a completed Participation Agreement and be considered for the "Inspired to Teach" Program the final semester.

(e) "Inspired to Teach" coordinators at postsecondary institutions will submit copies of the Participation Agreements to OSRHE within 10 days of submission by the student.

(f) OSRHE will notify each applicant of the receipt of his/her application to the "Inspired to Teach" program, the requirements for ongoing eligibility, and the disbursement benefits under "Inspired to Teach."

610:25-41-5. Certifications of compliance

(a) Participants must apply for entry into the "Inspired to Teach" program during their matriculation as an undergraduate student using the Participation Agreement Form which can be obtained from the eligible Oklahoma higher education institution in which they are enrolled or the OSRHE website.

(b) OSRHE will be responsible for determining participant eligibility at each stage following "Inspired to Teach" program entry.

(c) Institutions will supply OSRHE with verification and certification of student eligibility each semester for the "Inspired to Teach" Program scholarship.

(d) After graduation, as participants transition to their teaching assignments in Oklahoma public schools, "Inspired to Teach" Program participants will provide compliance documentation to OSRHE as set forth in 610:25-41-9 and 610:25-41-11.

610:25-41-6. Disqualification

The following conditions shall subject the participant to disqualification from the "Inspired to Teach" program:

- (1) Failing to maintain a 2.5 grade point average;
- (2) Changing major to an ineligible area of study;
- (3) Failing to meet and maintain SAP in an academic program leading to an eligible undergraduate degree in an Oklahoma accredited teacher education program;
- (4) Failing to maintain enrollment as a full-time student, withdrawing completely from enrollment, or otherwise leaving the higher education institution;
- (5) Failing to complete the teacher education baccalaureate degree and training necessary to obtain a traditional Oklahoma teaching certificate from an approved and accredited Oklahoma program of professional teacher preparation, including student teaching or internship;
- (6) Failing to meet requirements for traditional certification to teach as established by Oklahoma state law;
- (7) Failing to teach for five (5) consecutive years in an Oklahoma public school upon graduation and certification as a teacher; or
- (8) Failing to provide documentation as requested by OSRHE within the time indicated.

610:25-41-7. Participant eligibility for scholarship payments

(a) To the extent legislatively appropriated funding is available, the following scholarships will be awarded to eligible participants in the "Inspired to Teach" program:

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- (1) One thousand dollars (\$1,000) per academic year for up to three (3) academic years for full-time students who have earned less than 90 credit hours; and
- (2) Two thousand five hundred dollars (\$2,500) for the final academic year for full-time students who have earned 90 or more credit hours.
- (b) To the extent legislatively appropriated funding is available, the following scholarships will be awarded to eligible full-time students participating in "Inspired to Teach" according to the following tiers based on enrolled credit hours towards degree requirements if the student is entering the first year of undergraduate study, or earned credit hours towards degree requirements for all other students:
- (1) Tier 1, requiring a minimum of 12 hours enrolled: \$1,000
- (2) Tier 2, requiring a minimum of 24 and a maximum of 47 hours earned: \$1,000
- (3) Tier 3, requiring a minimum of 48 and a maximum of 89 hours earned: \$1,000
- (4) Tier 4, requiring a minimum of 90 hours earned: \$2,500
- (c) Participants can receive a maximum of Five Thousand Five Hundred Dollars (\$5,500) in total scholarship awards. Students will not be eligible for multiple awards in an academic year. If a participant will become eligible for a Tier 3 award and a Tier 4 award in the same academic year, which is also the participant's final academic year, and the participant has yet to receive an award from either tier, then the participant may choose which award to receive. Scholarship award disbursements will only be made for fall and spring semesters of the academic year. There will be no summer semester scholarship disbursements.
- (d) Participants who have earned less than ninety (90) credit hours towards degree requirements, but have received Three Thousand Dollars (\$3,000) in scholarship funding, will not be eligible for the final scholarship allotment of Two Thousand Five Hundred Dollars (\$2,500) until their final academic year of study.
- (e) Participants who have earned 90 or more credit hours towards degree requirements but still have more than one academic year remaining to complete the teacher education degree requirements, may receive the Two Thousand Five Hundred Dollar (\$2,500) award in the final academic year during a semester (fall and/or spring disbursement) designated by, and at the discretion of, the institution. Participants, upon receiving the Two Thousand Five Hundred Dollar (\$2,500) award, will not be eligible for any of the scholarship awards granted to participants who have earned less than 90 credit hours towards degree requirements.
- (f) Participants may utilize no more than one of the following provisions to become re-eligible for the "Inspired to Teach" program:
- (1) Participants whose GPA falls below a 2.5, or who fail to maintain SAP, will have one academic semester (fall or spring) to re-establish a 2.5 GPA (or above) and SAP in order to have the scholarship benefit reinstated. Failure to meet the GPA and/or SAP requirements will result in

the participant's withdrawal from the "Inspired to Teach" program.

(2) Participants who change majors to an ineligible area of study, fail to meet GPA and/or SAP requirements for two semesters, fail to maintain enrollment as a full-time student for one semester or completely withdraw from enrollment, will be allowed to reapply within one year of that occurrence as long as the participant does not graduate the same semester in which the participant reapplies.

(3) Participants who fail to meet the GPA or SAP requirement during the 2nd to last semester of their final year of matriculation, will not receive the scholarship benefit in the final semester; however, under the provisions of (1) of this subsection, if the participant re-establishes a 2.5 GPA (or above) and SAP within the final academic semester (before graduation), upon graduation, the participant's eligibility will be reinstated for employment incentive payments.

(4) Participants may obtain from the institution in which they are enrolled, an official letter reflecting a leave of absence or withdrawal when a serious illness, pregnancy, or other natural cause prevents the participant from continuing the coursework requirements or from fulfilling the provisions outlined under the eligibility requirements.

(A) College/ university withdrawals or leaves of absence may not exceed more than one academic year but will not be counted against the participant for the purposes of scholarship eligibility as long as the following criteria are met:

(B) Participants must present official college/university documentation to OSRHE at the time the withdrawal or leave of absence was granted which meets the requirements of this rule. Reapplication into the "Inspired to Teach" program must be received thirty (30) days prior to the participant resuming classes full-time or the participant may be withdrawn from the program.

(g) Participants who have been disqualified from the "Inspired to Teach" program but later become re-eligible pursuant to 610:25-41-7(f) shall be considered to have maintained program eligibility throughout matriculation for the purposes of 610:25-41-8(a)(1) if, following re-eligibility, the participant maintains "Inspired to Teach" program eligibility through graduation.

610:25-41-8. Participant eligibility for employment incentive payments

(a) In order to qualify to receive the employment incentive disbursement benefits under the "Inspired to Teach" program, program participants who are employed as traditionally prepared and certified teachers in Oklahoma public prekindergarten through 12th grade schools must:

(1) After being accepted into the "Inspired to Teach" program, maintain program eligibility pursuant to 610:25-41-3 throughout matriculation and receive at least one scholarship award;

(2) Graduate from an accredited Oklahoma teacher preparation degree program;

(3) Obtain a traditional teacher certification and provide eligible full-time teaching service under a regular teaching contract at an Oklahoma public school in the area of certification or qualified subject area; and

(4) Begin the first year of eligible full-time teaching service, as described above, within thirteen (13) months from the date of graduation from a four-year institution in Oklahoma.

(b) Employment incentive payments may be awarded following each consecutive year of satisfactory service as documented by the employing school district for up to five (5) years of service to "Inspired to Teach" program scholarship recipients upon graduation from an accredited Oklahoma teacher preparation degree program and traditional certification to teach in Oklahoma.

(c) The maximum amount of employment incentive payments for any qualified participant shall be Four Thousand Dollars (\$4,000) per year for up to five (5) years, not to exceed a total of Twenty Thousand Dollars (\$20,000) per participant.

(d) If sufficient funds are not available for employment incentive payment to qualified participants during any fiscal year, the Chancellor may make reductions in the payments made to qualified participants.

(e) Participants may apply to the employing school for a leave of absence when a serious illness, pregnancy, or other natural cause prevents the participant from providing consecutive full-time teaching service. Participants must present official school documentation to OSRHE that a leave of absence was granted which meets the requirements of this rule. Official notification must be given within one year that the teacher has resumed the teaching duties or participant may be withdrawn from the "Inspired to Teach" program.

(f) Leaves of absence may not exceed more than one academic year. Leaves of absence will not be included for the purpose of calculating the required consecutive five (5) years of teaching service.

(g) A Reduction in Force will not disqualify a participant based on the consecutive five-year obligation if the following requirements are met:

(1) Participant must provide to OSRHE official documentation of the Reduction in Force; and

(2) Participant must resume teaching at an Oklahoma public school within eighteen (18) months after the Reduction in Force.

610:25-41-9. Incentive benefits to be disbursed under the program

(a) Under the provisions of the "Inspired to Teach" program, OSRHE is authorized to make the employment incentive payments each year, up to five consecutive years for full-time teaching service, to Oklahoma public school districts for participants eligible pursuant to 610:25-41-8.

(b) An Employment Compliance Form must be submitted to OSRHE upon completion of each year of eligible teaching service. An authorized school official must complete the form.

(c) Each year, if all program requirements are satisfied, and contingent upon the availability of funds, OSRHE will issue disbursements of "Inspired to Teach" program benefits to school districts employing the qualifying participants for payment to participants.

(d) The total annual amount of employment incentive payments for any qualified participant shall not exceed Four Thousand Dollars (\$4,000).

(e) If OSRHE determines that any "Inspired to Teach" program disbursement was authorized based on misleading or incorrect information supplied by the participant, the participant must reimburse such payment to OSRHE.

610:25-41-10. Fiscal limitations of the program

(a) If insufficient funds are available for scholarship and/or employment incentive payments to qualified persons during any fiscal year, the Chancellor may make reductions in the payments made to those qualifying. [70 O.S. §698.1(F)].

(b) On or before June 30 of each year, the amount of employment incentive payments for all teachers eligible to receive payments for the upcoming school year will be determined. If in any given year funds are not available for employment incentive payments at the determined amount due to a reduction in employment incentive payments as determined by the Chancellor, the amount to be disbursed to all eligible participants will be reduced uniformly. Upon distribution of this reduced amount, the obligation of the "Inspired to Teach" program to those eligible teachers shall be satisfied for that academic year. The foregoing is true even if no funds are available for disbursement.

610:25-41-11. Verification and notification requirements

(a) Verification requirements which must be satisfied prior to disbursement of "Inspired to Teach" program benefits include:

(1) A copy of the participant's traditional teaching certificate from the Oklahoma State Department of Education submitted to OSRHE. Additionally, a new copy of the traditional teaching certificate must be submitted for all new subsequent certification competencies or credentials;

(2) A copy of the participant's official college or university transcript reflecting GPA, coursework, and graduation confirmation submitted to OSRHE; and

(3) An Employment Compliance Form submitted to OSRHE after each year of eligible teaching service. An authorized school district official must complete the form including the participant's signature. This form must be notarized prior to submission to OSRHE.

(b) The participant is responsible for ensuring that all documentation requested for verification requirements is provided within the time indicated.

(c) Until all mutual obligations of the Participation Agreement are satisfied, the participant must respond to all communications and requests from OSRHE within the time indicated.

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(d) Until all mutual obligations of the Participation Agreement are satisfied, the participant must provide written notification to OSRHE of any change in legal name or address and of any change in status, which affects "Inspired to Teach" program eligibility.

[OAR Docket #23-402; filed 6-5-23]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND SERVICES FOR THE BLIND AND VISUALLY IMPAIRED

[OAR Docket #23-441]

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PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 612:10-1-2. Definitions [AMENDED]
 - 612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]
- Subchapter 3. Client Participation in Cost of Services
 - 612:10-3-2. Consideration of comparable services and benefits [AMENDED]
 - 612:10-3-3. Participation of individuals in cost of services based on financial need [AMENDED]
- Subchapter 7. Vocational Rehabilitation and Services for the Blind and Visually Impaired
 - Part 1. Scope of Vocational Rehabilitation and Services for the Blind and Visually Impaired
 - 612:10-7-1. Overview of Vocational Rehabilitation and Services for the Blind and Visually Impaired [AMENDED]
 - 612:10-7-3. Client responsibilities [AMENDED]
 - Part 3. Case Processing Requirements
 - 612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
 - Part 5. Case Status and Classification System
 - 612:10-7-45. Electronic Case Management System Progression [AMENDED]
 - 612:10-7-58. Closed Rehabilitated [AMENDED]
 - 612:10-7-62. Post-Employment services [AMENDED]
 - 612:10-7-63. Post-Employment services completed [AMENDED]
 - Part 15. Training
 - 612:10-7-142. General guidelines for training services [AMENDED]
 - Part 17. Supported Employment Services
 - 612:10-7-185. Provision of supported employment services [AMENDED]
 - 612:10-7-185.1 Customized Employment [NEW]
 - Part 21. Purchase of Equipment, Occupational Licenses and Certifications
 - 612:10-7-220. Vehicle modification services [AMENDED]
 - 612:10-7-221. Housing Modification [AMENDED]
- Subchapter 13. Special Services for the Deaf and Hard of Hearing
 - Part 3. Certification of Interpreters
 - 612:10-13-16. Evaluation [AMENDED]
 - 612:10-13-18. Fees [AMENDED]
 - 612:10-13-20. Certification maintenance [AMENDED]
 - 612:10-13-22. Grievance procedures [AMENDED]

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Revisions to Chapter 10 consist of language revisions to comply with Workforce Innovation and Opportunity Act (WIOA).

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

"Assessment for determining eligibility and vocational rehabilitation needs" means, as appropriate in each case a review of existing data to determine if an individual is eligible for vocational rehabilitation services; and to assign priority for an order of selection described in 34 CFR 361.36 in the States that use an order of selection; and to the extent necessary, the

provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Best correction" refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client" means an individual found eligible and receiving services under the Act.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable services and benefits" means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with 34 CFR 361.53, and commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency. For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive integrated employment" means full or part-time work that is compensated at or above minimum wage, offers an individual with a disability benefits and opportunities for advancement comparable to those offered to employees in similar positions, and is performed in a setting where the individual with a disability interacts with persons without disabilities to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons. Specific criteria defining competitive integrated employment are detailed in 34 CFR 361.5(c)(9)."

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing

modifications to further assist individuals with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with administrative rules, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Counselor" means the qualified vocational rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services record of service, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/SBVI Specialist and VR/SBVI Coordinator.

"Credential attainment" means the percentage of those clients enrolled in an education or training program (excluding those in OJT and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within one year after exit from the program. Under the WIOA, workforce agencies are required to report this percentage during participation in or within one year after closure of the case. This is based on the sub-regulatory guidance related to the implementation and operation of the performance accountability system under section 116 of WIOA and the implementing regulations in 34 CFR parts 361 subpart E.

"Customized employment" means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the unique strengths, needs and interests of the individual; designed to meet the specific abilities of the individual and the business needs of the employer; and carried out using flexible strategies such as those detailed in 34 CFR 361.5(c)(11).

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"DVR" means the Division of Vocational Rehabilitation.

"DSBVI" means the Division of Services for the Blind and Visually Impaired.

"Electronic Case Management System" means a "system of records" which is a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

"Eligible individual" means an applicant for vocational rehabilitation services who meets the eligibility requirements of 34 CFR 361.42(a).

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering, advancing in, or retaining full-time or part-time competitive integrated employment as defined

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in 34 CFR §361.5(c) (9) (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in 34 CFR §361.5(c) (53), that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (Note: As specified in federal rule, a designated State unit may continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to the effective date of the final federal regulations until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability, as documented in the individual's service record.)

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

"Extended period of time" means, with respect to duration of vocational rehabilitation, services that are expected to extend at least 6 months from eligibility.

"Extended services" means ongoing support services provided to individuals with the most significant disabilities, including youth with the most significant disabilities, after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE, except that DRS may provide and pay for extended services for youth with the most significant disabilities for a period not to exceed 4 years or extend beyond the date when the youth reaches age 25.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services including mental health services, are not provided expeditiously.

"Family member" means for purposes of receiving vocational rehabilitation services in accordance with 34 CFR 361.48(b)(9), means an individual who either is a relative or guardian of an applicant or eligible individual; or lives in the same household as an applicant or eligible individual; who has a substantial interest in the well-being of that individual; and whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Individual with a disability" means an individual who has a physical or mental impairment; whose impairment constitutes or results in a substantial impediment to employment; and who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

"Individual with a severe disability" means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

"Individual with a significant disability" means an individual with a disability:

- (A) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most significant disability" means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in 34 CFR 361.36(d)(1) and (2):

- (A) who has a severe physical or mental impairment that seriously limits three or more functional capacities in terms of an employment outcome;
- (B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic

fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, intellectual disability, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

"Measurable Skill Gains" or "(MSG)" means a measure of the documented progress (academic, technical, occupational, or other) that a client makes in a training or education program toward obtaining a recognized postsecondary credential. This progress is reported throughout the life of the case. Examples of a valid skill gain would be the documented completion of a high school semester or a minimum of 12 college hours successfully completed over a one year period.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"OMES-DCAM" means Office of Management & Enterprise Services-Division of Capital Assets Management, which sets thresholds for State Purchasing guidelines.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most significant disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment.

"Other Qualified Rehabilitation Personnel" means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level.

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"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services are also designed to increase the individual's control in life and ability to perform everyday activities on or off the job; necessary to the achievement of an employment outcome; and provided only while the individual is receiving other vocational rehabilitation services.

"Physical and mental restoration services" means corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment.

"Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder such as intellectual disability organic brain syndrome, emotional or mental illness, and specific learning disabilities.

"Post-employment services" means one or more of the services identified in 34 CFR 361.48(b) that are provided subsequent to the achievement of an employment outcome and prior to case closure that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Pre-employment transition services" means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3).

"Prior approval" refers to the receipt of approval from the granting authority prior to issuing the authorization for the purchase of goods and services.

"Record of Service" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions

to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"SBVI" means the Division of Services for the Blind and Visually Impaired, depending upon the context.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Sole local agency" means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

"Student with a disability" means, in general, an individual with a disability in a secondary, postsecondary, or other recognized education program who meets the requirements set forth in 34 CFR 361.5(c)(51).

"Substantial impediment to employment" means that a physical or mental impairment (in the light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

"Supplemental Wage Record" means wage information used to determine both employment status and wages within a reporting period. This information is required when wage information cannot be obtained through other means such as the Oklahoma Employment Security Commission. The requirement to make the effort to obtain this supplemental wage information is necessary to carry out the accountability requirements under Section 116 of the Workforce Innovation and Opportunity Act.

"Support Service Providers" (SSP) means a Support Service Provider, commonly referred to as an SSP, is a specially trained individual who provides access to the community for people who are deaf-blind. The SSP is responsible for human guide assistance and facilitation of communication for the deaf-blind person.

"Supported employment" (SE) means competitive integrated employment, including customized employment, or employment in an integrated work settings in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities who meet the requirements set forth in 34 CFR 361.5(c)(53).

"Supported employment services" means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are:

(A) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(B) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(C) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

~~(D) Following transition, as postemployment services that are unavailable from an extended services provided and that are necessary to maintain or regain the job placement or advance in employment.~~

"Transition services" means, for a student or a youth with a disability, a coordinated set of activities designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation. Transition services (1) are based upon the individual student's or youth's needs, preferences and interests; (2) include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation; (3) promote or facilitate the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and (4) include outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to

participate in a vocational rehabilitation services, including expenses for training in the use of public transportation vehicles and systems.

"Vocational rehabilitation services", if provided to an individual, means those services listed in 34 CFR 361.48; and if provided for the benefit of groups of individuals, means those services listed in 34 CFR 361.49.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

"Youth with a disability" means an individual with a disability who is not younger than 14 years of age; or older than 24 years of age. Youth with disabilities means more than one youth with a disability.

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis and pre-employment transition services for students with disabilities regardless of whether the student has applied or been determined eligible for vocational rehabilitation services, must be in an approved Individualized Plan for Employment prior to authorization.

(1) All authorizations are to be issued prior to or simultaneously with the provision of the services.

(2) Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization.

(3) Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator.

(b) A prior vendor contract is required before authorizations can be made to any post-secondary school.

(1) By state law, a vendor contract cannot be issued for more than 12 months. If this written purchase agreement should lapse, vendor's claims will be denied by the Department.

(A) Training facility agreements. Training services are purchased from a specific vendor when a written agreement has been approved. Training facility are any type of facility that provides training such as colleges, real estate school, private trade schools, private vocational schools, and career techs. A post-secondary school (private or public) must have a prior written vendor contract with DRS before services can be authorized to that vendor; unless the school is participating in a direct payment program.

(B) Out-of-state vendor contracts. Are required to have a prior written vendor contract with DRS before services can be authorized to that vendor. The client will be provided an opportunity to attend the training facility of choice provided the facility has a written agreement with the Department.

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- (2) When a vendor has this prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for vocational rehabilitation services directly to that vendor.
- (c) Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS administrative rule manual section(s) for that service.
- (d) All other vocational rehabilitation services will be purchased pursuant to the administrative rules in (j) and (m) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the individual and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or DSBVI staff, in accordance with (j) and (m) of this Section, approves the claim, then forwards it to the DRS Finance Services Division.
- (1) When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts payment from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration.
- (2) The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.
- (e) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.
- (f) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided.
- (g) The individual is liable for services he/she arranged which were not planned and initiated under the auspices of DRS.
- (h) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing \$500 or more purchased with DVR and DSBVI funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and approved.
- (1) Completion of Program: Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.
- (2) Disposition at closure: Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.
- (3) Title Release: Title on any tools, equipment or durable medical equipment purchased with DRS funds for training or occupational purposes will not be released to the client until the counselor has determined the client is using the items as planned.
- (i) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must be canceled or accounted for to determine if a claim will be made against any outstanding authorization.
- (j) Purchasing vocational rehabilitation goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three-step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:
- (1) identifying the requirement for the purchase;
- (2) placing the order; and
- (3) accepting the material or service.
- (k) When a prior written purchasing agreement for vocational rehabilitation goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost the amount of the OMES-DCAM authority order limit or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for vocational rehabilitation services, other than direct client payments, is not required, and the service or package of services will cost more than the OMES-DCAM authority order limit, the rehabilitation professional will follow administrative rules in (1) through (7) of this Subsection.
- (1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency administrative rules.
- (2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.
- (3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.

(4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of \$5,000.00 the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.

(5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with ~~612:10-7-220~~ agency administrative rules. The AT Specialist will complete the "Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.

(6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Finance Services Division.

(7) Upon delivery of any goods costing \$500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(8) Itemized documentation will be in the case record on all orders costing less than \$500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

(9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.

(I) Program Managers will review record of services when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of record of services will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency administrative rules, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take. Prior to the initiation of the Individualized Plan for Employment (IPE), the counselor must determine if:

- (1) a vendor agreement is needed;
- (2) there is an established rate or fee schedule; and
- (3) client's participation in cost of services is required.

(m) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

SUBCHAPTER 3. CLIENT PARTICIPATION IN COST OF SERVICES

612:10-3-2. Consideration of comparable services and benefits

(a) **Determination of availability.** Prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation services, except those services listed under 34 CFR 361.53 (b), to an eligible individual or to members of the individual's family, the VR or SBVI counselor must determine whether comparable services and benefits, as defined in 34 CFR 361.5 (c) (8) are available to the individual unless such a determination would interrupt or delay services according to 34 CFR 361.53 (a-c).

(b) **Exempt services.** The vocational rehabilitation services described in 34 CFR 361.48 (b) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section as identified in 34 CFR 361.53 (b) (1-6). However, comparable services and benefits may be used for these VR services if the comparable services and benefits are readily available at the time the VR services are needed.

(c) **Provision of services.**

(1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, DRS must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome specified in the individualized plan for employment, DRS must provide vocational rehabilitation services until those comparable services and benefits become available.

(3) Each eligible individual is required to apply for such benefits. DVR and DSBVI will not participate in the cost of services for any client who fails to apply for and accept available comparable benefits.

(4) Whether or not the client must participate in the cost of VR services has absolutely no effect upon the required search for, or use of, available comparable benefits. Available comparable benefits cannot be used in place of client resources when the client is required to participate in the cost of VR services.

(5) A student loan is not a comparable benefit. Failure to apply for a student loan which must be repaid will not be cause to withhold participation by DVR or DSBVI. Clients who have defaulted on a student loan will not be assisted with post-secondary training until the client has cleared

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the default or has made arrangement with the lender on the terms of payment.

(6) Clients will be informed of and are expected to provide the counselor a copy of the award letter(s) or other written notice of comparable benefits received from other sources.

(d) **Interagency coordination.** The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the Governor, in consultation with DRS and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between DRS and any appropriate public entity, including the State ~~entity~~ entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce development system, to ensure the provision of vocational rehabilitation services, and if appropriate, accommodations or auxiliary aids and services, (other than those services listed in paragraph (b) of this section) that are included in the individualized plan for employment of an eligible individual, including the provision of those vocational rehabilitation services (including, if appropriate, accommodations or auxiliary aids and services) during the pendency of any interagency dispute in accordance with the provisions of paragraph (d) (3) (iii) of 34 CFR 361.53 (d) (1-3).

(e) **Responsibilities under other law.** If a public entity other than DRS is obligated under Federal law (such as the Americans with Disability Act, Section 504 of the Act, or section 188 of the Workforce Innovation and Opportunity Act) or State law, or assigned responsibility under State administrative rules or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (e.g., interpreter services under 34 CFR 361.48 (j)), and, if appropriate, accommodations or auxiliary aids and services other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility according to the terms in 34 CFR 361.53 (e) (1-2).

612:10-3-3. Participation of individuals in cost of services based on financial need

(a) DRS has chosen to consider the financial need of eligible individuals or individuals who are receiving services through the trial work experiences under 34 CFR 361.42 (e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (c) in this section according to the criteria set forth in 34 CFR 361.54 (b) (1-2).

(b) DVR and DSBVI requires the client to participate in the cost of some vocational rehabilitation services if the client and/or client's family income exceeds the established basic living requirement for the applicable family size. Any client whose available family income exceeds the applicable basic living requirements is required to apply the monthly surplus to the cost of services during each 30 day period services are provided.

(c) A basic living requirement has been established for different size family groups. A family member is an individual

who is a relative or guardian of an applicant or eligible individual. Basis living requirements are based on 200% of the Federal poverty level adjusted annually for family size. The standard is intended to cover only the necessities of food, shelter, utilities, clothing, transportation, and incidentals to give the counselor some criteria by which to measure the financial need of a client. To qualify as independent from the family group, the client must meet one of the following criteria:

(1) Beneficiary of Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI);

(2) At least 24 years of age and single;

(3) A ward of the court and in custody of DHS;

(4) Married and maintaining a separate household;

(5) Meets the criteria for temporary housing as described (7) of this section or;

(6) The counselor has adequate documentation to verify the client has the financial resources to demonstrate self-sufficiency and that no family contributions are available.

(7) An eligible individual whose disability has resulted in the need to live with family or friend, and as appropriate the individual's spouse and dependent children, will be considered as a separate household regardless of living arrangements.

(A) Verification of family membership should be based upon whatever available information most accurately documents family membership according to the definition given in this administrative rule.

(B) Examples of acceptable verification include the latest Federal income tax return, payroll information, insurance policies, client report, and/or counselor observation.

(d) The client can be provided services not based on financial needs, the following services do not require a determination of financial need status:

(1) services provided to assess eligibility and priority for services (services which would require the individual's participation in cost under an IPE will also require the individual's participation in cost during an evaluation of the individual's ability to benefit from VR services);

(2) counseling and guidance including information and support services to assist an individual in exercising informed choice;

(3) referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system;

(4) on-the-job training, work experience, internships and apprenticeships;

(5) personal or vocational adjustment training;

(6) personal assistance services;

(7) job-related services including job search and placement assistance, job retention services, follow-up services and follow-along services; under 34 CFR 361.48 (b) (12);

(8) compensatory training;

(9) Supported employment, employment and retention; or

(10) any auxiliary aid or service (e.g., interpreter services, reader services) that an individual with a disability

require under Section 504 of the Act or the American with Disabilities Act (42 U.S.C. 12101, et seq.) or regulations implementing those laws, in order for the individual to participate in the VR program.

(e) Any client who does not have a surplus is not required to participate in the cost of services. Financial need does not exempt the client from required use of comparable benefits. If a payment is required of the client, it will be made to the vendor.

(f) The counselor will re-evaluate the client's financial situation at least annually and any time there is a change in the financial situation of the client or ~~family~~household. The amount of client participation in cost is based upon the most recent determination of client's financial needs at the time the IPE or amendment. If applicable, the extent of the individual's participation in paying for the cost of services is identified on the IPE service (e.g. ~~FamilyHousehold~~ monthly income surplus will be exhausted prior to agency financial contribution).

(g) The client's financial needs must be verified when an IPE includes service which require client participation in costs of services.

(h) Determination of income and liabilities will be verified and documented by the counselor in the record of service when services in the IPE and amendments require client participation in cost. If the individual refuses to provide the requested information, DRS resources will not be used to purchase services which require client participation in cost of the services.

(1) Income.

(A) Income generated from salaried wages will be calculated by gross earnings minus federal taxes, state taxes and social security deductions.

(B) Income generated from business or profession will be calculated by adjusted gross minus additional federal and state taxes divided by 12 to determine a monthly amount.

(C) Income received from unearned sources, such as pensions, public assistance, interest, dividends, royalties, trust fund, or money payments of any kind will be counted. Educational grants, stipends, or loans will not be included in the calculation. If a yearly income is available, it will be divided by 12 to calculate a monthly amount.

(2) Liabilities. When the client is making payments on any areas of liability listed below, payments will be itemized. If payments are not being made on a debt, an expense cannot be shown for this item.

(A) Medical. Out-of-pocket medical payments not covered by insurance, including medication and supplies, can be used as a medical expense. Monthly premiums for health insurance can be included.

(B) Disability related expenses. Disability related expenses beyond the basic living requirements may be considered, if not funded by DRS.

(C) Other. Court order commitments, including child support, can be counted as a liability.

(D) Education expenses. Costs for any family member incurred only for tuition, books, and fees,

toward post-secondary educational expenses, not included in the IPE or paid by grants, scholarships, fee waivers, etc., can be counted as a liability. Only the amount of the payments can be counted as a liability.

(i) Case recording requirements. A statement regarding the re-evaluation of financial needs must be included in the record of service. The financial review may be included in the IPE review if they occur at the same time.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND SERVICES FOR THE BLIND AND VISUALLY IMPAIRED

PART 1. SCOPE OF VOCATIONAL REHABILITATION AND SERVICES FOR THE BLIND AND VISUALLY IMPAIRED

612:10-7-1. Overview of Vocational Rehabilitation and Services for the Blind and Visually Impaired

(a) Vocational rehabilitation services are provided by the Division of Vocational Rehabilitation and the Division of Services for the Blind and Visually Impaired to help eligible individuals achieve employment outcomes that are consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of each eligible individual. VR services for individuals are meant to result in competitive employment in an integrated setting. Vocational rehabilitation services include services for individuals and services to groups of individuals.

(b) Vocational rehabilitation services for an individual are prescribed in an Individualized Plan for Employment (IPE) that is based on an assessment of the individual's rehabilitation needs, guidance provided by a qualified vocational rehabilitation professional and the individual's informed choice with regard to employment goal, services and service providers. Services may include but are not limited to:

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) referral and other services to secure needed services from other agencies through cooperative agreements if such services are not available from DVR or DSBVI;

(4) job-related services, including job search and placement assistance, customized employment services, services leading to self-employment, job retention services, ongoing services, and extended services;

(5) vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

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(6) to the extent that financial support is not readily available from a source (such as health insurance or comparable services and benefits) other than DVR or DSBVI, diagnosis and treatment of physical and mental impairments;

(7) maintenance for additional costs incurred while participating in an assessment for determining eligibility and vocational rehabilitation needs or while receiving services under an Individualized Plan for Employment;

(8) transportation, including training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to participate in rehabilitation services or to achieve an employment outcome;

(9) on-the-job or other related personal assistance services provided while an individual is receiving other services described in this section;

(10) interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind;

(11) rehabilitation teaching services, and orientation and mobility services, for individuals who are blind;

(12) occupational licenses, tools, equipment, and initial stocks and supplies;

(13) technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) rehabilitation technology, including rehabilitation engineering, assistive technology devices and assistive technology services;

(15) transition services for students with disabilities, that facilitate the achievement of the employment outcome identified in the Individualized Plan for Employment, and pre-employment transition services as described in 34 CFR 361.48(a) and 29 USC 733;

(16) supported employment services for individuals with the most significant disabilities that need ongoing support services from a job coach to obtain and maintain employment;

(17) employment and retention services for individuals with significant disabilities who require short term job coach support to obtain and maintain a successful employment outcome;

(18) transitional employment services for individuals with the most significant disabilities due to mental illness who have little or no successful work history and need work adjustment/trial work experience;

(19) work experiences, internships, and apprenticeships;

(20) services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome; and

(21) specific post-employment services necessary to assist an individual with a disability to maintain, retain, regain, or advance in employment.

(c) Vocational rehabilitation services for groups of individuals with disabilities are described in 34 CFR 361.49 and include:

(1) In the case of any type of small business operated by individuals with significant disabilities the operation of which can be improved by management services and supervision provided by DVR or DSBVI, the provision of such services and supervision, along or together with the acquisition by DVR or DSBVI of vending facilities or other equipment and initial stocks and supplies.

(2) Equipment for clients who are going into self-employment requires prior approval from RSA.

(3) Transition services to youth and students with disabilities who may not have applied or been determined eligible for vocational rehabilitation services, that involve collaboration of a vocational rehabilitation counselor with education agencies, programs serving individuals with developmental disabilities, businesses, workforce programs, independent living centers, housing and transportation authorities and related entities. Such services are to benefit a group of youth or students with disabilities and may not be individualized services related to an individual plan for employment. Services may include group tours of training programs and businesses, career fairs, interview practice, resume writing, and other group activities that support future employability.

(4) High school students who have a disability and are not clients of the DRS, but are going to a conference or camp to provide them with the necessary tools and education for employment requires prior approval from RSA.

(5) The use of telecommunications systems (including telephone, television, video description services, tactile-vibratory devices, satellite, radio, and other similar systems) that have the potential for substantially improving delivery methods of activities described in this section and developing appropriate programming to meet the particular needs of individuals with disabilities;

(6) Special services to provide access to information for individuals who are blind, visually impaired, deaf, hard of hearing or deaf-blind including:

(A) the use of telecommunications, Braille, sound recordings, or other appropriate media;

(B) captioned television, films, or video cassettes for individuals who are deaf or hard of hearing;

(C) tactile materials for individuals who are deaf-blind; and

(D) other special services that provide information through tactile, vibratory, auditory, and visual media.

(7) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(8) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including employment.

- (9) The establishment, development or improvement of assistive technology demonstration, loan, reutilization or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998.
- (10) The establishment, development or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment.

612:10-7-3. Client responsibilities

To make the rehabilitation effort a success, the individual and agency's staff must work together to reach chosen goals. This shared responsibility requires that the client or applicant for services accept the basic responsibilities in (1) through (13) of this Subsection. Other specific client responsibilities are stated in relevant manual sections. It is the counselor's responsibility to fully and appropriately inform the client of client responsibilities.

- (1) Provide information and be available to complete the assessment process to find out if you are eligible for services.
- (2) Be on time and keep appointments with DVR/DS-BVI staff, doctors and others. Call in advance or as soon as possible, if you cannot come to an appointment.
- (3) Follow the advice of doctors and other medical professionals to include compliance with all prescribed medications.
- (4) Participate with your DVR/DSBVI qualified vocational rehabilitation counselor in developing the Individualized Plan for Employment, (IPE) including participating in assessments needed to determine your needs and strengths.
- (5) Provide enrollment documents to your counselor before the college or university's designated "Drop and Add" deadline so an authorization can be issued, if your IPE includes educational and training services.
- (6) Attend education or training classes on a regular basis and maintain passing grades, if your IPE includes these services.
 - (A) Payment of training services based on client's financial need will not be provided if the client's grades fall below 1.8 overall GPA.
 - (B) Training services may be paid for a client having an overall GPA between 1.8 and 1.9 for the first semester that grades fall below 2.0 overall GPA. Subsequent enrollments can only be paid if the student's overall GPA shows progress.
- (7) Review your IPE with your qualified vocational rehabilitation counselor at least once a year and participate in making revisions to the plan when needed.
- (8) Maintain satisfactory progress toward completing the IPE.
- (9) Abstain from abuse of drugs and/or alcohol. Individuals who abuse drugs and/or alcohol while receiving services will be referred to the Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS) and/or other appropriate agencies for purposes of

seeking treatment. All case services will be suspended. If the client refuses or fails to cooperate with seeking treatment, or is not available to pursue a DRS program, this will be considered as reasonable cause for case closure.

- (10) Keep the appropriate professional informed of changes in the individual's address, financial need, or other program-related changes.
- (11) Apply for and make appropriate use of any comparable benefits and services for which the client is eligible to defray in whole or in part the cost of services in the individual's IPE and provide verification of financial aid award status to counselor.
- (12) Work with the counselor to obtain or keep suitable competitive integrated employment outcomes as services are being completed.
- (13) Following the achievement of a suitable employment outcome, if contacted, assist your counselor by providing any requested employment earnings information to verify that you are still working. These follow up requests, when necessary, may occur up to one year after your case is closed.

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services

- (a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:
 - (1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;
 - (2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
 - (3) can benefit in terms of an employment outcome from vocational rehabilitation services.
- (b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from rehabilitation services due to the severity of the individual's disability.
- (c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI) shall be:
 - (1) considered to have a significant disability under the order of selection; and
 - (2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates

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that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(d) Eligibility requirements shall be applied without regard to:

- (1) duration of residence in the state,
- (2) type of disability,
- (3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.
- (4) gender, race, color or national origin,
- (5) type of expected employment outcome,
- (6) source of referral, or
- (7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.

(e) Disabled veterans. Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:

- (1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.
- (2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.

(f) Applicants who are employed. Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services to advance in or retain employment, or when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(g) Citizenship. Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.

(h) Criteria. Some conditions have unique criteria that must be considered when determining eligibility.

(1) Alcoholism/Drugs. Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a qualified professional. Clients must be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating professional must be filed in the case record upon IPE development.

(2) Allergies/Asthma. Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.

(3) Deafness and Hearing Loss. ~~The rehabilitation professional will base eligibility determination upon one of~~

~~the measurement methods listed below, as performed by a licensed audiologist as determined by the Department. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual. The licensed audiologist will do a Comprehensive Hearing Evaluation (CHE) with written recommendations for treatment. The CHE will include the type of hearing aids needed with a treatment plan to maintain the maximum rehabilitation for the hearing loss. In most cases, for the purpose of vocational rehabilitation, the majority of cases served will be in the moderate range to profound range, barring any other significant functional limitations as determined by a rehabilitation counselor for the Deaf (RCD). Degree of hearing loss from normal to profound are based on the hearing loss ranges as follows:~~

~~(A) Normal (-10-15)~~

~~(B) Slight (6-25)~~

~~(C) Mild (26-40)~~

~~(D) Moderate (41-55)~~

~~(E) Moderately severe (56-70)~~

~~(F) Severe (71-90)~~

~~(G) Profound (91+)~~

~~(i) The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below, as performed by a licensed audiologist as determined by the Department.~~

~~(ii) The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual. The licensed audiologist will do a Comprehensive Hearing Evaluation (CHE) with written recommendations for treatment. The CHE will include the type of hearing aids needed with a treatment plan to maintain the maximum rehabilitation for the hearing loss.~~

(4) A CHE or recommendation for hearing aids and treatment from a Hearing Instrument Specialist (HIS) is not acceptable and should not be considered by the rehabilitation professional in addressing the rehabilitation needs.

(A) Eligibility criteria. Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) Average hearing loss. Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

- (II) The hearing loss in the better ear is 30 dB or greater.
- (ii) ~~Speech recognition threshold (SRT). An individual is considered to have a qualifying disability when: the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or a consultation is conducted with a Qualified Rehabilitation Counselor for the Deaf (RCD) and upon Review of the RCD based on the Speech reception threshold.~~
 - (II) ~~the speech reception threshold in the better ear is 30 dB or greater.~~
 - (iii) Speech discrimination or word recognition score. An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less, upon review by a RCD.
 - (iv) Articulation index. An individual is considered to have a qualifying disability when the articulation index is 70% or less upon review by RCD.
 - (v) Only a licensed audiologist can determine the speech discrimination or word recognition and articulation index score. The Vocational Rehabilitation Counselor will utilize these scores in determining eligibility and identification of the functional barriers to employment.
 - (I) A Consultation by the Rehabilitation Counselor for the Deaf (RCD) that the applicant has hearing loss that constitutes a physical or mental impairment and the physical or mental impairment constitutes or results in a substantial impediment to employment; and
 - (II) A Consultation by a Rehabilitation Counselor for the Deaf (RCD) that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individuals unique strengths, resources, priorities, concerns, abilities, capabilities, interest and informed choice.
- (B) Severity of Hearing Loss. All individuals who qualify as having a severe hearing loss or, who are culturally Deaf and/or use Manual Communication, will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD for a consultation on severity of loss and functional limitations) The RCD then will determine whether the case needs to be assigned to an RCD. Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form.
 - (i) Severe Hearing Loss. Average hearing loss, as calculated above, is considered severe when:
 - (I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or
 - (II) The hearing loss in each ear is 55 dB or greater.
 - (ii) Severe Speech Recognition Threshold (SRT). An individual is considered to have severe disability when;
 - (I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or
 - (II) The SRT in each ear is 55 dB or greater.
 - (iii) Severe Speech Discrimination or word recognition score. An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.
- (4) Diabetes: The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. Diabetes management training will be incorporated into the IPE unless the client shows that he/she has previously completed diabetes management training. When recommended by a physician, diabetes management training will be incorporated into the IPE regardless of past diabetes education received by the individual.
- (5) Facial and Disfigurement Conditions. When these conditions result in an impediment to employment an individual may be eligible for VR services.
- (6) Learning Disabilities. Learning disabilities is a general term that refers to a group of disorders manifested by significant difficulties in the attainment and use of listening, speaking, reading, writing, reasoning, or mathematical abilities. Learning disabilities are identified when there are difficulties learning and using academic skills, as indicated by at least one of the following occurring even with interventions: Inaccurate or slow reading, difficulty understanding the meaning of what is read, difficulties with spelling, difficulties with written expression, difficulties mastering numbers sense, facts or calculation, and difficulties with mathematical reasoning. Also, academic skills are significantly below those expected for the student's chronological age and causes issues with academic and occupational performance. Academic areas include, impairment in reading, impairment in written expression, and impairment in mathematics.
- (7) Mental Disorders. Individuals may be eligible for vocational rehabilitation services based on a mental health diagnosis made by a qualified professional (612:10-7-98 (17)(A)(1-5)). Documentation must be filed from a qualified professional indicating the client is participating in a treatment plan and in compliance with all medication as prescribed. Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.
- (8) Intellectual Disability. To be eligible, individuals having an I.Q. of 69 or below and substantially limited

adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the intellectual disability range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the intellectual disability range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** Any of the following conditions may provide a basis for eligibility due to visual disability:

(A) **Blindness.** A central visual acuity of 20/200 or less in the better eye with best correction, or a limitation in the field of vision in the better eye so that the widest diameter of the visual field subtends an angle of 20 degrees or less. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis.

(B) **Visual impairment.** A central visual acuity of 20/60 or less in the better eye with best correction, or other visual condition which, for the individual, results in functional limitations and constitutes a barrier to employment. Other visual conditions which may result in functional limitations include, but are not limited to, limited peripheral vision, extreme light sensitivity, loss of depth perception, loss of stereopsis, diplopia (double vision), aphakia, total absence of color discrimination or red-green deficiency, blurred vision, eye muscle and movement conditions, and cortical visual impairment.

(C) **Progressive eye disease.** Diagnosis of a progressive sight threatening disease or condition that has resulted in functional limitations for the individual or is expected to progress rapidly. Progressive eye diseases which may result in significant vision loss include, but are not limited to, retinitis pigmentosa, diabetic retinopathy, glaucoma and macular degeneration.

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

PART 5. CASE STATUS AND CLASSIFICATION SYSTEM

612:10-7-45. Electronic Case Management System Progression

(a) The electronic case management system is comprised of a logical flow an individual progresses through the vocational rehabilitation process. This electronic case management system covers the life cycle of a case from referral and application through eligibility, plan, employment, post-employment services, and closure, ~~and post-employment services.~~

(b) No case action is effective until all required approvals have been obtained in accordance with administrative rules. The effective date of any case action, including closures, is the date the last required approval is obtained in accordance with administrative rules.

612:10-7-58. Closed Rehabilitated

(a) **Use of Closed Rehabilitated status.** A case is closed as rehabilitated because the client has achieved an employment outcome as a result of vocational rehabilitation services. Cases closed as rehabilitated must as a minimum meet the requirements in (1) through (5) of this Subsection:

(1) the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

(2) the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) the employment outcome is in an integrated setting, consistent with the individual's informed choice;

(4) the individual has maintained the employment outcome for a period of at least 90 days; and

(5) at the end of the appropriate period under Paragraph (4) of this Section, the individual and the VR Counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

(b) **Out of state.** Clients who move out of state after services have been completed are closed in rehabilitated status if the requirements in Subsection (a) of this Section can be met. If those requirements cannot be met the case will be closed, not rehabilitated.

(c) **Successful closure prior to completion of IPE.** If employment is secured before completion of the IPE, a counselor must document the conditions of substantial services and suitable employment were met. If planned services are interrupted prior to achieving the originally planned vocational goal, and services provided have directly contributed to the employment outcome for the individual or to job retention, an IPE amendment is not needed to revise the vocational goal prior to closure. A plan amendment is required when there is a substantial deviation from the original employment goal.

(d) **Cases closed from supported employment.** An individual with the most significant disabilities who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported

employment placement for a minimum of 90 days beyond stabilization. In addition to the criteria for "suitably employed", the counselor must document that the individual has met or has made substantial progress toward meeting the weekly work goal defined in the IPE, the client is satisfied with the job, the employer is satisfied with the client's job performance, extended services are in place, all supported employment requirements have been met, and the case is ready for closure. The closure documentation will address any significant differences in the ultimate work week achieved as compared with the predicted goal.

(e) **Cases closed from employment and retention.** An individual with severe disabilities who is receiving employment and retention services is considered to be successfully rehabilitated when the client maintains employment for a minimum of 90 days after placement, or for a minimum of 4 weeks plus 90 days if the individual required the "4 Weeks Job Support" Milestone.

(f) **Case recording requirements.** The client, or the client's authorized representative as appropriate, will be a full participant in the decision to close the case. The last discussion of the closure decision with the client, or the client's authorized representative, will be held at the end of the required 90 days of the closure, and will be documented in a case narrative. The client will be notified in writing their preferred format of the case closure and advised of the availability of Post-Employment Services.

(g) **Documentation at Successful Closure.** Prior to closure, a copy of the current pay stub identifying the individual's competitive hourly wage and hours to determine weekly earnings. If the current pay stub is not available, then the following is acceptable:

- (1) An individual's written report of employment information and required wage information documented on an authorized DRS form (DRS-C-065) with their dated signature; or
- (2) A detailed case note identifying the individual's employment information including the current competitive hourly wage and work hours in a typical week that is based on the counselor's conversation with the actual employer. Prior to calling an employer, the individual shall be informed that information provided and gathered is limited to what is necessary to document and verify employment. This provides the individual the opportunity to discuss preferences and options for obtaining required documentation. A signed Release of Information should be in the case file.
- (3) If verification as stated above is not forthcoming and all efforts to obtain acceptable verification are documented, then the following is acceptable: a detailed case note identifying the individual's employment information including the current competitive hourly wage and work hours in a typical week, the date the final employment verification was received with justification for the individual not providing formal documentation.
- (4) Individuals who are self-employed are required to provide wage documentation of competitive integrated self-employment.

612:10-7-62. Post-Employment services

(a) **Use of Post-Employment services.** Post-employment services may be provided to assist ~~rehabilitated~~employed clients to maintain, retain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

(1) The need for post-employment services will be assessed at initiation of the IPE. Ongoing assessment continues during case services, is documented as needed, and is reassessed just prior to case closure.

(2) Post-employment services may also be provided for needs that were not anticipated in the original IPE or prior to case closure. Post-employment services can be provided to individuals who receive Supported Employment Services if such services are needed to maintain the supported employment placement and those services are not available from an extended services provider, and those services are provided prior to case closure.

(3) Post-employment services are not to be used in instances of underemployment when extensive retraining is needed.

(4) ~~Cases reopened on a post-employment basis do not require re-establishment of eligibility.~~Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required.~~New diagnosis is needed only if there has been a change in the client's physical or mental condition.~~ Any vocational rehabilitation service or combination of services necessary to assist the individual

to maintain, retain, regain, or advance in employment may be provided if the service(s) does not involve a complex or comprehensive effort. ~~If comprehensive services are indicated, a new application is taken.~~

(5) Federal regulations forbid the setting of arbitrary time limits on the provision of post-employment services. If the client has been employed for a long period of time, the counselor must carefully review the client's situation before making the decision to provide post-employment services as opposed to opening a new case.

(b) **Other considerations.** Other considerations in determining a client's eligibility for post-employment services are:

(1) **Financial Needs.** A new financial need determination must be made if services requiring consideration of client participation in the cost of services are to be provided.

(2) **Emergency conditions.** Treatment of an emergency condition will not be considered as a post-employment service.

~~(3) **Upgrading.** Post employment services are provided to help the individual advance in employment only when the nature of the individual's impediment to employment makes advancement the most appropriate post-employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.~~

~~(e) **Transfer of cases.** Clients needing post-employment services who have moved to another area of the state will have their cases transferred. When a rehabilitant who has moved~~

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~~out of state requests post employment services, the counselor will refer the individual to the rehabilitation program in the state where the individual resides. Upon receipt of a release signed by the client, copies of the requested information from the closed record of service will be forwarded to the receiving state agency. If an individual who was a rehabilitant in another state requests post employment services from our state, information must be requested from the state where services were previously provided. All requests must include a specific release of confidential information signed by the applicant. The case will be processed as a new referral, but will be served and documented as a post employment case.~~

(dc) Criteria for terminating post-employment services. Decisions to terminate post-employment services must be made on an individual basis in consultation with the client.

(ed) Case recording requirements. The same principles of client involvement are required in the IPE for Post-Employment Services as are required under any other IPE. Case recording will be made at significant times during the process, including assessment of progress, the decision to conclude services and the results achieved at the completion or termination of services.

612:10-7-63. Post-Employment services completed

~~(a) Use of Post-Employment services completed.~~ The case can be closed as soon as the services in the Post-Employment Services amendment have been completed insofar as possible and the client has been consulted regarding the closure decision.

(b) Case recording requirements. Closure from post-employment ~~status~~services is documented in the case record and in a closure letter given to the client.

PART 15. TRAINING

612:10-7-142. General guidelines for training services

(a) Types of training. Training provided by DVR and DSBVI may include:

(1) **Vocational.** Vocational training provides the knowledge and skills necessary for performing the tasks involved in an occupation. Such knowledge and skills may be acquired through training from an institution, on-the-job, by tutors or through a combination of these methods. Vocational training may be provided for any occupation.

(2) **Prevocational.** Prevocational training includes any form of academic or basic training provided for the preparatory skills needed for entrance into a vocational training program or employment. Prevocational training is initiated to enhance occupational knowledge or skills or to remove an educational deficiency interfering with employment.

(3) **Personal or work adjustment.** Personal or work adjustment training includes any training given for one or a combination of the reasons given in (A) - (D) of this paragraph.

(A) To assist the individual in developing personal habits, attitudes, and skills enabling the individual to function effectively in spite of disability.

(B) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.

(C) To develop work habits and to orient the individual to the world of work.

(D) To provide skills or techniques enabling the individual to compensate for a disability such as the loss of a body part or the loss of a sensory function.

(b) Training may be provided for clients who:

(1) are mentally, physically and/or emotionally capable of pursuing a course of training to completion;

(2) require training to achieve an employment outcome or other goals established in the Individual Plan for Employment (IPE); and

(3) are determined to have a reasonable opportunity for obtaining employment in the chosen vocation.

(c) Decisions related to training are based on the individual needs and informed choices of the client as identified in the IPE.

(d) DVR and DSBVI will only pay tuition and fees for courses which count toward requirements consistent with the vocational goal of the IPE. Training of DVR and DSBVI clients is provided by colleges, universities, private business and trade schools, state supported vocational schools, employers in the form of on-the-job training, sheltered workshops, and other approved training facilities with valid contracts.

(e) Federal regulations require a search for comparable services and benefits with the results documented before payment can be made for training in the following institutions: colleges, universities, community/junior colleges, public or private vocational/technical schools, or hospital schools of nursing. PELL grants and other available Federal/State student aid (excluding merit awards) must be applied to tuition, fees and all other educational expenses as a first dollar source prior to consideration of the expenditure of DRS funds.

~~(f) Training costs will not be authorized beyond the first by DVR and DSBVI sponsored enrollment until proof of the availability of comparable benefits is received by the counselor.~~

(g) Once training has begun, the client is expected to progress toward the vocational objective at a steady rate. This requires the client to attend training on a regular basis, and maintain a full-time load unless an exception is granted by the counselor due to severity of disability, scheduling problems or other valid reasons. Training progress reports or other methods of reporting (i.e., grade reports, transcripts) are utilized to document training progress. Sporadic attendance and reduced training loads causing a delay in the completion of training must be reviewed by the counselor. The client is responsible for advising the counselor of problems encountered during the training program.

(h) All types of institutional, technical, personal adjustment or employment training are purchased by an authorization issued by the counselor.

PART 17. SUPPORTED EMPLOYMENT SERVICES

612:10-7-185. Provision of supported employment services

- (a) Supported employment (SE) services are provided by DRS for a period of time not to exceed the period specified in federal law, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time in order to achieve the rehabilitation objective identified in the IPE.
- (b) Supported employment services are not subject to financial status determination. Services are purchased from a qualified vendor under contract with the Department. Payment rates are established by the Commission for Rehabilitation Services and are based on a system of service milestones.
- (c) Supported employment services may include:
 - (1) Situational assessments to help develop, finalize or reassess a supported employment plan of services;
 - (2) Job development and job placement;
 - (3) Time-limited job coach services to provide intensive on-the-job skills training and additional training and support services needed to achieve and maintain job stability, including follow-up services with employers and others for the purpose of supporting and stabilizing the job placement; and
 - (4) ~~Post employment services following an individual's transition to extended services, when such services are not available from an extended service provider and are necessary to maintain or regain the job placement or advance in employment. Services may include job coaching, job station redesign, repair and maintenance of assistive technology and repair and replacement of orthotic and prosthetic devices.~~
- (d) DRS must utilize re-placement services for individuals who lose a job within two years of achieving a successful rehabilitation outcome if the counselor determines extended services are not adequate to cover re-placement and DRS assistance is necessary. Re-placement services include Vocational Preparation/Job Club, Four (4) Weeks Job Support, Job Stabilization and Successful Rehabilitation.
- (e) Transitional employment services are available for individuals with serious mental illness. Transitional employment is designed to assist individuals who have not had significant, successful or recent work experience to build work adjustment skills and ego strength/self-esteem, develop a positive work history, learn adjustment skills in a real work environment or clarify their strengths and interests. Transitional employment prepares individuals to make future employment and career decisions.

612:10-7-185.1. Customized employment

(a) Customized employment means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the unique strengths, needs and interests of the individual; designed to

meet the specific abilities of the individual and the business needs of the employer, and carried out using flexible strategies such as those detailed in 34 CFR 361.5(c)(11).

(b) Provision of customized employment services.

(1) Customized Employment (CE) services are provided by DRS for a time not to exceed the period specified in federal law unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the rehabilitation objective identified in the IPE.

(2) Customized employment services are not subject to financial status determination. Services are purchased from a qualified vendor under contract with the Department.

(3) Customized Employment (CE) is for individuals in Priority Group 1 with the most significant disabilities who need intensive support to prepare for, obtain and maintain successful, competitive integrated employment. Those who may benefit from CE services include but are not limited to:

(A) Individuals with little or no work experience in a competitive integrated setting;

(B) Individuals who require multiple services over an extended period of time;

(C) Individuals who may benefit from specialized job development, job negotiations, and nontraditional jobs that meet an employer's needs;

(D) Individuals who are not able to perform all the essential functions of existing job descriptions;

(E) Individuals who require substantial assistance with preparing for employment and completing the job search process;

(F) Individuals who require significant job site support to learn job tasks, gain work adjustment skills and stabilize in employment; and

(G) Individuals who require long-term support to retain employment.

(4) Customized Employment referrals to contractors must include copies of the following documents:

(A) DRS-C-301 Employment Services Referral,

(B) DRS-C-21 Eligibility Determination Form,

(C) DRS-C-29 Individualized Plan for Employment (IPE),

(D) DRS Personal Information report (printed from AWARE).

(5) Customized employment services may include:

(A) CE Discovery includes activities that utilize a person-centered approach to describe who the individual is, and their vocational themes, and guides the planning process to develop a customized job.

(B) Team Meeting will be conducted with the individual, DRS Counselor, Contractor, and all other team members identified by the individual and DRS Counselor. The individual, or with the support of a designee identified by the individual, will lead the meeting to review the results of the discovery findings and develop a plan for job development.

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(C) Visual Resume is a print and/or digital tool to aid in highlighting the individual's skills and interests to be used in job development with employers.

(D) Job Development involves negotiating a successful job match that meets the individual's interests, abilities, resources, priorities, and the employer's unmet needs. The job must meet the definition of competitive integrated employment.

(E) Job Coaching is provided by an Employment Consultant who uses structured intervention techniques to help the individual learn job tasks, interpersonal and other skills necessary to maintain successful employment.

(F) CE Maintenance is achieved when the individual is satisfied with the job and the supervisor/employer is satisfied with the worker's performance, work behaviors, and socialization. Extended Services, if needed, have been identified and initiated.

(G) CE Employment Outcome results in the individual being employed in a permanent competitive integrated job, all appropriate training and support services were provided, the weekly work goal has been met, the individual is satisfied with the job and the employer is satisfied with the individual's job performance for the required ninety (90) calendar days.

PART 21. PURCHASE OF EQUIPMENT, OCCUPATIONAL LICENSES AND CERTIFICATIONS

612:10-7-220. Vehicle modification services

(a) Vehicle modification services may be provided as needed to enable a Vocational Rehabilitation client to prepare for, enter or retain employment. Vehicle modifications include the range of modifications and special equipment needed by a person with an impairment to drive or be a passenger in a vehicle. Vehicle modifications above the State Capitalization rate are subject to the Prior Approval from RSA in accordance with 2 CFR 200.439.

(b) Vehicle modification services provided to an individual in the Vocational Rehabilitation program may include:

- (1) purchase and installation of adaptations or devices in a vehicle;
- (2) assistance with payment of the portion of the cost attributable to modifications pre-installed in a new or used vehicle purchased from a dealer;
- (3) evaluation of an individual's ability to operate a motor vehicle;
- (4) required devices recommended by AT Specialist specific to both the individual needs and the vehicle. The AT report must not be older than six months at a time of purchase of recommended devices.
- (5) training in the operation of the vehicle.

(c) Vehicle modifications which are projected to cost the amount of the ~~OMESOMES-DCAM~~ authority order limit or less will be made in accordance with ~~612:10-1-7~~agency administrative rules. Vehicle modifications projected to cost

more than the ~~OMESOMES-DCAM~~ authority order limit will require additional processing by DRS Central/Departmental Services after the process is completed by the counselor as outlined in Categories A through C below. Clients purchasing new vehicles shall apply for any mobility equipment rebate available from the vehicle manufacturer and the amount of any such rebate shall be assigned to DRS.

(1) Category A: New or used vehicle with structural modifications: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications.

(2) Category B: New or used vehicle with structural modifications and accessibility modifications additions: In this process, the vehicle will be purchased by client choice and not obtained through a bid process. The client will be responsible for the purchase of the vehicle and DRS will be responsible for the costs attributable to the structural modifications and the accessibility modification additions. DRS will participate in this method only if the client obtains warranty from the mobility aids vendor. A copy of the warranty agreement will be obtained by the counselor and maintained in the case file.

(3) Category C: Any modifications to a new or used vehicle not purchased as part of the vehicle package with a cost greater than the ~~OMESOMES-DCAM~~ authority order limit will require additional processing by C/DS after the bid process is completed by the counselor in accordance with ~~612:10-1-7~~agency administrative rules.

(d) The qualifications in (1) - (9) of this Subsection apply to all vehicle modifications.

(1) The client or individual providing the transportation must have a current, valid driver's license. If the client will be driving the vehicle and does not yet have a driver's license, he/she must be legally permitted to drive or participate as a driving student.

(2) The name of the client must appear on the title to the vehicle and current vehicle registration. The client may be listed as a co-owner on these documents.

(3) The client must agree to maintain the vehicle for the predictable life of the equipment and is responsible for maintaining special equipment in good working order. DRS may pay for repairs to such equipment during the life of the case unless there is clear evidence that the special equipment has been damaged due to client abuse or neglect as determined by the dealer, vendor, or Assistive Technology Specialist.

(4) The client must maintain full vehicle coverage (both collision and comprehensive) to include special equipment and any other vehicle modifications. All potential and/or additional drivers permitted to drive the vehicle must be insured and the appropriate insurance documentation provided to OKRS.

(5) The vehicle must be evaluated by an Assistive Technology Specialist or person with equivalent qualifications (Driver Rehabilitation Instructor, Occupational Therapist, Rehab Engineer, etc.) for identification of the appropriate

adaptive equipment and assessment of the compatibility of the vehicle with recommended adaptive equipment.

(6) A used vehicle must be inspected by an ASE or manufacturer certified mechanic to assure it is mechanically and structurally sound before equipment can be installed. This inspection may be authorized by the counselor if necessary. If the ASE or manufacturer certified mechanic recommends it, a separate inspection related to structural soundness will be completed. This inspection may be authorized by the counselor.

(7) Existing modifications on a new or used vehicle shall be inspected for the appropriateness of the adaptive equipment for the client's needs by the Assistive Technology Specialist or other qualified person. DRS also requires documentation that existing modifications on a used vehicle have been inspected by the mobility equipment dealer/vendor to determine efficiency, quality and fair market value of the modification or adaptive equipment. This documentation may be obtained directly from the mobility equipment dealer/vendor or from the lender when such documentation has been required for loan approval.

(8) DRS will not pay the expense of replacing the equipment unless the equipment no longer meets the needs of the client as determined through review of current medical reports and assistive technology evaluation indicating replacement is required to meet the IPE goals.

(9) DRS will not provide comprehensive structural modifications to include vertical, butterfly, or gull-wing doors for any vehicle types.

(10) Certain types of vehicle modification equipment are considered "transferable" by design: i.e., hand controls, left foot accelerator, and hitch lift systems for wheelchairs/scooters. DRS may assist with the cost of transferring this type of equipment to meet the IPE goals. These modifications are categorized as non-structural modifications.

(11) When vehicle modifications are completed, installation is to be inspected by an Assistive Technology Specialist or person with equivalent qualifications, to determine if the authorized equipment conforms to prescribed standards, is properly installed and meets the functional needs of the client. The counselor must obtain a statement of satisfaction from the client.

(12) Once a vehicle modification is complete, an Assistive Technology Specialist will conduct the inspection, and if required, a Driving Rehabilitation Instructor (DRI) to determine if the authorized equipment conforms to prescribed standards, is properly installed, and meets the functional needs of the client. The modified vehicle is not to be released to the client until after the inspection process is complete. This includes the Assistive Technology Specialist obtaining the following: valid driver's license, vehicle title, insurance verification, client's signed statement of satisfaction, and vehicle modification pictures. Counselor will not release final payment until all items are received and reviewed.

612:10-7-221. Housing Modification

(a) Modification of a residence may include installation of ramps, widening of doors, installation of grab bars and other accessibility modifications when such modifications are necessary to support the client in achievement of an employment outcome. DRS will not provide major structural modifications such as elevators, room additions or major wall removal. Housing modifications that will cost more than the ~~OMESOMES-DCAM~~ authority order limit require supervisor approval. All housing modifications are subject to the Prior Approval from RSA in accordance with 2 CFR 200.439.

(b) In all situations where housing modification is to be done, the owner of the house must provide proof of ownership, sign a written release form, and be current on mortgage payments. DRS will not provide permanent modification to rental properties but may assist with portable/removable modifications. The renter/client is responsible for obtaining prior written permission from the owner for any portable/removable modifications. The counselor must make a referral to the Assistive Technology (AT) Specialist who will then evaluate the residence recommending modifications needed to make the residence accessible for the client. After modifications have been completed the counselor will contact the AT Specialist for inspection of the home, to ensure the modifications conform to prescribed standards and meet the client's accessibility needs. The AT Specialist will provide a report to the counselor that will contain pictures of the completed work and a signed statement of satisfaction from the client.

SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING

PART 3. CERTIFICATION OF INTERPRETERS

612:10-13-16. Evaluation

(a) **Evaluation components and conditions.** To be certified as an interpreter, an individual must pass a skill based performance evaluation. The process for certification consists of a written examination and a performance evaluation. The written examination and performance interview may include items from the ~~Oklahoma QAST Ethical Standards~~ NAD-RID Code of Professional Conduct and the ~~Limitations of Levels Certification Levels limitations.~~ Interpreters who hold Level III certification in either Interpreting or Transliterating are required to take the IV/V performance evaluation, which is in compliance with the Ethical Standards.

(b) **Written examination.** The written examination consists of questions designed to measure knowledge of interpreting and situational ethics. Applicants must make a passing score, as established by the program, before being allowed to take the performance evaluation. If the written test is failed, retesting may be taken again in 30 calendar days.

(c) **Performance Evaluation.** The Interpreter Certification and Resource Center (ICRC) administers two performance evaluations, certification levels for category I-III and certification levels for category IV/V. The performance evaluation

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consists of ethical situational questions, which is called an interview, and a skill based proficiency test, which will test the candidate's ability to interpret and transliterate interactive settings. Individuals may request testing for category levels I-III or category levels IV/V. A candidate is eligible to apply in the same performance category, I-III or IV-V, in four months from prior testing date. A performance application can be submitted before four months and will be placed on the next available evaluation date after the four months waiting period. If an interpreter obtains a level III in either transliterating or interpreting, he/she is immediately eligible to apply for the IV/V performance. Certification will be granted to an individual whose total score falls within the acceptable range for that level.

(d) **Conflict of interest.** Interpreter certification program staff who select, manage or coordinate the certification process or select evaluators are not eligible to test for Oklahoma interpreter certification through this process.

612:10-13-18. Fees

A fee will be charged to each applicant who applies for the written test and performance evaluation for state certification of an interpreter for the deaf. A yearly certification ~~maintenancere~~ renewal fee will also be charged. Individuals failing to timely pay the ~~maintenancere~~ renewal fee must submit a reinstatement fee and the annual certification ~~maintenancere~~ renewal fee along with the application for reinstatement. The fee structure will be based on the cost of the evaluations, materials and certificate maintenance program. The fee for the written test is \$50.00. The fee for performance evaluation is \$125.00. The yearly certification ~~maintenancere~~ renewal fee is \$50.00. The certification reinstatement fee is \$100. Out of state residents may take the written/performance test for double the fee.

612:10-13-20. Certification maintenance

(a) **General provisions for certification maintenance.** QAST certification in Interpreting and Transliterating, for levels I-V, are valid for a term of two years at which time the certification will expire unless the interpreter ~~re-test~~ retests. The exception for re-testing applies to those that achieve a certification level in Transliterating: V and Interpreting: V; those are the only levels that will not ~~expire~~ be required to retest providing the annual CEUs and the ~~maintenancere~~ annual renewal fee is satisfied.

(1) Level V certification: An interpreter holding a certification level V in either Transliterating or Interpreting, but not both, will be required to ~~re-test~~ retests. Testing will include the ethical situation interview and the performance section the interpreter does not hold a level V in. The interpreter must pass the ethical situation interview with 80% before a level is granted. If a level V is not obtained, the interpreter will be required to ~~re-test~~ test until a V/V is achieved.

(2) Level I-IV certification: An interpreter with levels I, II, III, IV are required to take the ethical situation interview, Interpreting and Transliterating. The interpreter

must pass the ethical situation interview with at least an 80% before a level is granted.

(3) ~~Any combination of levels other than a V/V obtained during testing will expire 2 years from the test date. Interpreters are required and permitted to re-test before their certification expires.~~

(4) Certification will remain valid for an interpreter who has applied for ~~re-evaluation~~ evaluation and cannot be scheduled for testing prior to his/her certificate's expiration date, provided the application is received no later than 90 calendar days before the expiration date. However, any certification will lapse if the ~~maintenancere~~ annual renewal fee is not paid and/or continuing education requirements are not met by stipulated due dates, and/or if the ~~performancere~~ application is not submitted 90 days before levels expire. Individuals who have allowed certification to lapse due to non-compliance with requirements must take and pass the ICRC/QAST written portion before they are eligible for the performance evaluation.

(4) An interpreter that holds only one QAST level V in either Interpreting or Transliterating, and holds a nationally recognized certification in good standing, CI and CT or NIC, can be exempted from the requirement of retesting for the mode they do not have a level V in. The exemption is only valid providing the interpreter satisfies the annual ICRC CEUs by due date, the annual renewal fee by due date, and provides a current copy of their national certification card. If any of the stated requirements are not satisfied, the exemption is voided, and the interpreter will be required to take QAST to meet the V/V certification requirements.

(b) **Continuing education requirements.** QAST certified interpreters are required to satisfy one (10 hours) Continuing Education Unit (CEU) annually, with .1 (1 hour) of this in the category of Ethics. It is the interpreter's responsibility to ensure all supportive CEU documentation is submitted to the Interpreter Certification Resource Center (ICRC) staff before or on December 31st, to avoid certification becoming invalid. If certification becomes invalid, the individual must ~~re-test~~ apply to test, and will be required to take and pass the written ICRC/QAST test before becoming eligible for the performance portion.

(c) **Certification ~~maintenancere~~ renewal fee.** A certification ~~maintenancere~~ renewal fee and ~~maintenancere~~ renewal form ~~is~~ are due by January 31st each year. The renewal form must be postmarked on or before January 31st to avoid certification becoming suspended.

(d) **Certification suspension and reinstatement.** If the certification ~~maintenancere~~ renewal fee and renewal form are submitted after January 31st, the interpreter will become suspended, but has an option to make application for reinstatement. The reinstatement application, a \$100 reinstatement fee and payment of the annual certification ~~maintenancere~~ renewal fee will be required for reinstatement. The reinstatement fee and certification ~~maintenancere~~ renewal fee are due before or on February 28th to avoid certification becoming invalid. If certification becomes invalid, the individual must ~~re-test~~ apply to test, and will be required to take and pass the written

ICRC/QAST test before becoming eligible for the performance portion.

(e) **Expiration of certification.** If an interpreter does not submit an application for ~~re-testing~~testing 90 days prior to the level(s) expiration date, the interpreter's level(s) will be considered invalid on the expiration date. If level(s) become invalid, the individual must ~~re-test~~apply to test, and will be required ~~to~~must take and pass the ICRC/QAST written test before becoming eligible for the performance portion. If an interpreter's certification becomes invalid twice in a four (4) year period due to non-compliance with either, the CEU or ~~maintenance~~annual renewal fee requirements, the interpreter will not be allowed to take the written portion or the performance portion of the ICRC/QAST test until one (1) year from the date of the second documented non-compliance.

(f) **Modification of requirements.** Requirements for certification renewal of any level may be changed or modified by future amendments to this section or the rules of this subchapter.

612:10-13-22. Grievance procedures

(a) Individuals who are dissatisfied with certification testing procedures or performance of a certified interpreter may file a written complaint with the designated Oklahoma interpreter certification program official, Department of Rehabilitation Services, within thirty (30) days of the grieved incident.

(b) The Department will accept jurisdiction only for those incidents directly related to the evaluation and certification of interpreters for the deaf in Oklahoma and those incidents involving the performance of State Certified Interpreters that allege a specific violation of interpreting standards or ethical behavior.

(c) A complaint must be in writing and must provide:

- (1) The date of the incident;
- (2) The names(s) of the person(s) involved;
- (3) The location of the incident;
- (4) A description of the specific action or actions in question; and
- (5) The specific policy or procedure or the NAD-RID Code of Professional Conduct ethical tenet(s) and/or the ICRC Certification of Levels, and/or governing State or Federal law in possible violation.

(d) Upon receipt of a properly executed complaint, the Department will review the complaint and within thirty (30) days notify the parties that a complaint has been filed. The respondent will have thirty (30) days from the date they receive the grievance notification to respond in written form.

(e) Upon the receipt of a written response, the designated Oklahoma interpreter certification program official and Department will review the information presented and make an initial decision regarding the merit of the complaint based on facts presented. The designated Oklahoma interpreter certification program official has thirty (30) days from the submission of the grievance to provide a decision. All parties concerned will be notified of the decision in writing. If there has not been sufficient information provided, from either party, the Oklahoma Interpreter Certification program official can request more information, in writing, to make a determination.

(f) The Department can seek the assistance from a merit panel to determine if there is a direct violation against (c) 5.

(1) The function of the merit panel is to assist the Department in determining if there is founded merit to the claimed violation(s) set forth in (c) 5. The names of the parties will be anonymous when presented to the merit panel. The panel can recommend a course of action.

(2) Possible course of action(s) are set forth as defined in 612:10-13-23 in (1) through (8) of that subsection.

(g) If it is determined that no violation of rules related to evaluation and certification or violation of interpreting standards and ethical behavior has occurred, the involved parties will be notified, and the complaint will be dismissed. If the complaint is dismissed, the complainant or respondent may appeal and request a formal hearing. The appeal must be in written form and submitted within thirty (30) days of receiving the notification. The request for formal hearing must be in writing and addressed to the designated Oklahoma interpreter certification program official at the Department of Rehabilitation Services.

[OAR Docket #23-441; filed 6-6-23]

**TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 25. BUSINESS ENTERPRISE PROGRAM**

[OAR Docket #23-442]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
Subchapter 4. The State Licensing Agency
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]

AUTHORITY:

Commission for Rehabilitation Services; 74 O.S. § 166.2

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n/a

Permanent Final Adoptions

GIST/ANALYSIS:

Revisions to Chapter 25 consist of language revisions to comply with Workforce Innovation and Opportunity Act (WIOA).

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 2. GENERAL PROVISIONS

612:25-2-5. Definitions

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

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which govern the duties, supervision, transfer, promotion and financial participation of licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"Annual Evaluation" means an evaluation conducted on a yearly basis of a manager. This evaluation will be performed at the end of each calendar year.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP Operations Coordinator" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or **"Commission"** means the governing body for the State Licensing Agency.

"Business Consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers of the State to which the consultant is assigned.

"Business Enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of ~~Visual Services~~ Visual Services for the Blind and Visually Impaired counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or **"Executive Director"** means the chief administrator of the State Licensing Agency.

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"Federal property" means any building, land or other real property owned, leased, or occupied by any department,

agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed Manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Mail" is a method of distributing information that includes, but is not limited to, the U.S. Postal System, email, fax, or Federal Express.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed

managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Performance Evaluation" means an evaluation conducted to determine if a manager is eligible to apply for a facility or to be awarded a permanent BEP license.

"Permanent BEP License" means a license issued on a permanent basis to a BEP manager who has successfully completed all probationary requirements.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Probationary BEP License" means a license issued to an individual on their first day as manager of an Oklahoma BEP facility.

"Probationary Licensee" means a person who has received a certificate of completion of the Business Enterprise Program training and has not completed their six (6) month probationary period.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business enterprise.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and

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determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise assigned to a licensed manager on a temporary basis.

"Satisfactory site" means an area determined by the BEP Operations Coordinator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included

in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

SUBCHAPTER 4. THE STATE LICENSING AGENCY

PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING

612:25-4-14. Training for new or potential licensed managers

(a) **Overview of Licensed Manager Training.** The Business Enterprise Program (BEP) provides individuals who are blind with training that leads to potential employment as a Licensed Manager of a vending facility or related business in the Business Enterprise Program. The training program includes but is not limited to training in laws and regulations affecting the Business Enterprise Program, state and federal tax reporting, food service operations, sanitation, inventory control, money management, staffing of personnel, safety procedures, business management principles and techniques, and preparation of reports required by the State Licensing Agency. The licensed manager training program will be based on a curriculum developed and periodically reviewed through consultation with appropriate business representatives, trainers, BEP experts, and the Elected Committee of Licensed Managers. Additional training required by the licensed manager trainee to adjust to blindness, learn assistive technology skills or improve the trainee's opportunity to succeed as a licensed manager may be arranged through coordination with the DRS Division of Visual Services and DRS Division of Vocational Rehabilitation.

(b) **Application process.** Applications for BEP training shall include the following information which shall be obtained from the individual's counselor:

- (1) current eye examination, documenting blindness;
- (2) documentation for United States citizenship;
- (3) documentation the client is at least 18 years of age; and
- (4) completion of any rehabilitation training prerequisites established by the BEP in consultation with the ECM to better optimize the successful employment outcome;

(c) **Acceptance for training.** Applicant qualifications will be reviewed by BEP staff who will report any training-related recommendations to the individual's ~~DVS/DVR~~DVR/DSBVI counselor and BEP operations coordinator. An individual's application must be approved by the BEP operations coordinator prior to acceptance into the training program.

(d) **Notice regarding criminal background record and Oklahoma sales tax background check.** Before entering

training, BEP applicants will be informed that a criminal background investigation and an Oklahoma sales tax background check will be performed and may prevent their being licensed to manage some BEP facilities.

(e) **Duration of training.** To be eligible for licensure as a BEP facility manager an individual must complete the full BEP manager training program, unless the BEP operations coordinator, in consultation with the Chair of the Elected Committee of Licensed Managers, determines an exception is justifiable.

(f) **Completion of training.** Each trainee who completes the BEP manager training program is issued a certificate certifying that the trainee has met all the training criteria to be a licensed manager in the Business Enterprise Program. Upon assuming management of their first facility, a certified graduate shall be issued a BEP license.

(g) **Failure to complete training.** If it appears that a trainee will not be able to successfully complete training, the BEP operations coordinator, in consultation with the ECM Chair, will review the individual's training record before making a decision to terminate training. The BEP operations coordinator will notify the trainee and their DVS-DSBVI or DVR counselor of any BEP decision to terminate training.

(h) **Post-training interview.** Upon completion of a new manager's training, they will be interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments regarding the training program and provides them to the BEP Operations Coordinator.

(i) **Acceptance of out-of-state licenses.** The BEP Operations Coordinator will evaluate the skills and knowledge of BEP applicants who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. After qualifications are met, the applicant is issued a training completion certificate.

(j) **Seniority.** Seniority in the Oklahoma Business Enterprise Program will only accrue when managing an Oklahoma BEP facility.

(k) **Licensed Manager Benefits.** Benefits such as insurance will begin the same date the Licensed Manager signed the manager's agreement.

[OAR Docket #23-442; filed 6-6-23]

**TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 11. OKLAHOMA UNIFORM
SECURITIES ACT OF 2004**

[OAR Docket #23-464]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Broker-Dealers and Agents
Part 1. General Provisions
660:11-5-2. Definitions [AMENDED]
Part 3. Licensing Procedures
660:11-5-15. Categories of registration [REVOKED]

660:11-5-16. ~~Qualification examination~~ Examination requirements for agents and for principals of non-FINRA member broker-dealers [AMENDED]

Part 7. Record Keeping and Ethical Standards
660:11-5-42. ~~Standards of ethical practices for practices~~ Dishonest and unethical practices of broker-dealers and their agents [AMENDED]

Subchapter 7. Investment Advisers and Investment Adviser Representatives

Part 3. Licensing Procedures
660:11-7-13. ~~Qualification examination~~ Examination requirements for investment adviser representatives [AMENDED]

Part 7. Record Keeping and Ethical Standards
660:11-7-41. Record keeping requirements [AMENDED]
660:11-7-42. ~~Standards of ethical practices~~ Dishonest and unethical practices of investment advisers and investment adviser representatives [AMENDED]

660:11-7-44. Financial statements for investment advisers [AMENDED]
660:11-7-47. Payments for client solicitations [AMENDED]

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Administrator, Oklahoma Department of Securities; 71 O.S. §§1-605, 1-608

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GIST/ANALYSIS:

The proposed rule amendments and revocation clarify definitions and conform them to federal law for uniformity, remove a rule made unnecessary by amendments to another rule, clarify examination requirements for agents and investment adviser representatives and conform them to changes in federal law, conform broker-dealer and investment adviser regulations relating to dishonest and unethical practices to model rules and federal law, clarify that investment advisers must maintain and produce at the Department's request documentation supporting their financial statements, clarify that changes in federal law relating to advertising are in part, but not wholly, applicable to state-registered investment advisers and investment adviser representatives, correct statutory cites and terminology, and clarify existing law and changing regulatory procedures.

CONTACT PERSON:

Gerri Kavanaugh, General Counsel, Oklahoma Department of Securities, (405) 280-7721

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2023:

SUBCHAPTER 5. BROKER-DEALERS AND AGENTS

Permanent Final Adoptions

PART 1. GENERAL PROVISIONS

660:11-5-2. Definitions

In addition to the terms defined in 660:11-1-3, the following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise or the words or terms are defined in another Section:

~~"Branch office" means any business location of a broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer, excluding any location identified solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.~~

"Branch office" means any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

(A) Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) Any location that is the associated person's primary residence; provided that:

(i) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(ii) The location is not held out to the public as an office and the associated person does not meet with customers at the location;

(iii) Neither customer funds nor securities are handled at that location;

(iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

(v) The associated person's correspondence and communications with the public are subject to the firm's supervision;

(vi) Electronic communications (e.g., e-mail) are made through the member's electronic system;

(vii) All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

(viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

(ix) A list of the residence locations is maintained by the member;

(C) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the

member complies with the provisions of subparagraphs (B)(a) through (h) above;

(D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(E) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

(F) The floor of a registered national securities exchange where a member conducts a direct access business with public customers; or

(G) A temporary location established in response to the implementation of a business continuity plan.

"Complaint" means and includes any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

"Completion of the transaction" means:

(A) In the case of a customer who purchases a security through or from a broker-dealer, except as provided in (B), the time when such customer pays the broker-dealer any part of the purchase price, or, if payment is effected by bookkeeping entry, the time when such bookkeeping entry is made by the broker-dealer for any part of the purchase price;

(B) In the case of a customer who purchases a security through or from a broker-dealer and who makes payments therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker-dealer delivers the security to or into the account of such customer;

(C) In the case of a customer who sells a security through or to a broker-dealer, except as provided in (D), if any security is not in the custody of the broker-dealer at the time of sale, the time when the security is delivered to the broker-dealer, and if the security is in the custody of the broker-dealer at the time of sale, the time when the broker-dealer transfers the security from the account of such customer;

(D) In the case of a customer who sells a security through or to a broker-dealer and who delivers such security to such broker-dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker-dealer makes payment to or into the account of such customer.

"Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person is presumed to control a company that:

(A) is a director, general partner or officer exercising executive responsibility or having similar status or functions;

(B) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or

(C) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital.

"Customer" means any person who, in the regular course of a broker-dealer's business, has cash or securities in the possession of such broker-dealer. "Customer" shall not include a broker-dealer.

"Direct participation programs" mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof; excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans Section 408 of that code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the 1940 Act.

"Independent investment adviser" means an investment adviser that is not controlled by, does not control, and is not under common control with a broker-dealer.

"Investment company and variable contracts products" means:

(A) redeemable securities of companies registered pursuant to the 1940 Act;

(B) securities of closed-end companies registered pursuant to the 1940 Act during the period of original distribution only; and

(C) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the 1933 Act.

"Issuer agent" means an agent whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer or issuers as that term is defined in Section 1-102.19 of the Securities Act.

"Municipal securities" mean securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a state or any political subdivision thereof, or any agency or instrumentality of a state or any political subdivision thereof, or any municipal corporate instrumentality of one of more states, or any security which is an industrial development bond as defined in Section 3(a)(29) of the 1934 Act.

"Nonbranch sales office" means any business location of the broker-dealer identified to the public or customers by any means as a location at which a securities business is conducted on behalf of the broker-dealer which location is identified

solely in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the office of the broker-dealer responsible for supervising the activities of the identified location.

"Office" means any location where a broker-dealer and/or one or more of its agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale, of any security.

"Option" means any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the 1933 Act, as amended, but shall not include any tender offer, registered warrant, right, convertible security or any other option in respect to which the writer is the issuer of the security which may be purchased or sold upon the exercise of the option.

"OSJ" or "Office of supervisory jurisdiction" means any office designated as directly responsible for the review of the activities of registered agents or associated persons in such office and/or in other offices of the broker-dealer. An office of supervisory jurisdiction would be any business location of a broker-dealer at which one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the broker-dealer;

(E) review and endorsement of customer orders pursuant to 660:11-5-42;

(F) final approval of advertising or sales literature for use by agents of the broker-dealer;

(G) responsibility for supervising the activities of persons associated with the broker-dealer at one or more other offices of the broker-dealer.

"Principal" means:

(A) any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer, or any other person who has been delegated supervisory responsibility for the firm or its associated persons; or

(B) any person associated with a non-FINRA applicant for registration as a broker-dealer who is or will be actively engaged in the management of the applicant's securities business, including supervision, solicitation, conduct of business or training of persons associated with an applicant for any of these functions, and is designated as a principal by the broker-dealer applicant.

"Public offering price" shall mean the price at which the security involved was offered to the public as set forth in the prospectus of the issuing company.

"Selling group" means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through

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members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may individually or collectively elect to do so.

"**Selling syndicate**" means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by others or sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon the participants in such syndicate to purchase any of such securities.

"**Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program**" means the document entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the CRD.

PART 3. LICENSING PROCEDURES

660:11-5-15. Categories of registration [REVOKED]

~~(a) **Broker-dealers.** The Administrator may register broker-dealers in accordance with the following categories:~~

~~(1) **General securities**—an applicant whose activities in the securities business are not limited.~~

~~(2) **Investment company and variable contracts products**—an applicant whose activities in the securities business are limited to the solicitation, purchase and/or sale of investment company and variable contracts products.~~

~~(3) **Direct participation programs**—an applicant whose activities in the securities business are limited solely to marketing, on behalf of the issuer, direct participation programs.~~

~~(4) **Options**—an applicant whose activities in the securities business include transactions in put or call options with the public.~~

~~(5) **Municipal securities**—an applicant whose activities in the securities business are limited solely to effecting transactions in municipal securities.~~

~~(6) **Multiple categories**—an applicant may be registered in more than one category if qualified to be so registered.~~

~~(b) **Broker-dealer agents.** The Administrator may register broker-dealer agents in accordance with the categories of registration of the broker-dealer with whom they are associated. An agent may be registered in more than one category provided the agent is qualified to be so registered. An agent qualified solely within one category of registration shall not be qualified to transact business as an agent in any are not prescribed by said category.~~

~~(c) **Issuer agents.** The Administrator may register an applicant whose activities in the securities business are limited solely to effecting transactions for the benefit of an issuer as that term is defined in Section 1-102.19 of the Securities Act.~~

660:11-5-16. Qualification examination Examination requirements for agents and for principals of non-FINRA member broker-dealers

(a) **Examination requirement.** Proof of compliance with the examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examination.** Each applicant for registration as a broker-dealer agent, ~~or issuer agent, or principal of a non-FINRA member broker-dealer~~ must shall, unless covered by subsection (g), have passed within four (4) years of the date of application the Securities Industry Essentials examination (SIE) and within two (2) years of the date of application the other applicable examinations for the desired category of registration as set forth in subsection (d) or (e). The examinations shall consist of a qualification examination(s) applicable to the category of registration applied for and a uniform state law examination. The Administrator adopts the examinations administered by FINRA as applicable to each individual registrant by category of registration as the required examinations.

~~(c) **Limitations on licenses.** Without regard to the category of registration of one's broker-dealer, if any, the~~ The activities of each person registered as an agent are limited to the corresponding category for which they are qualified by examination, unless waived, and for which they are registered under the Securities Act.

(d) **Examination categories.** Examination categories for agents are as follows

(1) General securities or government securities - FINRA Members: - ~~Securities Industry Essentials (SIE)~~ SIE; Series 7; and Series 63 or 66

(2) General securities - Non-FINRA Members/Issuers - SIE; Series 7; and Series 63 or 66

(3) Investment company and variable contract products - SIE; Series 6; and Series 63 or 66

(4) Direct participation programs - SIE; Series 22; and Series 63 or 66

(5) Municipal securities - Series 7; Series 52; and Series 63 or 66

(6) Investment banking representative - SIE; Series 79; and Series 63 or 66

(7) Securities Trader - SIE; Series 57; and Series 63 or 66

(8) Limited Representative - Private Securities Offerings - SIE; Series 82; and Series 63 or 66

(9) Research Analyst - SIE; Series 86; Series 87; and Series 63 or 66

(10) Operations Professional - SIE; Series 99; and Series 63 or 66

(e) **Examination categories for principals of non-FINRA member broker-dealers.** Examination categories for principals of non-FINRA member broker-dealers are as follows - Series 7; Series 24; and Series 63 or 66

(ef) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(fg) **Validity of prior examination scores.**

~~(1) The Department will not recognize for purposes of qualification for registration under the Securities Act any FINRA examination score (other than the SIE) that pre-dates an initial application for registration by more than two (2) years in the absence of registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative since examination.~~

~~(2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) (other than the SIE) of any person whose most recent registration as an agent, principal, broker-dealer, investment adviser or investment adviser representative has been terminated for a period of two (2) or more years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.~~

~~(3) With respect to the SIE, the time period for validity is four (4) years.~~

(1) Any individual who has been registered as an agent in any state within two years from the date of filing an application for registration shall not be required to retake the required examinations to be eligible for registration.

(2) Any individual who has not been registered as an agent in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall be deemed in compliance with the examination requirements for the FINRA qualifying examination; provided, however, that participation in the FINRA Maintaining Qualifications Program shall not extend the Series 63 or Series 66 for purposes of agent registration.

(3) Successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 63, Series 65, or Series 66 for purposes of investment adviser representative registration.

(g) **Waiver of examination requirement.** The Administrator may waive the examination requirements on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons/justifications therefor.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-5-42. ~~Standards of ethical~~Dishonest and unethical practices ~~for~~of broker-dealers and their agents

(a) **Purpose.** This rule/Section is intended to set forth the standards of ethical practices for broker-dealers and their agents. Any noncompliance with the standards of ethical practices specified in this section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not

intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of broker-dealers, and their agents, in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.**

(1) A broker-dealer and its agents, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. A broker-dealer and its agents shall not violate any federal securities statute or rule or any rule of a national securities exchange or national securities association of which it is a member with respect to any customer, transaction or business effected in this state.

(2) Recommendations

(A) A broker-dealer and its agents shall have reasonable grounds for believing that a recommended transaction or investment strategy involving a security or securities is suitable for such customer based upon the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the customer or known to the broker-dealer or agent.

(B) A broker-dealer and its agents fulfill the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if (i) the broker-dealer or agent has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (ii) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the broker-dealer or agent's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(3) Charges, if any, for services performed, including miscellaneous services such as collection of monies due for principal, dividends, or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

(4) In "over-the-counter" transactions, whether in "listed" or "unlisted" securities, if any broker-dealer or agent of a broker-dealer buys for their own account from their customer, or sells for their own account to their customer, they shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and

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the fact that they are entitled to a profit; and if they act as agent for their customer in any such transaction, they shall not charge their customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service they may have rendered by reason of their experience in and knowledge of such security and the market therefor.

(5) No broker-dealer or agent of a broker-dealer shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security. If nominal quotations are used or given, they shall be clearly stated or indicated to be only nominal quotations.

(6) No broker-dealer or agent of a broker-dealer shall make an offer to buy from or sell to any person any security at a stated price unless such broker-dealer or agent is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

(7) A broker-dealer, when a member of a selling syndicate or a selling group, shall purchase securities taken in trade at a fair market price at the time of purchase, or shall act as agent in the sale of such securities.

(8) A broker-dealer who in the capacity of paying agent, transfer agent, trustee, or any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

(9) No broker-dealer or agent of a broker-dealer shall, directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security, provided that this rule shall not be construed to apply to matter which is clearly distinguishable as paid advertising.

(10) A broker-dealer at or before the completion of each transaction with a customer shall give or send to each customer written notification disclosing:

(A) whether such broker-dealer is acting as a broker for such customer and some other person; and

(B) in any case in which such broker-dealer is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date

and the time when such transaction took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by such broker-dealer in connection with the transaction.

(11) A broker-dealer or agent of a broker-dealer controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(12) A broker-dealer or agent of a broker-dealer who is acting as a broker for a customer or for both such customer and some other person, or a broker-dealer who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such broker-dealer is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

(13) The following standards shall apply to discretionary accounts:

(A) No broker-dealer or agent of a broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources of such customer and character of such account.

(B) No broker-dealer or agent of a broker-dealer shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer, or manager duly designated by the broker-dealer, in accordance with (22) of this subsection.

(C) The broker-dealer or the person duly designated shall approve promptly, in writing, each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources of the customer and the character of the account.

(D) This section shall not apply to:

(i) discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer

granted such discretions, absent a specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretions exercised in an institutional account, as defined in 660:11-1-3, pursuant to valid Good-Till-Cancelled instructions issued on a "not-held" basis. Any exercise of time and price discretion must be reflected on the order ticket;

(ii) bulk exchange at net asset value of money market mutual funds ("funds") utilizing negative response letters provided:

(I) The bulk exchange is limited to situations involving mergers and acquisitions of funds, changes of clearing members, and exchanges of funds used in sweep accounts;

(II) The negative response letter contains a tabular comparison of the nature and amount of the fees ~~charged~~ ~~charged~~ by each fund;

(III) The negative response letter contains a comparative description of the investment objectives of each fund and a prospectus of the fund to be purchased; and;

(IV) The negative response feature will not be activated until at least 30 days after the date on which the letter was mailed.

(14) A broker-dealer or agent of a broker-dealer who is participating or who is otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange, shall make no representation that such security is being offered to a customer "at the market" or at a price related to the market price unless such broker-dealer or agent knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such broker-dealer or agent, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer or agent.

(15) No broker-dealer or agent of a broker-dealer shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device, practice, plan, program, design, or contrivance.

(16) The following standards shall apply to the use of customer funds:

(A) No broker-dealer or person associated with a broker-dealer shall make improper use of a customer's securities or funds.

(B) No broker-dealer or agent of a broker-dealer shall lend, either to themselves or to others, securities carried for the account of any customer, unless such broker-dealer or agent shall first have obtained from the customer a separate written authorization permitting the lending of securities thus carried by such broker-dealer or agent; and, regardless of any agreement between the broker-dealer or agent and

a customer authorizing the former to lend or pledge such securities, no broker-dealer or agent shall lend or pledge more of such securities than is fair and reasonable in view of the indebtedness of the customer, except such lending as may be specifically authorized under (C) of this paragraph.

(C) No broker-dealer or agent of a broker-dealer shall lend securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be loaned in view of the indebtedness of the customer, unless such broker-dealer or agent shall first have obtained from such customer a separate written authorization designating the particular securities to be loaned.

(D) No broker-dealer or agent of a broker-dealer shall hold securities carried for the account of any customer which have been fully paid for or which are in excess of the amount which may be pledged in view of the indebtedness of the customer, unless such securities are segregated and identified by a method which clearly indicates the interest of such customer in those securities.

(E) No broker-dealer or agent of a broker-dealer shall guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer or agent with or for such customer.

(F) No broker-dealer or agent of a broker-dealer shall share directly or indirectly in the profits or losses in any account of a customer carried by the broker-dealer or agent or any other broker-dealer or agent, unless such broker-dealer or agent obtains written authorization from the broker-dealer carrying the account; and, a broker-dealer or agent shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the broker-dealer or agent. Exempt from the direct proportionate share limitation are accounts of the immediate family of such broker-dealer or agent. For purposes of this section, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the broker-dealer or agent otherwise contributes directly or indirectly.

(17) The following standards shall apply to customer credit:

(A) No broker-dealer or agent of a broker-dealer shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer or for the sale of any security to the customer where payment for the security is to be made to the broker-dealer by the customer over a period of time in installments or by a series of partial payments, unless:

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- (i) in the event such broker-dealer acts as an agent or broker in such transaction, it shall immediately, in the regular course of its business, make an actual purchase of the security for the account of the customer, and shall immediately, in the regular course of its business, take possession or control of such security and shall maintain possession or control thereof so long as it remains under obligation to delivery of the security to the customer;
 - (ii) in the event such broker-dealer acts as a principal in any such transaction, it shall, at the time of such transaction own such security and shall maintain possession or control thereof so long as it remains under obligation to deliver the security to the customer; and
 - (iii) the provisions of Regulation T of the Federal Reserve Board, if applicable to such broker-dealer, are satisfied.
- (B) No broker-dealer, whether acting as a principal or agent, shall, in connection with any transaction referred to in this Standard, make any agreement with its customer under which such broker-dealer shall be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such broker-dealer.
- (18) The following standards shall apply to books and records:
- (A) Each broker-dealer shall keep and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.
 - (B) Each broker-dealer shall keep and preserve in each office of supervisory jurisdiction, as defined in 660:11-5-2, either a separate file of all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and clear reference to the files containing the correspondence connected with such complaints as maintained in such office.
- (19) A broker-dealer shall make available to inspection by any bona fide regular customer, upon request, the information relative to such broker-dealer's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such broker-dealer's usual practice or as required by the state or federal securities laws, or any rule or regulation promulgated thereunder.
- (20) No broker-dealer or agent of a broker-dealer shall offer any security or confirm any purchase or sale of any security, from or to any person not actually engaged in the investment banking or securities business at any price which shows a concession, discount, or other allowance, but shall offer such security and confirm such purchase or sale at a net dollar or basis price.
- (21) Selling concessions, discounts, or other allowances, as such, shall be allowed only as consideration for services

rendered in distribution and in no event shall be allowed to anyone other than a broker-dealer registered under the Securities Act actually engaged in the investment banking or securities business; provided however, that nothing in this standard shall prevent any broker-dealer from selling any security owned by him to any person at any net price which may be fixed by him unless prevented therefrom by agreement.

(22) The following standards shall apply to supervisory procedures:

(A) Each broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each registered agent and associated person to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated by the Administrator and/or the Commission under the Securities Act.

(B) Final responsibility for proper supervision shall rest with the broker-dealer, the principal(s) of the broker-dealer registered in accordance with 660:11-5-11, and the principal(s) of the broker-dealer in each OSJ, including the main office, and the registered representatives in each non-OSJ branch office designated by the broker-dealer to carry out the supervisory responsibilities assigned to that office by the broker-dealer pursuant to the rules and regulations of FINRA. A copy of the written supervisory procedures shall be kept in each office of supervisory jurisdiction and each non-OSJ branch office.

(C) Each broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out such broker-dealer's supervisory procedures. Each broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its registered agents pertaining to the solicitation or execution of any securities transaction.

(D) Each broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and conduct at least an annual inspection of each office of supervisory jurisdiction.

(E) Each broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration under the Securities Act.

(23) The following standards shall apply to financial information:

(A) Each broker-dealer offering or selling securities not listed on a registered national securities exchange recognized by the Administrator shall have and furnish to customers, on request, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, prepared in accordance with generally

accepted accounting principles, the names of the issuer's proprietors, partners or officers, the nature of the enterprise of the issuer and any other available information reasonably necessary for evaluating the desirability or the lack of desirability of investing in the securities of the issuer.

(B) Each broker-dealer who, in computation of net capital includes securities not listed on a registered national securities exchange recognized by the Administrator shall also have the information provided for in (A) of this paragraph available and shall, upon request, furnish same to the Department.

(C) All transactions in such securities described in (A) and (B) of this paragraph shall comply with the provisions of Section 1-301 of the Securities Act.

(D) The provisions of (A) of this paragraph shall not be required in unsolicited transactions, except when numerous unsolicited transactions in a particular security are occurring, it shall be the duty and responsibility of the broker-dealer to make reasonable effort to secure and provide to customers upon their written request the information required by the provisions of (A) of this paragraph. Nothing contained in this Section shall be construed to limit the powers of the Administrator under Section 1-204 of the Securities Act.

(24) The following standards shall apply when a broker-dealer shares an office with an independent investment adviser that has an investment adviser representative who regularly conducts business in the office and is not registered as an agent of the broker-dealer.

(A) The broker-dealer and the independent investment adviser shall reduce any agreement between them to writing.

(B) The broker-dealer shall take appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship between the broker-dealer and the independent investment adviser when one does not otherwise exist.

(C) The broker-dealer shall comply with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from disclosure to the independent investment adviser and investment adviser representative.

(25) No broker-dealer or agent shall engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(26) No broker-dealer or agent shall execute a transaction on behalf of a customer without authorization to do so.

(27) No broker-dealer or agent shall enter any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(28) No broker-dealer or agent shall enter into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(29) No broker-dealer or agent shall fail to furnish to a customer purchasing securities in an offering, no later than the due date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(30) No broker-dealer or agent shall use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure.

(31) No broker-dealer or agent shall fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.

(32) No broker-dealer or agent shall fail or refuse to furnish a customer, upon reasonable request, information to the which the customer is entitled, or to respond to a formal written request or complaint.

(33) No broker-dealer or agent shall execute securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(34) No broker-dealer or agent shall establish or maintain an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(35) No broker-dealer or agent shall divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(36) No broker dealer or agent shall fail to pay and fully satisfy any final judgment or arbitration award, resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement.

(37) No broker-dealer or agent shall attempt to avoid payment of any final judgment or arbitration award resulting from an investment-related, customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the customer and the broker-dealer or broker-dealer agent, in writing, and the

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broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements.

(38) No broker-dealer or agent shall fail to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or agent by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

SUBCHAPTER 7. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

PART 3. LICENSING PROCEDURES

660:11-7-13. Qualification examination requirements for investment adviser representatives

(a) **Examination requirement.** Proof of compliance with the written examination requirements of this Section is prerequisite to a complete filing for registration under the Securities Act.

(b) **Examinations.** ~~Any natural person seeking registration as an investment adviser or investment adviser representative must pass the Series 65 or the Securities Industry Essentials (SIE) examination, Series 66, and Series 7. The Administrator adopts the examinations as administered by FINRA as the required examinations.~~ Every natural person seeking registration as an investment adviser or investment adviser representative shall, unless covered by subsection (c) or (e) or otherwise waived by the Administrator, have passed:

(1) the Series 65/Uniform Investment Adviser Law Examination (Series 65) within two years of the date of application; or

(2) the Series 66/Uniform Combined State Law Examination (Series 66) and the FINRA Series 7/General Securities Representative Examination within two years of the date of application, and

(3) the Securities Industry Essential Examination within four years of the date of application.

(c) **Designations acceptable in lieu of examinations.** Compliance with the examination requirements is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(1) Certified Financial Planner ("CFP") awarded by the Certified Financial Planners Board of Standards;

(2) Chartered Financial Consultant ("ChFC") or Masters of Science and Financial Services ("MSFS") awarded by the American College, Bryn Mawr, Pennsylvania;

(3) Chartered Financial Analyst ("CFA") awarded by the Institute of Chartered Financial Analysts;

(4) Personal Financial Specialist ("PFS") awarded by the American Institute of Certified Public Accountants;

(5) Chartered Investment Counselor ("CIC") awarded by the Investment Adviser Association; or

(6) Any further certificates or credentials that are placed on the NASAA 65 Equivalency List, as maintained and updated by NASAA and the NASAA Exams Advisory Committee.

(ed) **Change in series number.** Should FINRA examination series numbers change, the most current examination series applicable to the category of registration shall apply.

(de) **Validity of prior examination scores.**

~~(1) The Department will not recognize for purposes of qualification for registration under the Securities Act any FINRA examination score(s) that predates an initial application for registration by more than two (2) years in the absence of registration as an investment adviser representative, an investment adviser, agent, principal or broker dealer since examination.~~

~~(2) The Department will not recognize for purposes of qualification for registration under the Securities Act the examination score(s) of any person whose most recent registration as an investment adviser, investment adviser representative, agent, principal or broker dealer has been terminated for a period of two (2) years immediately preceding the date of receipt by the Department of a new application for registration under the Securities Act.~~

(1) Any individual who has been registered as an investment adviser representative in any state within two years from the date of filing an application for registration shall not be required to retake the examinations to be eligible for registration.

(2) Any individual who is not registered as an investment adviser representative in any state for more than two years but less than five years, who has elected to participate in the FINRA Maintaining Qualifications Program pursuant to FINRA Rule 1240(c), and whose appropriate FINRA qualifying examinations remain valid pursuant to effective participation in the FINRA Maintaining Qualifications Program shall not have to retake the appropriate FINRA qualifying examinations to comply with the examination requirements of subsection (b)(1); provided, however, that successful participation in the FINRA Maintaining Qualifications Program shall not extend the Series 65 or the Series 66 for purposes of investment adviser representative registration.

(ef) **Waiver of examination requirement.** The Administrator may waive the examination requirement on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the ~~reasons~~justifications therefor.

PART 7. RECORD KEEPING AND ETHICAL STANDARDS

660:11-7-41. Record keeping requirements

(a) **General requirements.** Every investment adviser registered or required to be registered under the Securities Act shall make and keep true, accurate and current the following books and records:

- (1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts. In no event shall the general ledger be posted less than once a month.
- (3) A record of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The record shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.
- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.
- (6) All trial balances, financial statements prepared in accordance with generally accepted accounting principles with documentation to support the ownership of assets, and internal audit working papers relating to the business of such investment adviser. The trial balance shall be prepared no later than fifteen (15) business days after the end of the accounting period. The financial statements shall include a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation.
- (7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to the business of the investment adviser, including, but not limited to:
 - (A) any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) any receipt, disbursement or delivery of funds or securities, or
 - (C) the placing or execution of any order to purchase or sell any security; provided, however:
 - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to 2 or more persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.
- (8) A list or other record identifying all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.
- (9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.
- (10) A copy of all agreements entered into by the investment adviser with any client and all other agreements relating to the business of the investment adviser as such, including agreements which set forth the fees to be charged, the manner of computation and method of payment.
- (11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to 2 or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including any communication by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.
- (12) When providing investment advice is the primary business of the investment adviser:
 - (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in (B) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment adviser nor the advisory representative of the investment adviser has any direct or indirect influence or control, and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded no later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

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(B) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(13) When providing investment advice is not the primary business of the investment adviser:

(A) Notwithstanding the provisions of (12) of this subsection, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as defined in (C) of this paragraph) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

(B) Each record required by (A) of this paragraph shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be

recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(C) For purposes of this paragraph, the following definitions will apply:

(i) The term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

(I) any person in a control relationship to the investment adviser,

(II) any affiliated person of a controlling person, and

(III) any affiliated person of an affiliated person.

(ii) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(iii) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than 50% of:

(I) its total sales and revenues, and

(II) its income (or loss) before income taxes and extraordinary items

(14) A copy of each brochure and brochure supplement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Section 1-410.F of the Securities Act, and a record of the dates that each brochure and brochure supplement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(B) a signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgement, and solicitor disclosure statement will be considered to be in compliance with this paragraph if such documents are in compliance with Rule 275.206(4)-3 of the Advisers Act of 1940.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Recommendations.

(A) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(B) A record evidencing that the account record of each client consisting of the information described in (A) of this paragraph has been furnished by the investment adviser to the client within thirty days of the signing of an investment advisory contract, and thereafter at intervals no greater than thirty-six months. The account record shall include or be accompanied by prominent statements that the client should mark any corrections and return the account record to the adviser and that the client should notify the advisor of any changes to information contained in the account record as they occur in the future.

(19) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(20) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(21) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks drawn by clients and made payable to third parties within three business days of receipt, the adviser shall keep a ledger or other listing of all securities or funds held or obtained including the following information:

- (A) issuer;
- (B) type of security and series;
- (C) date of issue;
- (D) for debt instruments, the denomination, interest rate and maturity date;
- (E) certificate number, including alphabetical prefix or suffix;
- (F) name in which registered;
- (G) date received by the adviser;
- (H) date sent to client or sender;
- (I) form of delivery to client or sender, or copy of the form of delivery to client or sender; and
- (J) mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(22) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody in (c)(2) of 660:11-7-48, the adviser shall keep the following records:

- (A) a record showing the issuer or current transfer agent's name, address, phone number and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and
- (B) a copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(23) A copy of the investment adviser's written policies and procedures required by 660:11-7-46. In addition to the investment adviser's recordkeeping requirements under subsections (e) and (g) of this Section, the investment adviser shall maintain:

- (A) A current copy of these policies and procedures either in hard copy in a separate location or stored on electronic storage media that is separate from and not dependent on access to the investment adviser's computers or a network;
- (B) All records documenting the investment adviser's compliance with 660:11-7-46, including, but not limited to, evidence of the annual review of the policies and procedures; and

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- (C) A record of any violation of 660:11-7-46 and of any action taken as a result of the violation.
- (24) Copies of the brochures required by 660:11-7-43 including a list of all clients or prospective clients to whom the brochures were provided and the date the brochures were provided.
- (b) **Special requirements due to type of custody.**
- (1) **Custody as defined in 660:11-7-48.** If an investment adviser has custody, as that term is defined in 660:11-7-48, the records required to be made and kept under (a) of this Section shall include:
- (A) a copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.
- (B) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.
- (C) a separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.
- (D) copies of confirmations of all transactions effected by or for the account of any client.
- (E) a record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.
- (F) a copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.
- (G) if applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.
- (H) a record of any finding by the independent certified public accountant of any material discrepancies found during the examination.
- (I) if applicable, evidence of the client's designation of an independent representative.
- (2) **Adviser to pooled investment vehicle.** If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:
- (A) true, accurate and current account statements;
- (B) When the exception set forth in (c)(4) of 660:11-7-48 applies, the records required to be made and kept shall include:
- (i) the date(s) of the audit;
- (ii) a copy of the audited financial statements; and
- (iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.
- (C) When the description set forth in (b)(5) of 660:11-7-48 applies to an investment adviser, the investment adviser is required to make and keep records to include:
- (i) a copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.
- (ii) copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.
- (c) **Managed accounts.** Every investment adviser subject to (b) of this Section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:
- (1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.
- (2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each security held by the client, and the current amount or interest of the client.
- (d) **Client identity.** Any books or records required by this Section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.
- (e) **Records retention.** Every investment adviser subject to (a) of this Section shall preserve the following records in the manner prescribed:
- (1) All books and records required to be made under the provisions of (a) to (c), inclusive, of this Section (except for books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.
- (2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.
- (3) Books and records required to be made under the provisions of (a)(11) and (a)(16) of this Section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the

end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(4) Notwithstanding other record preservation requirements of this Section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) records required to be preserved under (a)(3), (a)(7)-(10), (a)(14)-(15), (a)(17)-(19), ~~(a)(24)-(25)~~(a)(23)-(24), (b) and (c) inclusive, of this Section, and (B) the records or copies required under the provision of(a)(11) and (a)(16) of this Section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the applicable period described in this Subsection.

(f) **Ceasing business.** An investment adviser subject to (a) of this Section, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Section for the remainder of the period specified in this Section, and shall notify the Administrator in writing of the exact address where the books and records will be maintained during the period.

(g) **Format and storage of records.**

(1) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved as the records are kept in their regular form for the required time, by an investment adviser on:

- (A) paper or hard copy form; or
- (B) micrographic media, including microfilm, microfiche, or any similar medium; or
- (C) electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

- (A) arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;
- (B) provide promptly any of the following that the Administrator or his representatives may request:
 - (i) a legible, true, and complete copy of the record in the medium and format in which it is stored;
 - (ii) a legible, true, and complete printout of the record; and
 - (iii) means to access, view, and print the records; and
- (C) separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

- (A) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;
- (B) to limit access to the records to properly authorized personnel and the Administrator and his representatives; and
- (C) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) **Investment supervisory services.** For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(i) **Compliance with federal law.** Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the 1934 Act, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Section, shall be deemed to be made, kept, maintained and preserved in compliance with this Section.

(j) **Compliance with other state requirements.** Every investment adviser registered or required to be registered under the Securities Act that has its principal place of business in a state other than Oklahoma shall be exempt from the requirements of this section, provided the investment adviser is licensed in the state in which it maintains its principal place of business and is in compliance with that state's books and records requirements.

660:11-7-42. Standards of ethical practices Dishonest and unethical practices of investment advisers and investment adviser representatives

(a) **Purpose.** This Section is intended to set forth the standards of ethical practices for investment advisers and investment adviser representatives. The standards set forth in this Section apply to federal covered investment advisers and investment adviser representatives only to the extent that application is permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). Any non-compliance with the standards set forth in this Section will constitute unethical practices in the securities business as the same is set forth in Section 1-411.D.13 of the Securities Act; however, the following is not intended to be a comprehensive listing of all specific events or conditions that may constitute such unethical practices. The standards shall be interpreted in such manner as will aid in effectuating the policy and provisions of the Securities Act, and so as to require that all practices of investment advisers and investment adviser representatives

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in connection with their activities in this state shall be just, reasonable and not unfairly discriminatory.

(b) **Standards.** Investment advisers and investment adviser representatives shall act in accordance with their fiduciary duty to their clients and shall not engage in dishonest or unethical practices including, although not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment profile.

(A) A client's investment profile includes, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information disclosed by the client or known to the investment adviser or investment adviser representative.

(B) Institutional clients.

(i) An investment adviser or an investment adviser representative fulfills the customer-specific suitability obligation for an institutional account, as defined in 660:11-1-3, if

(I) the investment adviser or investment adviser representative has a reasonable basis to believe that the institutional client is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and

(II) the institutional client affirmatively indicates that it is exercising independent judgment in evaluating the investment adviser or investment adviser representative's recommendations.

(ii) Where an institutional client has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party

without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or investment adviser representative, or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser or investment adviser representative.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, ~~or an investment adviser representative,~~ federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative, or federal covered investment adviser, without disclosing the source. This prohibition does not apply to a situation where the investment adviser, investment adviser representative or federal covered investment adviser uses published research reports or statistical analyses to render advice or where an investment adviser, investment adviser representative or federal covered investment adviser orders such a report in the normal course of providing service.

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(B) Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser, or ~~its~~their employees or affiliated persons.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) ~~Publishing, circulating and distributing any advertisement which does not comply with Reg. A § 275.206(4) 1 under the Advisers Act as effective to May 3, 2021.~~ Publishing, circulating, or distributing any

advertisement which directly or indirectly does any one of the following:

(A) Refers to any testimonial of any kind concerning the investment adviser, investment adviser representative or federal covered investment adviser, or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

(B) Refers to past specific recommendations of the investment adviser, investment adviser representative or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(i) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

(ii) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

(C) Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.

(D) Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

(E) Represents that the [Administrator] has approved any advertisement.

(F) Contains any untrue statement of a material fact, or that is otherwise false or misleading.

(G) For the purposes of this section, the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities.

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(iv) Any other investment advisory service with regard to securities.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the investment adviser's action does not comply with the requirements of ~~Reg. A § 275.206(4) 2 under the Advisers Act as effective to May 3, 2021~~ 660:11-7-48.

(16) Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment adviser or investment adviser representative and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Entering into, extending, or renewing any investment advisory contract, if such contract contains any provision that limits or purports to limit any of the following:

(A) the liability of the investment adviser for conduct or omission arising from the advisory relationship that does not conform to the Securities Act, applicable federal statutes, or common law fiduciary standard of care;

(B) remedies available to the client at law or equity or the jurisdiction or venue where any action shall be filed or heard; or

(C) applicability of the laws of Oklahoma with respect to the construction or interpretation of the provisions of the investment advisory contract.

(18) Failing to adopt, implement, and follow written supervisory procedures that are tailored specifically to their business and that:

(A) address the activities of all its investment adviser representatives and associated persons;

(B) identify who has supervisory responsibilities, including a record of each associated person who has supervisory responsibilities and the date assigned, and procedures for each business line and applicable

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securities laws for which each supervisor is responsible; and

(C) specifically identify the individual to perform a supervisory function; what specifically the supervisor will review; when or how often the review will take place and how the supervisor's review will be documented.

(19) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act or any section thereunder.

(20) Accessing a client's account by using the client's own unique identifying information such as username and password.

(21) Failing to establish, maintain, and enforce required policies and procedures.

(22) Knowingly selling any security to or purchasing any security from a client while acting as principal for its own advisory account, or knowingly effecting any sale or purchase of any security for the account of the client while acting as broker-dealer for a person other than the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(A) The prohibitions of this paragraph (22) shall not apply to any transactions with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(B) The prohibition of this paragraph (22) shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

(i) by means of publicly distributed written materials or publicly made oral statements;

(ii) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(iii) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(iv) any combination of the foregoing services.

(C) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Securities Act.

(D) The prohibition of this paragraph (22) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(i) The advisory client executes a written consent prospectively authorizing the investment

adviser to effect agency cross transactions for such client;

(ii) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(iii) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this subparagraph sends the client a written confirmation. The written confirmation shall include:

(I) A statement of the nature of the transaction;

(II) The date the transaction took place;

(III) An offer to furnish, upon request, the time when the transaction took place; and

(IV) the source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a tender offer, the written confirmation shall state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written consent.

(iv) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this subparagraph (D) send each client a written disclosure statement identifying:

(I) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(II) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during such period.

(v) Each written disclosure and confirmation required by this subparagraph (D) must include a conspicuous statement that the client may revoke the written consent required under (i) of this subparagraph (D) at any time by providing written notice to the investment adviser.

(vi) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(vii) Nothing in the subparagraph (D) shall be construed to relieve an investment adviser or investment adviser representative from acting in the

best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act.

(E) Definitions for purposes of this paragraph (22).

(i) "Agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(ii) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

(iii) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(23) Sharing an office with a person who is not an advisory affiliate without:

(A) reducing any agreement with the unaffiliated person to writing;

(B) taking appropriate measures, including, but not limited to, adequate disclosures to eliminate the appearance of an agency relationship with the unaffiliated person when one does not otherwise exist; and

(C) complying with all applicable Oklahoma and federal laws requiring the safeguarding of customer data from the unaffiliated person.

(24) Failing to pay and fully satisfy any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangement.

(25) Attempting to avoid payment of any final judgment or arbitration award resulting from an investment-related, client or customer-initiated arbitration or court proceeding, unless alternative payment arrangements are agreed to between the client and the investment adviser or investment adviser representative or between the customer and the broker-dealer or broker-dealer agent, in writing, and the broker-dealer or broker-dealer agent complies with the terms of the alternative payment arrangements.

(26) Failing to pay and fully satisfy any fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the investment adviser or investment adviser representative

by the Securities and Exchange Commission, the securities or other financial services regulator of any state or province, or any self-regulatory organization.

660:11-7-44. Financial statements for investment advisers

(a) **Audited statements.** Applications for registration as investment advisers shall contain audited financial statements for the applicant as of the end of its last fiscal year. Applicants that have been in operation for less than twelve (12) months shall submit an unaudited statement of financial condition as of a date within ninety (90) days of the date of the filing of the application and an unaudited statement of income for the period beginning from the date of inception through the date as of which the statement of financial condition is prepared.

(b) **Unaudited interim financial statements.** If the audited financial statements required in the preceding (a) are not current to within ninety (90) days of the date of filing, additional unaudited financial statements shall be submitted covering the period from the beginning of the current fiscal year through a month ending within the 90-day time frame.

(c) **Sole proprietors.** Investment advisers who are individuals or sole proprietorships, in lieu of audited financial statements, may provide financial statements that have been prepared in accordance with generally accepted accounting principles and which have been reviewed and reported upon by independent accountants in accordance with the standards for the review of financial statements promulgated by the American Institute of Certified Public Accountants.

(d) **Exemption.** The financial statement requirements specified in this section shall not apply to an investment adviser unless the investment adviser has custody or possession of clients' funds or securities or requires prepayment of advisory fees six (6) months or more in advance and in excess of ~~\$500.00~~ \$1,200.00 per client.

(e) **Waiver.** The Administrator in his discretion may waive any of the requirements of this section on a case-by-case basis when such action is determined to be consistent with the purposes fairly intended by the policy and provisions of the Securities Act. Requests for waivers shall be in writing setting forth the reasons therefor.

660:11-7-47. Payments for client solicitations

(a) **Prohibition.** An investment adviser required to be registered pursuant to Section 1-403 of the Securities Act shall not ~~pay a cash fee~~ compensate, directly or indirectly, a solicitor with respect to solicitation activities unless:

(1) the investment adviser is registered under the Securities Act;

(2) the solicitor is registered as an investment adviser representative of this or another investment adviser registered under the Securities Act or separately registered as an investment adviser under the Securities Act;

(3) such ~~cash fee~~ compensation is paid pursuant to a written agreement to which the investment adviser is a party; and

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(4) the only compensation paid for a referral of investment advisory clients to a solicitor other than one registered as an investment adviser representative of this investment adviser is paid to an investment adviser registered under the Securities Act or a federal covered investment adviser who has filed a notice under Section 1-405 of the Securities Act.

(b) **Written agreement.** If soliciting clients is the only service rendered on behalf of an investment adviser, the written agreement required by (a)(3) of this section shall:

- (1) describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;
- (2) contain an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Securities Act and the rules thereunder; and
- (3) require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the customer with a current copy of the investment adviser's written disclosure statement required by 660:11-7-43 and a separate written disclosure document described in (d) of this section.

(c) **Investment adviser responsibilities.** The investment adviser shall receive from the client, prior to, or at the time of, entering into any written investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. In addition, the investment adviser shall ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(d) **Disclosure by solicitor.** The separate written disclosure document required to be furnished by the solicitor to the customer pursuant to (b) of this section shall contain the following information:

- (1) the name of the solicitor;
- (2) the name of the investment adviser;
- (3) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
- (4) a statement that the solicitor will be compensated for his solicitation services by the investment adviser;
- (5) the terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
- (6) the amount, if any, for the cost of obtaining his account the customer will be charged in addition to the advisory fee, and the differential, if any, among customers with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting customers for, or referring customers to, the investment adviser.

[OAR Docket #23-464; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-477]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Practice and Procedure

Part 5. Administrative Proceedings Related to Tax Protests

710:1-5-22 [AMENDED]

710:1-5-28 [AMENDED]

710:1-5-34 [AMENDED]

710:1-5-45 [AMENDED]

710:1-5-47 [AMENDED]

Part 7. Abatement of Erroneous Tax Assessment

710:1-5-74 [AMENDED]

AUTHORITY:

68 O.S. § 203; 75 O.S. § 302; Oklahoma Tax Commission

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n/a

GIST / ANALYSIS:

The proposed changes amend Part 5. Administrative Proceedings Related to Tax Protests and Part 7. Abatement of Erroneous Tax Assessment of Subchapter 5. Practice and Procedure. The proposed revisions streamline and modernize the various procedural processes, both formal and informal, by which a party aggrieved by any action of the Tax Commission in the performance of its functions may seek a remedy.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-22. Commencement and numbering of a protest

(a) Protests must be commenced by filing a timely written protest with the office of any Commissioner, the director of the division out of which the controversy arose, the office of the Administrative Law Judges, or the office of the General Counsel. In order for a protest to be considered timely, it must be filed, pursuant to Oklahoma Statutes, within sixty (60) days after the date of the mailing of the assessment, unless an extension is granted in writing within the sixty (60) day period.

(b) The Administrative Law Judges' Office assigns a case number of a protest of proposed assessment or protest to denial of claim for refund (both called "protest" herein), creates a court file, assigns a Judge and sets a day for a pre-hearing conference between the parties and the Administrative Law Judge.

710:1-5-28. Pre-hearing conference

(a) **General provisions.** A pre-hearing conference notice is sent to the parties, usually within sixty (60) days of the filing of the protest, but not less than twenty (20) days prior to the pre-hearing conference date. The purpose of the pre-hearing conference is to get the parties together before the Administrative Law Judge to attempt to resolve the case or parts of it, early in the progression of the case, to discuss the facts, identify the legal issues, present discovery requests, make all appropriate stipulations, and to propose a procedural schedule. However, the pre-hearing conference should not serve as the ~~parties~~ parties' introduction to the case. Rather, the parties are to make contact and discuss the merits of the case prior to the scheduled pre-hearing conference.

(b) **Rulings; pre-hearing conference order.** During the pre-hearing conference, the Administrative Law Judge makes all necessary rulings. After the pre-hearing conference, the Administrative Law Judge issues a pre-hearing conference order which reduces to writing the agreements reached at the pre-hearing conference.

(c) **Failure to appear.** If a party fails to appear at the scheduled pre-hearing conference or to timely respond to the notice of pre-hearing conference, but has previously submitted a written request for a hearing on the protest, then a hearing will be set. If a hearing has **not** been requested, then the Administrative Law Judge may close the record and issue Findings, Conclusions and Recommendations based on information in the record or may request the Division to file a Verified Response. A Verified Response is a pleading filed by the attorney representing the Division, verified by the Division, which sets forth the legal and factual basis for the action taken by the Division and will be directed by the Administrative Law Judge to file at the response of the Division to the issues raised in the protest, verified by the Division and signed by the attorney representing the Division and is accompanied by documentation the Division would like the Administrative Law Judge to consider in reaching a decision. If a party files a reply to the Division's Verified Response, and requests a hearing therein, then the Administrative Law Judge may set the matter for hearing on the merits of the protest, and thereafter, enter recommendations to the Commission in accordance with

the findings. If a party files a reply to the Verified Response and does **not** request a hearing, then the Administrative Law Judge will consider the reply in making a recommendation to the Commission. If a party fails to file a reply to the Division's Verified Response, and requests a hearing therein, then the Administrative Law Judge ~~will issue~~ may set the matter for hearing on the merits of the protest, and thereafter, enter Findings, Conclusions and Recommendations. Any party aggrieved by the recommendation may proceed pursuant to 710:1-5-40.

710:1-5-34. Rules of evidence

(a) **Rules governing; admissibility; objections.** The rules of evidence as applied in non-jury, civil cases in the district courts of this State shall be followed in administrative proceedings related to tax protests except when it is necessary to ascertain facts not reasonably susceptible of proof under those rules. In that event, evidence not admissible under the Rules of Evidence may be admitted, if it is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, part or all of the evidence may be received in written form if the hearing will be expedited and the interest of the parties will not be substantially prejudiced.

(b) **Certification of issues.** A party to the proceedings who objects to a ruling of the Administrative Law Judge may request and obtain certification of the issue to the Commission for a decision prior to the issuance of Findings, Conclusions and Recommendations by the Administrative Law Judge. The signatures of the ~~taxpayer's representative, the tax division attorney~~ requesting party and the Administrative Law Judge must be upon the certification.

710:1-5-45. Service of documents

Service of any document in an administrative proceeding may be accomplished by personal delivery or by mailing such document addressed to the party or ~~his~~ the party's authorized representative at the last known address, postage prepaid. In the alternative, upon written consent of the party filed in the administrative proceeding, service of any document may be made by electronic mail to the address provided by the party or the party's authorized representative. The document shall indicate on its face by Certificate of Service or of Mailing that copies have been served on parties of record.

710:1-5-47. Burden of proof

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. ~~If, upon hearing,~~ the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

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PART 7. ABATEMENT OF ERRONEOUS TAX ASSESSMENT

710:1-5-74. Notification of initial disposition of abatement request; procedure upon denial by Division

Should the Division not agree that the evidence presented demonstrates that the assessment, or some portion thereof, is clearly erroneous, the Division shall notify the taxpayer of its determination. The notification letter shall state prominently that should taxpayer disagree with the Division's determination, taxpayer must make written request for a review of the determination, to the General Counsel's office within thirty (30) days of the mailing date of the Division notification. Failure of taxpayer to seek review within thirty (30) days of the mailing date of the Division's notification shall constitute abandonment of the request.

[OAR Docket #23-477; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #23-478]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
710:10-1-3 [AMENDED]
Subchapter 2. Business Personal Property Valuation Schedules
710:10-2-2 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-14 [AMENDED]
Subchapter 9. Manufactured Homes
710:10-9-1 [AMENDED]
710:10-9-2 [AMENDED]
710:10-9-3 [AMENDED]
710:10-9-5 [AMENDED]
710:10-9-6 [REVOKED]
710:10-9-9 [AMENDED]
710:10-9-12 [AMENDED]
710:10-9-14 [AMENDED]
710:10-9-18 [REVOKED]
710:10-9-19 [AMENDED]
Subchapter 10. Visual Inspection Plan
Part 5. Direction and Guidance
710:10-10-28. [AMENDED]
Subchapter 12. Agricultural Land Conservation Adjustment
710:10-12-10 [AMENDED]
Subchapter 13. Valuation Exclusion for Desulphurization Equipment
710:10-13-11 [AMENDED]

AUTHORITY:

68 O.S. §§ 203 and 2817; Oklahoma Tax Commission

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GIST / ANALYSIS:

The proposed amendment to Section 710:10-1-3 is to remove unnecessary and outdated language.

The proposed amendment to Section 710:10-2-2 implements the provisions of HB 1682 and SB 192. As a result of the enactment of these two measures the stricken definitions are no longer applicable or necessary. [68:2807.1, 2817]

The proposed amendments to Sections 710:10-7-14, 710:10-12-10 and 710:10-13-11 implement the provisions of HB 3901 which extended the jurisdiction of the Court of Tax Review to complaints challenging an order of the county board of equalization sustaining a valuation of real or personal property with a fair cash value as determined by the county assessor in excess of \$3 million, as authorized by 68 O.S. § 2880.1, for which a scheduling conference will be required within 20 days of the answer filed by the county assessor. Also, taxpayers and county assessors shall have the right to appear from any order of the county board of equalization sustaining a valuation of real or personal property at a fair cash value as determined by the county assessor in excess of \$3 million to the Court of Tax Review. Appeals from any other order of the county board of equalization will be filed in the district court of the same county. [68:2880.1, 3024]

The proposed amendments to Subchapter 9 Manufactured Homes implements the provisions of HB 3419 which created Service Oklahoma as a division of the Oklahoma Office of Management and Enterprise Services. It also transferred applicable powers, duties, and responsibilities exercised by the Motor Services Division of the OTC to Service Oklahoma on January 1, 2023.

The proposed amendment to Section 710:10-10-28 implements the provisions of HB 2627; at the time of filing a protest pursuant to subsections E and F of Section 2876, which relate to proposed increases of existing property values, the taxpayer will also file the form provided for in 68 O.S. § 2835. If the taxpayer fails to file the required form, a presumption will exist in favor of the correctness of the county assessor's valuation in any appeal of the county assessor's valuation. [68:2876]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

710:10-1-3. Procedures for implementation of the ad valorem valuation limitation

(a) ~~Application of limitation for counties in compliance January 1, 2013 and subsequently.~~ Pursuant to Article X, Section 8B of the Oklahoma Constitution and 68 O.S. §2817.1, ~~on and after January 1, 2013,~~ the fair cash value of any parcel of locally assessed real property which constitutes homestead property or agricultural land shall not increase by more than 3% in any taxable year. The fair cash value of all other locally assessed real property shall not increase by more than 5%.

The limitation on valuation increases set forth in this subsection do not apply in any year when the title of the property is transferred, changed, or conveyed to another person, or if improvements are made to the property unless subject to provisions of subsection (j) of this Section. [See: 68 O.S. § 2802.1] ~~The limitation shall apply January 1, 2013, to all counties in compliance with applicable laws and administrative regulations governing valuation of locally assessed real property. For those counties out of compliance as of January 1, 2013, the limitation shall apply January 1 of the year following the date on which the county was deemed to be in compliance. Once a county is in compliance on or after January 1, 2013 the limitation shall not be removed, even if a county is deemed to be out of compliance.~~

(b) **Implementation of limitation.** The county assessor will implement the limitation by annually comparing the fair cash value with the constitutionally-limited value. County assessors should continue to determine fair cash value on an annual basis. The limitation does not accumulate. In the event that a final fair cash value of a property changes as the result of a protest with the county assessor, County Board of Equalization, applicable court action, or action by the County Board of Tax Roll Corrections, the applicable valuation limitation shall apply to that property's final taxable value, as determined using accepted appraisal methodology for subsequent years.

(c) **Rights of taxpayers.** Taxpayers shall continue to have all rights of protest with respect to the valuation and assessment of property as currently specified by statute. If the taxpayer demonstrates to the satisfaction of the county assessor or county board of equalization that the fair cash value is below the constitutionally-limited value, it is appropriate for the county assessor to lower the property to that value. The limitation would then be applied annually to that value if all other conditions of the limitation on increases of fair cash value in Article 10, Section 8B, Oklahoma Constitution, are met.

(d) **Review of valuation for error.** The county assessor should review the valuation of the property for clerical errors, incorrect physical characteristics, or other material error affecting valuation in order to protect the taxpayer. This review should not include a revaluation of the property because it is below fair cash value.

(e) **Duration of limitation.** The annual valuation limitation is valid on the property as long as title to the property is not transferred, changed, or conveyed. [See: Article 10, Section 8B, Oklahoma Constitution & 68 O.S. §§ 2802.1 & 2817.1]

(f) **Physical improvements on limited property.** In the event that physical improvements are made to the limited property, the improvement shall be valued in the same manner as the improvements are presently valued. Examples of physical improvements may include, but are not limited to, a room addition, additional square footage, a garage, out buildings, enclosed garage, or similar improvements. This additional valuation shall be added to the limited value of the property before the construction occurred. For example, if the improvements added \$5,000 in fair cash value to the property, it would be increased by that amount. The property may increase up to the applicable valuation limitation in addition to the increased amount added by the improvement. The new

total value continues to be limited as long as the title of the property remains the same. Physical additions or changes that are considered normal maintenance such as certain normal repairs, minor re-modeling, roof repair or installation, minor energy efficiency improvements, or retro fit improvements such as wheelchair ramps providing access to the property are not generally considered physical improvements affecting the limited value. [See: 68 O.S. §§ 2802.1, 2817.1]

(g) **Effect of conveyance of property.** If title to the property is transferred or conveyed, the parcel of real property shall be assessed at fair cash value as set forth by Section 8 of Article X of the Oklahoma Constitution. This valuation is to be based upon current market value standards rather than simply placing the property on at its sale price, and it is the responsibility of the county assessor to value the property at fair cash value consistent with applicable statutes and ad valorem rules. Any sale occurring during the course of a given calendar year shall be valued at fair cash value as specified by statute for the following tax year. The county assessor shall continue to be responsible for making valuation changes to surrounding properties based on current sales information of comparable property within the constitutional limitations specified for non-sold properties. [See: 68 O.S. § 2802.1]

(h) **Omitted property.** While accomplishing statutorily mandated duties, the county assessor or a deputy will discover unassessed improvements on real property. A house and outbuildings, for example, could be on the assessment rolls, but a detached garage, second dwelling, or barn, previously unassessed, could be discovered. This additional property must be treated as if it was new construction and the county assessor should proceed to establish the fair cash value of the discovered property. It should be added to the assessment rolls, and proper notice provided. The original property will still be subject to the applicable valuation limitation, but the additional structure will **not** be subject to the valuation limitation, for that year only. This additional property was not on the assessment rolls before, and is to be placed on the assessment rolls at fair cash value.

(i) **Clerical errors.** When a property has been incorrectly entered on the assessment rolls as a result of clerical or data entry error, any error should be corrected. Clerical errors, however, are not to be used for general revaluation of the property, except that when the error results in a substantial impact on the value of the property, it should be corrected when discovered and proper notice provided to the taxpayer. For example, a residence that has been incorrectly entered as 1,000 square feet, instead of 2,000 feet, because of a clerical error should be corrected. The clerical error must be a mistake of fact, and the change must reflect the actual physical characteristics of the property itself. Clerical errors of this nature are not subject to the applicable valuation limitation.

(j) **Adjustment of damaged properties.** In valuing property damaged by natural causes, flood, storms, fires, or other disasters, the county assessor shall adjust the value of such properties. When the damage has been repaired, or the property fully restored to its previous usage, the improvements made must be disregarded for purposes of determining the maximum amount of fair cash value subject to ad valorem

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taxation pursuant to Section 8B of Article 10 of the Oklahoma Constitution unless the improvements increase the square footage. The valuation limitation outlined in subsection (a) of this Section applies to the restoration of the damaged property to the extent the square footage is the same as the original property. However, the limitation does not apply to any improvements constituting increases in square footage to the original property. [See: 68 O.S. §§ 2802.1, and 2817.1]

SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-2. Agricultural products and related other equipment

(a) **Agricultural products.** The term "**agricultural products**" includes, but is not limited to: wheat, milo, peanuts, alfalfa hay, grass hay, corn, soybeans, native pecans, improved pecans, grains, and cotton.

(b) **Livestock.** The term "**livestock**" includes, but is not limited to: horses, cattle, commercial pigs, commercial chickens, commercial turkeys, table eggs, and other livestock.

(c) **Agricultural related equipment.** The term "**agricultural related equipment**" includes, but is not limited to: balers, combines, cotton pickers and strippers, forage harvesters, mower conditioners, sweepers and brooms, tractors, and windrowers.

(d) **Business related equipment.** "**Business related equipment**" includes, but is not limited to: computers, computer components, copiers, facsimile machines, office equipment, office furniture, office machines, printers, including peripherals, safes, and typewriters.

(e) **Industrial related equipment.** "**Industrial related equipment**" includes, but is not limited to: air equipment, asphalt distributors and finishers, compaction equipment, cranes, crawlers, loaders, crushing equipment, ditchers (trenchers), excavators (hydraulic and mechanical), forestry equipment, generator sets, motor graders, motor scrapers, pavement millers, pumps, reclaimers/stabilizers, skid steer loaders, sweepers/brooms, tractor (backhoes), tractor (crawlers), tractor (wheel), and wheel loaders.

(f) **Petroleum related equipment.** "**Petroleum related equipment**" includes, but is not limited to: cable tool rigs, casing and tubing, crude oil, drill pipe, drilling rigs, gas compressors, meters, natural gas, pipeline costs, tanks, and valves.

(g) **Exploration related equipment.** All taxable personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs shall be assessed annually at its fair cash value, based upon the value set by the first *Hadco International* monthly bulletin published for the current tax year and such other available relevant and reliable market data, if any, concerning the fair cash value of property of the same kind, using the appropriate depth rating assigned to the drawworks by its manufacturer and actual condition of the rig. [See: 68 O.S. § 2817(L)]

(h) **Miscellaneous equipment.** "**Miscellaneous equipment**" means, but is not limited to, coin changers, food

merchandisers, game machines, golf cars, industrial motors, organs, phonographs, pianos, and vending machines.

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-14. Appeal from Board of Equalization to district court

~~The decision of the County Board of Equalization as to the exemption of a manufacturing concern from ad valorem taxation may be appealed to the District Court by either the applicant or the county assessor, as provided by law. [See: 68 O.S. § 2879]~~ Taxpayers may appeal the decision of the county board of equalization in the same manner and subject to the same requirements as provided by law for appeals from the county board of equalization on questions of valuation of property. [See: 68 O.S. §§ 2880.1 2895, 2902]

SUBCHAPTER 9. MANUFACTURED HOMES

710:10-9-1. Listing and assessment of manufactured homes for ad valorem taxes

(a) **Manufactured homes subject to ad valorem taxation.** On the first day of January of each year, the county assessor of the county in which a manufactured home is located shall list, assess and tax such manufactured homes as required by the Ad Valorem Tax Code as it pertains to real and personal property. [See: 68 O.S. §§2811-2813] If a manufactured home is permanently affixed to the real estate, the original document of title may be surrendered to ~~the Oklahoma Tax Commission~~ Service Oklahoma, a division of the Oklahoma Office of Management and Enterprise Services (hereinafter "Service Oklahoma") for cancellation, in accordance with 47 O.S. § 1110, provided there is no outstanding lien recorded on the title. Thereafter, these homes will be assessed as other real property improvements.

(b) **New manufactured homes sold and properly registered between December 1st and January 31st.** New manufactured homes which are sold and properly registered between December 1st and January 31st pursuant to this subsection shall be exempt from ad valorem taxes for the assessment period beginning January 1st. [See: 710:10-9-4 for proper listing and assessment of used manufactured homes held for resale.]

(c) **New manufactured homes.** The purchaser of a new manufactured home will not be subject to ad valorem taxes until January 1st of the following year, if the new manufactured home is properly registered, titled, and tagged, as required by law.

(d) **Properly registered manufactured homes.** Manufactured homes properly registered as provided by Section 1117 of the Vehicle License and Registration Act with payment of applicable title, registration and excise taxes will not be liable for ad valorem taxes until the following tax year.

(e) **Improperly registered manufactured home remaining in this state in excess of (sixty) 60 days.** A manufactured

home improperly registered which remains in Oklahoma in excess of sixty (60) days establishes taxable situs and will be assessed ad valorem taxes.

(f) Information required. Data elements required for listing a manufactured home with a completed certified OTC Form 936 (Manufactured Home Certificate 936) consist of:

- (1) Receipt or Release for taxes paid;
- (2) Type of manufactured home transaction;
- (3) Date to be moved;
- (4) Name of current manufactured home owner(s);
- (5) Seller's current mailing address;
- (6) Seller's new mailing address;
- (7) Name of manufactured home buyer;
- (8) Buyer's current mailing address;
- (9) Buyer's new mailing address;
- (10) Information describing where manufactured home is being moved from, such as:
 - (A) Landowner's or park's name,
 - (B) City,
 - (C) County, and
 - (D) Legal description, or
 - (E) Situs description;
- (11) Current physical address;
- (12) Real property account number or personal property account number;
- (13) Information describing where manufactured home is being moved to, such as:
 - (A) Landowner's or park's name,
 - (B) City,
 - (C) County, and
 - (D) Legal description, or
 - (E) Situs description;
- (14) New physical address;
- (15) School district;
- (16) Certificate of Title information, consisting of:
 - (A) Vehicle identification number (VIN);
 - (B) Year of manufacture;
 - (C) Size;
 - (D) Make;
 - (E) Title number;
 - (F) Body type;
 - (G) Model;
 - (H) Agent number;
 - (I) Factory delivered price;
 - (J) Total delivered price.
- (17) Fair cash value;
- (18) Total current estimated taxes due;
- (19) Taxes due from prior years, if unpaid;
- (20) Total of prior years' taxes due, if unpaid;
- (21) Signature of applicant and date;
- (22) Certification by assessor's office, evidenced by signature and date;
- (23) Certification by treasurer's office that all current and prior years' taxes have been paid, evidenced by signature, date, and a statement substantially as follows: "THIS DOCUMENT SHALL NOT BE CERTIFIED BY THE TREASURER'S SIGNATURE UNLESS ALL SPACES

HAVE BEEN COMPLETED WITH THE INFORMATION REQUESTED"

- (24) Column for remarks;
- (25) Legal certification of the Manufactured Home Certificate 936 requires the signatures of the assessor and treasurer;
- (26) Other information necessary for CAMA valuation;
- (27) Such other information as may be required by the Oklahoma Tax Commission

710:10-9-2. License plates and decal (initial and annual) for manufactured homes

(a) Requirements to obtain license plate. The following manufactured homes shall require a license plate:

- ~~(1) Any manufactured home entering Oklahoma requiring registration under the Motor Vehicle Code or establishing taxable situs;~~
- ~~(2) Any manufactured home previously registered and subject to ad valorem taxation as provided by law;~~
- ~~(3) Any manufactured home which remains in Oklahoma for a period in excess of sixty (60) days; and~~
- ~~(4) Any manufactured home with taxable situs in Oklahoma which has not applied for registration and a certificate of title under the Motor Vehicle Code as required by law.~~

(b) Initial decal requirement.

~~(1) The initial decal will be affixed to the license plate which is issued by the motor licensing agent (commonly referred to as a tag agent). Thereafter, the decal will be issued on an annual basis by the county treasurer. New or used manufactured homes entering Oklahoma will receive a license plate and validation decal upon registering with the Motor Vehicle Division of the Oklahoma Tax Commission~~

~~(2) The initial decal will be issued with the license plate as follows:~~

~~(1A) If the manufactured home is not moving, the taxpayer is required to obtain a Manufactured Home Certificate 936 (OTC Form 936) from the county assessor of the county in which the manufactured home was assessed and taxed;~~

~~(2B) The taxpayer should bring ~~his~~their registration papers and certificate of title to the county assessor's office and then to the treasurer's office to complete the Manufactured Home Certificate 936 (OTC Form 936);~~

~~(3C) The county treasurer shall collect all current and delinquent ad valorem taxes due on the manufactured home and any delinquent special assessments due before issuance of a Manufactured Home Certificate 936 (OTC Form 936);~~

~~(D) The cost of the license plate will be \$1.00. An additional \$1.25 may be charged for a license plate purchased from a motor license agent (commonly referred to as a tag agent) as a processing fee for a total cost of \$2.25.~~

~~(3b) The decal shall be obtained on an annual basis from the county treasurer in the county in which the manufactured home is located as follows:~~

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(1A) The taxpayer must pay all current and delinquent ad valorem taxes levied on the manufactured home and any delinquent special assessments due.

(2B) The county treasurer then shall issue the decal as prescribed by ~~the Motor Vehicle Division of the Oklahoma Tax Commission~~ Service Oklahoma.

(c4) If the manufactured home is to be moved, the taxpayer shall be charged a registration fee by ~~the motor license agent an operator licensed by~~ Service Oklahoma (hereinafter "licensed operator"), in lieu of current ad valorem tax.

710:10-9-3. Transfer of manufactured home with real property

When ownership of the manufactured home is transferred with the land upon which it is located with real property, the registration and certificate of title will be transferred in the new ownership as follows:

(1) The new owner will obtain a "Manufactured Home Certificate 936" (OTC Form 936) from the county assessor's office; and

(2) The new owner will present the "Manufactured Home Certificate 936" (OTC Form 936) to ~~the Oklahoma Tax Commission~~ Service Oklahoma or a ~~motor license agent (tag agent)~~ licensed operator who will prepare the registration and certificate of title pursuant to the rules and regulations of ~~the Motor Vehicle Division of the Oklahoma Tax Commission~~ Service Oklahoma. A registration would not be issued unless the initial registration fee was never collected.

(3) All taxes due, as required by ~~this Subchapter~~ and the statutes of Oklahoma, including the current year's ad valorem taxes, will be collected before issuance of the "Manufactured Home Certificate 936" (OTC Form 936). However, there will be no excise tax due on the change in registration and certificate of title.

(4) If the manufactured home owner has surrendered the title in accordance with 47 O.S. § 1110, no title work or OTC Form 936 will be required, provided the home is not being moved.

710:10-9-5. Exemption for persons in active military service-owned manufactured homes

(a) **Manufactured homes.** The manufactured home of an active duty nonresident service person residing in the State of Oklahoma in compliance with military orders is exempt from ad valorem taxation and is to be registered pursuant to the Oklahoma Vehicle License and Registration Act with the Motor Vehicle Division of the Oklahoma Tax Commission annually for a fee of twenty dollars (\$20.00). A U.S. Armed Forces Affidavit (OTC Form 779) must be submitted with the OTC copy of the registration receipt. *Snapp v. Neal*, 382 U.S. 398, 86 S.Ct. 485 (1966).

(b) **Personal property.** Section 574 of the Civil Relief Act of 1940 exempts household personal property from ad valorem taxation for servicemen qualifying under this act.

(c) **When exemption not applicable.** The provisions of subsection (a) and ~~(b)~~ of this Section do not apply when a

serviceman establishes residency by the filing of a homestead exemption.

710:10-9-6. Registration and ad valorem taxation of manufactured homes of nonresident owners [REVOKED]

(a) **Registration.** ~~A manufactured home properly registered or not properly registered in another state which remains in Oklahoma for a period in excess of sixty (60) days shall be registered under the same terms and conditions as an Oklahoma resident.~~

(b) **Ad Valorem Taxation.**

(1) ~~A manufactured home improperly registered which remains in Oklahoma in excess of sixty (60) days establishes taxable situs and will be assessed ad valorem taxes for failure to properly register the manufactured home.~~

(2) ~~Manufactured homes properly registered as provided by Section 1117 of the Motor Vehicle Code who pay the proper fees and excise taxes will not be liable for ad valorem taxes until the following tax year.~~

(c) **College Students.** ~~Any full time student of an institution of higher learning paying nonresident tuition shall not be required to purchase an Oklahoma license plate for a manufactured home provided that the state of residence of such student affords a similar exemption to Oklahoma students attending institutions of higher learning in such state. [See: 47 O.S. §1125(B)]~~

710:10-9-9. Homestead exemption requirements; improper registration of title

(a) **Qualification for homestead.** An owner of a manufactured home may apply for homestead exemption if all the following requirements are met:

(1) The land and the manufactured home are in the ownership of the same person; or,

(2) The applicant for homestead exemption is residing in a manufactured home that is owned by someone else. The applicant must own the land that the manufactured home is located on to qualify for homestead exemption. The owner or agent of the owner must render the manufactured home to the county assessor as personal property; [See: OAC 710:10-9-10 and 710:10-9-11] and,

(3) The owner of the land and manufactured home is residing upon the property and domicile thereon; and

(4) The owner meets the record ownership requirements for the land as set out in the Ad Valorem Tax Code to qualify for homestead exemption; and

(5) The land, improvements and manufactured home are valued and assessed as real property.

(b) **Registration and certificate of title.** The county assessor should refer any applicant for a homestead which presents improper registration of title to ~~the local motor licensing agent (tag agent)~~ a licensed operator before approving the homestead application with an OTC Form 936 for proof of all taxes paid.

710:10-9-12. Manufactured homes not registered or assessed for ad valorem taxation

(a) Manufactured homes escaping ad valorem taxation for previous years.

- (1) The county assessor shall value and assess all manufactured homes in his/her county at fair cash value (market value) as prescribed by law.
- (2) The county assessor or a duly appointed and authorized deputy is empowered to go upon any premises to view and appraise any manufactured home as prescribed by law.
- (3) The county assessor or a duly appointed and authorized deputy may examine a person under oath in regard to the value of a manufactured home.
- (4) A manufactured home shall not be valued and assessed for any assessment year in which the manufactured home was previously assessed for ad valorem taxation in any other county in this state.

(b) Assessment as omitted property; manufactured homes; omitted property; valued and assessed.

- (1) The county assessor shall place a value upon a manufactured home for each prior year omitted from the assessment and tax rolls. Upon the determination of the valuation for each prior year omitted, the county assessor shall assess the manufactured home by applying the assessment ratio percentage of the applicable prior year omitted against the valuation of the applicable prior years omitted. The number of prior years which a manufactured home shall be determined to be omitted from the assessment and tax rolls shall not exceed three (3) years. [See: Attorney General Opinion 00-23]
- (2) When presented to the county assessor, county treasurer, ~~Motor License Agent (tag agent)~~ licensed operator or the Department of Public Safety, a properly completed OTC Form 936 shall be conclusive as to the proper payment of ad valorem taxes for the current year of issuance and all prior years.
- (3) A tax receipt shall not be conclusive as to the payment of current or prior years' taxes.

(c) Manufactured homes not properly registered. A manufactured home not properly registered as required by the Motor Vehicle Code Oklahoma Vehicle License and Registration Act will be entered upon the assessment roll and the tax roll as omitted property pursuant to the Ad Valorem Tax Code. A manufactured home not properly registered will be treated as omitted property for the prior years not to exceed three (3) years preceding the current year. The subsequent registration of a manufactured home by the owner, as required by the Oklahoma Vehicle License and Registration Act, after the county assessor lists and assesses the manufactured home as omitted property as required by the Ad Valorem Tax Code, does not entitle the owner to a one (1) year refund on the ad valorem taxes. The duties mandated by the Oklahoma Vehicle License and Registration Act and the Ad Valorem Tax Code are mandatory and mutually exclusive. That is, they operate independently of each other, which require that both the proper late registration fees be paid and also the ad valorem taxes be paid.

710:10-9-14. ~~Registration of new or used non-registered manufactured homes; payment of taxes; proof of registration and failure to show proof of registration~~

~~(a) **Who shall register.** The following shall apply for registration and obtaining an original certificate of title with the Oklahoma Tax Commission or a motor license agent (tag agent):~~

- ~~(1) **New manufactured home.** A person that purchases a new manufactured home which acquires taxable situs in this state;~~
- ~~(2) **Used manufactured home.** A person that purchases a used manufactured home which acquires taxable situs in this state;~~
- ~~(3) **Manufactured home which obtains taxable situs.** A nonresident owner of a manufactured home which obtains taxable situs by the presence of the manufactured home in this state in excess of sixty (60) days.~~

~~(b) **Registration of new manufactured homes.** Proper registration of a manufactured home is described as follows:~~

- ~~(1) A person lawfully filing an application for registration and original certificate of title for a manufactured home shall be required to make payment of the following:

 - ~~(A) License fee; and,~~
 - ~~(B) Excise tax, if applicable. Used manufactured homes entering Oklahoma and owned over sixty (60) days are exempt from payment of the excise tax.~~~~
- ~~(2) The Oklahoma Tax Commission or motor license agent (tag agent) shall, upon the proper application and payment of required fees, issue to the owner of the manufactured home the following:

 - ~~(A) A certificate of original title;~~
 - ~~(B) A manufactured home registration receipt;~~
 - ~~(C) A manufactured home registration decal;~~
 - ~~(D) A manufactured home license plate; and~~
 - ~~(E) An excise tax receipt, if applicable.~~~~

~~(e) **Payment of excise tax in lieu of ad valorem tax.** The owner of a manufactured home that documents ~~pays~~ payment of ~~the titling and registration~~ fees set out in ~~(b)(1) of the Oklahoma Vehicle License and Registration Act~~ along with any applicable excise taxes authorized pursuant to the Oklahoma Vehicle Excise Tax Act this Section as evidenced by the presentation of the documents set out in (b)(2) of this Section will not be required to pay ad valorem taxes for the year of registration of the manufactured home. The manufactured home shall be valued and assessed for ad valorem taxes as provided by the Ad Valorem Tax Code on January 1st of the year following registration. [See: 68 O.S. § 2813]~~

~~(d) **Failure to register and pay excise tax as required by the Motor Vehicle Code.** The owner of a manufactured home which fails to register a manufactured home and pay the fees and excise tax required by the Motor Vehicle Code shall have his manufactured home listed and assessed as omitted property and entered upon the assessment and tax rolls for prior years not to exceed three (3) years. The subsequent registration of a manufactured home by the owner, as required by the Motor Vehicle Code, after the county assessor lists and assesses the manufactured home as omitted property, as required by the~~

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~~Ad Valorem Tax Code, does not entitle the owner to a one (1) year refund on the ad valorem taxes. The duties mandated by the Motor Vehicle Code and the Ad Valorem Tax Code are mandatory and mutually exclusive. That is, they operate independently of each other, which require that both the proper late registration fees be paid and also the ad valorem taxes be paid.~~

(eb) Proof of registration; loss of registration and title; refusal to furnish proof of registration.

(1) **Proof of registration.** The county assessor of the county where a manufactured home is located shall require proof of the following to assure proper payment of ad valorem taxes and fees:

- (A) Proof of proper registration;
- (B) Proof of payment of excise taxes, if applicable; and,
- (C) Proof of payment of ad valorem taxes (OTC Form 936).

(2) **Loss of registration and certificate of title.** The procedure outlined in this paragraph will be utilized when an owner of a manufactured home seeks to render it as personal property or the county assessor discovers it while listing and assessing property and the owner is unable to locate or find the registration and certificate of title.

(A) The county assessor is required to list and assess all taxable property located in the county on an annual basis. The lack of registration papers does not relieve the assessor of that duty.

(B) The county assessor shall proceed to place the manufactured home on the assessment and tax rolls as omitted property unless:

(i) The county assessor ascertains the manufactured home is on the assessment and tax rolls of the county;

(ii) The owner of a manufactured home presents the county assessor a Manufactured Home Certificate 936 (OTC Form 936) - RECEIPT OF TAXES PAID - from another county showing that no taxes are due for current or prior years. Thereafter, the county assessor will value the manufactured home as of January 1st of the subsequent year if its taxable situs is still within the county.

(iii) The owner of a manufactured home presents the county assessor a Manufactured Home Certificate 936 (OTC Form 936) - RELEASE OF TAXES PAID - from another county for the current year. Thereafter, the county assessor will value the manufactured home as of January 1st of the subsequent year if its taxable situs is still within the county.

(C) The county assessor shall refer those owners of manufactured homes who have failed to present their registrations and certificates of title to either the ~~local motor vehicle agent (tag agent)~~ licensed operator or the Oklahoma Tax Commission Service Oklahoma upon a determination of their taxable situs and assessment pursuant to (B) of this paragraph. If the title has

been lost, the owner must apply for a duplicate title. A new registration will not be issued by a licensed operator ~~the local motor vehicle agent (tag agent).~~

(3) **Failure to present proof of registration.** Any person owning a manufactured home and failing to present satisfactory proof of registration of such manufactured home or who fails to make payment of ad valorem taxes upon demand by the county assessor of the county in which the manufactured home is located, upon conviction, shall be guilty of a misdemeanor.

710:10-9-18. Required registration information; duties of county assessor and treasurer [REVOKED]

~~(a) Upon the registration of a manufactured home in the State of Oklahoma, the Oklahoma Tax Commission will collect the following information and enter into its computer system:~~

~~(1) The name and address of the owner of the manufactured home;~~

~~(2) The serial number or vehicle identification number (VIN) of the manufactured home;~~

~~(3) The registration number (Title number) given to the manufactured home by the Motor Vehicle Division of the Oklahoma Tax Commission;~~

~~(4) The Tag number / validation decal number;~~

~~(5) The situs (physical address) or legal description where the manufactured home is to be located;~~

~~(6) The actual retail selling price of the manufactured home, excluding Oklahoma state taxes; and~~

~~(7) Any other information necessary to enable the county assessor to list and assess the proper ad valorem taxes for the manufactured home for the following year.~~

~~(b) The county treasurer, in cooperation with the county assessor, shall transmit a quarterly report of all decaled manufactured homes listed on the tax roll of the county.~~

~~(1) The information shall be transmitted either on a form prescribed by the Oklahoma Tax Commission, or by computerized data compatible with the Oklahoma Tax Commission computer and formatted as prescribed by the Oklahoma Tax Commission.~~

~~(2) Information submitted to the Oklahoma Tax Commission shall be as follows:~~

~~(A) Title number;~~

~~(B) Vehicle identification number (VIN);~~

~~(C) Decal number; and~~

~~(D) Tag number.~~

710:10-9-19. Obtaining a release of taxes paid for ad valorem tax liability before the subsequent move of a manufactured home from initial situs within the tax year

~~If a manufactured home is moved more than one time within any given calendar year, a current year registration and decal will be required by the Department of Public Safety before issuing a permit.~~

(a+) **Release of taxes paid.** Requirements for obtaining a release of taxes paid before the subsequent move of a manufactured home from initial situs within the tax year are as follows:

(1A) Current registration and current decal or payment of ad valorem taxes due for the current year and prior years.

(2B) Possession of a Manufactured Home Certificate 936 (OTC Form 936) showing receipt of taxes paid, signed by a county assessor and county treasurer may also be used.

(b2) **Issuance of release.** Procedure for issuing a release of taxes paid are as follows:

(1A) Upon meeting the requirements for obtaining a release of taxes paid, the county assessor shall complete Manufactured Home Certificate 936 (OTC Form 936) and forward it to the county treasurer.

(2B) The county treasurer shall check for any tax warrants from another county, and any special assessment or taxes delinquent on the manufactured home.

(3C) The county treasurer shall collect any outstanding taxes or assessment due on the manufactured home.

(4D) If no taxes are due, the county treasurer will place "NTD" in the space designated total estimated taxes due.

(5E) The treasurer will sign and return the OTC Form 936 to the county assessor.

(6F) The county assessor will sign the OTC Form 936 and forward the yellow copy of the release of taxes paid to the county assessor of the county in which the new taxable situs of the manufactured home is to be located.

SUBCHAPTER 10. VISUAL INSPECTION PLAN

PART 5. DIRECTION AND GUIDANCE

710:10-10-28. Notification of valuation changes; hearings

(a) Information and procedures related to valuation changes shall be included in the visual inspection plan. Notices shall then be mailed to all property owners having an increase in valuation. The notice shall include the fair cash value, taxable value, assessed value and the assessment percentage for the current and previous year. [See: 68 O.S. § 2876]

(b) The taxpayer shall have thirty (30) calendar days from the date the notice was mailed to file a written complaint with the county assessor. A taxpayer may even file a complaint if the valuation of property has not increased or has decreased from the previous year if the complaint is filed on or before the first Monday in May, as required by 68 O.S. §2876(E). In addition to filing a written protest or complaint, the taxpayer must also file the applicable form for the listing and assessment of real and personal property provided for in 68 O.S. § 2835. In the event the taxpayer fails to file the required form, a presumption shall exist in favor of the correctness of the county assessor's valuation in any appeal to the county assessor's valuation. At the time of filing a protest pursuant to this Section, the county assessor shall provide the taxpayer

a standard schedule prepared by the OTC which includes all deadlines and the consequences of failing to meet each deadline.

(c) Staff members in each county shall conduct informal hearings to resolve any errors in appraisal or assessment. Informal decisions by the assessor may be appealed to the County Board of Equalization within ten (10) working days of the date the decision is mailed.

SUBCHAPTER 12. AGRICULTURAL LAND CONSERVATION ADJUSTMENT

710:10-12-10. Appeal from Board of Equalization to district court

The decision of the Board of Equalization as to the conservation land adjustment may be appealed to the District Court by either the applicant or the county assessor, as provided by law. [See: 68 O.S. § 2879] Taxpayers may appeal the decision of the county board of equalization in the same manner and subject to the same requirements as provided by law for appeals from the county board of equalization on questions of valuation of property. [See: 68 O.S. §§ 2880.1 & 2895]

SUBCHAPTER 13. VALUATION EXCLUSION FOR DESULPHURIZATION EQUIPMENT

710:10-13-11. Appeal from Board of Equalization to district court

The decision of the Board of Equalization as to the valuation exclusion may be appealed to the district court by either the applicant or the County Assessor, as provided by law. [See: 68 O.S. § 2879] Taxpayers may appeal the decision of the county board of equalization in the same manner and subject to the same requirements as provided by law for appeals from the county board of equalization on questions of valuation of property. [See: 68 O.S. §§ 2880.1 & 2895]

[OAR Docket #23-478; filed 6-8-23]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL AND MIXED BEVERAGES**

[OAR Docket #23-479]

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PERMANENT final adoption

RULES:

Subchapter 5. Mixed Beverages
710:20-5-8 [AMENDED]

AUTHORITY:

68 O.S. § 203; 37A O.S. § 5-135; Oklahoma Tax Commission

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The proposed amendment to Section 710:20-5-8 implements the provisions of SB 757 (2022) which amended 37A O.S. § 5-135 by striking subsection G thereof to remove compliance percentage parameters for the amount of gross receipts tax paid on spirits, wine, and beer in regard to an audit conducted by the OTC.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-8. Liability and audit of mixed beverage tax permit holder for gross receipts tax upon sale, preparation or service of all alcoholic beverages purchased or received

(a) **Liability in general.** Every mixed beverage tax permit holder or any other person transacting business subject to the gross receipts tax shall be liable for the tax upon the gross receipts from such beverages (on the basis of the number of drinks available for sale, preparation, or service from the total alcoholic beverages received). Each permit holder or other person shall be liable for the gross receipts tax upon any and all disposition by his or her agents or employees or any other persons on the premises of the mixed beverage tax permit holders or other person, except upon seizure or other disposition of the alcoholic beverage by employees of the ABLE Commission, Tax Commission, or other law enforcement agencies in the execution of their official duties. [See: 37A O.S. § 5-105]

(b) **Audit procedures.**

(1) Upon audit of the books and records of a mixed beverage establishment for gross receipts tax, it shall be assumed that spirits have been dispensed at the average rate of one and one-half fluid ounce, except for drinks with recipes calling for more than one type of spirit or for

double portions of spirits, or upon reasonable evidence of a different rate of use.

(2) Wines will be presumed to have been dispensed at the average rate of six ounces (6 oz.) per serving. The Tax Commission may use an average rate greater or less than those set out in this ~~Rule~~ rule upon reasonable evidence of a different rate of use.

(3) ~~An audit may be conducted to determine if the correct amount of tax payable has been collected. The taxpayer will be deemed in compliance if the audit reveals that the amount of tax collected is:~~

(A) ~~For spirits, within Eighty four percent to One Hundred Sixteen percent (84-116%) of the amount of tax payable.~~

(B) ~~For wine, within Ninety percent to One Hundred Ten percent (90-110%) of the amount of tax payable.~~

(C) ~~For beer sold at draft and not in original packages, within Eighty six percent to One Hundred Fourteen percent (86-114%) of the amount of tax payable.~~

(D) ~~For beer in original packages, within Ninety five percent to One Hundred Five percent (95-105%) of the amount of tax payable. [See: 37A O.S. § 5-135]~~

(4) In addition, a deduction may be allowed from the gross receipts tax liability determined by an audit or other investigation of the books and records of a mixed beverage tax permit holder, for alcoholic beverages that are:

(A) consumed in food as verified by the audit;

(B) destroyed due to breakage for which the permit holder has retained the container; or that portion thereof that has the unbroken seal; or for partial bottles destroyed by breakage for which the permit holder has completed a breakage affidavit listing the date of the occurrence, the brand and type of liquor, the size bottle, the approximate amount left in the bottle by 1/10ths, and the cause of the breakage. The affidavit shall be signed by the permit holder and two witnesses;

(C) stolen or destroyed by a disaster such as a fire or flood, provided that reasonable evidence is provided to support a claim. Reasonable evidence might include a copy of a police or sheriff's crime report; or an insurance claim detailing the inventory destroyed by brand, size, and type of liquor;

(D) not consumed, and exist or existed, at the close of a taxable period in question, provided that the amount and nature of the unconsumed inventory has been verified by agents of the Tax Commission, ABLE Commission, or verified by invoice to a mixed beverage permittee or wholesaler approved to purchase the inventory by the ABLE Commission. Partially filled bottles which are not included in a transferred inventory should be verified by a Tax Commission or ABLE Commission agent or agents.

(45) If an establishment was selling alcoholic beverages prior to the starting date of the audit period being used by the Commission in its audit, the establishment shall

be required to furnish the Commission with a beginning inventory of all liquor, wine, and beer on hand if an ending inventory is offered for audit purposes. When the permittee is unable or unwilling to furnish such an inventory, then no beginning or ending inventories shall be considered for the audit period used and the audit will be conducted solely on the taxpayer's purchases made during the audit period.

[OAR Docket #23-479; filed 6-8-23]

**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 30. DOCUMENTARY STAMPS**

[OAR Docket #23-480]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

710:30-1-2 [AMENDED]

710:30-1-3 [AMENDED]

710:30-1-6 [AMENDED]

710:30-1-10 [AMENDED]

AUTHORITY:

68 O.S. §§ 203 and 3205; Oklahoma Tax Commission

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The proposed amendments modify definitions, clarify the procedure for claiming an exemption from the payment of the documentary stamp tax, and update statutory citations and references to Tax Commission forms.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,
SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE
DATE OF AUGUST 11, 2023:**

710:30-1-2. Definitions

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

"Administrator" means the Director of the Business Tax Services Division of the Oklahoma Tax Commission. It is the intent of this Chapter that as Division Director, the actions and activities of the administrator shall be in compliance with directives established by the Commissioners of the Oklahoma Tax Commission.

"Attorney General" means the chief legal officer of the State of Oklahoma.

"Commission" means the Oklahoma Tax Commission.

"Consideration" means the actual pecuniary value exchanged or paid or to be exchanged or paid in the future, whether in money or otherwise, for the transfer or conveyance of an interest of realty, or minerals, including any assumed indebtedness. At the time of recording the instrument of transfer or conveyance, the consideration shall be stated, upon forms prescribed by the Oklahoma Tax Commission, and signed by the grantee, in accordance with the procedures prescribed by the Oklahoma Tax Commission.

"Deed" means any instrument or writing whereby realty or minerals are assigned, transferred, or otherwise conveyed to or vested in, the purchaser or, at his or her direction, any other person.

"Grantee" means the person receiving property.

"Grantor", "Seller" or "Transferor" means mean the person selling, giving or conveying the property.

"Mineral Deed" means the instrument which conveys a mineral interest in land.

"Mineral Interest" means the property interest created in oil or gas or other minerals by a mineral deed.

"Realty" includes those interests in real property, which endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years; and, those interests enduring for a fixed period of years but which, either by reason of the length of the term or grant of a right to extend the term of renewal, consists of rights closely approximating interests in real property which endure for a period of time the termination of which is not fixed or ascertained by a specific number of years.

"Sold" means a transfer of interest for a valuable consideration, which may involve money or any other item of value.

710:30-1-3. Purchase and affixing of documentary stamps

(a) Only documentary stamps shall be used in payment of the tax imposed by Oklahoma Statutes. The requisite stamps shall be affixed to the deed, instrument, or other writing by which the realty is conveyed. If there is insufficient space on the face of the deed, instrument, or other writing to affix the required documentary stamps, such stamps shall be affixed to a second or subsequent page of the document, or in the absence of a second or subsequent page, the stamps shall be affixed to the back of the deed, instrument, or other writing by which the realty is conveyed. It shall be the responsibility of the ~~County Clerk~~ county clerk to ensure that the page on which the stamps

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are affixed is recorded as part of the deed, instrument, or other writing conveying the realty. [See: 68 O.S. ~~1991~~, §3203(B)]

(b) Documentary stamps may be purchased, and requisite forms for the purchase of such stamps may be obtained, from the sources and in the manner provided for by statute. [See: 68 O.S. ~~1991~~, §3204]

(c) If a taxpayer claims exemption from the payment of the documentary stamp tax, and there is no notation on the face of the deed indicating the reason for claiming the exemption, the county clerk shall ~~make a brief notation on the face of the deed~~ require documentation indicating the reason for claiming the exemption.

(d) If a single deed conveys property located in more than one county, the stamps will be purchased from, and the deed filed in, the county having the largest portion of the property. Certified copies of the deed showing the stamps affixed will then be filed in the affected counties.

710:30-1-6. Examination of county records

Tax Commission auditors ~~will~~ shall periodically review deeds filed with each county clerk. The examinations shall consist of:

- (1) Extracting information concerning the amount of ~~Documentary Stamp Tax~~ documentary stamp tax paid;
- (2) Verifying the proper affixing of the ~~Documentary Stamp~~ documentary stamp;
- (3) Verifying the payment of the ~~Documentary Stamp Tax~~ documentary stamp tax;
- (4) Extracting information concerning nonpayment of the ~~Documentary Stamp Tax~~ documentary stamp tax;
- (5) Examination of the records of the county clerk concerning the administration of the Documentary Stamp Tax Act. [See: 68 O.S. §§ 3201 et seq.]

710:30-1-10. Duties and responsibilities of the county clerk

County clerks are responsible for selling ~~Documentary Stamps~~ documentary stamps to the taxpayers and have the duty of accounting for the stamps to the Oklahoma Tax Commission. For the purpose of collecting the stamp tax, the county clerks act as agents of the Oklahoma Tax Commission.

- (1) Documentary stamps are to be purchased only from the county clerk of the county in which the realty conveyed is located. If the property being conveyed by the deed is located in more than one county, the stamps will be purchased from the county in which the original deed is filed. Certified copies of such deed, showing stamps affixed, can then be filed with the other county or counties where the property is located.
- (2) In order to make a correct determination of tax due, the county clerks shall have the duty to request taxpayers to produce satisfactory documentation which correctly discloses the value of the property. The total value of the consideration paid can be determined from a real estate purchase contract, closing statement, bill of sale, completed, signed and dated OTC Form 961, or any other

documentation showing the total price of the property sold.

(3) County clerks shall make sure that the ~~Documentary Stamps~~ documentary stamps are not sold over the counter. The stamps can only be sold when the tax is paid and the stamps affixed to the deed. Stamps are to be sold only when the deed is offered for recording.

(4) County clerks shall make sure that the proper amount of stamps are affixed. Metering machines may not be used to collect an odd tax amount or, in other words, to collect an amount of tax that is not a multiple of ~~75~~ 75 cents. Stamps worth ~~75~~ 75 cents must be affixed for each \$500.00 (or any fractional part thereof) of the consideration. When a metering machine is used, a single stamp can be printed for the total tax amount rather than attaching multiple stamps. However, whether a metering machine is used or not does not change the tax amount. Thus ~~75~~ 75 cents is still required for each \$500.00 of consideration or fractional part thereof. This can be illustrated by the following example: The selling price of Blackacre is \$30,250.00. Based on this consideration paid, the deed will require 61 documentary stamps at 75 cents each, which computes to a tax amount of \$45.75. It is improper to use a metering machine to calculate the tax on 60.5 documentary stamps, or \$45.38.

(5) If the taxpayer claims exemption from the payment of the documentary stamp tax, and there is no notation on the deed indicating the reason for the claiming of the exemption, the county clerk shall ~~make a brief notation on the face of the deed~~ require documentation detailing the reason for claiming the exemption.

[OAR Docket #23-480; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 45. GROSS PRODUCTION

[OAR Docket #23-481]

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RULES:

Subchapter 5. Required Returns and Reports

710:45-5-1 [AMENDED]

Subchapter 9. Exemptions and Exclusions

Part 17. Economically At-Risk Leases

710:45-9-80 [AMENDED]

710:45-9-81 [AMENDED]

710:45-9-81.1 [NEW]

710:45-9-82 [AMENDED]

710:45-9-83 [AMENDED]

710:45-9-84 [AMENDED]

Part 23. Secondary and Tertiary Recovery Projects [NEW]

710:45-9-110 [NEW]

710:45-9-111 [NEW]

710:45-9-112 [NEW]

710:45-9-113 [NEW]

710:45-9-114 [NEW]

Part 25. Production Completed With the Use of Recycled Water [NEW]

710:45-9-120 [NEW]

710:45-9-121 [NEW]

710:45-9-122 [NEW]
 710:45-9-123 [NEW]
 Subchapter 13. Refiners and Processors
 710:45-13-1 [AMENDED]
 Subchapter 15. Reclaimers and Reclaiming Operations
 710:45-15-1 [AMENDED]
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The proposed changes amend the rules to reflect the updated reporting methods and procedures due to the migration to Onelink from OkTap. The proposed changes amend Part 17. Economically At-Risk Leases in Subchapter 9. Exemptions and Exclusions and promulgate new Part 23. Secondary and Tertiary Recovery Projects and new Part 25. Production Completed with the Use of Recycled Water, to implement the provisions of HB 3568 (2022), providing definitions, qualification and refund procedures. [68:1001,1001.3a]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 5. REQUIRED RETURNS AND REPORTS

710:45-5-1. Monthly production reports

(a) **Minimum requirements of monthly production report.** All producers or purchasers of asphalt or ores bearing lead, zinc, jack, or copper or petroleum oil, mineral oil, other crude oil, condensate, reclaimed oil, gas, natural gas, casing-head gas, or liquid hydrocarbons from oil or gas produced in this state shall report volume and value of such production monthly on OTC Form ~~300341~~ or any other form as may be prescribed and required by the Oklahoma Tax Commission. Each monthly report shall include the following information:

- (1) Tax Commission assigned purchaser reporting number;

- (2) Tax Commission assigned producer reporting number;
- (3) Tax Commission assigned production unit number, subnumber, and merge number for each lease from which production is reported;
- (4) Assigned product code number for the product reported;
- (5) Gross ~~volume amount~~ of the product reported from each lease from which production is reported;
- (6) Total value of the product reported from each lease from which production is reported; and, the gross production tax, ~~and~~ the petroleum excise tax, Oklahoma energy resource board fee, and sustaining energy resources fee for said lease;
- (7) Taxpayer identification number, social security number (SSN), or, if applicable, the federal employer identification number (FEI);
- (8) The month and year the product reported was sold;
- (9) The Tax Commission assigned tax remitter reporting number.

(b) **Reports must be filed electronically.** OTC Forms ~~300~~ 341 and 323-A must be filed electronically in the format prescribed by the ~~Oklahoma~~ Tax Commission.

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 17. ECONOMICALLY AT-RISK LEASES

710:45-9-80. Scope of Part 17

Exemption from the levy of ~~Gross Production Tax~~ gross production tax on economically ~~at-risk~~ at-risk leases set out in 68 O.S. Supp. 2022, Section 1001.3a shall be determined according to the provisions of this Part. [~~See: 68 O.S. Supp. 2022, Section 1001.3a]~~]

710:45-9-81. Definitions

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

"Active "production days means any day in which oil or natural gas was produced by the lease as reflected in the daily production logs.

"Economically ~~at-risk~~ oil or gas lease" means ~~prior to calendar year 2015, any lease operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the previous tax reporting year. Beginning~~ beginning with calendar year ~~2015~~ 2022, and each year thereafter;

(A) Any Tax Commission assigned production unit number classified as an economically at-risk lease means any oil or gas lease that operated at a net profit which is less than the total gross production tax remitted for such lease during the tax reporting year with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty

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~~(60) MCF of natural gas per day or less. and the monthly average price of oil for the year was less than Fifty Dollars (\$50.00) per barrel; and~~

~~(B) Any Tax Commission assigned production unit number classified as a gas lease that operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the tax reporting year with an average production volume per lease of sixty (60) MCF of natural gas per day and the "monthly average price of gas" for the year was less than Three Dollars and Fifty Cents (\$3.50) per MMBtu. The "average production volume" shall be determined based upon the Oklahoma Corporation Commission well classification, wherein only the primary product shall be used to determine the "average production volume." For example, only production from wells classified as oil wells shall be considered to determine average daily production of oil and no production of natural gas from these oil wells shall be used to determine if the lease meets the definition. The lease in its entirety must be operated at a net loss or at a net profit which is less than the total gross production tax remitted for all products for such lease during the qualifying calendar year.~~

~~"Gas Lease" means any Tax Commission assigned production unit number with a gas to oil production ratio of fifteen thousand (15,000) cubic feet of natural gas or more to one (1) barrel of oil. a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number. A lease may contain one or more wells which have identical interest and payout.~~

~~"Oil Lease" means any Tax Commission assigned production unit number with a gas to oil production ratio of less than fifteen thousand (15,000) cubic feet of natural gas to one (1) barrel of oil.~~

710:45-9-81.1. Determination of average production volume and monthly average price of oil and gas

~~(a) Average production volume shall be determined based upon the lease classification, wherein only the primary product shall be used to determine the average production volume. For example, an oil lease that produced 2,789 barrels over 342 active production days during the calendar year would have an average volume of 8.16 barrels per day.~~

~~(b) Monthly average price of oil shall be determined by taking the gross value of oil produced during the calendar year divided by the gross volume of oil produced from the lease, based on a per-barrel measurement of forty-two (42) U.S. gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit.~~

~~(c) Monthly average price of gas shall be determined by taking the gross value of natural gas produced during the calendar year divided by the gross volume of natural gas produced based on a measurement of one million (1,000,000) British thermal units (MMBtu).~~

710:45-9-82. Exemption period

~~The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through 2016, with each year being claimed separately. No claims for rebates regarding the economically at risk leases shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013. No claims for rebates regarding the economically at risk leases for production periods occurring between calendar years 2014 through 2015 shall be claimed or paid more than eighteen (18) months after the date that the refund is first available. Claims for rebates regarding economically at risk leases for production periods ending on or before December 31, 2015 shall not be claimed until after July 1 of the year following the year of production. Claims for rebates regarding economically at risk leases for production occurring in calendar year 2016 shall be claimed prior to July 1, 2017. Any claims for refunds received on or after July 1, 2017 will not be accepted by the Tax Commission.~~

~~(a) **Exemption period.** The exemption for economically at-risk oil and gas leases is limited to calendar year 2022 and subsequent tax years, with each year being claimed separately.~~

~~(b) **Filing period.** A refund of gross production taxes must be filed within eighteen (18) months after the close of the calendar year for which an exemption is claimed. Refund claims submitted after eighteen (18) months shall not be accepted by the Tax Commission. For example, economically at-risk refund claims for calendar year 2022 shall be filed beginning January 1, 2023 until June 30, 2024.~~

710:45-9-83. Certification

~~(a) **General provisions.** This Section establishes criteria for determining whether an operator of an economically at risk at-risk oil lease has met the required conditions to apply for an exemption from gross production tax levied on such and establishes a procedure for the issuance of the refund.~~

~~(b) **Application to Oklahoma Tax Commission; determination; approval.** Any operator who desires to make application to have a lease certified as being economically at risk at-risk shall submit electronically through the Oklahoma Taxpayer Access Point (OKTAP) the following information: complete the appropriate OTC Form in its entirety and file it with the Commission. The application must be properly signed by the operator.~~

~~(1) Properly completed Form 329;~~

~~(2) Division Order(s) supporting the applicable royalty interest payments made during the claim period;~~

~~(3) An itemization of all expenses claimed as lease operating expenses;~~

~~(4) For leases governed by a Joint Operating Agreement (JOA) a copy of the JOA, including the accounting procedures attached to the JOA showing the base rate used to escalate per the Council of Petroleum Accounts Societies (COPAS) for the overhead expense; and~~

~~(5) Copies of the daily production reports for the calendar year applied.~~

~~(c) **Formula used to determine if lease is economically at risk.** The application sets out the formula used to determine if a lease is economically at risk. This entails subtracting~~

Net profit/loss calculation. For each calendar year, subtract from the gross revenue ~~of the from each lease for the previous calendar year~~, any severance taxes, royalty payments, and lease operating expenses, including expendable workover and recompletion costs for the applicable previous calendar year, and overhead escalation costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS). For purposes of this calculation, depreciation, depletion, and intangible drilling costs shall **not** be included ~~in lease operating expenses~~.

(d) **Tax Commission may require additional information.** For audit purposes, the Tax Commission may require additional information, such as copies of the operator's ~~Federal Income Tax Return~~ federal income tax return, joint interest billings, or other documentation regarding lease production or expenses.

710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Tax Commission, a refund of the gross production taxes paid in the previous calendar year for the lease shall be issued to the well operator or a designee after the eighteen (18) month refund claim period has concluded July 1 of the subsequent year, to the well operator or a designee.

(b) **Limitation of refund.** ~~For oil and natural gas produced from qualifying economically at risk leases in calendar years 2015 through 2016, the total amount of refunds to be paid, as provided for in 68 O.S. § 1001.3a, shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) for all products combined. If the amount of claims exceeds Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund that may be claimed by any taxpayer of a qualifying lease, so that the maximum amount authorized is not exceeded.~~ Beginning with calendar year 2022, and each subsequent year thereafter, the Tax Commission is authorized to issue up to Ten Million Dollars (\$10,000,000) in economically at-risk refunds for each eligible calendar year. If the total number of claims for an eligible calendar year exceed the refund cap, all approved refunds will be issued at the refund payout rate.

(c) **Refund payout rate.** The formula to be used for the percentage adjustment shall be Ten Million Dollars (\$10,000,000) divided by the amount of approved refund claims. For example, if the total amount of refund claims for calendar year 2022 was Twenty Million Dollars (\$20,000,000), the amount of each refund would be reduced by 50%.

(d) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit, signed by the operator must be submitted to the Tax Commission authorizing the designee to receive the refund.

PART 23. SECONDARY AND TERTIARY RECOVERY PROJECTS

710:45-9-110. Scope of Part 23

Exemption from the levy of gross production tax on secondary and tertiary recovery projects set out in 68 O.S. Supp. 2022, § 1001(D) shall be determined according to the provisions of this Part.

710:45-9-111. Definitions

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

"Project start date" means the date on which the injection of liquids, gases, or other matter begins on a secondary and tertiary recovery projects.

"Secondary and tertiary recovery projects" means secondary and tertiary recovery projects approved or having an initial project beginning date on or after July 1, 2022.

710:45-9-112. Exemption

(a) All production which results from secondary and tertiary recovery projects shall be exempt from gross production tax for a period not to exceed five (5) years from the initial project start date or for a period ending upon the termination of the secondary and tertiary recovery process, whichever occurs first.

(b) A refund for secondary and tertiary recovery projects shall not be claimed until after the end of the fiscal year. A fiscal year shall be deemed to begin on July 1 of one calendar year and shall end on June 30 of the subsequent calendar year.

(c) Unless otherwise specified, no claim for refund shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is first available. For example, secondary and tertiary recovery projects refund claims for fiscal year 2022 can be filed beginning July 1, 2023 until December 31, 2024.

710:45-9-113. Qualification procedures

(a) **Administrative approval and determination.** An operator seeking an exemption for secondary and tertiary recovery projects from the gross production tax shall first make application to the Oklahoma Corporation Commission for a determination that such project qualifies and request a determination of the start date.

(b) **Application to Oklahoma Tax Commission.** Upon approval from the Oklahoma Corporation Commission, the operator shall electronically submit an application for exemption to the Tax Commission through OKTAP. The application shall include a copy of the approval by the Oklahoma Corporation Commission; such approval shall include a determination of the project start date.

(c) **Tax Commission may require additional information.** For audit purposes, the Tax Commission may require additional information, such as copies of the operator's federal income tax return, joint interest billings, or other documentation regarding lease production or expenses.

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710:45-9-114. Refund procedure

(a) **Issuance of refund.** Upon certification by the Tax Commission, a refund of the gross production taxes paid in the previous fiscal year for the secondary and tertiary recovery projects shall be issued to the well operator or a designee after the eighteen (18) month refund claim period has concluded.

(b) **Limitation of refund.** Beginning with fiscal year 2023, and each subsequent year thereafter, the Tax Commission is authorized to issue up to Fifteen Million Dollars (\$15,000,000) in secondary and tertiary recovery project refunds combined for each eligible fiscal year. No entity, including subsidiaries of the entity, shall be authorized to receive refunds claimed pursuant to this exemption that exceed twenty percent (20%) of the cap. If the total number of claims for an eligible fiscal year exceed the refund cap then all approved refunds will be issued at the refund payout rate.

(c) **Refund payout rate.** The formula to be used for the percentage adjustment shall be Fifteen Million Dollars (\$15,000,000) divided by the amount of approved refund claims. For example, if the total amount of refund claims for calendar year 2022 was Thirty Million Dollars (\$30,000,000), the amount of each refund would be reduced by 50%.

(d) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit signed by the operator must be submitted to the Tax Commission authorizing the designee to receive the refund.

PART 25. PRODUCTION COMPLETED WITH THE USE OF RECYCLED WATER

710:45-9-120. Scope of Part 25

Exemption from the levy of gross production tax on production completed with the use of recycled water set out in 68 O.S. Supp. 2022 Section 1001(E) shall be determined according to the provisions of this Part.

710:45-9-121. Definitions

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

"Production completed with the use of recycled water" means the production of oil, gas, or oil and gas from wells drilled but not completed as of July 1, 2021, which are completed with the use of recycled water on or after July 1, 2022.

"Recycled water" means oil and gas produced water and waste that has been reconditioned or treated by mechanical or chemical processes into a reusable form.

710:45-9-122. Exemption and qualification

(a) **Exemption.** Production completed with the use of recycled water shall qualify for an exemption from the gross production tax from the date of first sales for a period of twenty four (24) months. The exemption provided shall be proportional to the percentage of the total amount of water used to complete the well that is recycled water.

(b) **Administrative approval and determination; order.** An operator seeking the exemption from gross production tax shall make application to the Oklahoma Corporation Commission for a determination that such project qualifies for the exemption.

(c) **Application to Oklahoma Tax Commission.** Upon approval from the Oklahoma Corporation Commission, the operator shall electronically submit an application for exemption to the Tax Commission through OKTAP. The application shall include a copy of the Oklahoma Corporation Commission Form 1002A, approved by the Oklahoma Corporation Commission, identifying the volume and percentage of recycled water used in completion.

(d) **Tax Commission may require additional information.** For audit purposes, the Tax Commission may require additional information, such as copies of the operator's federal income tax return, joint interest billings, or other documentation regarding lease production or expenses.

710:45-9-123. Refund procedure

(a) **Issuance of refund.** Upon certification by the Tax Commission, a refund of the gross production taxes paid in the previous fiscal year for production completed using recycled water shall be issued to the well operator or a designee after the eighteen (18) month refund claim period has concluded.

(b) **Limitation of refund.** Beginning with fiscal year 2023, and each subsequent year, the Tax Commission is authorized to issue up to Ten Million Dollars (\$10,000,000) in refunds for each eligible fiscal year. If the total number of claims for any fiscal year exceed the refund cap, all approved refunds will be issued at the refund payout rate.

(c) **Refund payout rate.** The formula to be used for the percentage adjustment shall be Ten Million Dollars (\$10,000,000) divided by the amount of approved refund claims. For example, if the total amount of refund claims for calendar year 2022 was Twenty Million Dollars (\$20,000,000), the amount of each refund would be reduced by 50%.

(d) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit signed by the operator must be submitted to the Tax Commission authorizing the designee to receive the refund.

SUBCHAPTER 13. REFINERS AND PROCESSORS

710:45-13-1. Refiner or processor license

(a) The Director of the Audit Services Division of the Oklahoma Tax Commission, or a designee, is authorized to issue non-transferrable licenses, upon the license form approved by the Tax Commission, to refiners, or other processors of any product subject to the Oklahoma gross production tax, upon receipt of the following:

- (1) Completed and duly executed Request for Assignment of Production Unit Number, OTC Form 320-A340, from the applicant; and,

(2) Completed and duly executed Application for Refiner's License to Process Petroleum Oil or Casinghead Gas, OTC Form 309-C, ~~in triplicate~~, from the applicant; and,

(3) Completed and duly executed gross production tax bond from the applicant, which has been approved by the Tax Commission.

(b) Any refiner-applicant, who has established that it has tangible assets in this state of sufficient value to protect the state against loss of gross production, petroleum excise or conservation excise taxes, may obtain a refiner's license without bond. [See: 68 O.S. §1015]

SUBCHAPTER 15. RECLAIMERS AND RECLAIMING OPERATIONS

710:45-15-1. Additional definitions

In addition to terms defined in 710:45-1-2 and 710:45-11-1, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Load ticket" means a document or bill of lading describing the source, contents and destination of any load of petroleum, tank bottoms, BS&W or other liquid hydrocarbons or salt water or any combination of these products. A load ticket shall not be considered valid unless it contains every item required by the definition set out in 710:45-11-1.

"Petroleum transporter" means any person or firm owning, leasing or otherwise controlling the operation of any vehicle or conveyance, other than railroad cars or pipelines, used in the transportation of measurable amounts (1% or more by volume) of any product subject to the ~~Gross Production Tax~~ gross production tax.

"Reclaimed oil" means any petroleum, crude oil, mineral oil or other liquid hydrocarbons recovered from tank bottoms, pits, salt water or other source where such oil is not reported to the Tax Commission by either its producer or purchaser of record, as shown by an Oklahoma Tax Commission Form ~~320A or 320C~~ 340 on file with the Tax Commission, as part of the production of the lease from whence it was produced. Oil or other liquid hydrocarbons blended with reclaimed oil before, during or after the reclaiming process shall be considered reclaimed oil.

"Reclaimer" means any person or firm who buys, salvages, reclaims or processes oil from the waste products associated with the production of oil or gas, including but not limited to salt water and the residue from oil storage tanks; any person operating a reclaiming plant, pit or disposal facility where oil or other liquid hydrocarbons are salvaged or recovered.

"Reclaiming Plant" means any facility used for the recovery or salvage of oil or other liquid hydrocarbons from oilfield wastes or contaminated stocks by heating, flotation, chemical treatment, or mechanical or other means except lease operations. It shall include any pit or water disposal system where oil is recovered except where such oil is reported to the Tax Commission, and ~~Gross Production Taxes~~ gross production

taxes paid thereon, as production from the lease or leases from whence it was actually produced. No pit or disposal well open to the public shall be exempt from the licensing requirements contained herein.

"Tank bottoms" means the mixture of oil and BS&W (basic sediment and water) that collects or settles in the bottom portion of lease and other oil storage tanks. Tank bottoms may be called BS&W. Salt ~~Water~~ water from salt water storage tanks shall not be shown on load tickets as tank bottoms or BS&W unless it contains one percent (1%) or more oil content by volume.

710:45-15-6. Reports and payment; due dates for reclaimers

The operators of reclaiming plants, including disposal facilities, shall be required to remit the ~~Gross Production and Petroleum Excise Taxes~~ gross production and petroleum excise taxes on all oil coming into their possession except where such taxes have previously been paid or when it can be shown that such oil was not subject to tax for reason of being exempt by law or having been produced in another state. Taxes shall be due on oil purchased by a reclaimer on the first day of the month following the month of purchase. Taxes shall be due on oil recovered from water at a disposal facility the first day of the month following the month it was sold by the reclaimer who recovered it. The tax shall become delinquent if not received by the Tax Commission on or before the twenty-fifth (25th) day of the second month in which it became due. Reclaimer's Monthly Gross Production Tax Report (OTC Form 341) ~~and Reclaimer's and Transporters Monthly Tax Report of Oil Transported, Stored and Sold (OTC Form 323-A)~~ is ~~are~~ due on the same date as the tax and shall be delinquent if not received by the twenty-fifth (25th) day of the second month following the month in which it becomes due. ~~The report shall be made on OTC Form 323.~~

[OAR Docket #23-481; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #23-482]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 13. Estimated Tax
- 710:50-13-3 [AMENDED]
- Subchapter 15. Oklahoma Taxable Income
- Part 5. Other Adjustments to Income
- 710:50-15-49 [AMENDED]
- 710:50-15-63 [AMENDED]
- 710:50-15-69.1 [NEW]
- Part 7. Credits Against Tax
- 710:50-15-81 [AMENDED]
- 710:50-15-95 [REVOKED]
- 710:50-15-97 [REVOKED]
- 710:50-15-98 [REVOKED]
- 710:50-15-99 [REVOKED]
- 710:50-15-104 [REVOKED]

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710:50-15-112 [REVOKED]

710:50-15-118 [NEW]

Subchapter 17. Oklahoma Taxable Income for Corporations

Part 5. Determination of Taxable Corporate Income

710:50-17-51 [AMENDED]

Subchapter 19. Oklahoma Taxable Income for Partnerships

710:50-19-5 [NEW]

Subchapter 21. Oklahoma Taxable Income for Subchapter "S" Corporations

710:50-21-1 [AMENDED]

AUTHORITY:

68 O.S. §§ 203, 2357.22, 2357.601, 2358.6A; Oklahoma Tax Commission

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Subchapter 15. Oklahoma Taxable Income

Part 5. Other Adjustments to Income

710:50-15-69.1 [NEW]

Subchapter 17. Oklahoma Taxable Income for Corporations

Part 5. Determination of Taxable Corporate Income

710:50-17-51 [AMENDED]

Subchapter 19. Oklahoma Taxable Income for Partnerships

710:50-19-5 [NEW]

Subchapter 21. Oklahoma Taxable Income for Subchapter "S" Corporations

710:50-21-1 [AMENDED]

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n/a

GIST / ANALYSIS:

The proposed amendment to Section 710:50-15-49 implements the provisions of SB 401 which provides for a 100% income tax exemption for retirement benefits received from any component of the Armed Forces of the United States, effective for tax year 2022 and subsequent tax years. [68:2358]

The proposed amendment to Section 710:50-15-63 and promulgation of new Section 710:50-15-118 implements the provisions of HB 3088 which eliminates the existing \$20,000 annual income tax deduction for nonrecurring adoption expenses and enacts a new, refundable income tax credit for nonrecurring adoption expenses, beginning for tax year 2023. [68:2358, 2357.601]

The proposed amendments to Sections 710:50-17-51 and 710:50-21-1 and the promulgation of new Sections 710:50-15-69.1 and 710:50-19-5 implement the provisions of HB 3418 which authorized the decoupling of bonus depreciation; the 100% bonus depreciation rate for qualified property is made permanent and Oklahoma taxpayers may elect to not follow the federal bonus depreciation phase-out schedule. [68:2358.6A]

The proposed amendment to Section 710:50-15-81 implements the provisions of SB 1857 which amended the credit for qualified clean-burning motor vehicle fuel property. [68:2357.22]

Sections 710:50-15-95, 710:50-15-97, 710:50-15-98, 710:50-15-99, 710:50-15-104, 710:50-15-112 have been revoked; these tax incentives have either been repealed or sunsetted and are no longer available and can no longer

be claimed on the Oklahoma income tax return. [68: 2357.100, 2357.203, 2357.67, 2357.102, 2357.46, 2357.402]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-3. Who must make payments of estimated tax; due dates

(a) Payment of estimated income tax must be made by the following:

(1) A single individual whose tax liability for the year is estimated to be \$500.00 or more in excess of taxes withheld from wages.

(2) Married individuals whose combined tax liability for the year is estimated to be \$500.00 or more in excess of taxes withheld from wages.

(3) A corporation or trust whose tax liability for the year is estimated to be \$500.00 or more.

(b) Initial payments of estimated tax should be made by:

(1) Calendar-year taxpayers, no later than April 15th.

(2) Fiscal-year taxpayers, by the fifteenth day of the fourth month following the beginning of the taxable year.

[See: 68 O.S. § 2385.7]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-49. Deduction for retirement income

(a) **General provisions applicable to Oklahoma or federal government retirement income.** Each individual taxpayer may deduct up to ~~Five Ten Thousand Five Hundred Dollars (\$5,500.00)~~ \$10,000.00 of retirement benefits paid by the State of Oklahoma or by the federal government. ~~Effective for tax years beginning on or after January 1, 2005, and ending before January 1, 2006, this deduction increases to Seven Thousand Five Hundred Dollars (\$7,500.00). Effective for tax year 2006 and subsequent tax years the deduction increases to Ten Thousand Dollars (\$10,000.00).~~ This deduction cannot exceed the amount included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income. The total exclusion from all government retirement benefit plans may not exceed ~~Five Thousand Five Hundred Dollars (\$5,500.00), or for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars (\$7,500.00); or for tax years~~

beginning on or after January 1, 2006, Ten Thousand Dollars (\$10,000.00), per individual.

(b) **Qualifying Oklahoma or federal government retirement income defined.** For purposes of this Section, "Oklahoma or federal government retirement income" means retirement income received from the following sources:

- (1) The Civil Service of the United States;
- (2) Any Component of the Armed Forces of the United States; [See special rule (g)]
- (3) The Oklahoma Public Employees' Retirement System;
- (4) The Oklahoma Teachers' Retirement System;
- (5) Oklahoma Law Enforcement Retirement System;
- (6) Oklahoma Firefighters' Pension and Retirement System;
- (7) Oklahoma Police Pension and Retirement System;
- (8) The Employee retirement systems created by counties pursuant to 19 O.S. §951 et seq.
- (9) The Uniform Retirement System for Justices and Judges;
- (10) The Oklahoma Wildlife Conservation Department Retirement Fund;
- (11) The Oklahoma Employment Security Commission Retirement Plan; or,
- (12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) **Disability income; state and federal government retirees.** Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

(d) **General provisions for other retirement income.** Each individual taxpayer ~~aged sixty five (65) and over~~ may deduct up to ~~Five Thousand Five Hundred Dollars (\$5,500.00)~~ Ten Thousand Dollars (\$10,000.00) of other retirement benefits received and included in ~~Federal Adjusted Gross Income~~ federal adjusted gross income through tax year 2004. Effective for tax years beginning on or after January 1, 2005, this deduction increases to ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~ and the taxpayer is no longer required to be sixty five (65) years of age. Effective for tax year 2006 and subsequent tax years the deduction increases to ~~Ten Thousand Dollars (\$10,000.00)~~.—This deduction cannot exceed the amount included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income. The total exclusion from all retirement benefit plans may not exceed ~~Five Thousand Five Hundred Dollars (\$5,500.00)~~ or, for tax years beginning on or after January 1, 2005, ~~Seven Thousand Five Hundred Dollars (\$7,500.00)~~, or for tax years beginning on or after January 1, 2006, ~~Ten Thousand Dollars (\$10,000.00)~~ per individual.

(1) **Income eligibility levels for tax years through 2004.** In order to qualify for this exclusion, Oklahoma Adjusted Gross Income cannot exceed ~~Twenty Five Thousand Dollars (\$25,000.00)~~ for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed ~~Fifty Thousand Dollars (\$50,000.00)~~ in order to qualify for the exclusion.

(2) **Income eligibility levels for tax years 2005 and 2006.** Effective for tax years beginning on or after January 1, 2005 and ending prior to January 1, 2007, Oklahoma Adjusted Gross Income cannot exceed ~~Thirty Seven Thousand Five Hundred Dollars (\$37,500.00)~~ for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed ~~Seventy Five Thousand Dollars (\$75,000.00)~~ in order to qualify for the exclusion.

(3) **Income eligibility levels for tax year 2007.** Effective for tax years beginning on or after January 1, 2007 and ending before January 1, 2008, Oklahoma Adjusted Gross Income cannot exceed ~~Fifty Thousand Dollars (\$50,00.00)~~ for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed ~~One Hundred Thousand Dollars (\$100,000.00)~~ in order to qualify for the exclusion.

(4) **Income eligibility levels for tax year 2008.** Effective for tax years beginning on or after January 1, 2008 and ending before January 1, 2009, Oklahoma Adjusted Gross Income cannot exceed ~~Sixty Two Thousand Five Hundred Dollars (\$62,500.00)~~ for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed ~~One Hundred Twenty Five Thousand Dollars (\$125,000.00)~~ in order to qualify for the exclusion.

(5) **Income eligibility levels for tax year 2009.** Effective for tax years beginning on or after January 1, 2009 and ending before January 1, 2010, Oklahoma Adjusted Gross Income cannot exceed ~~One Hundred Thousand Dollars (\$100,000.00)~~ for individuals using the filing status of "single", "married filing separately", or "head of household". For individuals using "married filing jointly" or "qualifying widow(er)" filing status, Oklahoma Adjusted Gross Income cannot exceed ~~Two Hundred Thousand Dollars (\$200,000.00)~~ in order to qualify for the exclusion.

(6) **Income eligibility levels for tax year 2010 and subsequent years.** Effective for tax years beginning on or after January 1, 2010, there are no longer any income eligibility requirements to qualify for the exclusion.

(e) **"Qualifying other retirement income" defined.** For purposes of this Section "other retirement income" must be received from the following and satisfy the requirements of the Internal Revenue Code (IRC):

- (1) An employee pension benefit plan under IRC Section 401;
- (2) An eligible deferred compensation plan under IRC Section 457;
- (3) An individual retirement account, annuity, or trust or simplified employee pension under IRC Section 408;
- (4) An employee annuity under IRC Section 86; or,

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- (5) Lump-sum distributions from a retirement plan under IRC Section 402(e).
- (f) **Disability income; private sector retirees.** Disability retirement benefits received by an individual shall qualify for the retirement income deduction, without regard to the recipient's age.
- (g) **Special rule for certain retirement income from a component of the Armed Forces of the United States.** Effective for tax year 2006, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars (\$10,000.00) or fifty percent (50%) of the amount included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income. Effective for tax year 2007 and subsequent tax years, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars (\$10,000.00) or seventy-five percent (75%) of the amount included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income. For tax year 2022 and subsequent tax years, retirement benefits received by an individual from any component of the Armed Forces of the United States shall be exempt from taxable income.
- (h) **Special rule for Federal civil service retirement income.** Beginning with tax year ~~2007~~ 2011, retirement benefits received by ~~Federal~~ federal civil service retirees, including survivor annuities paid in lieu of Social Security benefits, are allowed to be excluded from Oklahoma taxable income to the extent such benefits are included in the taxpayer's ~~Federal Adjusted Gross Income~~ federal adjusted gross income, pursuant to the provisions of Section 86 of the Internal Revenue Code. ~~For tax year 2007, twenty percent (20%) of such taxable benefits will be excludable. For tax year 2008, forty percent (40%) of such taxable benefits will be excludable. For tax year 2009, sixty percent (60%) of such taxable benefits will be excludable. For tax year 2010, eighty percent (80%) of such taxable benefits will be excludable. For tax year 2011 and subsequent tax years, one hundred percent (100%) of such taxable benefits will be excludable.~~

710:50-15-63. Deduction for nonrecurring adoption expenses

- (a) **General provisions.** In taxable years beginning after December 31, 1995, and ending before January 1, 2003, a deduction is allowed to resident individual taxpayers for nonrecurring adoption expenses, not to exceed ten thousand dollars (\$10,000.00) per calendar year, paid in connection with the adoption of a minor, or proposed adoption of a minor which did not result in a decreed adoption. Effective for taxable years beginning after December 31, 2002, and ending before January 1, 2023, the deduction for nonrecurring adoption expenses shall not exceed Twenty Thousand Dollars (\$20,000.00) per calendar year.
- (b) **Allowable expenses.** For purposes of this Section "nonrecurring adoption expenses" means and includes:
- (1) Adoption fees;
 - (2) Court costs;
 - (3) Medical expenses;
 - (4) Attorney fees;

(5) Expenses directly related to the legal process of the adoption of a child and are not reimbursed by other sources, to include, but not limited to costs related to:

- (A) The adoption study;
 - (B) Health and psychological examinations;
 - (C) Transportation and reasonable costs of food and lodging for the child or adoptive parents which are incurred to complete the adoption process. Transportation expense by either commercial or private means may be claimed based upon actual unreimbursed costs incurred, or in the case of travel by private means, the mileage rate allowed pursuant to the Internal Revenue Code for determining business travel expense may be elected.
- (6) Costs associated with physical remodeling, renovation, or alteration of the adoptive parents home or property, if incurred in conjunction with the adoption of a special needs child, as authorized by the court.
- (c) **"Nonrecurring adoption expenses"** shall not mean or include:
- (1) Costs reimbursed by other sources.
 - (2) Attorney fees incurred from and after the commencement of an action involving a contest of an adoption.
 - (3) Costs associated with physical remodeling, renovation, or alteration of the adoptive parent's home or property, with the exception noted in (b)(6) of this Section.
- (d) **Verification.** A schedule describing the expenses claimed must be enclosed and filed with the claimant's tax return. Receipts supporting the claimed expenses are not required to be submitted with the tax return and descriptive schedule, but must be retained and be available upon request by the Commission.

710:50-15-69.1. Add-back of federal depreciation for Oklahoma income tax purposes

For tax years beginning on or after January 1, 2023, taxpayers have the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to Oklahoma taxable income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

PART 7. CREDITS AGAINST TAX

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property

- (a) **Definitions.** ~~For purposes of the clean-burning motor vehicle fuel property credit, "motor~~ The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Motor vehicle" means a motor vehicle originally designed by the manufacturer to operate lawfully and principally on streets and highways. [See: 68 O.S. § 2357.22(C)] "Vehicle" shall not mean conveyor belts, forklifts, riding mowers, tractors, or other similar items.

(2) "Qualified clean-burning motor vehicle fuel property" means as defined in Section 2357.22 of Title 68 of the Oklahoma Statutes.

(b) General provisions. For tax years 2028 and before, there shall be allowed a one-time nonrefundable income tax credit for investments in qualified clean-burning motor vehicle fuel property placed in service on or after January 1, 1991. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(c) Amount of credit.

(1) For the qualified clean-burning motor vehicle fuel property defined in 68 O.S. Supp. 2022, §2357.22 (B)(1), (2) or (5), the amount of the credit shall be as follows based upon gross vehicle weight of the qualified vehicle:

(A) For vehicles up to or below 6,000 pounds, the credit shall be a maximum of \$5,500.00.

(B) For vehicles between 6,001 pounds to 10,000 pounds, the credit shall be a maximum amount of \$9,000.00.

(C) For vehicles of 10,001 pounds, but not in excess of 26,500 pounds, the credit shall be a maximum amount of \$26,000.00, and

(D) For vehicles in excess of 26,501 pounds, the credit shall be a maximum amount of \$100,000.00.

(2) For qualified clean-burning motor vehicle fuel property defined in 68 O.S. Supp. 2022, § 2357.22(B)(3), a per location credit of 45% of the cost of the qualified clean-burning motor vehicle fuel property.

(3) For qualified clean-burning motor vehicle fuel property defined in 68 O.S. Supp. 2022, § 2357.22(B)(4), a per location credit of the lesser of 50% of the cost of the qualified clean-burning motor vehicle fuel property or \$2,500.00.

(d) Carryforward. Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

(e) Limitations of eligibility. No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S. §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(ef) Sunset date. This credit will only be available through tax years beginning before December 31, 20272028.

(dg) Tax credit limitation.

(1) For tax years beginning on or after January 1, 2020 through 2022, the total amount of credits used to offset tax

shall be adjusted annually to limit the annual amount of credits to Twenty Million Dollars (\$20,000,000.00).

(2) For tax years 2023 through 2028, the total amount of credits used to offset tax shall be adjusted annually to limit the annual amount of credits to:

(A) Ten Million Dollars (\$10,000,000.00) for qualified clean burning fuel property propelled by compressed natural gas, liquefied natural gas, or liquefied petroleum gas, property related to the delivery of compressed natural gas, liquefied natural gas or liquefied petroleum gas, and property directly related to the compression and delivery of natural gas;

(B) Ten Million Dollars (\$10,000,000.00) for property originally equipped so that the vehicle may be propelled by a hydrogen fuel cell electric fueling system and property directly related to the delivery of hydrogen; and

(C) Ten Million Dollars (\$10,000,000.00) for property which is a metered-for-fee, public access recharging system for motor vehicles propelled in whole or in part by electricity.

(3) The Tax Commission shall annually calculate and publish by the first day of the affected taxable year a percentage by which the credits shall be reduced so the total amount of credits used to offset tax does not exceed Twenty Million Dollars (\$20,000,000.00) per year each of the limits provided in subsection (g).

710:50-15-95. Poultry litter credit [REVOKED]

(a) General provisions. Effective for tax years beginning on or after January 1, 2005, and ending on or before December 31, 2009 an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars (\$5.00) per ton of poultry litter purchased and transported. Effective for tax years beginning on or after January 1, 2010, and ending on or before December 31, 2013 the credit is Ten Dollars (\$10.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.

(b) Qualification. In order to qualify for the credit the poultry litter must:

(1) Be purchased from a registered, Oklahoma-based poultry operation located within an environmentally sensitive and nutrient limited watershed;

(2) Be used or spread in a watershed that is not environmentally sensitive and nutrient limited; and,

(3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.

(c) Limitation. The sum total of all such credits claimed cannot exceed Three Hundred Seventy five Thousand Dollars (\$375,000.00) annually, for all claimers of the credit.

(d) Tax credit moratorium. No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for poultry litter purchased and transported on or after July 1, 2012.

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710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines [REVOKED]

(a) **General provisions.** An Oklahoma income tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed, for expenditures made before November 1, 2013. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Nonqualified operating expenditures"** means labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity;

(2) **"Qualified direct costs"** means expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility; and

(3) **"Specially trained canines"** means dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture.

(c) **Qualification.** In order to qualify for the credit, applicant must have:

(1) An official copy of the United States Department of Agriculture dog breeder license; and

(2) Documentation showing that the business enterprise's principal purpose is the rearing of specially trained canines. Also, a written description of the services of the organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the business enterprise.

(3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.

(d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.

(e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring during the period of July 1, 2010

through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for expenditures occurring on or after July 1, 2012 for qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines.

710:50-15-98. Credits for biodiesel production [REVOKED]

(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2013, there is an income tax credit for biodiesel production at certain biodiesel facilities.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Biodiesel"** is any diesel equivalent biofuel made from renewable materials such as vegetable oils or animal fats.

(2) **"Biodiesel facility"** is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.

(c) **Basic credit.** Any biodiesel facility which is in production at the rate of at least twenty five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2008 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced for the first sixty (60) months provided the biodiesel facility maintains an average production rate of at least twenty five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of biodiesel produced expires for production after December 31, 2013.

(d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after July 1, 2005 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2013.

(e) **Credit for production after December 31, 2013.** For production of biodiesel after December 31, 2013 a biodiesel facility may receive an income tax credit in the amount of seven and one half cents (\$0.075) per gallon of biodiesel, for new production for a period not to exceed thirty six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons

first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of biodiesel production at a biodiesel facility during the twenty four month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three month average amount determined under this subsection during any twelve consecutive month period beginning no sooner than January 1, 2012.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant at which all biodiesel esterification takes place.

(2) Not more than twenty five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.

(3) Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve consecutive month period at a biodiesel facility shall be eligible for credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

(g) **Carryover.** Any credits allowed under this Section but not used may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years, beginning July 1, 2009.

(h) **Tax credit moratorium.** No credit may be claimed for any biodiesel production during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for biodiesel production at certain biodiesel facilities produced on or after July 1, 2012.

710:50-15-99. Dry fire hydrant credit [REVOKED]

(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of

water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma, purchased before January 1, 2014.

(b) **Definitions.** "**Dry fire hydrant**" means nonpressurized pipes permanently installed in lakes, farm ponds, and streams that provide a ready means of drawing water.

(c) **Qualification.** In order to qualify for the credit, the dry fire hydrants or new water storage facilities must meet the following criteria:

(1) Each body of water or water storage structure must be able to provide two hundred fifty (250) gallons per minute for a continuous two hour period during a fifty-year drought or freeze at a vertical lift of eighteen (18) feet for each body of water or water storage structure.

(2) Each dry fire hydrant must be located within twenty five (25) feet of an all weather roadway and accessible to fire protection equipment.

(3) Dry fire hydrants must be located at a reasonable distance from other dry or pressurized hydrants.

(d) **Certification.** The Oklahoma Tax Commission will receive certifications from The State Fire Marshall's Office. Allowed credits will be based on these certifications. The Taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return.

(e) **Computation of credit.** Upon certification, the allowed credit shall be equal to fifty percent (50%) of the purchase price of a dry fire hydrant or the actual expenditure for the new water storage construction, equipment, development and installation of the dry hydrant or new water storage facility.

(f) **Limitations.** The amount of credit allowed pursuant to this Section shall not exceed \$5,000.00 for each taxpayer and any credit allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

(g) **Tax credit moratorium.** No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for purchases on or after July 1, 2012 of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

710:50-15-104. Credit for construction of energy efficient residential property [REVOKED]

(a) **General provisions.** Effective for the time period beginning on or after January 1, 2006, and ending on or before July 1, 2016, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) "**Contractor**" is the taxpayer who actually constructed the residential property or manufactured home.

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In cases if more than one person qualifies as the contractor, the primary contractor.

(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) **"Home energy ratings"** means a confirmed rating involving an on site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(e) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars (\$4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars (\$2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. A credit will be allowed for eligible expenditures made prior to July 1, 2010 regardless of when the property is substantially complete. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures made on or after July 1, 2012, by contractors who construct either energy efficient residential property or energy efficient manufactured homes.

(g) **Termination of the credit.** No credit may be claimed for any expenditure made on or after July 1, 2016 for which the credit would otherwise be allowable. The credit shall be allowed for eligible expenditures made prior to July 1, 2016; however, the property must be substantially complete before January 1, 2017.

710:50-15-112. Credit for electric motor vehicle manufacturers [REVOKED]

(a) **General provisions.** Electric motor vehicle manufacturers may claim a one-time income tax credit for electric motor vehicles, medium-speed electric motor vehicles and low-speed electric motor vehicles manufactured after June 30, 2010, and before January 1, 2014.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Electric motor vehicle"** means a new motor vehicle originally equipped to be propelled only by electricity and that may be legally operated on both interstate highways and turnpikes in this state and that is eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act. The term does not include medium-speed electric motor vehicles, or low-speed electric motor vehicles;

(2) **"Electric motor vehicle manufacturer"** means an entity that has received a manufacturer exemption permit pursuant to the provisions of 68 O.S. § 1359.2. Adding modifications to existing electric motor vehicles, existing medium-speed electric motor vehicles or existing low-speed electric motor vehicles shall not be considered manufacturing for purposes of this section;

(3) **"Low-speed electric motor vehicle"** means a new four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act; and

(4) **"Medium-speed electric motor vehicle"** means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five

(35) miles per hour and, other than the speed requirement, is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act.

(e) **Computation of credit.**

(1) An electric motor vehicle manufacturer is allowed a per vehicle manufactured credit of Two Thousand Dollars (\$2,000.00) for an electric motor vehicle;

(2) An electric motor vehicle manufacturer is allowed a per vehicle manufactured credit of One Thousand Dollars (\$1,000.00) for a medium speed electric motor vehicle; and

(3) An electric motor vehicle manufacturer is allowed a per vehicle manufactured credit of Five Hundred Dollars (\$500.00) for a low speed electric motor vehicle.

(d) **Limitations.** The credit shall not be claimed with respect to any one vehicle based upon multiple definitions as set out in this Section even if such vehicle would otherwise qualify for tax credits based upon qualification pursuant to more than one definition.

(e) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.

710:50-15-118. Credit for nonrecurring adoption expenses

(a) **General provisions.** In taxable years beginning after December 31, 2022, an income tax credit is allowed to resident individual taxpayers for nonrecurring adoption expenses, not to exceed \$2,000 (\$4,000 for a married filing joint return) per calendar year, paid in connection with the adoption of a minor, or proposed adoption of a minor which did not result in a decreed adoption.

(b) **Allowable expenses.** For purposes of this Section "non-recurring adoption expenses" means and includes:

- (1) Adoption fees;
- (2) Court costs;
- (3) Medical expenses;
- (4) Attorney fees;
- (5) Expenses directly related to the legal process of the adoption of a child and are not reimbursed by other sources, to include, but not limited to costs related to:
 - (A) The adoption study;
 - (B) Health and psychological examinations;
 - (C) Transportation and reasonable costs of food and lodging for the child or adoptive parents which are incurred to complete the adoption process. Transportation expense by either commercial or private means may be claimed based upon actual unreimbursed costs incurred, or in the case of travel by private means, the mileage rate allowed pursuant to the Internal Revenue Code for determining business travel expense may be elected.

(6) Costs associated with physical remodeling, renovation, or alteration of the adoptive parents' home or property, if incurred in conjunction with the adoption of a special needs child, as authorized by the court.

(c) **"Nonrecurring adoption expenses"** shall not mean or include:

- (1) Costs reimbursed by other sources.
- (2) Attorney fees incurred from and after the commencement of an action involving a contest of an adoption.
- (3) Costs associated with physical remodeling, renovation, or alteration of the adoptive parent's home or property, with the exception noted in (b)(6) of this Section.

(d) **Verification.** A schedule describing the expenses claimed must be enclosed and filed with the claimant's tax return. Receipts supporting the claimed expenses are not required to be submitted with the tax return and descriptive schedule, but must be retained and be available upon request by the Commission.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to ~~Federal~~federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

- (1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]
 - (A) Taxes based on or measured by income shall not be allowed as a deduction.
 - (B) Type of taxes that are based on or measured by income are:
 - (i) State and Local Income Taxes,
 - (ii) Foreign Income Taxes, and
 - (iii) some Franchise Taxes that are based on or measured by income.
- (2) **Federal income taxes.** Federal ~~Income Taxes~~income taxes are not deductible.
- (3) **Federal loss carryback/carryforward.** A ~~Federal~~federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma ~~Net Operating Loss~~net operating loss deduction refer to (4) of this Section.
- (4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the ~~Net Operating Loss~~net operating loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.
 - (A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]

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- (i) An Oklahoma ~~Net Operating Loss~~ ~~(NOL)~~NOL may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a ~~Federal~~federal NOL carryback from the same loss year to the same carryback year.
- (I) For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code; and
- (II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and
- (III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.
- (ii) Any Oklahoma ~~Net Operating Loss~~ ~~(NOL)~~NOL carryback not allowed, due to no ~~Federal~~federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a ~~Federal~~federal loss.
- (B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:
- (i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)
- (ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to ~~Federal~~federal loss. (If no ~~Federal~~federal loss, there is no NOL allowable.) This percentage is then applied to the ~~Federal~~federal NOL (each loss year separately) when it is taken (absorbed) on the filed ~~Federal Return~~federal return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed ~~Federal Return~~federal return year.
- (5) **Oklahoma accrued income tax.**
- (A) Oklahoma will allow a deduction for Oklahoma ~~Accrued Income Tax~~accrued income tax. The Oklahoma ~~Accrued Income Tax~~accrued income tax is computed as follows:
- (i) Divide the Oklahoma net income by the number 26 for tax years beginning before January 1, 1985.
- (ii) Divide the Oklahoma net income by the number 21 for tax years beginning after December 31, 1984 and ending before January 1, 1990.
- (iii) Divide the Oklahoma net income by the number 17.667 for tax years beginning after December 31, 1989 and ending before January 1, 2022.
- (iv) Divide the Oklahoma net income by the number 26 for tax years beginning after December 31, 2021.
- (B) There is no deduction for Oklahoma accrued income tax when Oklahoma net income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.
- (6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income.
- (A) An adjustment is required when a corporation has an investment in assets which produce income which is non-unitary, or separately allocable. Such items may include, but are not limited to, investments in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income.
- (B) A ratio is used to allocate expenses between unitary business operations and all other activities that do not produce unitary income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is allocable, by the average of total assets. This percentage is then applied to certain expenses claimed on the return to arrive at the amount of expenses related to non-unitary business, and the resulting amount is added back to federal taxable income.
- (C) Generally, interest expense is the only expense against which the adjustment described in subparagraph (B) of this paragraph is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)] [See example in Appendix E of this Chapter]
- (7) **Interest income.**
- (A) **U. S. obligations.** Interest income from U.S. obligations is excluded from ~~Federal~~federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the

Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) Other interest income.

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to ~~Federal~~-federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) Dividends. Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(A) For purposes of calculating Oklahoma taxable income, foreign earnings deemed repatriated pursuant to 26 U.S.C. § 965 shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(i) To the extent such income is not included in the calculation of a taxpayer's federal taxable income due to inclusion on an IRC 965 Transition Tax Statement rather than the income tax return, the income shall be included on the Oklahoma return as an addition to net taxable income.

(ii) If a taxpayer elects to make installment payments of tax pursuant to the provisions 26 U.S.C. § 965, such election may also apply to the payment of Oklahoma income tax, attributable to the income upon which such installment payments are based.

(B) For purposes of calculating Oklahoma taxable income, global intangible low-taxed income included in federal income pursuant to 26 U.S.C. § 951A shall be considered dividend income and shall be allocated to the domiciliary situs of the taxpayer.

(9) Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense. Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) Net oil and gas income. Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) Oklahoma 22% depletion. Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, and for tax years beginning on or after January 1, 2014, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty percent (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty percent (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the ~~Federal Income Tax Return~~federal income tax return. [See: 68 O.S. § 2353(10)]

(12) Net rental income and safe harbor leasing. The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net rental income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of net rental income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) Royalties; patents; copyrights. [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) Capital gains or loss - 4797 gains or loss.

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) Partnership income or loss from corporate partners.

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) Overhead allocation. The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

(17) Federal new jobs credit deduction. For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

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(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma income tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma ~~Income Tax~~ income tax purposes.

(A) Corporations filing Oklahoma ~~Income Tax Returns~~ income tax returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars (\$175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

(23) Add-back of federal depreciation for Oklahoma income tax purposes. For tax years beginning on or after January 1, 2023, taxpayers have the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these

expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to Oklahoma taxable income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

SUBCHAPTER 19. OKLAHOMA TAXABLE INCOME FOR PARTNERSHIPS

710:50-19-5. Add-back of federal depreciation for Oklahoma income tax purposes

For tax years beginning on or after January 1, 2023, partnerships have the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to the Oklahoma distributive share of partnership income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission.

SUBCHAPTER 21. OKLAHOMA TAXABLE INCOME FOR SUBCHAPTER "S" CORPORATIONS

710:50-21-1. Subchapter "S" corporations and 512S Oklahoma returns

(a) A corporation having an election in effect under Subchapter S of the Internal Revenue Code shall not be subject to the Oklahoma income tax on the corporation. However, if any of the shareholders of such corporation are nonresidents of Oklahoma during any part of the corporation's taxable year, the corporation shall be taxed for such year on the nonresident shareholder's distributive share of income, unless the corporation files with its return for such year an agreement executed by each nonresident stockholder stating that such nonresident will file an Oklahoma ~~Income Tax Return~~ income tax return reporting his or her portion of Oklahoma taxable income.

(b) The shareholders of a Subchapter "S" Corporation shall include in their taxable income their distributive share of such corporation's ~~Federal~~ federal income, subject to the modifications as set forth in 68 O.S. §2358 and 68 O.S. §2362.

(c) For tax years beginning on or after January 1, 2023, a Subchapter "S" Corporation has the option for immediate and full expensing of qualified property and qualified improvement property by deducting the full cost of these expenditures in the

tax year in which the cost is incurred or the property is placed in service. [68 O.S. § 2358.6A] If this option is taken, amounts that are depreciated for federal income tax purposes shall be added back to the distributive share of such corporation's federal income in the year the depreciation is claimed. The taxpayer's decision to use immediate expensing for a qualified property or qualified improvement property in the year the investment cost is incurred is irrevocable for the property unless specifically authorized by the Oklahoma Tax Commission. (d) A Subchapter "S" corporation that files its return without including necessary nonresident shareholder agreements, shall be taxed on such nonresident(s) shareholders distributive share of income. The method of filing the return shall be irrevocable for each tax period once the return is filed. However, if a nonresident shareholder fails to file his or her individual Oklahoma Income Tax Return, income tax return the corporation will be assessed the tax.

[OAR Docket #23-482; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 55. MOTOR FUEL

[OAR Docket #23-483]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 8. Electric Vehicle Charging Tax [NEW] 710:55-8-1 [NEW] 710:55-8-2 [NEW] 710:55-8-3 [NEW] 710:55-8-4 [NEW] 710:55-8-5 [NEW] 710:55-8-6 [NEW]

AUTHORITY:

68 O.S. §§ 203 and 6504; Oklahoma Tax Commission

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST / ANALYSIS:

The proposed rulemaking creates a new Subchapter 8 in Chapter 55 to implement the provisions of Sections 1 through 8 of HB 2234 [2021] which levies a tax at the rate of \$0.03 per kilowatt hour or its equivalent as determined by the Tax Commission on the electric current used to charge or recharge the

battery or batteries of an electric vehicle, beginning January 1, 2024. [68:6501 et seq]

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 8. ELECTRIC VEHICLE CHARGING TAX

710:55-8-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to the "Driving on Road Infrastructure with Vehicles of Electricity (DRIVE) Act of 2021" (68 O.S. §§ 6501 et seq.).

710:55-8-2. Definitions

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

"Charging station" means equipment by which electric current is transferred to the power system of an electric vehicle together with the real property upon which such equipment is located or affixed;

"Charging station operator" means any person, firm, general partnership, limited partnership, limited liability partnership, corporation, limited liability company or any other lawfully recognized business entity that owns or operates or owns and operates a charging station in the state;

"Electric vehicle" means a 100%-electric or plug-in hybrid electric motor vehicle with the following characteristics:

(A) a 100%-electric motor vehicle originally equipped so that the vehicle:

- (i) draws propulsion energy solely from a battery with at least twenty (20) kilowatt hours of capacity, which can be recharged from any external source of electricity,
(ii) is manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated exclusively on a rail or rails, and
(iii) which has at least four (4) wheels.

(B) a plug-in hybrid electric motor vehicle which is originally equipped so that the vehicle:

- (i) draws propulsion energy from:
(I) an internal combustion engine, and
(II) a battery with at least five (5) kilowatt hours of capacity, which can be recharged from an external source of electricity.

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- (ii) is manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated exclusively on a rail or rails, and
- (iii) which has at least four (4) wheels,

(C) The term "electric vehicle" does not include a vehicle that is manufactured primarily for off-road use, such as primarily for use on a golf course, and that has a maximum speed of thirty (30) miles per hour or less;

"Legacy chargers" means charging stations in operation prior to November 1, 2021, that have never had a metering system in place capable of measuring electricity transferred from the charging station to the vehicle or are incapable of measuring the time elapsed while actively charging a vehicle and placing a fee on the charging session; and

"Public charging station" means a location at which a charging station owner or operator conducts for-profit business using a metered system for the delivery of electric power to an electric vehicle and charges the customer either for the electricity transferred to the power system of the vehicle or for the duration of time during which electricity is transferred to the power system of the vehicle.

710:55-8-3. Tax rate

(a) Electric vehicle charging tax. Beginning January 1, 2024, a tax of three cents (\$0.03) per kilowatt hour or an equivalent thereof is levied on the electric current used to charge or recharge the battery or batteries of an electric vehicle.

(b) Tax base. The amount of tax shall not include any fees or charges associated with the method for payment for the charging service, but shall be based only upon the rate of tax and the electricity transferred during the charging process.

(c) Transactions excluded from the levy. The tax shall not be applicable to the following:

(1) Electric vehicles charged at a private residence at which the owner or occupant of the residence uses electric power paid for by the owner or occupant of the residence which is supplied to the residence by a regulated public utility, an electric cooperative or other wholesale level of electric supply, whether or not supplemented by electric power produced by the owner or occupant using solar energy or other methods to provide electric power to the residence.

(2) Electric vehicles charged at charging stations with a charging capacity of less than fifty (50) kilowatts and charging stations that do not require payment for use.

(d) Charging stations exempted from the levy. The following electric charging station classifications are exempted from the imposition of tax as provided:

(1) Legacy chargers until November 1, 2041.

(2) Public charging stations that have never charged a fee for their use until November 1, 2041.

710:55-8-4. When tax is due

(a) The electric vehicle charging tax shall be remitted monthly by each charging station owner or operator on forms prescribed by the Tax Commission.

(b) The tax and any required report shall be filed with the Tax Commission not later than the twentieth day of the month following the month during which the electric charging for an electric vehicle occurred.

(c) The charging station owner or operator shall separately state on any invoice or billing document provided to the customer the amount of the electric vehicle charging tax imposed and shall not include the tax amount in the total amount billed to the customer.

710:55-8-5. Charging station registration requirements

(a) Charging stations in operation prior to November 1, 2021 must register with the Oklahoma Tax Commission, Business Tax Services Division, Oklahoma City, OK 73194 not later than January 31, 2024.

(b) Charging stations which begin operations for the first time on or after November 1, 2021, must register with the Oklahoma Tax Commission, Business Tax Services Division, Oklahoma City, OK 73194 not later than fifteen (15) days after the date as of which the first business operations at the station site begins or by January 31, 2024, whichever is later.

710:55-8-6. Charging station metering requirements

Any public charging station for an electric vehicle constructed or which begins operations for the first time on or after November 1, 2021, must utilize a metering system that is capable of imposing the cost for the charging service using a unit per kilowatt hour or a comparable measurement, such as time elapsed while charging and the charging capacity of the charging station. The metering system shall include a system by which an audit of the electricity supplied through the system may be performed to determine the amount of electricity transferred to a customer and the cost charged by the charging station owner or operator for each unit of electricity transferred.

[OAR Docket #23-483; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #23-484]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Sales and Use Tax Exemptions

Part 5. Items Subject To Other Taxes

710:65-13-30 [AMENDED]

Part 9. Computers; Data Processing; Telecommunications

710:65-13-52 [REVOKED]

Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities

710:65-13-170 [AMENDED]
710:65-13-173 [AMENDED]
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275 [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-371 [NEW]
710:65-13-372 [NEW]
Subchapter 19. Specific Applications and Examples
Part 15. "H"
710:65-19-142 [AMENDED]
Part 35. "R"
710:65-19-294 [REVOKED]

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68 O.S. §§ 203, 1357(34), and 6504; Oklahoma Tax Commission

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GIST / ANALYSIS:

The proposed amendment to Section 710:65-13-30 implements the provisions of HB 2234 [2021]; HB 2234 levies a tax at the rate of \$0.03 per kilowatt hour or its equivalent on the electric current used to charge or recharge the battery or batteries of an electric vehicle, beginning January 1, 2024. Electric vehicle charging tax collected and remitted to the Tax Commission is in lieu of state and local sales tax. [68:6501 et seq]

The proposed revocation of Sections 710:65-13-52 and 710:65-19-294 implements the provisions of SB 72 which repealed the Oklahoma Research and Development Incentives Act (68 O.S. §§ 54001, et seq.). This Act allowed a sales/use tax exemption for sales of computers, data processing equipment, related peripherals, telegraph or telecommunications services, and equipment, to new and expanding businesses classified under designated industrial group numbers of the Standard Industrial Classification (SIC) manual and that meet other requirements set forth in the Act.

The proposed amendments to Sections 710:65-13-170 and 710:65-13-173 are to clarify the taxability treatment of medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients, and the taxability treatment of drugs and prosthetic equipment. [68:1357.6]

The proposed amendment to Section 710:65-13-275 implements the provisions of SB 1670 which amended 68 O.S. § 1357(34) by expanding the sales tax exemption for surviving spouses of 100% disabled veterans to include sales to the surviving spouse of a person who is determined by the United States Department of Defense or any branch of the United States military to have died while in the line of duty if the spouse has not remarried.

The proposed promulgation of new Section 710:65-13-369.1 implements the provisions of SB 1305 which amended 68 O.S. § 1356 to add a sales tax exemption for sales of tangible personal property or services to a qualified nonprofit entity, the principal functions of which are to provide assistance to a natural person following a disaster, with program emphasis on repair or restoration to single-family residential dwellings or the construction of a replacement single-family residential dwelling. The exemption is applicable to sales made on or after July 1, 2022.

The proposed promulgation of new Section 710:65-13-371 implements the provisions of SB 1496 which amended 68 O.S. § 1356 by exempting from the sales tax levy, sales of tangible personal property or services to or by a women's

veteran's organization, and its subchapters in Oklahoma, that is exempt from taxation pursuant to 26 U.S.C., § 501(c)(19) and is known as the Oklahoma Women Veterans Organization.

The proposed promulgation of new Section 710:65-13-372 implements the provisions of HB 3649 which amended 68 O.S. § 1356 by providing a sales tax exemption for sales of tangible personal property or services to an organization that is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), that provides support to veterans, active duty members of the Armed Forces, reservists and members of the National Guard to assist with the transition to civilian life, and that provides documentation to the Tax Commission that over 70% of its revenue is expended on support for transition to civilian life.

The proposed amendment to Section 710:65-19-142 implements the provisions of Sections 1 and 3 of HB 3905 which amended 68 O.S. §§ 227 and 1364.1, relating to direct pay permits, which allow hospitals, similar institutions and medical practitioners to purchase certain medical appliances, medical devices and other medical equipment without the payment of sales or use tax to the vendor. A direct pay permit allows a purchaser to remit the taxes due directly to the Tax Commission. A person may only file a claim for refund of sales/use tax erroneously paid on purchases of items exempted pursuant to 68 O.S. §1357.6, if the person presented the seller a direct pay permit issued pursuant to 68 O.S. §1364.1 at the time of purchase of the items for which the refund is claimed.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 5. ITEMS SUBJECT TO OTHER TAXES

710:65-13-30. Exemption for the sale of tangible personal property subject to other taxes

(a) Aircraft, boats, boat motors, and low-speed/medium-speed electrical vehicles. Sales and use tax does not apply to the sale of airplanes, boats, boat motors, and low-speed/medium-speed electrical vehicles, which are subject to the "Oklahoma Aircraft Excise Tax Act" [See: 68 O.S. § 6002], the "Oklahoma Vessel and Motor Registration Act" [See: 63 O.S. § 4107], or the "Oklahoma Vehicle Excise Tax Act" [See: 68 O.S. § 2106]. These excise taxes are levied on all aircraft, small vessels, watercraft, sailboats, motors greater than ten (10) horsepower, motorboats, or low-speed/medium-speed electrical vehicles, and also the optional equipment and accessories attached at the time of the sale and included in the purchase price or manufacturer statement of origin.

(b) Motor vehicles. Sales of motor vehicles on which the Oklahoma vehicle excise tax levied in Section 2101 et seq. of Title 68 has been, or will be paid, are subject to sales/use tax at the rate of 1.25% of the gross receipts of such sales. (See 710:65-19-215). The provisions of this subsection do not apply to low-speed/medium-speed electrical vehicles, power units (truck tractors) and trailers proportionally registered

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pursuant to the International Registration Plan (IRP) 47 O.S. § 1120 or trailers and semitrailers registered under subsection C of Section 1133 of Title 47 of the Oklahoma Statutes to transport cargo over the highways of this state.

(c) **Accessories, optional equipment, and parts.** Sales tax is due on accessories, optional equipment, or parts which are not attached and sold as part of the purchase price on the sale of aircraft, motors greater than ten (10) horsepower, vessels, motorboats, motor vehicles and low-speed/medium speed electrical vehicles.

(d) **Boats motors.** The sale of boat motors in excess of ten (10) horsepower is subject to boat and motor excise tax. [See: 63 O.S. §§ 4003(B)(1), 4107] The sale of boat motors ten (10) horsepower or less is subject to sales/use tax. [See: 68 O.S. § 1355]

(e) **Leases of aircraft.** Leases of aircraft are not subject to sales tax if either the aircraft excise tax has been paid on the lease transaction or an exemption applies to the transfer from the lessor to the lessee, pursuant to 68 O.S. §§ 1355(9) and 6001(4).

(f) **Sales of crude petroleum, natural or casinghead gas, and other products.** *Sales of crude petroleum, natural or casinghead gas, and other products subject to gross production tax pursuant to 68 O.S. §1001 et seq. and 68 O.S. §1101 et seq. are not subject to sales tax. This exemption shall not apply when such products are sold to a consumer or user for consumption or use, except when used for injection into the earth for the purpose of promoting or facilitating the production of oil or gas.* [See: 68 O.S. § 1355(3)]

(g) **Sales from coin-operated vending devices.** Sales from coin-operated vending devices on which the fee imposed by 68 O.S. §§ 1501-1512 has been paid are not subject to sales tax.

(h) **Leases of motor vehicles.** Leases of motor vehicles are exempt from sales tax provided that the lease is for a term of twelve (12) months or more and the vehicle excise tax levied by Section 2103 of Title 68 of the Oklahoma Statutes has been paid.

(i) **Sales of charity game equipment.** Sales of charity game equipment on which a tax is paid pursuant to the Oklahoma Charity Games Act, (3A O.S. § 401 et seq.), are not subject to sales tax. Additionally charity games equipment is exempt from sales tax when sold to the following entities: ~~or which is sold to~~

(1) a veterans' organization exempt from taxation pursuant to the provisions of Section 501(c)(4),(7),(8),(10), or (19) of the Internal Revenue Code; ~~or which is sold to~~

(2) a group home for mentally disabled individuals exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code are not subject to sales tax; and

(3) a charitable healthcare organization exempt from taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended.

(j) **Sales of cigarettes and tobacco products.** Sales of cigarettes and tobacco products are exempt from sales tax in the following instances:

(1) Sales to a federally-recognized Indian tribe or nation which has entered into a compact with the State of Oklahoma pursuant to the provisions of 68 O.S. § 346(C)

or to a licensee of such a tribe or nation, upon which the payment in lieu of taxes required by the compact has been paid; or

(2) From and after January 1, 2005, sales of cigarettes on which the tax levied in 68 O.S. § 301 et seq. or tobacco products on which the tax levied in 68 O.S. § 401 et seq. has been paid. [See: 68 O.S. § 1355(11)]

(k) **Sales of electricity at charging stations.** Beginning January 1, 2024, sales of electricity when sold by a charging station owner or operator for purposes of charging an electric vehicle and the tax imposed pursuant 68 O.S. § 6504(A) is collected and remitted to the Oklahoma Tax Commission. [See: 710:55-8-1 through 710:55-8-6]

PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

710:65-13-52. Sales of computers, data processing equipment, related peripherals, and telephone, telegraph, or telecommunications service and equipment to a qualified purchaser primarily engaged in computer services and data processing or research and development [REVOKED]

(a) **Definitions.** ~~In addition to the definitions found in the Oklahoma Research and Development Act, 68 O.S. §54001 et seq., the following words and terms, when used in this Section shall have the following meaning, unless the context clearly indicates otherwise:~~

~~(1) **"Computer"** means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. [68 O.S. Supp. 2003, § 1352]~~

~~(2) **"Data processing equipment"** means machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities.~~

~~(3) **"Primarily engaged in"** means that at least seventy five percent (75%) of the gross revenues of the new or expanding business must come from such activities.~~

~~(4) **"Qualified purchaser"** means any new or expanded business or facility which adds at least ten (10) new in state full time equivalent employees, as certified by the Employment Security Commission, for a period of at least thirty six (36) months at an average annual salary of at least Thirty five Thousand Dollars (\$35,000.00) per year per employee. In addition, at least fifty percent (50%) of the annual gross revenues must be derived from sales of a product or service to an out of state buyer or consumer.~~

~~(5) **"Qualified purchases"** means computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment.~~

~~(6) **"Related peripheral"** means input, output, processing, storage, software and communication facilities~~

which are connected or related to devices in a system or network.

(b) **Qualification.** Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications services and equipment sold to a qualified purchaser by a qualified vendor are exempt from sales and use tax.

(c) **Exempt items.** Exempt items shall include, but shall not be limited, to the following:

- (1) Bar code reader
- (2) Card reader/punch
- (3) Computer
- (4) CRT
- (5) Dedicated lines
- (6) Disk drive
- (7) Fixed disk
- (8) Key punch
- (9) Memory
- (10) Modem
- (11) Monitor
- (12) Plotter
- (13) Printer
- (14) Removable disk
- (15) Software
- (16) Tape drive
- (17) Telegraph equipment
- (18) Telegraph service
- (19) Telephone equipment
- (20) Telephone service
- (21) Terminal
- (22) Video display terminal

(d) **Non-exempt items.** The exemption shall not apply to the following:

- (1) Supplies, such as:
 - (A) Cleaning product
 - (B) Cleaning kit
 - (C) Diskettes
 - (D) Media storage
 - (E) Paper
 - (F) Pens
 - (G) Print wheels
 - (H) Print out label
 - (I) Print out ruler
 - (J) Ribbons
 - (K) Storage case
 - (L) Tape
 - (M) Template
- (2) Furniture, such as:
 - (A) Acoustical protector
 - (B) Acoustical shelving
 - (C) Chair
 - (D) Desk
 - (E) Rack
 - (F) Stand
 - (G) Table
- (3) Accessories, such as:
 - (A) Dust cover
 - (B) Filter

- (C) Radiation shield
- (D) Security system
- (E) Static dissipater
- (F) Surge protector

(e) **Qualified purchaser explained.** Specifically exempted from sales and use taxes are sales of qualified purchases to a qualified purchaser primarily engaged in computer services and data processing as defined under Industrial Group Number 7372 (prepackaged software), Industrial Group Number 7373 (computer integrated system design), Industrial Group Number 7374 (computer processing and data preparation and processing services) and Industrial Group Number 7375 (information retrieval services). In order to qualify for this exemption under Industrial Group 7374 a qualified purchaser must have a minimum of One Hundred Thousand Dollars (\$100,000.00) in qualified purchases yearly. In order to qualify for this exemption, a new or expanding business can not include the existing employee positions of any business enterprise that is directly or beneficially owned by a corporation, trust, joint venture, proprietorship, or partnership doing business in this state as of January 1, 1992.

(f) **Out-of-state sales.** Eligibility to receive the exemption provided for in 68 O.S. §54003(1) as a business which derives at least fifty percent (50%) of its annual gross revenues from sales of a product or service to an out of state buyer or consumer shall be established, subject to review by the Oklahoma Tax Commission on an annual basis, by an affidavit that the business qualifies for such exemption. The Oklahoma Tax Commission may require additional information as required to ensure that the business qualifies for such exemption. All sales to the federal government shall be considered to be sales to an out of state buyer or consumer.

(g) **Limitations.** No exemption shall be granted if the qualified computer services and data processing or research and development facility fails to file the documentation required by Subsection (j) of this Section with the Commission. Additionally, the required certification issued by the Employment Security Commission must be filed with the Tax Commission within thirty six (36) months of the date of first purchase.

(h) **Administration.** Pursuant to statute, the exemption for sales to a qualified computer service and data processing or research and development facility outlined in this Section will be administered as a refund for state and local taxes paid by the qualified computer services and data processing or research and development facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(i) **Application process.** All persons who believe that they fall within the exemption shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as an attachment, specifications of the new or expanded facility, a complete description of the computer services and data processing or research and development that will take place within the facility, and other information requested by the Commission. Upon receipt of the application, the application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission

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for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the application by the Commission.

(j) **Claims process.** For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) **Invoices** indicating the amount of state and local taxes billed to the qualified computer services and data processing or research and development facility.

(2) **An affidavit** of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the qualified purchasing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached.

(3) All additional documentation required to be submitted by the Commission.

(k) **Filing claims.** At the option of the entity who believes it will be certified as a qualified computer services and data processing or research and development facility, the documentation required by Subsection (j) of this Section can be filed monthly, quarterly, semiannually, or annually. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(l) **Fiscal procedure.** Each month, the Commission shall transfer from sales and use tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(m) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total annual purchases exceeded the sum of One Hundred Thousand Dollars (\$100,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified computer services and data processing or research

and development facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [See: 68 O.S. § 54005(C)]

(3) **Denial.** The following procedure shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the Applicant or a duly authorized agent setting out:

(i) A statement of denial as determined by the Commission;

(ii) A statement of the applicant's disagreement with such denial; and,

(iii) Supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within sixty (60) days, then the denial, without further action of the Commission, shall become final and no appeal will be entertained.

(4) **Protest of denial of certification.** The following procedure shall apply to protests of any denial of certification.

(A) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(B) The Commission will issue an order in each case. That order is directly appealable to the Oklahoma Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [See: 710:1-5-21 through 710:1-5-49 / 68 O.S. §§225, 1357.4, 1404.3]

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally

Drugs and prosthetic devices

(a) **Drugs—Prescription drugs.** Sales of drugs, except for over the counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S. § 1357(9)]

(b) **Over-the-counter drugs.** Sales of over-the-counter drugs do not qualify for the sales tax exemption outlined in subsection (a) of this Section.

(c) **Prosthetic devices.** Sales of prosthetic devices as defined in 710:65-13-169 for use by an individual are exempt from sales tax.

(d) **Documentation required to be maintained by the vendor when sales are made to healthcare providers.** For sales qualifying for exemption pursuant to subsections (a) and (c) of this Section to entities providing healthcare services to individuals, the documentation set out in (1) or (2) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed.

(1) Where the healthcare provider presents its direct payment permit, vendors should obtain and maintain in their files and records the information outlined in OAC 710:65-7-10, or

(2) Sufficiently detail the product sold and disclose as a separate line item on the bill or invoice.

~~(e) **Medical equipment, appliance, or device.** Except as set forth in 710:65-13-171 and 710:65-13-173, the sale or rental of medical equipment, appliances or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.~~

~~(d) **Sales to hospitals, nursing homes and practitioners.** Notwithstanding the provisions outlined in subsection (b), sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x ray photographs, and other tangible personal property when used in rendering medical service to patients, regardless of whether the tangible items are billed separately.~~

~~(e) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment.~~

~~(f) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.~~

~~(g) **Direct payment permits (DPP).** Health care providers may qualify for a direct payment permit, valid for three (3)~~

~~years, pursuant to the provisions of Section 710:65-9-10 of this Chapter.~~

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

- (1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169;
- (2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and
- (3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

- (1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
- (2) A copy of the prescription or work order; and
- (3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

- (1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
- (2) A copy of the prescription or work order;
- (3) A copy of the eligible recipient's Medicare card; and
- (4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Sales tax refund claims.**

~~(1) **Purchases made prior to July 1, 2022.** Under circumstances where~~For purchases made prior to July 1, 2022, a refund may be claimed by hospitals, nursing homes, similar institutions and practitioners ~~that~~ dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, ~~a refund may be claimed by the institution or practitioner~~ for the sales taxes previously paid by the institution or practitioner on such items. The documentation set out in ~~(4)(A) through (3)(C)~~ of this subsection ~~paragraph~~ must be obtained as part of the claimant's records to substantiate the exemption claimed:

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(1A) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2B) A copy of the prescription or work order; and

(3C) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(2) Purchases made on or after July 1, 2022. For purchases made on or after July 1, 2022, refund claims for items exempted pursuant to the provisions of this Section will not be allowed unless the purchaser's direct payment permit issued pursuant to 710:65-9-10 was presented to the vendor at the time of sale and the tax was accrued by the direct pay permit holder. To substantiate the refund claim the documentation outlined in subsection (e) of this Section will be required.

(e) **Medical equipment purchased pursuant to a direct payment permit.** To substantiate the sales tax exemption for certain medical equipment pursuant to subsection (a) of this Section, a healthcare provider holding a direct pay permit must maintain, separate from confidential patient records, the following information:

- (1) Patient case number or account number;
- (2) Type of insurance; and
- (3) Item description or product number.

(f) **Medicare and Medicaid recipients.** Eyeglasses, contact lenses, and hearing aids are considered items of "medical equipment", and if their cost will be reimbursed by Medicare or Medicaid pursuant to the terms and conditions set out in this Section, the sale is tax exempt.

~~(g) **Examples of medical appliances, medical devices, and medical equipment.** A nonexclusive list of medical appliances, medical devices, and medical equipment is as follows:~~

~~(1) **IPPB, circuits, devices and supplies.**~~

- ~~(A) Air oxygen mixers~~
- ~~(B) Emergency oxygen delivery units~~
- ~~(C) Manual resuscitators~~
- ~~(D) Nebulizers, tubing~~

~~(2) **Oxygen equipment.**~~

- ~~(A) Cylinder stands, support devices~~
- ~~(B) Cylinder transport devices (sheaths, carts)~~
- ~~(C) Face masks~~
- ~~(D) Liquid oxygen base dispenser~~
- ~~(E) Liquid oxygen portable dispenser~~
- ~~(F) Nasal cannulas~~
- ~~(G) Oxygen concentrators~~
- ~~(H) Oxygen cylinders~~
- ~~(I) Oxygen fittings, accessories~~
- ~~(J) Oxygen humidifiers~~
- ~~(K) Oxygen tubing~~
- ~~(L) Regulators, flowmeters~~
- ~~(M) Tank wrench~~

~~(3) **Respiratory therapy equipment.**~~

- ~~(A) Aerosol compressors (stationary and portable)~~
- ~~(B) Aspirators~~
- ~~(C) Percussors, vibrators~~
- ~~(D) Room humidifiers (with script)~~

~~(E) Ultrasonic nebulizers~~

~~(F) Volume ventilators, respirators and related device supplies~~

~~(h) **Other examples.** The following nonexclusive list contains other examples of **medical appliances, medical devices, and medical equipment** that qualify for the exemption described herein:~~

- ~~(1) Adhesive bandages~~
- ~~(2) Alternating pressure mattresses~~
- ~~(3) Alternating pressure pads~~
- ~~(4) Alternating pressure pads~~
- ~~(5) Anesthesia trays~~
- ~~(6) Aneurysm clips~~
- ~~(7) Arterial bloodsets~~
- ~~(8) Artificial sheepskin~~
- ~~(9) Aspirators~~
- ~~(10) Atomizers~~
- ~~(11) Autolit~~
- ~~(12) Back cushions~~
- ~~(13) Bathing aids~~
- ~~(14) Bathing caps~~
- ~~(15) Bathtub grab bars~~
- ~~(16) Bathtub lifts~~
- ~~(17) Bathtub seats~~
- ~~(18) Bed pans~~
- ~~(19) Bed rails~~
- ~~(20) Bedside commodes~~
- ~~(21) Bedside rails~~
- ~~(22) Bedside tables~~
- ~~(23) Bedside trays~~
- ~~(24) Bedwetting prevention devices~~
- ~~(25) Belt vibrators~~
- ~~(26) Biopsy needles~~
- ~~(27) Biopsy trays~~
- ~~(28) Blood administering sets~~
- ~~(29) Blood cell washing equipment~~
- ~~(30) Blood pack holders~~
- ~~(31) Blood pack trays~~
- ~~(32) Blood pack units~~
- ~~(33) Blood pressure meters~~
- ~~(34) Blood processing supplies~~
- ~~(35) Blood tubing~~
- ~~(36) Blood warmers~~
- ~~(37) Bone fracture therapy devices~~
- ~~(38) Breast pumps~~
- ~~(39) Breathing machines~~
- ~~(40) Canes~~
- ~~(41) Cannula systems~~
- ~~(42) Cardiac electrodes~~
- ~~(43) Cardiac pacemakers~~
- ~~(44) Cardiopulmonary equipment~~
- ~~(45) Catheter trays~~
- ~~(46) Cervical pillows~~
- ~~(47) Chair lifts~~
- ~~(48) Clamps~~
- ~~(49) Commode chairs~~
- ~~(50) Communication aids for physically impaired~~
- ~~(51) Connectors~~

- | | |
|---|--|
| (52) Contact lens cases | (109) Hearing aid carriers |
| (53) Contact lenses | (110) Hearing aid repair kits |
| (54) Contact solution | (111) Hearing aids |
| (55) Convoluted pads | (112) Heart stimulators |
| (56) Corrective eyeglasses | (113) Heat lamps |
| (57) Cotton balls | (114) Heat pads |
| (58) Crawlers | (115) Hemodialysis devices |
| (59) Crutch cushions | (116) Hemolators |
| (60) Crutch handgrips | (117) Hospital beds |
| (61) Crutch tips | (118) Hospital beds |
| (62) Crutches | (119) Hot water bottles |
| (63) Crutches | (120) Household aids for the impaired |
| (64) Crutches, crutch pads, tips | (121) Hydraulic lifts |
| (65) Decubitus prevention devices | (122) Hydro collators |
| (66) Decubitus seating pads, bed pads | (123) Hydro therm heating pads |
| (67) Dialysis chairs | (124) Hypodermic syringes and needles |
| (68) Dialysis machines | (125) I.V. administering sets |
| (69) Dialysis supplies | (126) I.V. connectors |
| (70) Dialyzers | (127) I.V. stands |
| (71) Dietetic scales | (128) I.V. tubing |
| (72) Disposable diapers | (129) Ice bags |
| (73) Disposable gloves | (130) Ident a bands |
| (74) Disposable underpads | (131) Incontinent garments |
| (75) Donor chairs | (132) Incubators |
| (76) Drainage bags | (133) Infrared lamps |
| (77) Dressing aids, button loops, zipper aids, etc. | (134) Inhalators |
| (78) Dressings | (135) Insulin infusion devices |
| (79) Drug infusion devices | (136) Invalid rings |
| (80) Dry aid kits for ears | (137) Iron lungs |
| (81) Earmolds | (138) Irrigation apparatus |
| (82) Eating and drinking aids | (139) Irrigation solutions |
| (83) EKG paper | (140) Karaya paste |
| (84) Elastic bandages | (141) Karaya seals |
| (85) Elastic supports | (142) Kidney dialysis machines |
| (86) Electrodes | (143) Knee immobilizers |
| (87) Emesis basins | (144) Laminar flow equipment |
| (88) Endo trach tubes | (145) Latex gloves |
| (89) Enema units | (146) Leg weights (rehab. related) |
| (90) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers) | (147) Leukopheresis pumps |
| (91) Exercise devices | (148) Lift reeliners |
| (92) Eyeglasses | (149) Lithotripter |
| (93) First aid kits | (150) Lumbosacral supports |
| (94) Fistula sets | (151) Lymphedema pumps |
| (95) Fitted stroller | (152) Manometer trays |
| (96) Foam seating pads | (153) Massagers |
| (97) Foam slant pillows | (154) Maternity belts |
| (98) Foam wedges | (155) Medigrade tubing |
| (99) Gauze bandages | (156) Modulung oxygenators |
| (100) Gauze packings | (157) Moist heat pads |
| (101) Gavage containers | (158) Muscle stimulators |
| (102) Geriatric chairs | (159) Muscle stimulators |
| (103) Geriatric chairs | (160) Myelogram trays |
| (104) Grooming aids | (161) Myringotomy tubes |
| (105) Grooming aids, dental aids | (162) Nebulizers |
| (106) Hand exercise equipment putty | (163) Needles |
| (107) Hand sealers | (164) Nerve stimulators |
| (108) Head halters | (165) Neuromuscular electrical stimulators [when not worn on the body] |

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- (166) Overbed tables
 - (167) Oxygen equipment
 - (168) Page turning devices
 - (169) Pap smear kits
 - (170) Paraffin baths
 - (171) Patient lifts
 - (172) Patient lifts-slings
 - (173) Patient safety vests
 - (174) Patient transport devices, boards
 - (175) Physicians instruments
 - (176) Pigskin
 - (177) Plasma extractors
 - (178) Plasmapheresis units
 - (179) Plaster (surgical)
 - (180) Plastic heat sealers
 - (181) Post-surgical bust forms
 - (182) Posture back supports
 - (183) Posture back supports for seating
 - (184) Prescribed device repair kits
 - (185) Pressure pads
 - (186) Raised toilet seats
 - (187) Reaching aids
 - (188) Respirators
 - (189) Restraints
 - (190) Resuscitators
 - (191) Sauna baths
 - (192) Security pouches
 - (193) Servipak dialysis supplies
 - (194) Shampoo trays
 - (195) Shelf trays
 - (196) Shoulder immobilizers
 - (197) Shower chairs
 - (198) Shower grip bars
 - (199) Shower seating
 - (200) Side rails
 - (201) Sitting and sleeping cushions
 - (202) Sitz bath kit
 - (203) Small vein infusion kits
 - (204) Specialized seating, desks, work stations
 - (205) Specially built hospital beds
 - (206) Specially designed hand utensils
 - (207) Specimen containers
 - (208) Spinal puncture trays
 - (209) Sponges (surgical)
 - (210) Stairglides, lifts in home
 - (211) Stairway elevators
 - (212) Standing frames, devices and accessories
 - (213) Steri-peel
 - (214) Stethoscope
 - (215) Stools
 - (216) Stopeocks
 - (217) Strap-on urinals
 - (218) Suction equipment
 - (219) Sun lamps
 - (220) Surgical bandages
 - (221) Surgical equipment
 - (222) Suspensories
 - (223) Sutures
 - (224) Thermometers
 - (225) Toilet aids
 - (226) Toilet safety frames
 - (227) Toilet seat rails
 - (228) Toilet seat risers
 - (229) Tourniquets
 - (230) Trach tubes
 - (231) Traction equipment
 - (232) Traction stands, pulleys, etc.
 - (233) Transcutaneous electrical nerve stimulators (tens unit) [when not worn on the body]
 - (234) Transcutaneous nerve stimulators
 - (235) Transfer boards
 - (236) Transfusion sets
 - (237) Trapeze bars-bar stand
 - (238) Trapezes
 - (239) Tub sealers
 - (240) Underpads
 - (241) Urinals
 - (242) Vacutainers
 - (243) Vacuum units
 - (244) Vaporizers
 - (245) Venous blood sets
 - (246) Vibrators
 - (247) Walker accessories
 - (248) Walkers
 - (249) Walkers, including walker chairs
 - (250) Walking bars
 - (251) Walking canes, quad canes, accessories
 - (252) Water beds
 - (253) Wheel-walkers
 - (254) Wheelchairs
 - (255) Whirlpools
 - (256) Writing and speech aids for the impaired
 - (257) X-ray film
- (i) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:
- (1) Abdominal belts
 - (2) Anti-embolism stockings
 - (3) Arch supports
 - (4) Arm slings
 - (5) Artificial arteries
 - (6) Artificial breasts
 - (7) Artificial ears
 - (8) Artificial eyes
 - (9) Artificial heart valves
 - (10) Artificial implants
 - (11) Artificial larynx
 - (12) Artificial limbs
 - (13) Artificial noses
 - (14) Athletic supporters
 - (15) Bone cement
 - (16) Bone nails
 - (17) Bone pins
 - (18) Bone plates
 - (19) Bone screws
 - (20) Bone wax
 - (21) Braces

- (22) Cast heels
- (23) Casts
- (24) Catheter devices and supplies
- (25) Catheters
- (26) Cervical braces
- (27) Cervical collars
- (28) Clavicle splints
- (29) Colostomy devices
- (30) Colostomy supplies and devices
- (31) Corrective braces
- (32) Corrective pessaries
- (33) Corrective shoes
- (34) Cosmetic gloves
- (35) Dental prosthesis
- (36) Dorsolumbar belts
- (37) Dorsolumbar supports
- (38) Eyelid load prosthesis
- (39) Heart valves
- (40) Hernia belts
- (41) Ileostomy devices
- (42) Iliac belts
- (43) Mastectomy pads
- (44) Neuromuscular electrical stimulators [~~when worn on the body~~]
- (45) Organ implants
- (46) Orthopedic implants
- (47) Orthopedic shoes
- (48) Orthotic supports (~~Bandages, belts, and similar supplies~~)
- (49) Ostomy devices
- (50) Pacemaker equipment
- (51) Pacemakers
- (52) Penile implants
- (53) Rib belts
- (54) Rupture belts
- (55) Sacroiliac supports
- (56) Sacrolumbar belts
- (57) Sacrolumbar supports
- (58) Space shoes
- (59) Splints
- (60) Splints, holders
- (61) Stoma appliances (~~colostomy, ileostomy, ureteros-tomy, catheters~~)
- (62) Stoma bags
- (63) ~~Transcutaneous electrical nerve stimulators (tens unit) [when worn on the body]~~
- (64) Trusses
- (65) Ureostomy devices

PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:65-13-275. Exemption for disabled veterans in receipt of compensation at the ~~one hundred percent~~100% rate, ~~and unremarried surviving spouses of qualifying veterans thereof, and unremarried surviving spouses of persons who died while in the line of duty~~

(a) **General provisions for exemption afforded certain veterans.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the 100% rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service and are registered with the veterans registry created by the Oklahoma Department of Veterans Affairs (ODVA). The exemption includes sales to the spouse of such veteran or to a household member where the veteran resides and who is authorized to make purchases on behalf of the veteran in the veteran's absence, so long as the purchase is for the benefit of the qualified veteran.

(b) **General provisions for exemption afforded an unremarried surviving spouse of deceased qualifying a veteran qualifying under subsection (a) of this Section or a person who died in the line of duty.** Sales of tangible personal property or services are exempt from sales tax when made to ~~an unremarried~~ surviving spouse of a deceased veteran qualifying for the exemption set out in subsection (a) of this Section or to an unremarried surviving spouse of a person determined by the United States Department of Defense or any branch of the United States military to have died while in the line of duty if the spouse has not remarried. The exemption includes sales to a household member where the qualifying surviving spouse of the deceased qualifying veteran resides who is authorized to make purchases on behalf of the spouse in his or her absence, so long as the purchase is for the benefit of the spouse.

(c) **Qualification to receive an exemption card.** To qualify for exemption under this Section and receive an exemption card a veteran or surviving spouse of ~~the a~~ qualifying veteran must be an Oklahoma "resident" as defined in 68 O.S. §2353 and submit to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, ~~OK~~ OK 73194 the following information:

(1) **Qualifying veteran.** A letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate and proof of registration with the veterans registry established in accordance with 72 O.S. § 721.

(2) **Unremarried surviving spouse of veterans qualifying for exemption under subsection (a) of this Section.** A letter from the United States Department of Veterans Affairs, Muskogee, OK certifying that the applicant is the unremarried spouse of the qualifying veteran.

(3) **Unremarried surviving spouse of a person who died in the line of duty.** An original or certified copy of

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the Department of Defense Form DD-1300 which certifies that the applicant is the surviving spouse of a person who died in the line of duty.

(d) **Exemption limitations.** The authorized exemption in this Section is subject to the following limitations:

(1) **Disabled veterans in receipt of compensation at the ~~one hundred percent~~100% rate.** The authorized exemption for a qualified veteran is limited to Twenty-five Thousand Dollars (\$25,000.00) per year of qualifying purchases made by the qualified veteran, spouse or household member authorized to make purchases on behalf of the qualified veteran in the veteran's absence. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded the yearly limitation of Twenty-five Thousand Dollars (\$25,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(2) **Unremarried surviving spouse of ~~qualifying disabled veteran.~~** The exemptions authorized in subsection (b) of this Section ~~exemption for the~~ unremarried surviving spouse is ~~are~~ limited to One Thousand Dollars (\$1,000.00) per year of qualifying purchases made by the qualified surviving spouse. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amount for which the exemption is applicable has not exceeded the yearly limitation of One Thousand Dollars ~~(1,000.00)~~ ~~(\$1,000.00)~~. If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(e) **Qualifying sales.** Sales are exempt if the qualified veteran or surviving spouse has an interest in the funds presented and the purchase is made on his or her behalf, and the qualified ~~veteran's person's~~ spouse or household member or the surviving spouse's household member authorized to make purchases on behalf of the veteran or surviving spouse in their absence has presented the exemption card issued by the Oklahoma Tax Commission.

(f) **Previously qualified veterans.** Veterans which were granted the sales tax exemption outlined in this Section prior to November 1, 2020, must register with the ODVA veterans registry prior to July 1, 2023, in order to remain qualified.

(g) **Perfection of exemption.** The sales tax exemption afforded 100% disabled veterans must be perfected by presenting the sales tax exemption card, issued to the qualifying veteran by the Tax Commission, at the time of sale so that the vendor does not charge and collect sales tax on the purchase.

(h) **Denial of exemption by vendor.** All vendors shall honor the proof of eligibility for the sales tax exemption to both the qualified veteran, qualified unremarried surviving spouse

and persons making purchases for the benefit of the disabled veteran or surviving spouse. Qualifying 100% disabled veterans and qualifying unremarried surviving spouses who have had claims for sales tax exemption denied by vendors may notify the Tax Commission of such denial by submitting to the Audit Services Division a signed and completed OTC Form 13-37, which is available online at www.tax.ok.gov.

(i) **Refund request.** A refund of sales taxes erroneously paid may be claimed only under circumstances where a vendor refused to honor the proof of exemption eligibility issued by the Tax Commission and the person eligible for the exemption submits to the Tax Commission a completed and signed OTC Form 13-37 *Disabled American Veterans Notification of Denial of Exemption*.

(j) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the ~~one hundred percent (100%)~~100% rate or an unremarried surviving spouse of the qualifying veteran who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to disabled veterans in receipt of compensation at the ~~one hundred percent~~100% rate.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-371. Exemption for Oklahoma Women Veterans Organization and Subchapters

(a) **General provisions.** Sales of tangible personal property or services to or by a women's veteran's organization, and its subchapters in Oklahoma, that is exempt from taxation pursuant to 26 U.S.C., § 501(c)(19) and is known as the Oklahoma Women Veterans Organization are exempt from sales tax. [68 O.S. § 1356(85)]

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(19); and,

(2) Written confirmation that the applicant is currently recognized as the Oklahoma Women Veterans Organization or a subchapter thereof.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S.

§ 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-372. Exemption for nonprofit organizations that provide support to veterans, active duty members of the Armed Forces, reservists and members of the National Guard

(a) **General provisions.** *Sales of tangible personal property or services to an organization that is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and which provides support to veterans, active duty members of the Armed Forces, reservists and members of the National Guard to assist with the transition to civilian life, and that provides documentation to the Tax Commission that over 70% of its revenue is expended on support for transition to civilian life are exempt from sales tax. [68 O.S. § 1356(84)]*

(b) **Application process.** Application for exemption is made by submitting to the Business Tax Services Division, Oklahoma Tax Commission, Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available online at www.tax.ok.gov along with supporting documentation as follows:

- (1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);
- (2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in subsection (a) of this Section as evidenced by copies of:
 - (A) Articles of incorporation;
 - (B) By-laws;
 - (C) Brochure; or
 - (D) Notarized letter from the President or Chairperson of the organization; and

(3) A copy of an audit, income tax informational return or financial statement which demonstrates that for the last fiscal year end before application that over 70% of the applying organization's funds were expended on the support for veterans, active duty members of the Armed Forces, reservists and members of the National Guard to assist with the transition to civilian life.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which

qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 15. "H"

710:65-19-142. Hospitals, nursing homes, similar institutions and practitioners

(a) **General provisions.** Hospitals, infirmaries, ~~sanitariums, nursing homes, and~~ ~~like~~ similar institutions and practitioners are primarily engaged in the business of rendering services, are generally considered to be the consumers or users of tangible personal property and services used in the operation of the institutions. Thus, with the exception of drugs, not to include over-the-counter drugs, and prosthetic devices, the gross proceeds derived from sales of tangible personal property and certain services to such institutions and practitioners are subject to tax. In-state vendors collect and remit sales tax on sales of such property to the institutions and practitioners, and use tax is due on out-of-state purchases. ~~They~~ Healthcare institutions are not required to collect, report, and remit sales tax on gross receipts from meals, bandages, dressings, drugs, x-ray photographs or other tangible personal property when such items of tangible personal property are used in the rendering of a hospital ~~their~~ service, regardless of whether the items are billed separately. This is true irrespective of whether or not such tangible items are billed separately to their patients.

(b) **Vendors selling to healthcare institutions.** With the exception of drugs, excluding over the counter drugs, as outlined in 710:65-13-170, hospitals, infirmaries, and sanitariums are deemed to be the purchasers for use or consumption of all tangible personal property used in the rendering of their service, and the sellers ~~Sellers~~ of these items ~~tangible personal property to hospitals, infirmaries or sanitariums~~ institutions and practitioners are required to collect tax on sales of such property to hospitals, unless the hospital, nursing home, or similar institution is owned or operated by the federal government, the State of Oklahoma, a city, county, public trust, or a federally-recognized Indian Tribe, in which case the exemption described at OAC 710:65-13-130 will apply.

(c) **Exceptions to the requirement to pay sales tax on purchases.** Hospitals, infirmaries ~~or sanitariums,~~ nursing homes, similar institutions and practitioners engaged in the administration of drugs to their patients, may purchase drugs, except for over-the-counter drugs, and prosthetic devices for use by individuals, exempt from sales tax as outlined in subsections (a) and (c) of 710:65-13-170.

(d) **Sales tax refund claims.**

(1) **Purchases made prior to July 1, 2022.** For purchases made prior to July 1, 2022, a refund may be claimed by hospitals, nursing homes, similar institutions

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and practitioners that dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients for the sales taxes previously paid by the institution or practitioner on such items. The documentation set out in (A) through (C) of this paragraph must be obtained as part of the claimant's records to substantiate the exemption claimed:

(A) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(B) A copy of the prescription or work order; and

(C) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(2) **Purchases made on or after July 1, 2022.** For purchases made on or after July 1, 2022, refund claims for items exempted pursuant to the provisions of 710:65-13-173 will not be allowed unless the purchaser's direct payment permit issued pursuant to 710:65-9-10 was presented to the vendor at the time of sale and the tax was accrued by the direct pay permit holder. To substantiate the refund claim the documentation outlined in subsection (e) of this Section will be required.

(e) **Direct pay permits.** Health care providers such as hospitals, nursing homes, similar institutions and practitioners may qualify for a direct payment permit, valid for three (3) years, pursuant to the provisions of Section 710:65-9-10. To substantiate the sales tax exemption for certain medical appliances, medical devices and other medical equipment pursuant to 68 O.S. § 1357.6(A), a healthcare provider holding a direct pay permit must maintain, separate from confidential patient records the following information:

(1) Patient case number or account number;

(2) Type of insurance; and

(3) Item description or product number.

(ef) **Provision of meals.** When hospitals furnish meals to nurses, attendants and patients as a part of the service rendered, the hospitals are deemed to be the users or consumers of the food and beverages used in the preparation of these meals and the sellers of these items to the hospital are required to collect tax on the sales of such property.

(ég) **Cafeterias open to public.** When privately owned hospitals operate cafeterias that serve meals to the public, they will be allowed to purchase all foodstuffs used to operate the cafeteria exempt from tax for resale with a valid sales tax permit. The hospitals will then be required to collect the sales tax on sales to their customers and report and remit same to the Commission each month. The hospitals will also be required to pay sales tax on the cost of all foodstuffs withdrawn from stock, which are used to feed patients.

(eh) **State, city and county hospitals.** State, city or county hospitals who operate cafeterias that serve meals to the public, or who charge their employees, are also required to collect the sales tax on sales to their customers and report and remit same to the Commission each month.

PART 35. "R"

710:65-19-294. Research and development [REVOKED]

(a) The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide such things as plans, designs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

(b) In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the research and development company must pay tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes is deemed not a sale of tangible personal property.

(c) A research and development contract is distinguishable from a contract for the production of an item after the research and development has been completed. All charges to the researcher's customer relating to the production of such an item are for the sale of tangible personal property, not research and development services, and as such are subject to the tax.

(d) A new or expanding business primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733, and 8734 of the SIC Manual, latest revision, may qualify for sales and/or use tax exemption on certain of its purchases under the Oklahoma Research and Development Incentives Act. [See: 68 O.S. § 54001 et seq. and OAC 710:65-13-52]

[OAR Docket #23-484; filed 6-8-23]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #23-485]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
710:90-1-13 [AMENDED]

AUTHORITY:

68 O.S. §§ 203 and 2385.15; Oklahoma Tax Commission

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed amendment to Section 710:90-1-13 incorporates new Tax Commission withholding Form OK-W-4-R in response to the new IRS Form W-4R. New Form OK-W-4-R is to be used for nonperiodic and rollover distributions. [68:2385.1 et seq]

CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

710:90-1-13. Pensions, annuities, and certain other deferred income

(a) **Treatment of designated distributions.** Designated distributions, as defined by the Internal Revenue Code (IRC), Section 3405, whether periodic or non-periodic, ~~should be treated as if they were a payment of wages for may be subject to Oklahoma Income Tax Withholding purposes income tax withholding.~~ The payor of any periodic or non-periodic payment should inform recipients who are or become Oklahoma residents of the need to withhold if:

- (1) ~~The recipient has not chosen the election of "no federal withholding," provided by Section 3405 of the Internal Revenue Code, or~~
- (2) ~~The recipient elects to have Oklahoma Income Tax withheld irrespective of any election to not withhold federal income tax.~~

(b) **Treatment of periodic payments.** The amount to be withheld from a periodic payment is determined as if it were a payment of wages. The marital status and number of withholding allowances ~~an employee a recipient~~ may claim in determining the tax to be withheld shall be the same as that claimed on Form W-4P, Withholding Certificate for Pension or Annuity Payments, or a similar form provided by the payer.

- (1) If the recipient has not provided a withholding certificate, tax will be withheld as if the recipient were married and claiming three (3) withholding allowances.
- (2) The recipient can choose not to have tax withheld, regardless of how much tax is owed for the previous year, or is expected to be owed in the current year.

(c) **Treatment of non-periodic payments.** Tax will be withheld at ~~a five percent (5%)~~ the top marginal individual income tax rate on any non-periodic payments.

(1) The recipient ~~cannot~~must use Form ~~W-4P~~OK-W-4-R, Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions to determine ~~whether income tax will the amount to be withheld, since withholding allowances or marital status are not taken into consideration.~~

(2) ~~The recipient can use Form W-4P to specify an additional amount to be withheld.~~

(3) ~~The recipient can also use Form W-4P~~OK-W-4-R, to choose not to have tax withheld.

(d) **Employer contributions.** Employer contributions to qualified cash or deferred arrangements are not subject to Oklahoma ~~Withholding Tax~~withholding tax.

[OAR Docket #23-485; filed 6-8-23]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY**

[OAR Docket #23-486]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Used Tire Recycling
- 710:95-5-3 [AMENDED]
- 710:95-5-19 [AMENDED]
- Subchapter 21. Quality Events
- 710:95-21-3 [AMENDED]

AUTHORITY:

27A O.S. § 2-11-401.6; 68 O.S. §§ 203 and 4309; Oklahoma Tax Commission

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GIST/ANALYSIS:

The proposed amendments to Sections 710:95-5-3 and 710:95-5-19 implement the provisions of Sections 21 and 22 of HB 3419 which created Service Oklahoma as a division of the Oklahoma Office of Management and Enterprise Services. It transferred applicable powers, duties, and responsibilities exercised by the Motor Vehicle Division of the Tax Commission to Service Oklahoma on January 1, 2023. Consistent with the transfer, provisions contained in the Used Tire Recycling Act were amended to reflect new terminology and/or denote Service Oklahoma as the

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party responsible to undertake and fulfill the transferred authority, duties and responsibilities. [47:3-101 et seq]

The proposed amendment to Section 710:95-21-3 is required to conform to the provisions of HB 1121 [2021]. [68:4304]

CONTACT PERSON:

Lisa Haws, Tax Policy and Research Division, Oklahoma Tax Commission, Oklahoma City, OK 73194; 405-521-3133; lhaws@tax.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 5. USED TIRE RECYCLING

710:95-5-3. Used tire recycling fee

(a) **Applicability and amount of the fee.** With the exception of tires for automobiles as defined in 710:95-5-2, the amount of the fee levied by the Oklahoma Used Tire Recycling Act is determined based upon the size of the tire rim and/or use of the tire. [See: 27A O.S. § 2-11-401.2]

(b) **Report.** The Commission shall provide a report, on a monthly basis, to the DEQ of the fees remitted by each tire dealer and ~~motor license agent~~operator licensed by Service Oklahoma a division of Oklahoma Office of Management and Enterprise Services hereinafter known as licensed operator.

(c) **Payments.** Upon receipt of monthly reports from the DEQ, the Commission will issue payments from the Fund to qualified applicants.

710:95-5-19. Compliance

Upon receipt of a determination from the DEQ that a tire dealer or ~~motor license agent~~licensed operator has demonstrated a flagrant or repeated disregard of Section 2-1-401.2 of Title 27A, the Tax Commission will commence proceedings to collect finally established used tire fee liabilities in accordance with the recommendations of the DEQ. The Tax Commission will, in a timely manner, report the results of the proceedings to the DEQ.

SUBCHAPTER 21. QUALITY EVENTS

710:95-21-3. Quality event requirements, limitations and eligibility

(a) **Designation of quality event.** For purposes of this Subchapter a host community can designate a quality event pursuant to the adoption by the governing body of the host community an ordinance or resolution which must contain designation of the following:

- (1) The dates during which a quality event will be hosted; and
- (2) The type of expenses eligible for payment through distribution of captured revenues to the host community

including, but not limited to, advertising, facility rental, promotional materials and security.

(b) **Designation requirements.** The resolution or ordinance must be adopted at least ~~six months~~thirty (30) days prior to the first day of the quality event.

(c) **Limitations.** A host community may only designate one quality event during the timeframe in which a designated quality event will occur.

(d) **Eligible quality events.** Eligibility for qualify event status is available for the following:

- (1) New events or meetings of a nationally recognized organization or its members
- (2) New or existing events that are a national, international or world championship, or
- (3) New or existing events that are managed or produced by an Oklahoma-based national or international organization.

[OAR Docket #23-486; filed 6-8-23]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-462]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

715:1-1-13. Change of address, name or district [AMENDED]

AUTHORITY:

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

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS

715:1-1-13 is being amended and implemented to comply with statutory responsibility of the Board of Trustees in establishing rules and regulations for the administration of the System and the transaction of its business (70 O.S. Section 17-101 et seq.). This rule is necessary to the orderly administration of the System for the benefit of the System's members and to defray costs of administering the System.

CONTACT PERSON:

Phyllis Bennett, Rules Liaison, Teachers' Retirement System of Oklahoma, 301 NW 63rd Street, Suite 500, Oklahoma City, OK, 73116, (405) 521-4745, phyllis.bennett@trs.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:

715:1-1-13. Change of address, name or district

~~When a member moves to~~For active members, to document a new address, or if there is a change of surname name, or a change of employer, TRS should be notified of such change by the member's employer in writing or via the TRS ClientEmployer Reporting Portal. Please include the new name, the former name and the Social Security number or Member ID number. This procedure also applies to retired members whose checks are directly deposited to their banking accounts. ~~When an employee moves from one school district to another, the employee shall notify TRS using the Personal Data Form that may be secured from the fiscal officer of the member's employer or from the TRS website. Active members can update their email address via the myTRS Member Portal. For retired members, changes of address or name shall be documented on the Personal Data Form 1R (Retired) or via the myTRS Member Portal.~~

[OAR Docket #23-462; filed 6-8-23]

**TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 10. GENERAL OPERATIONS**

[OAR Docket #23-463]

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PERMANENT final adoption

RULES:

- Subchapter 1. Membership Provisions
 - 715:10-1-5. Change of address, name or district [AMENDED]
- Subchapter 5. Establishing Other Service Credits [AMENDED]
- 715:10-5-33. Credit for family leave [NEW]
- 715:10-5-34. Credit for adjunct service [AMENDED]
- Subchapter 9. Survivor Benefits
 - 715:10-9-3. Monthly annuity in lieu of death benefit [AMENDED]
 - 715:10-9-8. Beneficiary designation for death benefit [AMENDED]
- Subchapter 11. Withdrawal from Membership and Refund of Deposits
 - 715:10-11-4. Refunds of contributions [AMENDED]
- Subchapter 13. Contributions for Membership Service
 - 715:10-13-2. Contributions required on all compensation [AMENDED]
 - 715:10-13-3. Employee contribution rates [AMENDED]
- Subchapter 15. Service Retirement
 - 715:10-15-8. Age, creditable service determination [AMENDED]
 - 715:10-15-11. Designation of beneficiaries or joint annuitant for retirement options [AMENDED]
 - 715:10-15-12. Spousal consent [AMENDED]
 - 715:10-15-15. Disability retirement; application; effective date [AMENDED]
 - 715:10-15-22. Reduction of disability benefits for excess earnings [AMENDED]
- Subchapter 17. Post-Retirement Employment
 - 715:10-17-5. Permissible employment [AMENDED]
 - 715:10-17-7. Employment by a disabled retiree [AMENDED]
 - 715:10-17-9. Annual W-2P tax statements [AMENDED]
 - 715:10-17-13. Election to return to qualifying employment [AMENDED]
 - 715:10-17-14. Termination and resumption of benefit payments [AMENDED]

715:10-17-15. Salary limitations for certain returning classroom teachers [AMENDED]

AUTHORITY:

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

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS

715: 10-1-5 is being amended to comply with amendments to 70 O.S. Section 17-101.

715:10-5-33 is being reenacted to reflect TRS compliance with 70 O.S. §6-104.1.

715:10-5-34 is being amended for clarify who is eligible to earn service credits

715:10-9-3 is being amended to clarify and reflect all statutory requirements for eligibility for a monthly annuity in lieu of the statutory death benefit under 70 O.S. §17-105(11).

715:10-9-8 is being amended to reflect TRS's forthcoming ability to accept beneficiary designations electronically and to set out TRS requirements for a valid beneficiary designation.

715:10-11-4 is being amended to reflect Internal Revenue Service limitations on providing a refund, as opposed to a credit, to employers for excess contributions remitted due to mistake of law or fact.

715:10-13-2 is being amended to clarify that TRS members must remit on all contributions from the date their qualifying TRS employment began and that full service credit will not be awarded until all eligible contributions are remitted.

715:10-13-3 is being amended to comply with 70 O.S. §17-108.2 and accurately reflect the impact of earning state credit will occur to an eligible employee's gross pay, rather than net pay.

715:10-15-8 is being amended to reflect the ability of TRS to grant fractional service credit when calculating service credit at retirement consistent with prior amendments to the 715:10-3-1.

715:10-15-11 is being amended to reflect TRS's forthcoming ability to accept beneficiary designations electronically and to set out TRS requirements for a valid beneficiary designation.

715:10-15-12 is being amended to reflect updated clarified procedures for the Spousal Consent and Internal Revenue Service requirement, as part of a member's retirement.

715:10-15-15 is being amended to reflect that TRS will accept additional sufficient documentation from the Social Security Administration to prove an award of disability benefits. This rule is also being amended to clarify the level of medical evidence necessary to adequately determine disability on behalf of the member.

715:10-15-22 is being amended to reflect that TRS may seek documentation from a disabled retiree regarding earnings in a calendar year if the disabled retiree is under 62 years of age and otherwise clarifying procedures if a retiree is earning excessive earnings or working in a position similar to the one working in when they were medically retired.

715:10-17-5 is being amended to clarify current TRS procedures relative to retired members seeking to work as an independent contractor.

715:10-17-7 is being amended to reflect that TRS may seek documentation from a disabled retiree regarding earnings in a calendar year if the disabled retiree is under 62 years of age and otherwise clarifying procedures if a retiree fails to provide such information.

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715:10-17-9 is being amended to correct a typographical error.

715:10-17-13 is being amended to strike the requirement for a Personal Data Form consistent with TRS practice of obtaining such information via the Employer Portal rather than via a paper form and to otherwise clarify application to retired members.

715:10-17-14 is being amended to clarify its application to only those retired members who return to active contributing status and to maintain consistency with the actual timing of retirement benefit payments.

715:10-17-15 is being amended to operate to the benefit of eligible teachers when situations of good cause prevent their application for post-retirement employment from being timely and to ensure TRS rules are consistent with the intent of 70 O.S. Section 17-116.10 enacted by Senate Bill 267 in the 2021 legislative session, effective July 1, 2021, i.e., to capture and retain the participation of qualified active teachers in public education despite their prior retirement.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-5. Ineligible for TRS membership

The following employees are ineligible to be members of the Teachers' Retirement System. (Note: Ineligible employment cannot be combined with eligible employment.)

- (1) non-classified employee working less than 20 hours per week.
- (2) A substitute, irregular, seasonal, graduate assistant, fellowship recipient, adjunct supplemental or temporary employee. This provision does not apply to adjunct teachers as described in 70 O.S. § 6-122.3 who shall be considered non-classified employees and who may qualify for membership pursuant to OAC 715:10-1-4. (Note: Certain substitute and adjunct employment may qualify for service credit. See OAC 715:10-5-2 and OAC 715:10-5-34).
- (3) Persons employed as a consultant or persons contracting with a public school to transport students, to provide food service, or to provide any other services, who are not "regular" employees of the school. (NOTE: School bus drivers or food service personnel who are regular employees of the school are eligible for membership, subject to the requirements of OAC 715:10-1-2, 10-1-4, 10-1-5.)
- (4) An employee whose primary function at a school or institution is that of a student. If both the following conditions apply, a person employed in an Oklahoma public school, college or university shall be considered to be a student employee.
 - (A) The employment is conditional upon the employee's being enrolled as a student at the same institution; and

(B) The employee has no other employment during the same payroll period which is eligible for membership in TRS.

- (5) Any persons whose employment compensation comes from federal or other funds and is not administered by an Oklahoma public education employer. (Note: If the employee is not paid by the school on a state warrant, the employee is not considered to be an employee of the school or the State of Oklahoma. Regular employees whose salaries are paid in part or in whole by federal or other funds are eligible for membership if they were hired by the school and paid by the school.)
- (6) Any person employed by the public schools of Oklahoma after July 1, 1991, who is covered by another federal, state, county or local public retirement plan which will provide benefits on the employment service covered by the Teachers' Retirement System.
- (7) Employees of employers that are not governmental employers within the definition of Internal Revenue Code Section 414 and 70 O.S. 17-116.2J.
- (8) Any person employed by the University of Oklahoma or Oklahoma State University or the entities of either comprehensive university who elects to participate in an alternative retirement plan provided by the comprehensive university as provided by the Alternate Retirement Plan for Comprehensive Universities Act.

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-33. Credit for family leave

(a) A full-time teacher who takes ninety (90) or fewer days of leave without pay to care for the teacher's child during the first year of the child's life shall receive retirement service credit for the days taken as leave without pay if:

- (1) the employing district certifies to TRS that the employee's leave without pay was taken with the proper approval of the employing district's Board of Education; and
 - (2) TRS receives payment for the actuarial cost of the service credit for the days taken as leave without pay;
- (b) The teacher shall notify their employer and TRS in writing within thirty (30) days from the date the teacher returns to work that the teacher will pay the actuarial cost of the service credit for the days taken as leave without pay.
- (c) The teacher shall have up to twelve (12) months from the date they return to work to pay the actuarial cost for the days taken as leave without pay.

715:10-5-34. Credit for ~~adjunct service~~ Adjunct Service in Higher Education

(a) Pursuant to 70 O.S. §116.16, ~~As Teachers' Retirement System~~ TRS member who was employed in an adjunct position in an institution under The Oklahoma State System of Higher Education before joining the Retirement System may purchase service credit for that employment.

(b) The member may purchase one year of service credit for each school year in which he or she worked a minimum of eighteen (18) credit hours in such an adjunct position, up to a maximum five (5) years. Such purchased service credit shall be considered contributing service for vesting and retirement.

(c) The purchase price for eligible adjunct service credit shall be based upon actuarial cost as defined in OAC 715:10-5-4. All payments for such service credit must be made while the member is an active contributing member or within sixty (60) days after the end of the member's employment in the public schools in Oklahoma, and must be completed before the member's effective retirement date. No person may purchase service credit for such adjunct employment after the member's death.

(d) The payments for such service credit may be made in one lump sum or in equal monthly installments for up to sixty (60) months, as provided in OAC 715:10-5-4 (9).

SUBCHAPTER 9. SURVIVOR BENEFITS

715:10-9-3. Monthly annuity in lieu of death benefit

The designated beneficiary of an in-service member, who qualified for service retirement, and had ten (10) years or more of creditable service may elect to receive, in lieu of the return of contributions and the \$18,000 death benefit, the retirement benefit to which the deceased member would have been entitled at the time of death under the Option 2 retirement plan. To qualify for this option, the designated beneficiary must have been named as the ~~primary~~ sole beneficiary at the time of the member's death (see OAC 715:10-15-1 and 10-15-2 and 70 O.S. §17-105(11)). This option is only available when ~~the member has designated one individual as the designated beneficiary, and the beneficiary is the member's spouse, another person, or the beneficiary of a Discretionary and Special Needs Trust, provided~~ if the designated beneficiary is not the member's spouse, IRS Regulations require that the adjusted member/beneficiary age difference cannot be more than ten (10) years. [See OAC 715:10-15-10, to determine the adjusted member/beneficiary age difference]. [See also OAC 715:10-9-7, if the member and beneficiary were divorced before death].

715:10-9-8. Beneficiary designation for death benefit

A member may change or update his or her beneficiary designation for the statutory death benefit at any time in the manner prescribed by TRS. A beneficiary designation is valid for TRS purposes when properly executed and on file with TRS prior to the death of the member. TRS shall not be responsible for determining the competency of a member to designate a beneficiary except as otherwise provided by Oklahoma law.

SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS

715:10-11-4. Refunds of contributions

(a) Refunds for overpayment of employer contributions shall be made upon request by the employing school if the payment of contributions was made based on mistake of fact or law, provided a refund shall only be given to the requesting employer for overpaid contributions when such refund occurs within 12 months of the overpaid contribution. Otherwise, the employer shall receive a credit from TRS against future employer contributions due.

(1) The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made.

(2) No interest shall be paid on refunds for this purpose.

(b) Refunds of excess employee contributions shall be distributed to the member as soon as practical through a lump sum payment for all past overpayments with appropriate interest under OAC 715:10-11-1. The distribution shall be reported on IRS Form 1099-R for the year of the distribution.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-2. Contributions required on all compensation

Contributions shall be made on total compensation of each member. Total compensation means salary and benefits from all sources including federally-subsidized programs under the direct administration of a public school and salaries earned by an employee for extra duties. This includes pay to a teacher who also drives a school bus, members of TRS who are working part-time for another school and members employed on a regular basis who are employed by the same or different school in a summer school or night school program. All public schools shall treat the employee contributions as being picked-up under the provisions of Section 414(h)(2) of the Internal Revenue Code. Individuals who join the Teachers' Retirement System during the school year and who have been employed prior to becoming a member must make retroactive contributions from the beginning of that school year date their qualifying employment began. The membership date of such a member is the date the first payment is received, not the beginning of the school year. The member shall not receive full service credit for a year of service until the balance of contributions, including any contributions required by the employer, are received by TRS.

715:10-13-3. Employee contribution rates

(a) Beginning with the 1996-97 school year, the maximum compensation level for all members, other than those members employed by a comprehensive university on or before June 30, 1995, shall be the member's regular annual compensation. This includes any employee of a comprehensive university who transfers to another school or university after June 30, 1996, or who terminates paid employment status with a comprehensive university and returns to employment at a later date.

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(b) Beginning with the 1996-97 school year, the maximum compensation level for those employees of a "comprehensive university", defined in statutes as the University of Oklahoma and all of its constituent agencies, including the University of Oklahoma Health Sciences Center, the University of Oklahoma Law Center and the Geological Survey, and Oklahoma State University and all of its constituent agencies, including the Oklahoma State Agricultural Experiment Station, the Oklahoma State University Agricultural Extension Division, the Oklahoma State University College of Veterinary Medicine, the Oklahoma State University Center for Health Sciences, the Technical Branch at Oklahoma City the Technical Branch at Okmulgee and Oklahoma State University-Tulsa, who were employed on or before June 30, 1995, shall contribute the following:

(1) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level not to exceed \$25,000:

- (A) \$32,500 for service between July 1, 1996 and June 30, 1997,
- (B) \$37,500 for service between July 1, 1997 and June 30, 1998,
- (C) \$42,500 for service between July 1, 1998 and June 30, 2000,
- (D) \$47,500 for service between July 1, 2000, and June 30, 2001,
- (E) \$52,500 for service between July 1, 2001, and June 30, 2002,
- (F) \$57,500.00 for service between July 1, 2002, and June 30, 2003,
- (G) \$62,500.00 for service between July 1, 2003, and June 30, 2004,
- (H) \$67,500.00 for service between July 1, 2004, and June 30, 2005,
- (I) \$72,500.00 for service between July 1, 2005, and June 30, 2006,
- (J) \$77,500.00 for service between July 1, 2006, and June 30, 2007, and
- (K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007, and

(2) for members who, prior to June 30, 1995, elected to contribute on a maximum compensation level in excess of \$25,000, or who did not make an election prior to June 30, 1995, because their annual salary was less than \$25,000:

- (A) \$49,000 for service between July 1, 1996 and June 30, 1997,
- (B) \$54,000 for service between July 1, 1997 and June 30, 1998,
- (C) \$59,000 for service between July 1, 1998 and June 30, 2000,
- (D) \$64,000 for service between July 1, 2000, and June 30, 2001,
- (E) \$69,000 for service between July 1, 2001, and June 30, 2002,
- (F) \$74,000 for service between July 1, 2002, but not later than June 30, 2003,

(G) \$79,000 for service between July 1, 2003, and June 30, 2004,

(H) \$84,000 for service between July 1, 2004, and June 30, 2005,

(I) \$89,000 for service between July 1, 2005, and June 30, 2006,

(J) \$94,000 for service between July 1, 2006, and June 30, 2007, and

(K) the full amount of regular annual compensation for service authorized and performed after June 30, 2007.

(c) A person employed by any school district or technology center school district who holds a valid certificate issued by the State Department of Education or the State Board of Career and Technology Education and is employed on a full-time basis as a teacher, principal, supervisor, administrator, superintendent, counselor, librarian, or certified or registered nurse shall have a specific amount credited against the employee's contribution amount to TRS. The State of Oklahoma shall pay an annual amount as set forth in 70 O.S. §17-108.2 for each fiscal (or plan) year.

(d) Each school district or technology center school district shall adjust each eligible employee's monthly contribution to TRS in accordance with statutory provisions and shall cause the annual amount paid by the State of Oklahoma as provided in the preceding paragraph to be deducted from the monthly remittance to each eligible employee's retirement account and a like amount added to the ~~net~~gross pay of the eligible employee.

(1) If the school district pays the retirement contribution in addition to the employee's total compensation, the employer must reduce the employee's annual retirement contribution which the school pays to TRS by the appropriate amount and add that amount to each eligible employee's ~~net~~gross pay.

(2) If the school district deducts the retirement contribution from each employee's total compensation, whether as a salary reduction to pay the retirement contribution as a fringe benefit or as a deduction on an after-tax basis, the employer must adjust the employee's annual retirement deduction in accordance with the amount to be paid by the State. The adjustment in the retirement deduction will result in an increase to the eligible employee's ~~net~~gross pay.

(3) The State contribution to each eligible employee's retirement account is determined by the total experience of each employee as verified by the State Department of Education or the Oklahoma Department of Career and Technology Education.

(4) The State contribution must be calculated and paid in equal monthly installments as determined by the eligible employee's contract, i.e., ten months, eleven months or twelve months. Eligible employees who work full-time for less than a full contract year shall have the prescribed State contribution prorated proportionately based on the employee's full-time employment during the relevant contract period.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-8. Age, creditable service determination

The member's age, and the age of a member's designated beneficiary, at retirement shall be determined as the age attained as of the last birthday. Total creditable service shall be determined to the nearest whole number with any tenth fractional part of a year rounded down. Age shall be determined as of the date of retirement in the following manner:

- (1) If the member's date of birth is on or before the tenth (10th) day of the month of retirement, the age shall be the age of the member on the tenth (10th) day of the month.
(2) If the member's date of birth is after the tenth (10th) day of the month of retirement, the age shall be the age of the member on the first day of the month.

715:10-15-11. Designation of beneficiaries or joint annuitant for retirement options

A designation of beneficiary or joint annuitant must be made when the retirement contract is completed. A member who selects the Maximum, Option 1 or Option 4 retirement plan may name more than one beneficiary. Once the member has been retired for more than sixty (60) days or if no change in the member's retirement plan occurs, beneficiaries named for the Maximum, Option 1, or Option 4 retirement plan may be changed by the member at any time using a form in the manner prescribed by TRS. The joint annuitant for the Option 2 or Option 3 retirement plan cannot be changed even if the joint annuitant dies before the member, providing, however, the retired member may designate a beneficiary different from the joint annuitant to receive the \$5,000 death benefit. The member who elects the Option 4 retirement plan must name a beneficiary, who can be any living person or persons, or a trust. The beneficiary does not have to be a spouse or dependent. In the case of a divorce the retirement contract remains in force and the member's joint annuitant (ex-spouse) will receive the member's monthly benefit after the member's death (if named as a joint annuitant) unless a Court, acting through a Qualified Domestic Relations Order, directs otherwise. A beneficiary designation is valid for TRS purposes when properly executed and on file with TRS prior to the death of the member. TRS shall not be responsible for determining the competency of a member to designate a beneficiary except as otherwise provided by Oklahoma law.

715:10-15-12. Spousal consent

When selecting a retirement option, a TRS Acknowledgment of Spousal Consent shall be completed. If the member is married at the time of retirement, the retiring member's spouse must complete Part A, acknowledging acknowledge that the retirement options available to the member have been explained to the spouse and the spouse concurs with the retirement option selected by the retiring member. If the member is unmarried or unable to locate their spouse at the time of retirement, the member must complete Part B, certifying certify that he or she is unmarried or that at the time of retirement the whereabouts of the spouse is unknown and the spouse cannot be located. The

Spousal Consent form is an integral part of the application for retirement and must be filed with the retirement contract on file with TRS before the member's retirement becomes effective.

715:10-15-15. Disability retirement; application; effective date

(a) Any member who is actively employed in the public schools of Oklahoma and is regularly contributing to TRS may be retired due to a medical disability, which renders the member unable to perform regular employment duties, provided such member:

- (1) has at least ten (10) years of Oklahoma contributory membership service,
(2) submits a complete application for disability retirement, and,
(3) is found by the Medical Board of TRS, to be medically disabled to continue regular duties, or
(4) meets the requirements of paragraphs (1) and (2) of this subsection, and files a Social Security Award Notice or other sufficient written documentation from the Social Security Administration certifying the member has been approved for disability benefits by the Social Security Administration, U. S. Department of Health and Human Services,
(5) however, a member who is eligible for unreduced regular retirement is not eligible for disability retirement benefits.

(b) A member who has terminated employment or is on leave without pay status shall be eligible for disability retirement by meeting the provisions of paragraph (a) of this rule, providing the disability existed at the time the leave without pay status commenced or the termination of employment from the public schools of Oklahoma occurred, and the disability was the reason for the leave status or termination of employment.

(c) The application for disability retirement required in paragraph (2) of subsection (a) of this section must include:

- (1) a detailed statement by the member as to the nature of the disability and the reasons the disability prevents the member from performing the regular duties of the member's current position.
(2) a detailed statement by the member's employer (chief administrative officer or personnel officer) as to the nature of the disability and the reasons the disability prevents the member from performing the regular duties assigned to the position of employment, and
(3) a detailed report by the member's physician giving the medical nature of the disability. The attending physician's report should certify that the member, in the physician's judgment, is mentally or physically incapacitated from further performance of duty, that such incapacity is likely to be permanent and that the member should be retired. Any examination required to complete this report must be at the expense of the member. The physician must be a Doctor of Medicine or Doctor of Osteopathy and in good standing. In conditions related to the eye(s), the physician must be an ophthalmologist in good standing. In conditions related to hearing, the

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physician must be an otolaryngologist or Doctor of Audiology and in good standing. For mental health conditions, the physician must be a Doctor of Clinical Psychology or Doctor of Psychiatry and in good standing.

- (d) TRS must receive the complete application for disability retirement by the first day of the month in which the Medical Board is scheduled to meet.
- (e) The effective date for disability retirement is the later of (1) or (2) below:
- (1) the first day of the month in which the disability application is approved by the Medical Board, and subsequent to termination of employment in the public schools, or
 - (2) the date determined by the Board of Trustees after an administrative review, if such review is requested by the member pursuant to the Administrative Procedures Act 75 O.S. 250 et seq., but in no instance will the effective date be prior to the first day of the month following receipt of the complete disability retirement application.
- (f) The disability retirement becomes binding on the effective date specified in subsection (e) of this section and cannot be revoked except by written request from the member prior to the effective retirement date as provided by OAC 715:10-15-5 or by returning to employment as provided in OAC 715:10-15-21.
- (g) The disability retirement benefit shall be calculated in the same manner as regular retirement benefits described in OAC 715:10-15-7, with the exception that no reduction will be made due to the age of the member. Providing that any member who qualifies for disability benefits after June 30, 2003, who is married at the time his or her disability benefits commence, may elect an actuarially reduced 100% joint survivor retirement benefit based on factors provided by the System's consulting actuary.
- (h) The disability retirement benefit is payable under the same provisions as the Maximum Retirement Plan or Retirement Option 2 explained in OAC 715:10-15-10. Payments are made monthly for the life of the retiree or until the member is able to return to employment (See OAC 715:10-15-21). The only survivor benefits available to a disabled member's beneficiaries or estate is a return of member contributions not paid to the member in the form of monthly benefits and the \$5,000 death benefit provided per statute, unless the disabled member elected the reduced benefit option to provide the spouse a monthly benefit as described in subparagraph (g) of this section.
- (i) If the disabled member elects to receive an actuarially reduced 100% joint survivor retirement benefit, the surviving spouse will continue to receive the disabled member's monthly benefit for life. At the death of the disabled member, the surviving spouse will receive the \$5,000 death benefit provided by statute. If the disabled member's spouse should die before the disabled member, the disabled member's monthly disability benefit will be increased to the amount the disabled member would have been entitled to receive if the disabled member had elected the maximum disability benefit. The increased monthly benefit will become effective the first day of the month following the death of the disabled member's spouse

providing proper notice is received by TRS, as provided in OAC 715:10-15-10.1.

715:10-15-22. Reduction of disability benefits for excess earnings

~~All persons~~ TRS may require a disabled retiree under 62 years of age ~~who are retired on a TRS disability must file by April 15 of each year to~~ make a report of earnings received from gainful employment for the previous calendar year ~~on a form in a manner~~ provided by TRS. Failure to ~~timely~~ submit a ~~timely required~~ report may result in TRS mandating a requirement for medical re-examination or suspension of benefits until the report is filed. ~~If it is TRS determined that~~ TRS determines the ~~person~~ retiree is receiving excessive earnings or is employed in a position ~~requiring~~ consisting of duties similar to those required in the position held before having been granted disability benefits, TRS may demand a medical re-examination ~~may be required~~ to determine if the ~~person~~ retiree ~~is still~~ remains qualified for disability retirement.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYEE

715:10-17-5. Permissible employment

Post-retirement employment in the public schools, institutions, and agencies covered by TRS is allowed after the break in employment outlined in OAC 715:10-17-2 has been met. Employment subject to this section shall include any services performed by a retired member, as defined in this subchapter, except for payments received as an employee of the State Department of Education pursuant to 70 O.S. § 17-103(7) or as an independent contractor or consultant, pursuant to a lawful contract that complies with the requirements of 70 O.S. § 6-101.2(B) and which is approved by TRS within sixty (60) days of the contract's effective date. TRS will follow guidelines in ~~Subsection B of Section 6-101.2 of Title 70 O.S. § 6-101.2(B)~~ and federal guidelines from the Department of Labor and the Internal Revenue Service in determining when a retired person qualifies as an independent contractor or consultant.

715:10-17-7. Employment by a disabled retiree

A member retired under the disability retirement provisions of TRS is not eligible to be employed, in any capacity, by any school, public or private, in Oklahoma or in other state, from the date of retirement to age 62. After age 62, a member receiving disability retirement shall be eligible for post-retirement employment under the same conditions outlined above for other retired members.

- (1) A disabled retiree who returns to Oklahoma public education employment at an annual salary equal to or greater than the annual salary received at the time of disability shall again become a contributing member of TRS. Disability retirement payments shall be suspended until the member has qualified to be restored to active

service. Upon completion of six (6) months of membership service, the member shall be considered as having met the requirements to be restored to active service. At such time, disability retirement shall be terminated and the unused portion of the accumulated contributions shall be re-established in the member's active retirement account. If the member again retires under a regular retirement allowance, eligibility to receive a monthly retirement allowance shall be based on total years of creditable service (see OAC 715:10-15-21).

(2) ~~Each retired member~~Members, who has not attained age 62, receiving disability retirement from TRS who have not attained age 62 shall may be required by TRS to complete a TRS Report of Earned Income by Disabled Member Formreport of earnings received from gainful employment for the previous calendar year in the manner provided by TRS and file such formprovide such informationwith to TRS by April 15 each year. The report will list all "earned" income from all sources. Failure to completeprovide a TRS Report of Earned Income by Disabled Member Formthis information upon request may result in suspension of monthly benefits if the executive director of TRS deems such action necessary and appropriate (see OAC 715:10-15-22).

715:10-17-9. Annual W-2P tax statements

TRS will not adjust W-2P, or other year-end tax statements, to reflect ~~re-payment~~repayment of benefits received after December 31. Any adjustment in retirement income required because of repayments received after December 31 will be shown in the calendar year in which the transaction was completed.

715:10-17-13. Election to return to qualifying employment

Any retired member who returns to employment in the public schools of Oklahoma and is employed half-time or more as defined in OAC 715:10-3-2 and OAC 715:10-3-3 may return to post-retirement employment or active contributing status under the following conditions:

- (1) Active Contributing Status. The retired member must file an irrevocable election to discontinue retirement benefits for the period of such employment. The return to membership contributing status must coincide with the beginning of a school year or the member must refund all benefit payments received from the beginning of the school year in which employment begins and make employee contributions on any compensation earned from the beginning of the school year to the date of the election to return to contributing status.
- (2) The election form—must be completed by the employing school and signed by the retired member and an official who has authority to employ or pay regular employees of the school. ~~In addition, a new Personal Data Form shall be completed and submitted to TRS to return a member to work status.~~

(3) The ~~form~~election must include the nature of the position held and the beginning date of employment. Retirement payments shall not be resumed during the summer months between consecutive years of this type of employment.

(4) The retired member and the employing public school shall remit employee and employer contributions in the same manner as active contributing employees.

(5) The retired member shall accumulate service credit in the same manner as active contributing employees of the system.

(6) Upon termination of employment, the retired member's monthly retirement benefits will resume with an adjustment to reflect credit for the additional employment as follows:

(A) The initial benefit calculated at the time of retirement will not be affected by the additional employment.

(B) Service credits will be accumulated and credited to the member's record in accordance with Subchapter 3 of this Chapter.

(C) A supplemental benefit for the year(s) of additional service will be calculated using the standard retirement benefit formula and the retirement plan and other options selected by the retiree when the member first retired (See OAC 715:10-15-7 and 715:10-15-7.1).

(D) The average salary used in calculating the supplement benefit will be the average of the salaries earned during this period of employment. In the event the member is employed for less than the number of years required to determine the appropriate average salary, the average will be determined by the number of years employed. Annual salaries will be based on contributions made and determined on a school year basis.

(7) If the retired member is employed for a period of time which does not qualify for additional service credit, the employee contributions remitted by the ~~employee~~retired member or by the employer on the retired member's behalf will be refunded to the retired member without interest. Employer contributions as provided by OAC 715:10-13-3 will not be refunded.

(8) The employer shall provide written notice to TRS when the retired member's employment is terminated. The retired member cannot resume benefit payments under this rule and remain employed. The retired member must comply with the sixty (60)-day non-employment rule that applies to a member who elects normal retirement. Retirement payments will be resumed effective the first of the following month, provided the necessary retirement paperwork is received within the prescribed timelines, otherwise benefits will be resumed the first of the next succeeding month. Any supplemental benefit determined pursuant to this section shall commence at the same time.

(9) If the retired member dies while engaging in half-time or more employment as provided in this section, the retired member's beneficiaries will receive any

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survivor benefits specified in the terms of the retirement contract elected by the member, the \$18,000 death benefit provided by OAC 715:10-9-2, if applicable, and a return of employee contributions, plus interest accumulated during the current employment, as defined in OAC 715:10-9-1. The beneficiaries of the deceased retired member will not be entitled to both the \$18,000 death benefit and the \$5,000 death benefit ~~defined in OAC 715:10-9-4 described in 70 O.S. §17-105(11) and (12).~~

(10) If a retired member does not file an election to discontinue monthly benefits while employed by the public schools of Oklahoma, he or she waives the accrual of service credit and the right to any supplemental benefit from service in the position. The retired member will, however, be subject to the earnings limits outlined in ~~Title 70, Oklahoma Statutes, Section 17-116.10~~ [70 O.S. §17-116.10].

(11) Retired members returning to half-time or more employment under this subchapter and section shall not be considered "active members" for purposes of purchasing or transferring any form of prior service credit of whatever nature.

(12) A retiree having received a partial lump-sum payment, who is re-employed and returns to membership contributing status pursuant to OAC 715:10-17-13, shall have his or her subsequent retirement benefit calculated taking into consideration that a partial lump-sum payment has been received.

return to employment as an active classroom teacher under this provision must meet all the following requirements:

(1) The member must have been retired as of July 1, 2020;

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

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

(4) Within sixty (60) days of the member's return to employment, the member's employer must provide to TRS, ~~on a form~~ in a manner prescribed by TRS, documentation establishing the member's eligibility under this provision.

(A) The Executive Director of TRS may waive the sixty (60) day requirement for good cause shown.

(B) To petition for waiver, either the TRS member, the employer, or both if appropriate under the circumstances, must provide written documentation of good cause to TRS along with documentation establishing eligibility under this provision.

[OAR Docket #23-463; filed 6-8-23]

715:10-17-14. Termination and Resumption of Benefit Payments

When a retired member returns to active contributing status employment in a position that requires suspension of benefit payments pursuant to OAC 715:10-17-13, the following will apply:

(1) If the member commences employment after the 15th of the month, the benefit payment for that month will be paid ~~at the end of the month~~ as regularly scheduled.

(2) If the member commences employment on or before the 15th of the month, the benefit payment for that month will not be due and must be refunded if paid to the member.

(3) If the member terminates employment on or before the 15th of a month and ~~the Teachers' Retirement System TRS~~ is notified prior to the 20th of the month, the benefit payment for that month will be paid ~~at the end of the month~~ as regularly scheduled.

(4) If the member terminates employment after the 15th of a month, the benefit payment for ~~that~~ that month will not be due and must be refunded if paid to the member.

715:10-17-15. Salary limitations for certain returning classroom teachers

Legislation enacted during the 2021 legislative session allows members who retired on or before July 1, 2020, to return to employment as an active classroom teacher for a public school or career technology district with no earnings limitations in certain circumstances. Members seeking to

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 1. ORGANIZATION AND PROCEDURE OF OKLAHOMA WATER RESOURCES BOARD

[OAR Docket #23-456]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Organization, Meetings and Comprehensive Water Plan

785:1-3-1. Origin, composition and operations of the Board [AMENDED]

785:1-3-2. Purpose of the Board [AMENDED]

785:1-3-3. Offices of the Board [AMENDED]

Subchapter 5. Rules

785:1-5-3. Amending of rules or Standards by Board [AMENDED]

785:1-5-4. Petition requesting promulgation, amendment or repeal of a rule or Standard by others [AMENDED]

Subchapter 9. Time Periods for Permit and License Issuance and Denial

785:1-9-1. Time period for permit and license issuance or denial [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.1, § 1085.2; Senate Bill 1325 (2022).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board adopted amendments to the provisions of Chapter 1 of Title 785 of the Oklahoma Administrative Code (OAC) as follows:

The Oklahoma Water Resources Board ("Board") is proposing to amend certain provisions of Chapter 1 of the Board's rules to conform to state statutes and clarify agency procedures. All references to water quality standards are being removed as a result of Senate Bill 1325 (2022), which transfers the authority for the Water Quality Standards program to the Oklahoma Department of Environmental Quality ("ODEQ"). The current rules and any future amendments will be promulgated by ODEQ. Other amendments are being made to update the composition of the Board to reflect prior statutory changes and Board practice.

CONTACT PERSON:

Sara Gibson, General Counsel, Oklahoma Water Resources Board, 3800 North Classen Blvd., Oklahoma City, OK 73228, (405) 530-8800, sara.gibson@owrb.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 3. ORGANIZATION, MEETINGS AND COMPREHENSIVE WATER PLAN

785:1-3-1. Origin, composition and operations of the Board

(a) **Origin and composition.** The Oklahoma Water Resources Board was created as a seven-member Board by an Act of the Twenty-Sixth Oklahoma Legislature in 1957. ~~By an Act of the Second Session of the Thirty Third Legislature in 1972, a nine member Board was created~~The Board consists of nine members, one member being appointed from each of the ~~Congressional Districts of the State, and three members appointed at large~~nine (9) regions identified in 82 O.S. 1085.1. At all times the membership shall have represented on it at least one member well versed in each of the following major types of water use: recreational, industrial, irrigational, municipal, rural residential, agricultural, and soil conservation work, but no more than two (2) members may be selected representing any one of the major types of water use. A chairman, vice-chairman, and secretary shall be elected annually, provided that no person shall serve as chairman for more than two consecutive years.

(b) **Operations of Board.** The Executive Director, appointed by the Board, manages the day-to-day operations and staff members of the Board. Four divisions of the Board, each supervised by a Division Chief, have been established

as follows: Planning and Management Division, Financial Assistance Division, Water Quality Programs Division and Administrative Services Division. The public may obtain information or make submissions or requests by contacting the appropriate Division staff in person, in writing or by telephone. Other rules may also be applicable to obtain information or make submissions or requests. The Board retains final authority over all matters before the agency unless otherwise provided by law. Agenda items for all meetings of the Board are processed through the appropriate Division and approved for placement on the agenda by the Executive Director in consultation with the Chairman.

785:1-3-2. Purpose of the Board

It is the purpose of the Board to determine and administer rights to the use of waters of the State; develop long-range plans to encourage the conservation, development, and utilization of the water resources of the State; ~~and to coordinate local, state, and federal water activities within the State; and to establish and administer standards of quality for the prevention, control, and abatement of pollution of the waters of the State.~~

785:1-3-3. Offices of the Board

The principal office of the Board shall be located in Oklahoma City, Oklahoma. Additional branch offices may be located ~~at Tulsa, McAlester, Woodward and Lawton, Oklahoma or such other in other~~ Oklahoma towns and cities as the Board may deem necessary and proper to carry out its duties and responsibilities.

SUBCHAPTER 5. RULES

785:1-5-3. Amending of rules or Standards by Board

(a) These rules and regulations may, from time to time, be expanded, amended or repealed by the Board pursuant to the Oklahoma APA.

~~(b) Oklahoma's Water Quality Standards (Standards), are considered to be "rules" of the Board adopted through its "rulemaking" process under the APA, the special requirements in other applicable State statutes and the requirements of the federal Clean Water Act and U.S. Environmental Protection Agency regulations thereunder. The Board follows such requirements in amending or revising the Standards. The Standards include beneficial use designations for various waters of the state and criteria to protect such uses. In amending or revising beneficial use designations, in conjunction with other amendments or revisions or separately, the following shall also apply:~~

~~(1) If the Board makes a preliminary determination that a previously adopted beneficial use designation for any waters of the state was based on inaccurate, incomplete or insufficient data, information, or studies, and that said designation should be modified, the Board shall, as soon as practical, propose a modification to the use designated.~~

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~~(A) Notice of said proposed modification shall be given in accordance with the requirements of the APA and other applicable laws or regulations.~~

~~(B) Data, information or studies to support said modification shall be made available for public review at least thirty (30) days prior to the public hearing.~~

~~(C) Written and oral comments and additional data, information or studies in support of or in opposition to the proposed modification may be presented by any person at the public hearing.~~

(2) The Board may adopt the proposed modification if:

~~(A) The data, information or studies upon which the proposed modification is based was not available to the Board when it designated the beneficial use, or~~

~~(B) The data, information or studies upon which the proposed modification is based was not considered by the Board when it designated the beneficial use, and~~

~~(C) The proposed modification will not lower the water quality.~~

~~(3) If the Board adopts the proposed modification, a summary of the reasons therefor shall be made part of the Board's records regarding such modification.~~

(b) In addition to publishing notice of rulemaking intent in the Oklahoma Register as required by the APA, the Board shall, prior to or within three (3) days after publication of such notice, provide a copy of the notice to all persons who have filed before December 31 of each year a written request for advance notice of rulemaking proceedings for the next ensuing calendar year. Persons who have filed such a request and present comments or otherwise participate in any rulemaking proceedings shall be deemed to have renewed their request to receive such notice for the next calendar year.

785:1-5-4. Petition requesting promulgation, amendment or repeal of a rule ~~or Standard~~ by others

(a) Any interested person may petition the Board requesting the promulgation, amendment, or repeal of a Board rule ~~or water quality standard~~, provided, in submitting such petition, the following requirements shall apply:

(1) All petitions must be submitted in typewritten or legible printed form.

(2) All petitions must clearly identify the person submitting such petition and must include a statement reflecting the interest of the person in submitting such petition, i.e., a showing that such petition is being submitted by an "interested person".

(3) All petitions must clearly state that the petition is for promulgation of a new rule ~~or standard~~, for the amendment of an existing rule ~~or standard~~ or for the repeal of an existing rule ~~or standard~~, or, separately, any combination of the above. In the instance of a requested amendment to an existing rule(s) ~~or standard(s)~~, a complete text of the existing rule(s) ~~or standard(s)~~ requested for amendment must be submitted reflecting the existing rule(s) or ~~standard(s)~~ language requested for change or deletion

and/or such language as may be added. In the instance of a requested repeal of any rule(s) ~~or standard(s)~~, the petition must state the complete rule(s) or ~~standard(s)~~ requested for repeal.

(4) All petitions must clearly and separately state the submitted basis, reason, ground or justification for each requested rule promulgation, amendment or repeal. Any and all supporting documents, records, statistics, studies or information must be submitted with the petition, and, the legal authority for such requested action, where deemed necessary or appropriate, shall be submitted by the petitioning person unless otherwise ordered by the hearing examiner.

(5) All petitions must be duly signed and endorsed by all petitioning persons, or their legal representatives, and such signatures and endorsement must be duly acknowledged by notary.

(b) All petitions requesting the promulgation, amendment or repeal of any Board rule ~~or standard~~, as herein provided, shall be referred to a hearing examiner for review and consideration. The hearing examiner shall initially determine if the submitted petition is in adequate and proper form pursuant to (a) of this Section. If determined to be in proper and adequate form, the hearing examiner shall thereupon make a recommendation whether the petition should be granted or denied, in whole or in part. Before making any such recommendation, the requesting person shall be allowed reasonable opportunity to submit to the hearing examiner argument, written and/or oral, in support of the petition. In making its recommendation on the petition, the hearing examiner may, in his or her discretion, refer the request to staff for additional review, consideration and comment prior to a recommendation thereon by the hearing examiner.

(c) The written recommendations of the hearing examiner shall be submitted to the Board for its consideration. No further argument on the petition shall be allowed unless otherwise determined by the Board.

(d) Should any petition be granted by the Board, in whole or in part, the petition as granted shall separately or in conjunction with other amendments proposed by the Board become subject of proceedings under the APA and other applicable laws for the adoption of such rule ~~or standard~~ promulgation, amendment or repeal. A determination by the Board to grant a petition shall not be binding on the Board in considering the adoption of the rule ~~or standard~~ subject of the petition.

SUBCHAPTER 9. TIME PERIODS FOR PERMIT AND LICENSE ISSUANCE AND DENIAL

785:1-9-1. Time period for permit and license issuance or denial

Any permit, license and certification for an activity regulated by the Board, as described in 785:1-9-2, shall be issued or denied within six (6) months after the Board receives ~~an~~ completed application or notice of completion therefor which is deemed complete by the Board, unless the time is extended as provided in 785:1-9-3. If the application for a permit, license, or certification requires notice and opportunity for

hearing, the Board shall issue or deny the application within six (6) months of the end of the notice period.

[OAR Docket #23-456; filed 6-7-23]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 4. RULES OF PRACTICE AND HEARINGS

[OAR Docket #23-457]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Board Hearings

785:4-3-7. Notice and Scheduling of Hearings [NEW]

Subchapter 5. Pre-Hearing Actions and Proceedings

785:4-5-1. Pre-hearing discovery [AMENDED]

785:4-5-7. Copies of motions, Motions, requests and orders [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") is proposing to amend Chapter 4 of the Board's rules to clarify procedures and promote consistency within the hearing process. The proposed rules will set a timeline for notice of hearings and a more detailed procedure for filing and responding to motions within an individual proceeding before the Board.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 3. BOARD HEARINGS

785:4-3-7. Notice and scheduling of hearings

The Hearing Examiner shall give notice of the hearing within sixty (60) days of receipt of the evidentiary file submitted by the Board's Office of General Counsel. The hearing shall be scheduled at least thirty (30) days from the date of the notice, subject to continuances as provided in section 785:4-5-5(a).

SUBCHAPTER 5. PRE-HEARING ACTIONS AND PROCEEDINGS

785:4-5-1. Pre-hearing discovery

When deemed necessary and proper for the purposes of a hearing, pre-hearing discovery by an interested party may be allowed by the Hearing Examiner as provided under the APA and the rules in this Chapter. Depending upon the nature of the hearing, pre-hearing discovery may be made requested at any time subsequent to the filing (and acceptance for filing) of an application or petition, or otherwise, at any time subsequent to the institution of proceedings on the application. The party requesting discovery shall submit a proposed schedule for discovery to be agreed upon and signed by the parties and for approval and signature by the Hearing Examiner. The joint schedule may include, but need not be limited to, requests for discovery, objections to discovery requests, responses to discovery requests to which there are no objections, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing. The parties may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than fifteen (15) days before the hearing. The Hearing Examiner must resolve disputes regarding discovery or disputes regarding compliance with the joint scheduling order as soon as possible so that the parties may continue to comply with the joint scheduling order. Requests for pre-hearing discovery must be timely made and the Hearing Examiner may impose reasonable and necessary limitations on the scope of discovery and the period of time within which discovery requests may be presented and entertained.

785:4-5-7. Copies of motions, Motions, requests and orders

(a) Any person filing a motion or other request to the Board shall mail a copy of the motion or request to all parties of record. A certificate of such mailing shall be filed with the motion or request. Except for oral motions made in proceedings on the record, or where the Hearing Examiner otherwise direct, each motion shall:

- (1) Be in writing; and
(2) Contain a concise statement of supporting grounds.

(b) Unless otherwise directed within the interlocutory order, a copy of the interlocutory order relating to the motion or request shall be provided by the Board to the person filing the motion or request. That person shall mail a copy of the interlocutory order to all parties of record. Unless the Hearing Examiner orders otherwise, any party to a proceeding in which a

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motion is filed under (a) of this section shall have 15 days from service of the motion to file a statement in response.

(c) A written copy of the proposed final order of the Board prepared by the Hearing Examiner after the conclusion of any hearing shall be provided to the applicant, and the applicant shall be required to serve all other parties at least fifteen (15) days prior to Board meeting at which the proposed final order is scheduled to be considered. Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.

(d) The Hearing Examiner shall rule on all motions as expeditiously as possible.

(e) Any person filing a motion or other request to the Board shall mail a copy of the motion or request to all parties of record. A certificate of such mailing shall be filed with the motion or request.

(f) Unless otherwise directed within the interlocutory order, a copy of the interlocutory order relating to the motion or request shall be provided by the Board to the person filing the motion or request. That person shall mail a copy of the interlocutory order to all parties of record.

(g) A written copy of the proposed final order of the Board prepared by the Hearing Examiner after the conclusion of any hearing shall be provided to the applicant, and the applicant shall be required to serve all other parties at least fifteen (15) days prior to Board meeting at which the proposed final order is scheduled to be considered.

[OAR Docket #23-457; filed 6-7-23]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #23-458]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

785:35-1-4. Violations and penalties [AMENDED]

785:35-1-6. Well Drillers and Pump Installers Advisory Council [AMENDED]

Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications

785:35-5-3. Requirements for ~~multi purpose~~ completion ~~and plugging report reports~~ [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; 82 O.S. § 1020.16.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") proposes to amend Chapter 35 of Title 785 of the Oklahoma Administrative Code ("OAC") as follows:

OAC 785:35-1-4 is proposed to be amended to increase the administrative penalty issued to contractors for failing to file completion and plugging reports. The purpose of the amendment is to increase compliance with reporting requirements.

OAC 785:35-1-6 is proposed to be amended to award continuing education units for time spent by the members of the Advisory Council meeting to perform their duties. The purpose of the amendment is to compensate Council members for their time, encourage participation in the duties of the Council, and motivate contractors to seek membership on the Council.

OAC 785:35-5-3 is proposed to be amended to specify requirements for well completion and plugging reports that must be submitted to the Board by the contractor. The purpose of the amendment is to provide a record for the contractor to ensure that wells are being constructed to the standards of the Chapter. Complete well construction records are necessary for the Board to administer and appropriate water rights, study groundwater basins, and protect the groundwater from pollution and waste.

CONTACT PERSON:

Sara Gibson, General Counsel, Oklahoma Water Resources Board, 3800 North Classen Blvd., Oklahoma City, OK 73228, (405) 530-8800, sara.gibson@owrb.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-4. Violations and penalties

(a) **Misdemeanor violations.** Any person who, after notice from the Board violates or refuses or neglects to comply with any provision of 82 O.S. 1991, §§1020.1 through 1020.22, as amended and the rules of this Chapter, or who commits waste shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-Five Dollars (\$25.00) nor more than Two Hundred Fifty Dollars (\$250.00) for each offense. Any person who, after notice that he is in violation thereof continues to violate any provision of this act, and fails to comply therewith within a reasonable length of time, is guilty of a separate offense for each day the violation continues.

(b) **Administrative penalties.** *The Board may, after notice and hearing, impose on any person administrative penalties of up to Five Thousand Dollars (\$5000.00) and may revoke, suspend or deny renewal of any license or operator certification for each violation of the rules regarding license or certification requirements, the requirement to obtain a license or certification, or minimum construction or installation standards. Each day a violation continues shall constitute a separate violation. Such administrative penalties shall be deposited*

in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in 785:35-1-5(c). [82:1020.16(E)]

(1) Notice of violation and proposed assessment.

In addition to revoking, suspending or not renewing a license or operator certification, the Board may impose administrative penalties against drillers or operators who fail, refuse or neglect to comply with rules or orders of the Board. Such administrative penalties shall be imposed only after notice and opportunity for hearing on the proposed imposition of such penalties. The notice of the proposed assessment of administrative penalties shall inform the respondent of the provisions of the Board rules or order at issue and the proposed amount of the penalty. A letter, citation, petition, notice of violation, consent order or final order may constitute a notice of proposed assessment for purposes of initiating administrative penalty proceedings if it meets the requirements of this section.

(2) Administrative fine schedule. The schedule of fines in this Section is based on violation of requirements common to the rules promulgated under authority of the 82 O.S. Section 1085.2; Oklahoma Groundwater Law in 82 O.S. Section 1020.1 and following, particularly Section 1020.16 on well driller and pump installer licensing. The fine schedule for citations issued by the Board for violations of the following requirements is:

- (A) Engaged in commercial activity without a license.
 - (i) First - \$1,000.00
 - (ii) Second or subsequent - up to \$5,000.00.
- (B) Engaged in commercial activity without an operator's certification.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent - up to \$5,000.00.
- (C) Failure to have present a certified operator at the drilling, plugging or pump installation site.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (D) Failure to have rig used in drilling or pump installation properly identified
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (E) Failure to submit a multi-purpose completion report form or electronic version
 - (i) First - ~~\$50.00~~\$250.00.
 - (ii) Second or subsequent ~~\$250.00~~\$500.00.
- (F) Violation of groundwater well, fresh water observation well and water well test holes minimum standard
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (G) Violation of heat exchange well minimum standard
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (H) Violation of monitoring well and geotechnical boring minimum standard
 - (i) First - \$1,000.00.

- (ii) Second or subsequent up to \$5,000.00.
- (I) Violation of pump installation minimum standard.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (J) Violation of minimum standard for plugging and capping wells and test holes.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.
- (K) Violation of minimum standard for plugging site assessment observation well, monitoring well and geotechnical borings.
 - (i) First - \$1,000.00.
 - (ii) Second or subsequent up to \$5,000.00.

(3) Administrative Citations

(A) Issuance of a citation. A citation which is issued to a person for violation of one or more of the compliance requirements provided in Section 785:35-1-4(b)(2) shall advise the person of the hearing date at which the person may contest the issuance of the citation and/or the amount of the fine. Such hearings shall be conducted in compliance with the Oklahoma Administrative Procedures Act and the Oklahoma Open Meetings Act.

(B) Orders following hearing. A final order may uphold the citation as issued, reduce the amount of the fine or dismiss the action. A default order may be issued if the person cited has been advised in writing of the hearing date and fails to appear. The fine is due and payable immediately upon issuance of the order unless otherwise provided therein. A final order is appealable to the district court in accordance with the Oklahoma Administrative Procedures Act.

(4) **Payment of fines.** A person who is ordered to pay a fine shall submit the fine to the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118. A person who decides not to contest the issuance of the citation shall submit payment of the fine to the same address on or before the hearing date indicated on the citation.

785:35-1-6. Well Drillers and Pump Installers Advisory Council

(a) **Creation of Council.** The Well Drillers and Pump Installers Advisory Council is hereby created. The Council shall consist of eight (8) members appointed by and serving at the pleasure of the Oklahoma Water Resources Board. The Board shall seek nominations from each of the Congressional districts and the remaining members shall be appointed at large. The Executive Director of the Board shall be a member ex officio. At least one member shall represent each licensed activity. The term for a member on the advisory council shall be two (2) years. Upon the expiration of said terms, their successors shall be appointed for terms of two (2) years. Any vacancy occurring on the Council shall be filled within 60 days of such vacancy. Council members may be removed by the Board without cause.

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(b) **Qualifications for Council membership.** Each Council member shall have been licensed as a well driller or pump installer by the Board for at least five (5) years prior to appointment to the Council, and must be in good standing with the Board at the time of appointment and during the term of Council membership.

(c) **Organization of Council.** The Council shall meet at least once each twelve months and otherwise at the call of the Board or Executive Director of the Board. The Executive Director or his or her designee shall chair the first Council meeting, at which the Council members may elect a chair for a term of one year from among their membership. In the event of a vacancy on the Council, the remaining Council members may make nominations or recommendations, subject to approval and appointment by the Board. The Executive Director or his or her designee will consult with an elected chair concerning meeting agendas.

(d) **Duties of the Council.** The Council shall have the following duties:

(1) Recommend new rules and rules amendments to the Board, provided such recommendations must be in writing and must be concurred in by a majority of the membership of the Council;

(2) Review and recommend approval or denial of use of monies in the Well Drillers and Pump Installers Remedial Action Indemnity Fund for:

(A) Remedial actions to protect groundwater from pollution or potential pollution from wells or boreholes under the jurisdiction of the Board which do not meet minimum standards for construction or that have been abandoned, and

(B) Inspections, licensing, enforcement and education by the Board; and

(3) Recommend seeking reimbursement for any remedial action taken or required by the Board.

(e) **Effect of rule.** ~~Nothing in this section shall be construed to limit or restrict the Board's authority regarding water well and pump installer licensing or use of the Well Drillers and Pump Installers Remedial Action Indemnity Fund.~~ **Continuing Education.** Attendance by members of the Council at meetings organized in accordance with 785:35-1-6(c) shall qualify as continuing education requirements per OAC 785:35-3-5(e)(5).

(f) **Effect of rule.** ~~Nothing in this section shall be construed to limit or restrict the Board's authority regarding water well and pump installer licensing or use of the Well Drillers and Pump Installers Remedial Action Indemnity Fund.~~

SUBCHAPTER 5. GENERAL REQUIREMENTS TO MAINTAIN LICENSES AND OPERATOR CERTIFICATIONS

785:35-5-3. Requirements for ~~multi-purpose completion and plugging report reports~~

~~Each licensee or certified operator as the case may be shall file a multi-purpose completion report for each groundwater well, water well test hole, fresh water observation well, or heat~~

~~exchange well completed or plugged. The report shall be on forms provided by the Board or electronically online and shall be filed within sixty (60) days after the date of completion or plugging. Each licensee or certified operator as the case may be shall file a multi-purpose completion report electronically online for each monitoring well, site assessment observation well and geotechnical boring within sixty (60) days after the date completed or plugged. Information regarding multiple monitoring wells, geotechnical borings and heat exchange wells may be accumulated together in a single report if all of the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one boring or well is included on a multi-purpose completion report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. Provided, a report need not be filed for a geotechnical boring 20 feet deep or less in which groundwater or contamination is not present. Effective July 1, 2009, all multi-purpose completion reports shall be submitted with latitude and longitude data.~~

~~(a) **Completion and plugging reports.** Completion and plugging reports shall be filed on electronic or hardcopy forms provided by the Board and shall be filed within sixty (60) days after completion or plugging.~~

~~(b) **Groundwater wells, groundwater well test holes, fresh water observation wells, open-loop geothermal wells, and marginal quality groundwater wells.** The operator shall file a completion or plugging report for each groundwater well, groundwater well test hole, fresh water observation well, open-loop geothermal well, or marginal quality groundwater well completed or plugged. The completion report must include the following information:~~

~~(1) Completion or plugging date;~~

~~(2) Latitude and longitude of the well or test hole;~~

~~(3) A lithologic description of each stratum encountered during excavation of the borehole from the land surface to the total depth of the well;~~

~~(4) A description of the finding location for the well;~~

~~(5) The well owner's name, address, and telephone number;~~

~~(6) The type of well construction;~~

~~(7) The intended use purpose of the well;~~

~~(8) Borehole specifications;~~

~~(9) Surface pipe and casing construction specifications;~~

~~(10) Screen specifications and screened interval;~~

~~(11) Surface seal and annular seal materials and interval;~~

~~(12) Completion type;~~

~~(13) Hydrologic data including the depth of static water level, depth at which groundwater was encountered during construction of the well, and the estimated yield of the well;~~

~~(14) Name of the pump installation contractor, if known and applicable;~~

~~(15) Pump horsepower and rated flow, if applicable;~~

~~(16) Depth of the bottom of the pump, if applicable;~~

~~(17) Water right permit number, if applicable;~~

- (18) Variance request number, if applicable;
- (19) Proximity to the nearest potential pollution source and the type of pollution source;
- (20) Well disinfection procedure;
- (21) The sampled total dissolved solids concentration of the groundwater produced by the well in parts per million (ppm); and
- (22) Certification from the operator verifying the accuracy of the information on the report.

(c) **Geotechnical borings, site assessment observation wells, and monitoring wells.** The operator shall file a completion or plugging report for each geotechnical boring, site assessment observation well, and monitoring well completed or plugged, except as provide below. Reports for the completion or plugging of geotechnical borings, site assessment observation wells, and monitoring wells must be filed electronically. Information regarding multiple geotechnical borings, site assessment observation wells, or monitoring wells may be accumulated together in a single report if all the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one boring or well is included on a report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. A report need not be filed for a geotechnical boring 20 feet deep or less in which groundwater or contamination is not present. The completion report must include the following information:

- (1) Completion date;
- (2) Latitude and longitude of the well or test hole;
- (3) A lithologic description of each stratum encountered during excavation of the borehole from the land surface to the total depth of the well;
- (4) A description of the finding location for the boring or well;
- (5) The owner's name, address, and telephone number;
- (6) The type of boring or well construction;
- (7) The intended use purpose of the boring or well;
- (8) Borehole specifications;
- (9) Surface pipe and casing construction specifications, if applicable;
- (10) Screen specifications and screened interval, if applicable;
- (11) Surface seal and annular seal materials and interval, if applicable;
- (12) Hydrologic data including the depth of static water level and the depth at which groundwater was encountered during construction of the well;
- (13) Variance request number, if applicable; and
- (14) Certification from the operator verifying the accuracy of the information on the report.

(d) **Closed-loop geothermal (heat exchange) wells.** The operator shall file a completion or plugging report for each closed-loop geothermal well completed or plugged. Information regarding multiple closed-loop geothermal wells may be

accumulated together in a single report if all of the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one well is included on a report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. The completion report must include the following information:

- (1) Completion date;
- (2) Latitude and longitude of the well(s);
- (3) A lithologic description of each stratum encountered during excavation of the borehole from the land surface to the total depth of the well(s);
- (4) A description of the finding location for the well(s);
- (5) The well owner's name, address, and telephone number;
- (6) Borehole specifications;
- (7) Surface pipe and casing construction specifications, if applicable;
- (8) Heat exchange loop material specifications;
- (9) Grout sealing materials and interval;
- (10) Variance request number, if applicable;
- (11) Proximity to the nearest potential pollution source and the type of pollution source; and
- (12) Certification from the operator verifying the accuracy of the information on the report.

(e) **Plugging reports.** The plugging report for groundwater wells, groundwater well test holes, fresh water observation wells, marginal quality groundwater wells, geothermal wells, monitoring wells, site assessment observation wells, and geotechnical borings must contain the following information:

- (1) Plugging date;
- (2) Latitude and longitude of the well, test hole, or boring;
- (3) A description of the finding location for the well;
- (4) The well owner's name, address, and telephone number;
- (5) The type of well construction;
- (6) The former use purpose of the well;
- (7) Casing removal or perforation interval;
- (8) Backfill material and installation depth;
- (9) Grout and sealing materials, methods, and installation depth;
- (10) Well identification number, if known and applicable;
- (11) Water right permit number, if applicable;
- (12) Variance request number, if applicable;
- (13) Proximity to the nearest potential pollution source and the type of pollution source; and
- (14) Certification from the operator verifying the accuracy of the information on the report.

[OAR Docket #23-458; filed 6-7-23]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS [REVOKED]

[OAR Docket #23-459]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions [REVOKED]
785:45-1-1. Purpose [REVOKED]
785:45-1-2. Definitions [REVOKED]
785:45-1-3. Adoption and enforceability of the standards [REVOKED]
785:45-1-4. Testing procedures [REVOKED]
785:45-1-5. Revision procedures [REVOKED]
785:45-1-6. Errors and separability [REVOKED]
Subchapter 3. Antidegradation Requirements [REVOKED]
785:45-3-1. Purpose; antidegradation policy statement [REVOKED]
785:45-3-2. Applications of antidegradation policy [REVOKED]
Subchapter 5. Surface Water Quality Standards [REVOKED]
Part 1. General Provisions [REVOKED]
785:45-5-1. Declaration of policy; authority of Board [REVOKED]
785:45-5-2. Beneficial uses: existing and designated [REVOKED]
785:45-5-3. Beneficial uses: default designations [REVOKED]
785:45-5-4. Applicability of narrative and numerical criteria [REVOKED]
785:45-5-5. Water quality standard variance [REVOKED]
785:45-5-6. Compliance schedules [REVOKED]
785:45-5-7. Site-specific criteria [REVOKED]
Part 3. Beneficial Uses and Criteria to Protect Uses [REVOKED]
785:45-5-9. General narrative criteria [REVOKED]
785:45-5-10. Public and private water supplies [REVOKED]
785:45-5-11. Emergency public and private water supplies [REVOKED]
785:45-5-12. Fish and wildlife propagation [REVOKED]
785:45-5-13. Agriculture [REVOKED]
785:45-5-16. Primary Body Contact Recreation [REVOKED]
785:45-5-17. Secondary Body Contact Recreation [REVOKED]
785:45-5-18. Navigation [REVOKED]
785:45-5-19. Aesthetics [REVOKED]
785:45-5-20. Fish consumption [REVOKED]
Part 5. Special Provisions [REVOKED]
785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [REVOKED]
785:45-5-26. Mixing zones and zones of passage [REVOKED]
785:45-5-29. Delineation of NLW areas [REVOKED]
Subchapter 7. Groundwater Quality Standards [REVOKED]
785:45-7-1. Scope and Applicability; Purpose [REVOKED]
785:45-7-2. Groundwater Quality Antidegradation Policy [REVOKED]
785:45-7-3. Groundwater classifications, beneficial uses and vulnerability levels [REVOKED]
785:45-7-4. Criteria for groundwater quality protection [REVOKED]
785:45-7-5. Corrective action [REVOKED]
Appendix A. Designated Beneficial Uses for Surface Waters [REVOKED]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [REVOKED]
Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 2, Lower Arkansas River Basin [REVOKED]
Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 3, Upper Red River Basin [REVOKED]
Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 4, Lower Red River [REVOKED]
Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 5, Canadian River [REVOKED]
Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 6, Upper Arkansas River [REVOKED]
Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 7, Panhandle Region [REVOKED]
Appendix B. Areas with Waters of Recreational and/or Ecological Significance [REVOKED]
Appendix D. Classifications for Groundwater in Oklahoma [REVOKED]
Appendix E. Requirements for Development of Site Specific Criteria for Certain Parameters [REVOKED]

Appendix F. Statistical Values of the Historical Data for Mineral Constituents of Water Quality (beginning October 1976 ending September 1983, except as indicated) [REVOKED]
Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]
Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]
Appendix I. Criteria for Groundwater Protection [REVOKED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; Senate Bill 1325 (2022)

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n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") is proposing to revoke Chapter 45 of the Board's rules. Senate Bill 1325 (2022) transfers the authority for the Water Quality Standards program to the Oklahoma Department of Environmental Quality ("ODEQ"). The current rules and any future amendments will be promulgated by ODEQ.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

785:45-1-1. Purpose [REVOKED]

~~(a) The Oklahoma Water Resources Board's statutory authority and responsibility concerning establishment of standards of quality of waters of the state are provided for under 82 O.S., § 1085.30. Under this statute the Oklahoma Water Resources Board is authorized to promulgate rules which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters [82:1085.30(A)]. These standards are designed to maintain and protect the quality of the waters of the state.~~
~~(b) The Standards specify numerical and narrative criteria to protect beneficial uses designated for certain waters of the~~

State. Beneficial use designations can be found in Appendix A of this Chapter for listed surface waters and in 785:45-5-3 for unlisted surface waters. The numerical and narrative criteria assigned to protect surface water beneficial uses are shown in Subchapter 5 of this Chapter. Classifications for groundwater can be found in Subchapter 7 and Appendix D of this Chapter. Narrative criteria to protect groundwater are shown in Subchapter 7 of this Chapter. The criteria that are the standards for a specific water of the State are the most stringent assigned to its designated beneficial uses. Since these criteria will protect the most sensitive use assigned, they will protect all designated uses. The purpose of the Standards is to promote and protect as many beneficial uses as are attainable and to assure that degradation of existing quality of waters of the State does not occur.

785:45-1-2. Definitions [REVOKED]

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

"Abatement" means reduction of the degree or intensity of pollution.

"Acute test failure" means greater than or equal to 50% mortality to appropriate test species at or below the critical effluent dilution after a 48 hour test as provided in OAC 252:690-3-29.

"Acute toxicity" means greater than or equal to 50% lethality to appropriate test organisms in a test sample.

"Alpha particle" means a positively charged particle emitted by certain radioactive materials. It is the least penetrating of the three common types of radiation (alpha, beta and gamma) and usually is not dangerous to plants, animals or humans.

"Ambient" means surrounding, especially of or pertaining to the environment about an entity, but undisturbed and unaffected by it.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water; unconsolidated sands and gravels are typical examples.

"Aquifer Storage and Recovery Activities" ("ASR") means activities that exclusively include activities for the storage of water in and recovery of water from an aquifer pursuant to a site specific aquifer storage and recovery plan authorized by 82 O.S. § 1020.2A. Activities not conducted pursuant to a site specific aquifer storage and recovery plan shall not be considered ASR activities. For purposes of this chapter, ASR activities also shall not include groundwater recharge or augmentation through a natural connection with a farm pond or other impoundment otherwise authorized by law.

"Artificial Aquifer Recharge" means activities with the primary purpose of recharging or augmenting an aquifer with no intention of recovering such water for future use. For purposes of this chapter, Artificial Aquifer Recharge activities shall not include activities specifically authorized pursuant to 82 O.S. § 1020.2(G) or stormwater runoff management practices otherwise authorized by law.

"Assimilative capacity" means the amount of pollution a waterbody can receive and still maintain the water quality standards designated for that waterbody.

"Attainable uses" means the best uses achievable for a particular waterbody given water of adequate quality. The process of use attainability analysis can, and in certain cases must, be used to determine attainable uses for a waterbody.

"Background" means the ambient condition upstream or upgradient from a facility, practice or activity which has not been affected by that facility, practice or activity.

"BCF" means bioconcentration factor.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

"Benthic macroinvertebrates" means invertebrate animals that are large enough to be seen by the unaided eye, can be retained by a U. S. Standard No. 30 sieve, and live at least part of their life cycles within or upon available substrate in a body of water or water transport system.

"Best Available Technology" means the best proven technology, treatment techniques or other economically viable means which are commercially available.

"Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state or United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Beta particle" means a negatively charged elementary particle emitted by radioactive decay that may cause skin burns. It is easily stopped by a thin sheet of metal.

"Bioconcentration factor" means the relative measure of the ability of a contaminant to be stored in tissues and thus to accumulate through the food chain and is shown as the following formula: BCF = Tissue Concentration divided by Water Concentration.

"BMPs" means best management practices.

"Board" means Oklahoma Water Resources Board.

"BOD" means biochemical oxygen demand.

"Carcinogenic" means cancer producing.

"Chronic test failure" means the statistically significant difference (at the 95% confidence level) between survival, reproduction or growth of the test organism at or below the chronic critical dilution after completion of a 7 day test as provided in OAC 252:690-3-29, or other test as approved by the permitting authority and the EPA Regional Administrator, and a control.

"Chronic toxicity" means a statistically significant difference (at the 95% confidence level) between longer term survival and/or reproduction or growth of the appropriate test organisms in a test sample and a control. Teratogenicity and mutagenicity are considered to be effects of chronic toxicity.

"Coliform group organisms" means all of the aerobic and facultative anaerobic gram negative, non spore forming rod shaped bacteria that ferment lactose broth with gas formation within 48 hours at 35°C.

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"Color" means true color as well as apparent color. True color is the color of the water from which turbidity has been removed. Apparent color includes not only the color due to substances in solution (true color), but also that color due to suspended matter.

"Conservative element" means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or chemical degradation or volatilization.

"Conservation plan" means, but is not limited to, a written plan which lists activities, management practices and maintenance or operating procedures designed to promote natural resource conservation and is intended for the prevention and reduction of pollution of waters of the state.

"Critical dilution" means, for chronic whole effluent toxicity testing, an effluent dilution expressed as a percentage representative of the dilution afforded a wastewater discharge according to the appropriate Q^* dependent chronic mixing zone equation.

"Critical temperature" means the higher of the seven day maximum temperature likely to occur with a 50% probability each year, or 29.4°C (85°F).

"Criterion" means a number or narrative statement assigned to protect a designated beneficial use.

"CWAC" means Cool Water Aquatic Community.

"Degradation" means any condition caused by the activities of humans which result in the prolonged impairment of any constituent of the aquatic environment.

"Designated beneficial uses" means those uses specified for each waterbody or segment whether or not they are being attained.

"Dissolved oxygen" means the amount of oxygen dissolved in water at any given time, depending upon the water temperature, the partial pressure of oxygen in the atmosphere in contact with the water, the concentration of dissolved organic substances in the water, and the physical aeration of the water.

"DO" means dissolved oxygen.

"DRASTIC" means that standardized system developed by the United States Environmental Protection Agency for evaluating groundwater vulnerability to pollution, based upon consideration of depth to water (D), net recharge I, aquifer media (A), soil media (S), topography (T), impact of the vadose zone media (I), and hydraulic conductivity (C) of the aquifer.

"EPA" means the United States Environmental Protection Agency.

"Ephemeral stream" means an entire stream which flows only during or immediately after a rainfall event, and contains no refuge pools capable of sustaining a viable community of aquatic organisms.

"Epilimnion" means the uppermost homothermal region of a stratified lake.

"Eutrophication" means the process whereby the condition of a waterbody changes from one of low biologic productivity and clear water to one of high productivity and water made turbid by the accelerated growth of algae.

"Existing beneficial uses" means those uses listed in Title 40 CFR §131.3 actually attained by a waterbody on or after November 28, 1975. These uses may include public water supplies, fish and wildlife propagation, recreational uses, agriculture, industrial water supplies, navigation, and aesthetics.

"Existing point source discharge(s)" means, for purposes of 785:45-5-25, point source discharges other than stormwater which were/are in existence when the ORW, HQW, or SWS, or SWS-R designation was/is assigned to the water(s) which receive(s) the discharge. The load from a point source discharge which is subject to the no increase limitation shall be based on the permitted mass loadings and concentrations, as appropriate, in the discharge permit effective when the limitation was assigned. Publicly owned treatment works may use design flow, mass loadings or concentration as appropriate if those flows, loadings or concentrations were approved as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, SWS or SWS-R limitation.

"Fecal coliform" means a group of organisms common to the intestinal tracts of humans and of animals. The presence of fecal coliform bacteria in water is an indicator of pollution and of potentially dangerous bacterial contamination.

"Fresh groundwater" means groundwater with naturally occurring concentrations of total dissolved solids less than 10,000 mg/L, or with levels of total dissolved solids of 10,000 or more mg/L caused by human activities.

"Geometric mean" means the n th root of the product of the samples.

"Groundwater" means waters of the state under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream. [82: 1020.1(A)]

"Groundwater basin" means a distinct underground body of water overlain by contiguous land and having substantially the same geological and hydrological characteristics and yield capabilities". [82: 1020.11]

"HLAC" means Habitat Limited Aquatic Community.

"HQW" means High Quality Water.

"HUC" means hydrologic unit code utilized by the United States Geologic Survey and other federal and state agencies as a way of identifying all drainage basins in the United States in a nested arrangement from largest to smallest, consisting of a multi digit code which identifies each of the levels of classification within two digit fields.

"Intolerant climax fish community" means habitat and water quality adequate to support game fishes or other sensitive species introduced or native to the biotic province or ecological region, which require specific or narrow ranges of high quality environmental conditions.

"Lake" means:

(A) An impoundment of waters of the state over 50 acre feet in volume which is either:

- (i) owned or operated by federal, state, county, or local government or
- (ii) appears in Oklahoma's Clean Lakes Inventory.

(B) Surface impoundments which are used as a treatment works for the purpose of treating stabilizing or holding wastes are excluded from this definition.

"**LC50**" means lethal concentration and is the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

"**Long-term average flow**" means an arithmetic average stream flow over a representative period of record.

"**MDL**" means the Method Detection Limit and is defined as the minimum concentration of an analyte that can be measured and reported with 99% confidence that the analyte concentration is greater than zero (0). MDL is dependent upon the analyte of concern.

"**Mixing zone**" means when a liquid of a different quality than the receiving water is discharged into the receiving water, a mixing zone is formed. Concentration of the liquid within the mixing zone decreases until it is completely mixed with receiving water. A regulatory mixing zone is described in 785:45-5-26.

"**Narrative criteria**" means statements or other qualitative expressions of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"**Natural source**" means source of contamination which is not human induced.

"**NLW Impairment Study**" means a scientific process of surveying the chemical, physical and biological characteristics of a nutrient threatened reservoir to determine whether the reservoir's beneficial uses are being impaired by human induced eutrophication.

"**Non-conservative element**" means a substance which undergoes significant short term degradation or change in the environment other than by dilution.

"**Nonpoint source**" means a source of pollution without a well defined point of origin.

"**Normal stream flow conditions**" means flow corresponding to low gradient areas in the hydrograph.

"**NTU**" means Nephelometric Turbidity Unit, which is the unit of measure using the method based upon a comparison of the intensity of light scattered by the sample under defined conditions with the intensity of light scattered by a standard reference suspension (formazin). The higher the intensity of scattered light, the higher the turbidity.

"**Numerical criteria**" means concentrations or other quantitative measures of chemical, physical or biological parameters that are assigned to protect a beneficial use.

"**Numerical standard**" means the most stringent of the numerical criteria assigned to the beneficial uses for a given stream.

"**Nutrient impaired reservoir**" means a reservoir with a beneficial use or uses determined by an NLW Impairment Study to be impaired by human induced eutrophication.

"**Nutrient limited watershed**" means a watershed of a waterbody with a designated beneficial use which is adversely affected by excess nutrients as determined by Carlson's Trophic State Index (using chlorophyll a) of 62 or greater, or is otherwise listed as "NLW" in Appendix A of this Chapter.

"**Nutrients**" means elements or compounds essential as raw materials for an organism's growth and development; these include carbon, oxygen, nitrogen and phosphorus.

"**ORW**" means Outstanding Resource Water.

"**OWRB**" means Oklahoma Water Resources Board.

"**PCBs**" means polychlorinated biphenyls.

"**Picocurie**" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"**Point source**" means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, well, discrete fissure, container, rolling stock or concentrated animal feeding operation from which pollutants are or may be discharged. This term does not include return flows from irrigation agriculture.

"**Pollutant**" means any material, substance or property which may cause pollution.

"**Pollution**" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life". [82: §1084.2(1)]

"**Polychlorinated biphenyls**" means a group of organic compounds (206 possible) which are constructed of two phenyl rings and more than one chlorine atom.

"**PQL**" means Practical Quantitation Limit and is defined as 5 times the MDL. The PQL represents a practical and routinely achievable detection limit with high confidence.

"**Put and take fishery**" means the introduction of a fish species into a body of water for the express purpose of sport fish harvest where existing conditions preclude a naturally reproducing population.

"**Q***" means dilution capacity.

"**Salinity**" means the concentration of salt in water.

"**Sample standard**" means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus two standard deviations of the mean.

"**Seasonal base flow**" means the sustained or fair weather runoff, which includes but is not limited to groundwater runoff and delayed subsurface runoff.

"**Seasonal seven-day, two-year low flow**" means the 7-day low flow of a stream likely to occur with a 50% probability for a season with the applicable dates in Table 1 of Appendix G of OAC 785:45.

"**Seasonal 7Q2**" means the seasonal seven-day, two-year low flow.

"**Sensitive representative species**" means *Ceriodaphnia dubia*, *Daphnia magna*, *Daphnia pulex*, *Pimphales promelas* (Fathead minnow), *Lepomis macrochirus* (Bluegill sunfish), or other sensitive organisms indigenous to a particular waterbody.

"**SWS**" means Sensitive Public and Private Water Supply.

"**SWS-R**" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed water for the purpose of indirect potable reuse.

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"Seven-day, two-year low flow" means the 7 day low flow of a stream likely to occur with a 50% probability each year.

"7Q2" means the seven day, two year low flow.

"Standard deviation" means a statistical measure of the dispersion around the arithmetic mean of the data.

"Standard Methods" means the publication "Standard Methods for the Examination of Water and Wastewater", published jointly by the American Public Health Association, American Water Works Association, and Water Environment Federation.

"Standards", when capitalized, means this Chapter, which constitutes the Oklahoma Water Quality Standards described in 82 O.S. §1085.30. Whenever this term is not capitalized or is singular, it means the most stringent of the criteria assigned to protect the beneficial uses designated for a specified water of the State.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Subwatershed" means a smaller component of the larger watershed.

"Synergistic effect" means the presence of cooperative pollutant action such that the total effect is greater than the sum of the effects of each pollutant taken individually.

"Thermal pollution" means degradation of water quality by the introduction of heated effluent and is primarily a result of the discharge of the cooling waters from industrial processes, particularly from electrical power generation.

"Thermal stratification" means horizontal layers of different densities produced in a lake caused by temperature.

"Variance" is a time limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance.

"Warm Water Aquatic Community" means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support intolerant climax fish communities and includes an environment suitable for the full range of warm water benthos.

"Wastes" means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state". [82 O. S. §1084.2(2)]

"Waterbody" means any specified segment or body of waters of the state, including but not limited to an entire stream or lake or a portion thereof.

"Water quality" means physical, chemical, and biological characteristics of water which determine diversity, stability, and productivity of the climax biotic community or affect human health.

"Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this State or any portion thereof [82:1084.2(3)].

"Watershed" means the drainage area of a waterbody including all direct or indirect tributaries.

"WWAC" means Warm Water Aquatic Community.

"Yearly mean standard" means the arithmetic mean of historical data from October 1976 to September 1983 except as otherwise provided in Appendix F of this Chapter, plus one standard deviation of the mean. The moving yearly mean standard is an average of the last five years of available data.

"Zone of passage" means a three dimensional zone expressed as a volume in the receiving stream through which mobile aquatic organisms may traverse the stream past a discharge without being affected by it. A regulatory zone of passage is described in 785:45-5-26.

785:45-1-3. Adoption and enforceability of the standards [REVOKED]

(a) The Oklahoma Water Quality Standards are adopted and promulgated as rules by the Oklahoma Water Resources Board pursuant to the procedures specified in the Oklahoma Administrative Procedures Act, 75 O.S., § 250 et. seq., and the procedures and substantive law provided in 82 O.S., §1085.30, and are fully enforceable under the laws of Oklahoma.

(b) All waters of the state, as defined in 82 O.S. §1084.2(3), are protected by these Standards.

(c) Oklahoma Water Quality Standards adopted and promulgated by the Oklahoma Water Resources Board shall be applicable to all activities which may affect the water quality of waters of the state and shall be utilized by all appropriate state environmental agencies in implementing their respective duties to abate and prevent pollution to waters of the state. [82:1085.2(15)]

785:45-1-4. Testing procedures [REVOKED]

All methods of sample collection, preservation, and analysis used in applying any of the standards shall be in accordance with "The Guidelines Establishing Test Procedures for the Analysis of Pollutants" as provided by 40 Code of Federal Regulations, Part 136 (40 CFR Part 136); "Methods of Measuring the Acute Toxicity of Effluent to Freshwater and Marine Organisms", "Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", "Test Methods for Escherichia coli and Enterococci in Water by the Membrane Filter Procedure", or other procedures approved by the Department of Environmental Quality's Laboratory Certification Program and the EPA Region 6 Regional Administrator.

785:45-1-5. Revision procedures [REVOKED]

(a) Any person may petition the Board, under 785:1-5-4, to modify or repeal any criterion or beneficial use designation.

(b) The petitioner, through objective and acceptable scientific studies, data and other information, shall be required to show that the requested modification or repeal will be in accordance with the requirements of applicable State and Federal law regarding water quality and in the best interest of the State.

(c) Procedures required by applicable State and Federal law for revising the designated beneficial uses and criteria or water quality shall be followed in any revision which is the subject of the petition.

785:45-1-6. Errors and separability [REVOKED]

- (a) Errors resulting from inadequate and erroneous data or human or clerical oversight will be subject to correction by the Oklahoma Water Resources Board.
- (b) The discovery of such errors does not render the remaining and unaffected Standards invalid.
- (c) If any provision of these Standards, or the application of any provision of these Standards to any person or circumstances is held to be invalid, the application of such provisions to other persons and circumstances and the remainder of the Standards shall not be affected thereby.

SUBCHAPTER 3. ANTIDegradation REQUIREMENTS [REVOKED]

785:45-3-1. Purpose; antidegradation policy statement [REVOKED]

- (a) Waters of the state constitute a valuable resource and shall be protected, maintained and improved for the benefit of all the citizens.
- (b) It is the policy of the State of Oklahoma to protect all waters of the state from degradation of water quality, as provided in OAC 785:45-3-2 and Subchapter 13 of OAC 785:46.

785:45-3-2. Applications of antidegradation policy [REVOKED]

- (a) ~~Application to Outstanding Resource Waters (ORW).~~ Certain waters of the state constitute an outstanding resource or have exceptional recreational and/or ecological significance. These waters include streams designated "Scenic River" or "ORW" in Appendix A of this Chapter, and waters of the State located within watersheds of Scenic Rivers. Additionally, these may include waters located within National and State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges, and waters which contain species listed pursuant to the federal Endangered Species Act as described in 785:45-5-25(e)(2)(A) and 785:46-13-6(e). No degradation of water quality shall be allowed in these waters.
- (b) **Application to High Quality Waters (HQW).** It is recognized that certain waters of the state possess existing water quality which exceeds those levels necessary to support propagation of fishes, shellfishes, wildlife, and recreation in and on the water. These high quality waters shall be maintained and protected.
- (c) ~~Application to Sensitive Public and Private Water Supplies (SWS) and SWS-R.~~ It is recognized that certain public and private water supplies possess conditions that make them more susceptible to pollution events and require additional protection. These sensitive water supplies shall be maintained and protected.
- (d) **Application to beneficial uses.** No water quality degradation which will interfere with the attainment or maintenance of an existing or designated beneficial use shall be allowed.
- (e) ~~Application to improved waters.~~ As the quality of any waters of the state improve, no degradation of such improved waters shall be allowed.

SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

785:45-5-1. Declaration of policy; authority of Board [REVOKED]

- (a) ~~General policy to protect, maintain and improve water quality.~~ Title 82 of the Oklahoma Statutes, Section 1084.1, provides as follows: *Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, it is hereby declared to be the public policy of this state to conserve and utilize the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses...*
- (b) **Board authority to promulgate Standards.**
 - (1) Title 82 of the Oklahoma Statutes, Section 1085.30 provides that the Board is authorized to adopt, amend and otherwise promulgate rules to be known as "Oklahoma Water Quality Standards" which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters. *The...Standards shall, at a minimum, be designed to maintain and protect the quality of the waters of the state.*
 - (2) *Wherever the Board finds it is practical and in the public interest to do so, the rules may be amended to upgrade and improve progressively the quality of waters of the state.*
 - (3) *The Board may also amend the Standards to downgrade a designated use of any waters of this state which is not an existing use, may establish subcategories of a use or may provide for less stringent criteria or other provisions thereof only in those limited circumstances permissible under the Federal Water Pollution Control Act as amended or federal rules which implement said act. Provided, the Board may amend the...Standards to downgrade a designated use, establish subcategories of a use or may provide for less stringent criteria or other provisions thereof only to the extent as will maintain or improve the existing uses and the water quality of the water affected. Provided further, the Board shall not modify the...Standards applicable to scenic river areas as such areas are described by Section 1452 of Title 82 of the Oklahoma Statutes, to downgrade a designated use, establish a subcategory of a use or provide for less stringent criteria or other provisions thereof.*

785:45-5-2. Beneficial uses: existing and designated [REVOKED]

- (a) Beneficial uses are designated for all waters of the state. Such uses are protected through the restrictions imposed by the

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antidegradation policy statement, narrative criteria and numerical standards. Some uses require higher quality water than others. When multiple uses are assigned to the same waters, all such uses shall be protected. Beneficial uses are also protected by permits or other authorizations issued to meet these Standards for point sources and through practical management or regulatory programs for nonpoint sources. The criteria to protect the beneficial uses designated in 785:45-5-3 or in Appendix A of this Chapter for certain surface waters of the state are described in sections 785:45-5-10 through 785:45-5-20 of this Chapter.

(b) Beneficial uses designated in 785:45-5-3 or in Appendix A of this Chapter for certain surface waters of the state may be downgraded to a lower use or removed entirely, or subcategories of such designated uses may be established, if:

(1) the use, despite being designated, is not a use which is or has been actually attained in the water body on or after November 28, 1975; and

(2) for the use of Fish and Wildlife Propagation, Primary Body Contact Recreation or Secondary Body Contact Recreation, or any subcategory of such use or uses, it is demonstrated to the satisfaction of the Board and the U.S. E.P.A. that attaining the designated use is not feasible because:

(A) naturally occurring pollutant concentrations prevent the attainment of the use, or

(B) natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met, or

(C) human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place, or

(D) dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use, or

(E) physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses, or

(F) controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act as amended would result in substantial and widespread economic and social impact; and

(3) such downgrade, removal, or establishment of a subcategory will maintain or improve the quality of water affected.

785:45-5-3. Beneficial uses: default designations [REVOKED]

(a) ~~Surface waters excluding lakes.~~

(1) For those surface waters of the state not listed in Appendix A of this Chapter, excluding lakes, the following beneficial uses are designated:

(A) Irrigation Agriculture subcategory of the beneficial use classification Agriculture (see 785:45-5-13);

(B) Aesthetics (see 785:45-5-19);

(C) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c)); and

(D) Primary Body Contact Recreation (see 785:45-5-16);

(2) The beneficial uses described in 785:45-5-10 (Public and Private Water Supplies), 785:45-5-11 (Emergency Public and Private Water Supplies), 785:45-5-12(b) (the Habitat Limited Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation), and 785:45-5-17 (Secondary Body Contact Recreation) shall be designated only following use attainability analyses.

(3) Beneficial use determinations that follow use attainability analyses are subject to administrative rulemaking proceedings including the public hearing process.

(b) **Lakes.**

(1) For lakes, including those listed in Appendix A of this Chapter, the following beneficial uses are designated:

(A) The Warm Water Aquatic Community subcategory of the beneficial use classification Fish and Wildlife Propagation (see 785:45-5-12(c));

(B) Irrigation Agriculture subcategory of the beneficial use classification Agriculture (see 785:45-5-13);

(C) Primary Body Contact Recreation (see 785:45-5-16); and

(D) Aesthetics (see 785:45-5-19).

(2) The beneficial use of Public and Private Water Supplies (see 785:45-5-10) is specifically designated for certain lakes as provided in Appendix A of this Chapter. For all other lakes, the beneficial uses designated in this paragraph take control over the uses designated for stream segments which include descriptions of lakes or portions thereof identified in Appendix A of this Chapter.

785:45-5-4. Applicability of narrative and numerical criteria [REVOKED]

(a) For purposes of permitting discharges for attainment of numerical criteria or establishing site specific criteria, streamflows of the greater of 1.0 cfs or 7Q2 shall be used to determine appropriate permit conditions unless otherwise provided in OAC 785:45 or 785:46.

(b) When numerical criteria do not apply, water column conditions including dissolved oxygen concentrations, organoleptic compounds, nutrients, and oil and grease shall be maintained to prevent nuisance conditions caused by man's activities.

(c) Narrative criteria listed in this Chapter shall be maintained at all times and apply to all surface waters of the State.

(d) If more than one narrative or numerical criteria is assigned to a stream, the most stringent shall be maintained.

785:45-5-5. Water quality standard variance [REVOKED]

(a) A water quality standards variance is a time limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standards variance. OWRB rulemaking and approval is required for all water quality standard variances. All water quality standard variances shall be developed in accordance with and meet the requirements of 40 CFR 131.14 and be subject to U.S. Environmental Protection Agency review and approval or disapproval. The requirements of 40 CFR 131.14 are incorporated by reference into this document.

(b) A water quality standard variance may be developed on a discharger specific, reach specific, waterbody specific, or other site specific basis. The time limited designated use and criterion associated with the water quality standard variance do not replace the underlying waterbody designated use and criterion. Additionally, all other applicable water quality standards not specifically addressed by the variance remain applicable. A water quality standard variance serves as the applicable water quality standard for implementing Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permit limits and CWA §401 certification for the term of the water quality standard variance. The underlying waterbody designated use and criterion shall remain applicable for all other CWA purposes.

785:45-5-6. Compliance schedules [REVOKED]

Schedules for compliance with the Oklahoma Water Quality Standards may be granted to persons or facilities discharging wastes into waters of the state unless such discharge creates an actual or potential hazard to the public health in accordance with 82 O.S. §1085.30(D).

785:45-5-7. Site-specific criteria [REVOKED]

(a) As needed, site specific criteria may be developed to reflect site specific waterbody conditions. Site specific criteria must be based on sound scientific rationale and assure protection of beneficial uses. Site specific criteria are developed on a case by case basis and depending on the particular case there may be various acceptable scientific approaches for developing site specific criteria. However, in all cases prior to initiating development of a site specific criteria a detailed workplan consistent with OWRB and/or EPA technical guidance, if available, shall be submitted for review and approval by OWRB Water Quality Division Chief. Prior to the initiation of any work toward development of a site specific criterion, interested parties shall coordinate with OWRB technical staff. Additional information and site specific criteria adopted for certain waterbodies and conditions are found in Appendix E.

(b) Fees required for site specific criteria will be charged in accordance with Chapter 5 of this Title.

PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES [REVOKED]

785:45-5-9. General narrative criteria [REVOKED]

(a) **Minerals.** Increased mineralization from elements such as, but not limited to, calcium, magnesium, sodium and their associated anions shall not impair any beneficial use. Derivations of certain historic concentrations can be found in Appendix F of this Chapter.

(b) **Solids (suspended and/or settleable).** The surface waters of the state shall be maintained so as to be essentially free of floating debris, bottom deposits, scum, foam and other materials, including suspended substances of a persistent nature, from other than natural sources.

(c) **Taste and Odor.** Taste and odor producing substances from other than natural origin shall not interfere with the production of a potable water supply by modern treatment methods or produce abnormal flavors, colors, tastes and odors in fish flesh or other edible wildlife, or result in offensive odors in the vicinity of the water, or otherwise impair any beneficial use.

(d) **Nutrients.** Nutrients from point source discharges or other sources shall not cause excessive growth of periphyton, phytoplankton, or aquatic macrophyte communities which impairs any existing or designated beneficial use.

785:45-5-10. Public and private water supplies [REVOKED]

The following criteria apply to surface waters of the state having the designated beneficial use of Public and Private Water Supplies:

(1) **Raw water numerical criteria.** For surface water designated as public and private water supplies, the numerical criteria for substances identified under the "Public and Private Water Supply (Raw Water)" column in Table 2 of Appendix G of this Chapter shall not be exceeded. Raw water numerical criteria are considered long term average standards. For purposes of permitting discharges for attainment of these standards, the permitting authority shall use long term average receiving stream flows and complete mixing of effluent and receiving water to determine appropriate permit limits.

(2) **Radioactive materials.**

(A) There shall be no discharge of radioactive materials in excess of the criteria found in Title 10 Code of Federal Regulations Part 20, Appendix B, Table 2.

(B) The concentration of gross alpha particles shall not exceed the criteria specified in (i) through (iv) of this subparagraph, or the naturally occurring concentration, whichever is higher.

(i) The combined dissolved concentration of Radium 226 and Radium 228, and Strontium 90, shall not exceed 5 picocuries/liter, and 8 picocuries/liter, respectively.

(ii) Gross alpha particle concentrations, including Radium 226 but excluding radon and uranium, shall not exceed 15 picocuries/liter.

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- (iii) The gross beta concentration shall not exceed 50 picocuries/liter.
 - (iv) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in waters having the designated use of Public and Private Water supply shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
- (3) **Coliform bacteria.**
- (A) The bacteria of the total coliform group shall not exceed a monthly geometric mean of 5,000/100 ml at a point of intake for public or private water supply.
 - (B) The geometric mean will be determined by multiple tube fermentation or membrane filter procedures based on a minimum of not less than five (5) samples taken over a period of not more than thirty (30) days.
 - (C) Further, in no more than 5% of the total samples during any thirty (30) day period shall the bacteria of the total coliform group exceed 20,000/100 ml.
 - (D) In cases where both public and private water supply and primary body contact recreation uses are designated, the primary body contact criteria will apply.
- (4) **Oil and grease (petroleum and non-petroleum related).** For Public and Private Water Supplies, surface waters of the State shall be maintained free from oil and grease and taste and odors.
- (5) **General criteria.**
- (A) The quality of the surface waters of the state which are designated as public and private water supplies shall be protected, maintained, and improved when feasible, so that the waters can be used as sources of public and private raw water supplies.
 - (B) These waters shall be maintained so that they will not be toxic, carcinogenic, mutagenic, or teratogenic to humans.
- (6) **Water column criteria to protect for the consumption of fish flesh and water.**
- (A) Surface waters of the State with the designated beneficial use of Public and Private Water Supply shall be protected to allow for the consumption of fish, shellfish and water.
 - (B) The water column numerical criteria to protect human health for the consumption of fish flesh and water for the substances identified in Table 2 of Appendix G of this Chapter shall be as prescribed under the "Fish Consumption and Water" column in Table 2 of Appendix G in all surface waters designated with the beneficial use of Public and Private Water Supply. Water column numerical criteria to protect human health for the consumption of fish flesh and water are considered long term average standards. For purposes of permitting discharges for attainment of these standards, the permitting authority shall use long term average receiving stream flows and complete mixing of effluent and receiving water to

determine appropriate permit limits. Water column criteria to protect human health for the consumption of fish flesh only may be found in the column "Fish Consumption" in Table 2 of Appendix G of this Chapter.

(7) ~~**Chlorophyll a numerical criterion for certain waters.**~~ The long term average concentration of chlorophyll a at a depth of 0.5 meters below the surface shall not exceed 0.010 milligrams per liter in Wister Lake, Tenkiller Ferry Reservoir, nor any waterbody designated SWS or SWS-R in Appendix A of this Chapter. Wherever such criterion is exceeded, numerical phosphorus or nitrogen criteria or both may be promulgated.

(8) Phosphorus numerical criterion applicable to certain waters. The long term average total phosphorus concentration at a depth of 0.5 meters below the surface shall not exceed 0.0168 milligrams per liter in Lake Eucha and 0.0141 milligrams per liter in Spavinaw Lake.

785:45-5-11. Emergency public and private water supplies [REVOKED]

- (a) ~~During emergencies, those waters designated Emergency Public and Private Water Supplies may be put to use.~~
- (b) ~~Each emergency will be handled on a case by case basis, and be thoroughly evaluated by the appropriate State agencies and/or local health authorities.~~

785:45-5-12. Fish and wildlife propagation [REVOKED]

(a) ~~**List of subcategories.**~~ The narrative and numerical criteria in this section are designed to maintain and protect the beneficial use classification of "Fish and Wildlife Propagation". This classification encompasses several subcategories which are capable of sustaining different climax communities of fish and shellfish. These subcategories are Habitat Limited Aquatic Community, Warm Water Aquatic Community, Cool Water Aquatic Community (Excluding Lake Waters), and Trout Fishery (Put and Take).

(b) ~~**Habitat Limited Aquatic Community subcategory.**~~

(1) ~~Habitat limited aquatic community means a subcategory of the beneficial use "Fish and Wildlife Propagation" where the water chemistry and habitat are not adequate to support a "Warm Water Aquatic Community" because:~~

(A) ~~Naturally occurring water chemistry prevents the attainment of the use; or~~

(B) ~~Naturally occurring ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent to enable uses to be met; or~~

(C) ~~Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or~~

(D) ~~Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and~~

it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(E) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the "Warm Water Aquatic Community" beneficial use.

(2) Habitat Limited Aquatic Community may also be designated where controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act as amended, which would be necessary to meet standards or criteria associated with the beneficial use subcategories of Cool Water Aquatic Community or Warm Water Aquatic Community, would result in substantial and widespread economic and social impact.

~~(e) Warm Water Aquatic Community subcategory.~~ Warm Water Aquatic Community means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support climax fish communities.

~~(d) Cool Water Aquatic Community subcategory.~~ Cool Water Aquatic Community means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support cool water climax fish communities and includes an environment suitable for the full range of cool water benthos. Typical species may include smallmouth bass, certain darters and stoneflies.

~~(e) Trout Fishery subcategory.~~ Trout Fishery (Put and Take) means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support a seasonal put and take trout fishery. Typical species may include trout.

~~(f) Criteria used in protection of Fish and Wildlife Propagation.~~ The narrative and numerical criteria to maintain and protect the use of "Fish and Wildlife Propagation" and its subcategories shall include:

(1) **Dissolved oxygen.**

(A) Dissolved oxygen (DO) criteria are designed to protect the diverse aquatic communities of Oklahoma.

(B) Allowable loadings designed to attain these dissolved oxygen criteria are provided as follows:

(i) For streams with sufficient historical data, the allowable load shall be based on meeting the dissolved oxygen concentration standard at the seven-day, two-year low flow and the appropriate seasonal temperatures prescribed in Table 1 of Appendix G of this Chapter.

(ii) For streams lacking sufficient historical data, or when the appropriate flow is less than one (1) cubic foot per second (cfs), the allowable load shall be based on meeting the dissolved oxygen concentration standard at one (1) cfs and the appropriate seasonal temperature.

(iii) Provided, for streams designated in OAC 785:45 Appendix A as HLAC or WWAC which

have sufficient historical data as determined by the permitting authority, the allowable BOD load may be based upon meeting the dissolved oxygen concentration standard at the applicable seasonal temperature and corresponding seasonal seven-day, two-year low flow.

~~(iv) Provided further, in stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, including but not limited to the portions of the Verdigris and Arkansas Rivers constituting the McClellan Kerr Arkansas River Navigation System, a properly designed and implemented site specific hydrologic study approved by the permitting authority and the Board may be used to determine the appropriate regulatory low flow. In such circumstances, the allowable BOD load may be based upon meeting the dissolved oxygen concentration standard at the applicable seasonal temperature and the site specific regulatory low flow.~~

~~(C) Except for naturally occurring conditions the dissolved oxygen criteria are as set forth in Table 1 of Appendix G of this Chapter. Additionally;~~

~~(i) For streams, no more than two DO samples shall exhibit a DO concentration of less than 2.0 mg/L in any given year.~~

~~(ii) For lakes, no more than 50% of the water volume shall exhibit a DO concentration less than 2.0 mg/L. If no volumetric data is available, then no more than 70% of the water column at any given sample site shall exhibit a DO concentration less than 2.0 mg/L. If a lake specific study including historical analysis demonstrates that a different percent volume or percent water column than described above is protective of the WWAC use, then that lake specific result takes precedence.~~

(2) **Temperature.**

(A) At no time shall heat be added to any surface water in excess of the amount that will raise the temperature of the receiving water more than 2.8°C outside the mixing zone.

(B) The normal daily and seasonal variations that were present before the addition of heat from other than natural sources shall be maintained.

(C) In streams, temperature determinations shall be made by averaging representative temperature measurements of the cross-sectional area of the stream at the end of the mixing zone.

(D) In lakes, the temperature of the water column and/or epilimnion, if thermal stratification exists, shall not be raised more than 1.7°C above that which existed before the addition of heat of artificial origin, based upon the average of temperatures taken from the surface to the bottom of the lake, or surface to the bottom of the epilimnion if the lake is stratified.

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- (E) No heat of artificial origin shall be added that causes the receiving stream water temperature to exceed the maximums specified below:
- (i) ~~The critical temperature plus 2.8°C in warm water and habitat limited aquatic community streams and lakes except in the segment of the Arkansas River from Red Rock Creek to the headwaters of Keystone Reservoir where the maximum temperature shall not exceed 34.4°C.~~
 - (ii) ~~28.9°C in streams designated cool water aquatic community.~~
 - (iii) ~~20°C in streams designated trout fishery (put and take).~~
- (F) Water in privately owned reservoirs used in the process of cooling water for industrial purposes is exempt from these temperature restrictions, provided the water released from any such lake or reservoir into a stream system shall meet the water quality standards of the receiving stream.
- (3) **pH (hydrogen ion activity).** The pH values shall be between 6.5 and 9.0 in waters designated for fish and wildlife propagation; unless pH values outside that range are due to natural conditions.
- (4) **Oil and grease (petroleum and non-petroleum related).**
- (A) All waters having the designated beneficial use of any subcategory of fish and wildlife propagation shall be maintained free of oil and grease to prevent a visible sheen of oil or globules of oil or grease on or in the water.
 - (B) Oil and grease shall not be present in quantities that adhere to stream banks and coat bottoms of water courses or which cause deleterious effects to the biota.
- (5) **Biological criteria.**
- (A) Aquatic life in all waterbodies with the beneficial use designation of Fish and Wildlife Propagation (excluding waters designated "Trout, put and take") shall not exhibit degraded conditions as indicated by one or both of the following:
 - (i) Comparative regional reference data from a station of reasonably similar watershed size or flow, habitat type and Fish and Wildlife beneficial use subcategory designation or
 - (ii) By comparison with historical data from the waterbody being evaluated.
 - (B) Compliance with the biological criteria to protect Fish and Wildlife Propagation set forth in this paragraph shall be based upon measures including, but not limited to, diversity, similarity, community structure, species tolerance, trophic structure, dominant species, indices of biotic integrity (IBI's), indices of well being (IWB's), or other measures.
- (6) **Toxic substances (for protection of fish and wildlife).**
- (A) Surface waters of the state shall not exhibit acute toxicity and shall not exhibit chronic toxicity outside the chronic regulatory mixing zone. Acute test failure and chronic test failure shall be used to determine discharger compliance with these narrative aquatic life toxics criteria. The narrative criterion specified in this subparagraph (A) which prohibits acute toxicity shall be maintained at all times and shall apply to all surface waters of the state. The narrative criterion specified in this subparagraph (A) which prohibits chronic toxicity shall apply at all times outside the chronic regulatory mixing zone and within the zone of passage to all waters of the state except:
 - (i) When a discharge into surface waters designated with the Fish and Wildlife Propagation beneficial use complies with and meets the discharge permit limitations but the flow immediately upstream from the discharge is less than one (1) cubic foot per second or when the flow falls below the seven day, two year low flow, whichever is larger. For purposes of the permitting process, the regulatory low flow shall be the larger of one (1) cubic foot per second or the seven day, two year low flow; and
 - (ii) To streams listed as ephemeral in Appendix A.
 - (B) Procedures to implement these narrative criteria are found in OAC 785:46 Subchapter 3.
 - (C) Toxicants for which there are specific numerical criteria are listed in Table 2 of Appendix G of this Chapter.
 - (D) For toxicants not specified in Table 2 of Appendix G of this Chapter, concentrations of toxic substances with bio concentration factors of 5 or less shall not exceed 0.1 of published LC50 value(s) for sensitive representative species using standard testing methods, giving consideration to site specific water quality characteristics.
 - (E) Concentrations of toxic substances with bio concentration factors greater than 5 shall not exceed 0.01 of published LC50 value(s) for sensitive representative species using standard testing methods, giving consideration to site specific water quality characteristics.
 - (F) Permit limits to prevent toxicity caused by discharge of chlorine and ammonia are determined pursuant to the narrative criteria contained within (A) and (B) of this paragraph.
 - (G) The acute and chronic numerical criteria listed in the "Fish and Wildlife Propagation" column in Table 2 of Appendix G of this Chapter apply to all waters of the state designated with any of the beneficial use sub categories of Fish and Wildlife Propagation. The numerical criteria which prohibit acute toxicity apply outside the acute regulatory mixing zone.
 - (i) The numerical criteria specified in Table 2 of Appendix G which prohibit chronic toxicity shall apply at all times outside the chronic regulatory mixing zone and within the zone of passage to all waters of the state except:

- (I) When a discharge into surface waters designated with the Fish and Wildlife Propagation beneficial use complies with and meets the discharge permit limitations but the flow immediately upstream from the discharge is less than one (1) cubic foot per second or when the flow falls below the seven day, two year low flow, whichever is larger. For purposes of the permitting process, the regulatory low flow shall be the larger of one (1) cubic foot per second or the seven day, two year low flow; and
- (II) To streams listed as ephemeral in Appendix A.
- (ii) Equations are presented in Table 2 of Appendix G for those substances whose toxicity varies with water chemistry.
- (H) For purposes of assessment per OAC 785:46-15-5, the conversion factors identified in Table 3 of Appendix G of this Chapter may be used to convert the total recoverable metals criteria set forth in Table 2 of Appendix G into dissolved metals values. Such dissolved metals values may be determined by multiplying the total recoverable numerical criteria in OAC 785:45 Appendix G, Table 2 by the conversion factors identified in Table 3 of Appendix G.
- (7) **Turbidity.**
 - (A) Turbidity from other than natural sources shall be restricted to not exceed the following numerical limits:
 - (i) Cool Water Aquatic Community/Trout Fisheries: 10 NTUs;
 - (ii) Lakes: 25 NTUs; and
 - (iii) Other surface waters: 50 NTUs.
 - (B) In waters where background turbidity exceeds these values, turbidity from point sources shall be restricted to not exceed ambient levels.
 - (C) Numerical criteria listed in (A) of this paragraph apply only to seasonal base flow conditions.
 - (D) Elevated turbidity levels may be expected during, and for several days after, a runoff event.
- (8) **Sediments.** Concentrations or loads of suspended or bedded sediments that are caused by human activity shall not impair the Fish and Wildlife Propagation use or any subcategory thereof.

785:45-5-13. Agriculture [REVOKED]

- (a) **General.** The surface waters of the State shall be maintained so that toxicity does not inhibit continued ingestion by livestock or irrigation of crops.
- (b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning unless the context clearly indicates otherwise:
 - (1) "Long term average concentration" means the arithmetic mean of at least ten samples taken across at least twelve months.

- (2) "Short term average concentration" means the arithmetic mean of all samples taken during any 30 day period.
- (c) **Subcategories of the Agriculture beneficial use.**
 - (1) The narrative and numerical criteria stated or referenced in this section and in Appendix F of this chapter are designed to maintain and protect the beneficial use classification of "Agriculture". This classification encompasses two subcategories which are capable of sustaining different agricultural applications. These subcategories are Irrigation Agriculture and Livestock Agriculture.
 - (2) Irrigation Agriculture means a subcategory of the Agriculture beneficial use requiring water quality conditions that are dictated by individual crop tolerances.
 - (3) Livestock Agriculture is a subcategory of the Agriculture beneficial use requiring much less stringent protection than crop irrigation.
 - (4) If a waterbody is designated in Appendix A of this Chapter with the Agriculture beneficial use but does not have a designation of a subcategory thereof, the criteria for Irrigation Agriculture shall be applicable.
- (d) **Highly saline water.** Highly saline water should be used with best management practices as outlined in "Diagnosis and Reclamation of Saline Soils," United States Department of Agriculture Handbook No. 60 (1958).
- (e) **General criteria for the protection of Irrigation Agriculture.** This subsection prescribes general criteria to protect the Irrigation Agriculture subcategory. For chlorides, sulfates and total dissolved solids at 180°C (see Standard Methods), the arithmetic mean of the concentration of the samples taken for a year in a particular segment shall not exceed the historical "yearly mean standard" determined from the table in Appendix F of this Chapter. For permitting purposes, the long term average concentration shall not exceed the yearly mean standard. Yearly mean standards shall be implemented by the permitting authority using the greater of 1.47 cfs or long term average flows and complete mixing of effluent and receiving water. For permitting purposes, the short term average concentration shall not exceed the sample standard. Sample standards shall be implemented by the permitting authority using the greater of 1.0 cfs or short term average flows and complete mixing of effluent and receiving water. The data from sampling stations in each segment are averaged, and the mean chloride, sulfate, and total dissolved solids at 180°C are presented in Appendix F of this Chapter. Segment averages shall be used unless more appropriate data are available.
- (f) **Historic concentrations.** The table in Appendix F of this Chapter contains statistical values from historical water quality data of mineral constituents. In cases where mineral content varies within a segment, the most pertinent data available should be used.
- (g) **Criteria to protect Irrigation Agriculture subcategory.** For the purpose of protecting the Irrigation Agriculture subcategory, neither long term average concentrations nor short term average concentrations of minerals shall be required to be less than 700 mg/L for TDS, nor less than 250 mg/L for either chlorides or sulfates.

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~~(h) **Criteria to protect Livestock Agriculture subcategory.** For the purpose of protecting the Livestock Agriculture subcategory, neither long term average concentrations nor short term average concentrations of minerals shall be required to be less than 2500 mg/L for TDS.~~

~~(i) **Support tests.** For purposes of assessment, listing and reporting under sections 303(d) and 305(b) of the federal Clean Water Act as amended, the procedure for determining use support of the Agriculture beneficial use or any subcategory thereof with respect to TDS, chlorides and sulfates shall be as follows:~~

~~(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to TDS or chlorides or sulfates if both the mean of all sample concentrations calculated for that parameter from that waterbody do not exceed the yearly mean standard prescribed in OAC 785:45 Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E, and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in OAC 785:45 Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E.~~

~~(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to TDS or chlorides or sulfates if either the mean of all sample concentrations calculated for that parameter from that waterbody exceeds the yearly mean standard prescribed in OAC 785:45 Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E. Provided, if the sample concentrations are each less than 700 mg/L for TDS, or less than 250 mg/L for either chlorides or sulfates, then the Agriculture beneficial use shall be deemed to be fully supported for that parameter.~~

785:45-5-16. Primary Body Contact Recreation [REVOKED]

~~(a) Primary Body Contact Recreation involves direct body contact with the water where a possibility of ingestion exists. In these cases the water shall not contain chemical, physical or biological substances in concentrations that are irritating to skin or sense organs or are toxic or cause illness upon ingestion by human beings.~~

~~(b) In waters designated for Primary Body Contact Recreation the following limits for bacteria set forth in (c) of this section shall apply only during the recreation period of May 1 to September 30. The criteria for Secondary Body Contact Recreation will apply during the remainder of the year.~~

~~(c) Compliance with 785:45-5-16 shall be based upon meeting the requirements of one of the options specified in (1) or (2) of this subsection (c) for bacteria. Upon selection of one (1) group or test method, said method shall be used exclusively over the time period prescribed therefore. Provided, where concurrent data exist for multiple bacterial indicators on the same waterbody or waterbody segment, no criteria exceedances shall be allowed for any indicator group.~~

~~(1) **Escherichia coli (E. coli):** The E. coli geometric mean criterion is 126/100 ml. For swimming advisory and permitting purposes, E. coli shall not exceed a monthly geometric mean of 126/100 ml based upon a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. For swimming advisory and permitting purposes, no sample shall exceed a 75% one-sided confidence level of 235/100 ml in lakes and high use waterbodies and the 90% one-sided confidence level of 406/100 ml in all other Primary Body Contact Recreation beneficial use areas. These values are based upon all samples collected over the recreation period. For purposes of sections 303(d) and 305(b) of the federal Clean Water Act as amended, beneficial use support status shall be assessed using only the geometric mean criterion of 126/100 milliliters compared to the geometric mean of all samples collected over the recreation period.~~

~~(2) **Enterococci:** The Enterococci geometric mean criterion is 33/100 ml. For swimming advisory and permitting purposes, Enterococci shall not exceed a monthly geometric mean of 33/100 ml based upon a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. For swimming advisory and permitting purposes, no sample shall exceed a 75% one-sided confidence level of 61/100 ml in lakes and high use waterbodies and the 90% one-sided confidence level of 108/100 ml in all other Primary Body Contact Recreation beneficial use areas. These values are based upon all samples collected over the recreation period. For purposes of sections 303(d) and 305(b) of the federal Clean Water Act as amended, beneficial use support status shall be assessed using only the geometric mean criterion of 33/100 milliliters compared to the geometric mean of all samples collected over the recreation period.~~

785:45-5-17. Secondary Body Contact Recreation [REVOKED]

~~(a) The water quality requirements for Secondary Body Contact Recreation are usually not as stringent as for Primary Body Contact Recreation.~~

~~(b) The Secondary Body Contact Recreation beneficial use is designated where ingestion of water is not anticipated.~~

~~(c) Associated activities may include boating, fishing or wading.~~

~~(d) Waters so designated shall be maintained to be free from human pathogens in numbers which may produce adverse health effects in humans.~~

785:45-5-18. Navigation [REVOKED]

~~This beneficial use is generally more dependent upon quantity than quality of water.~~

785:45-5-19. Aesthetics [REVOKED]

~~(a) To be aesthetically enjoyable, the surface waters of the state must be free from floating materials and suspended substances that produce objectionable color and turbidity.~~

(b) The water must also be free from noxious odors and tastes, from materials that settle to form objectionable deposits, and discharges that produce undesirable effects or are a nuisance to aquatic life.

(c) The following criteria apply to protect this use:

(1) **Color.** Surface waters of the state shall be virtually free from all coloring materials which produce an aesthetically unpleasant appearance.

(2) **Nutrients; numerical criterion applicable to waters designated Scenic Rivers.** The thirty (30) day geometric mean total phosphorus concentration in waters designated "Scenic River" in Appendix A of this Chapter shall not exceed 0.037 mg/L. The criterion stated in this subparagraph applies in addition to, and shall be construed so as to be consistent with, any other provision of this Chapter which may be applicable to such waters. Such criterion became effective July 1, 2002 and shall be implemented as authorized by state law through Water Quality Standards Implementation Plans and other rules, permits, settlement agreements, consent orders, compliance orders, compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012.

(3) **Total phosphorus criterion applicable to designated Scenic River reaches of Illinois River, Flint Creek, and Barren Fork Creek.** The total phosphorus six month rolling average of 0.037 mg/L shall not be exceeded more than once in a one year period and not more than three times in a five year period. The criterion stated in this subparagraph applies in addition to, and shall be construed so as to be consistent with, any other provision of this Chapter which may be applicable to such waters.

785:45-5-20. Fish consumption [REVOKED]

(a) **General.** The surface waters of the state shall be maintained so that toxicity does not inhibit ingestion of fish and shellfish by humans. The numerical criteria and values for substances listed in the column "Fish Consumption" in Table 2 of Appendix G of this Chapter shall apply to surface waters designated as Warm Water Aquatic Community, Cool Water Aquatic Community, or Trout Fishery.

(b) **Water column criteria to protect for the consumption of fish flesh.** The water column numerical criteria (total recoverable) identified in the "Fish Consumption" column in Table 2 of Appendix G protect human health for the consumption of fish, shellfish and aquatic life. Water column numerical criteria to protect human health for human consumption of fish flesh are considered long term average standards. For purposes of permitting discharges for attainment of these standards, the permitting authority shall use long term average receiving stream flows and complete mixing of effluent and receiving water to determine appropriate permit limits.

(c) **Fish tissue levels.** Surface waters of the state shall be maintained to prevent bio-concentration of toxic substances in fish, shellfish, or other aquatic organisms to levels that become a risk to human health.

PART 5. SPECIAL PROVISIONS [REVOKED]

785:45-5-25. Implementation Policies for the Antidegradation Policy Statement [REVOKED]

(a) The following provisions set forth exceptions to the limitations stated in 785:45-5-25(e) for additional protection of certain waters of the state:

(1) The limitations contained in 785:45-5-25(e)(1) for additional protection of Outstanding Resource Waters shall apply to all discharges from point sources except such limitations do not apply to discharges of stormwater from temporary construction activities. Discharges of stormwater from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992, are also excepted from the 785:45-5-25(e)(1) rule prohibiting any new point source discharges, but such stormwater discharges are prohibited from increased load of any pollutant.

(2) The limitations for additional protection of Appendix B Waters (785:45-5-25(e)(2)), High Quality Waters (785:45-5-25(e)(3)), Sensitive Public and Private Water Supplies (785:45-5-25(e)(4)), and SWS R waterbodies (785:45-5-25(e)(8)) shall apply to discharges from all point sources except point source discharges of stormwater.

(b) For purposes of 785:45-5-25, the term "specified pollutants" means:

- (1) Oxygen demanding substances, measured as Carbonaceous Biochemical Oxygen Demand (CBOD) and/or Biochemical Oxygen Demand (BOD);
- (2) Ammonia Nitrogen and/or Total Organic Nitrogen;
- (3) Phosphorus;
- (4) Total Suspended Solids (TSS);
- (5) Such other substances as may be determined by the Oklahoma Water Resources Board.

(c) The following waterbody classifications provide limitations for additional protection and apply to various waters of the state identified on a waterbody by waterbody basis in Appendix A. Implementation of the Antidegradation Policy (OAC 785:46-13) shall be consistent with the requirements of 40 CFR 131.12. In conducting an antidegradation review, if assimilative capacity is available, the consumption of assimilative capacity may be allowed in accordance with OAC 785:46-13-18. In all instances, water quality shall be maintained to fully protect designated and existing beneficial uses. Thus, the consumption of assimilative capacity shall be allowed with a margin of safety, which takes into account any uncertainty between existing or proposed discharges and impacts on receiving water quality.

(1) **Outstanding Resource Waters (ORW).**

(A) Outstanding Resource Waters (ORW) are those waters of the state which constitute outstanding resources or are of exceptional recreational and/or ecological significance as described in 785:45-3-2(a).

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(B) The following waterbodies are prohibited from having any new point source discharge(s) of any pollutant or increased load of any pollutant from existing point source discharge(s):

- (i) Waterbodies designated "ORW" and/or "Scenic River" in Appendix A of this Chapter;
- (ii) Waterbodies located within the watersheds of waterbodies designated "Scenic River" in Appendix A of this Chapter; and
- (iii) Waterbodies located within the boundaries of Appendix B areas which are specifically designated "ORW" in Appendix A of this Chapter.

(2) **Appendix B Waters.**

(A) Appendix B waters are those waters of the state which are located within the boundaries of areas listed in Appendix B of this Chapter, including but not limited to the National and State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges. Appendix B also may include those areas which are inhabited by federally listed, threatened or endangered species, and other appropriate areas.

(B) Only those Appendix B waters specifically designated "ORW" in Appendix A of this Chapter shall be afforded the limitations for additional protection described in 785:45-5-25(c)(1)(B).

(C) New discharges or increased loading from existing discharges to Appendix B waters may be allowed under such conditions that ensure that the recreational and ecological significance of these waters will be maintained.

(D) Discharges or other activities associated with those waters listed in Appendix B, Table 2 containing federally listed threatened or endangered species may be restricted through agreements between appropriate regulatory agencies and the United States Fish and Wildlife Service.

(3) **High Quality Waters (HQW).**

(A) High Quality Waters (HQW) are those waters of the state whose historic water quality and physical habitat provide conditions suitable for the support of sensitive and intolerant climax communities of aquatic organisms whether or not that waterbody currently contains such a community, support high levels of recreational opportunity, and are designated "HQW" waters in Appendix A of this Chapter. These waters will generally have higher quality habitat, a more diverse and more intolerant biotic community and, as a result, may provide more ecological refuges and recreational opportunities than other waters in the same ecoregion with similar chemistry and physical conditions.

(B) All waterbodies designated with the limitation indicated by the letters "HQW" in Appendix A are prohibited from having any new point source discharge(s) of any pollutant or increased load or concentration of specified pollutants from existing point source discharge(s), provided however that new point source discharge(s) or increased load of

specified pollutants described in 785:45-5-25(b) may be approved by the permitting authority in those circumstances where the discharger demonstrates to the satisfaction of the permitting authority that the a new point source discharge or increased load from an existing point source discharge will result in maintaining or improving the level of water quality which exceeds that necessary to support recreation and propagation of fishes, shellfishes, and wildlife of the direct receiving water and downstream waterbodies designated HQW. As specified in 785:45-3-2(b) and (d), no discharge of any pollutant to a water designated HQW may lower existing water quality.

(C) Waters designated HQW after July 1, 2007 will demonstrate (1) 95% of water quality measurements for multiple parameters from metals, organics and general physicochemical water quality descriptors better than the promulgated criteria in Appendix G of this chapter at multiple stations on the segment, (2) an unimpaired biological community as determined by the application of Appendix C of Title 785 Chapter 46, and (3) significant local support for promulgation of the HQW designation.

(4) **Sensitive Public and Private Water Supplies (SWS).**

(A) Waters designated "SWS" are those waters of the state which constitute sensitive public and private water supplies as a result of their unique physical conditions and are listed in Appendix A of this Chapter as "SWS" waters. These are waters (a) currently used as water supply reservoirs, (b) that generally possess a watershed of less than approximately 100 square miles or (c) as otherwise designated by the Board.

(B) New point source discharges of any pollutant after June 11, 1989, and increased load of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of this Chapter with the limitation "SWS". Any discharge of any pollutant to a waterbody designated "SWS" which would, if it occurred, lower existing water quality shall be prohibited, provided however that new point source discharge(s) or increased load of specified pollutants described in 785:45-5-25(b) may be approved by the permitting authority in those circumstances where the discharger demonstrates to the satisfaction of the permitting authority that a new point source discharge or increased load from an existing point source discharge will result in maintaining or improving the water quality of both the direct receiving water and any downstream waterbodies designated SWS.

(5) **Prioritization of limitations.** In situations where more than one beneficial use limitation exists for a waterbody, the more stringent limitation shall apply.

(6) **Non-Point source discharges or runoff.** Best management practices for control of non point source

discharges or runoff should be implemented in watersheds of waterbodies designated "ORW", "HQW", "SWS" or "SWS R" in Appendix A of this Chapter and/or located within areas listed in Appendix B provided however that development of conservation plans shall be required in sub-watersheds where discharges or runoff from non point sources are identified as causing, or significantly contributing to, degradation in a waterbody designated "ORW".

(7) Culturally Significant Waters (CSW).

(A) Waters designated as CSW in Appendix A of this Chapter are those identified by recognized Tribal authorities as critical to maintaining the waters' utility for cultural, historic, recreational or ceremonial uses and which may require more stringent protection measures to protect human health or aquatic life or both.

(B) All activities associated with a CSW may require consultation with the duly authorized Tribal authority to assure that the proposed activity is consistent with applicable Tribal environmental laws.

(8) Sensitive Public and Private Water Supplies with Reuse (SWS R).

(A) Waters designated "SWS R" are those waters of the state which constitute sensitive public and private water supplies that may be augmented with reclaimed municipal water for the purpose of indirect potable reuse (IPR). SWS R waterbodies are identified in Appendix A of this Chapter. These are waters currently used as water supply reservoirs, that generally possess a watershed of less than approximately 100 square miles, or as otherwise designated by the Board.

(B) New point source discharges of any pollutant after June 11, 1989, and increased load of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of this Chapter with the limitation "SWS R" except as outlined in 8(C) below.

(C) New point source municipal wastewater discharges or increased loading from existing point source municipal wastewater discharges to a SWS R waterbody or watershed shall achieve a minimum level of effluent quality that is attainable using demonstrated treatment technologies or other alternatives. Approaches for required technology based limitations and or other alternatives are outlined in 785:46-13-4(e). A discharge to a SWS R waterbody may be permitted provided:

- (i) A determination of the waterbody's assimilative capacity for all applicable narrative and numeric criteria shall be the responsibility of the discharger;
- (ii) If assimilative capacity exists for any applicable narrative or numeric criteria, the discharger shall document what portion, if any, of the assimilative capacity is reasonable to maintain. If it is

proposed that it is not reasonable to maintain any, or a portion, of the assimilative capacity, a report consistent with all 40 CFR 131.12(a)(2) requirements describing the available assimilative capacity and providing justification for consuming all or a portion of the assimilative capacity shall be submitted by the discharger to the State for review;

(iii) The State may approve both the determination of assimilative capacity and the proposed consumption of any, or all, of the assimilative capacity if it is found to be necessary based on the aforementioned report and consistent with the requirements described in 40 CFR 131.12(a)(2);

(iv) All existing and designated beneficial uses of the receiving waterbody and downstream waterbodies shall be maintained; and,

(v) The discharge shall not impair human health even during drought of record conditions.

(D) SWS R waterbodies, with permitted discharge, shall be technically evaluated by permitted parties at least once every five years to determine the attainment or nonattainment of beneficial uses. Technical evaluation reports, including all data and information necessary to allow independent analysis, shall be submitted to the permitting authority for review. If the report documents nonattainment of a beneficial use(s) resulting from the discharge, the permitting authority shall consider actions including, but not limited to, additional permit requirements, cessation of the discharge, and or a recommendation to OWRB to revoke the SWS R waterbody classification.

785:45-5-26. Mixing zones and zones of passage [REVOKED]

(a) Mixing zones.

(1) In streams, the chronic regulatory mixing zone extends downstream a distance equivalent to thirteen (13) times the width of the water within the receiving stream at the point of effluent discharge and encompasses 25% of the total stream flow of the 7Q2 or 1 cfs, whichever is larger, immediately downstream of the point of effluent discharge.

(2) The acute regulatory mixing zone is encompassed by the $R = 0.01$ (cfs⁺¹) isopleth. R is the ratio of concentration to wasteload.

(3) Acute toxicity within the mixing zone is prohibited.

(4) Mixing zones in lakes shall be designated on a case by case basis.

(5) The water quality in a portion of the mixing zone may be unsuitable for certain beneficial uses.

(6) Where overlapping mixing zones occur because of multiple outfalls, the total length of the chronic regulatory mixing zone will extend thirteen (13) stream widths downstream from the downstream discharge point.

(b) Zones of passage.

(1) All discharges permitted for any criteria listed for protection of fish and wildlife propagation shall be regulated to insure that a zone of passage shall be maintained

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within the stream at the outfall and adjacent to the mixing zone that shall be no less than seventy five percent (75%) of the volume of flow.

(2) Water quality standards shall be maintained throughout the zone of passage.

(3) Zones of passage in lakes shall be designated on a case by case basis.

785:45-5-29. Delineation of NLW areas [REVOKED]

(a) ~~Scope and applicability.~~ This Section prescribes in greater detail than OAC 785:45 Appendix A the spatial limitations for nutrient limited watershed areas. The "NLW" designations in OAC 785:45 Appendix A are independent of and have no bearing on other designations such as those for beneficial uses or anti degradation limitations.

(b) ~~List and descriptions of Nutrient Limited Watersheds.~~ This subsection describes all areas which are nutrient limited watersheds and subject to the "NLW" designation. These are the only areas which are subject to limitations applicable to nutrient limited watersheds.

(1) ~~Spiro Lake.~~ The nutrient limited watershed area for Spiro Lake is the entire watershed and drainage area of Spiro Lake, including all direct and indirect tributaries.

(2) ~~Clinton Lake.~~ The nutrient limited watershed area for Clinton Lake is the entire watershed and drainage area of Clinton Lake, including all direct and indirect tributaries.

(3) ~~Hobart Lake.~~ The nutrient limited watershed area for Hobart Lake is the entire watershed and drainage area of Hobart Lake, including all direct and indirect tributaries.

(4) ~~Lake Overholser.~~ The nutrient limited watershed area for Lake Overholser is the entire watershed and drainage area of Lake Overholser up to but not including Canton Reservoir, and includes direct and indirect tributaries in HUCs 11100301080 (excluding downstream from Lake Overholser), 11100301070, and 11100301060.

(5) ~~Lake Carl Etling.~~ The nutrient limited watershed area for Lake Carl Etling is the entire watershed and drainage area of Lake Carl Etling, including South Carrizo Creek and all direct and indirect tributaries.

(6) ~~Fort Gibson Reservoir.~~ The nutrient limited watershed area for Fort Gibson Reservoir is the entire watershed and drainage area of Fort Gibson Reservoir up to but not including Lake Hudson, and includes direct and indirect tributaries in HUCs 11070209120 (excluding downstream from Fort Gibson Reservoir), 11070209100, and 11070209090.

(7) ~~Spavinaw Lake.~~ The nutrient limited watershed area for Spavinaw Lake is the entire watershed and drainage area of Spavinaw Lake, including Spavinaw Creek and all direct and indirect tributaries.

(8) ~~Eucha Lake.~~ The nutrient limited watershed area for Eucha Lake is the entire watershed and drainage area of Eucha Lake, including Spavinaw Creek and Beaty Creek and Brush Creek and all direct and indirect tributaries.

(9) ~~Lake Claremore.~~ The nutrient limited watershed area for Lake Claremore is the entire watershed and

drainage area of Lake Claremore, including all direct and indirect tributaries.

(10) ~~Hulah Reservoir.~~ The nutrient limited watershed area for Hulah Reservoir is the entire watershed and drainage area of Hulah Reservoir, including all direct and indirect tributaries in the HUC 11070106020.

(11) ~~Wister Reservoir.~~ The nutrient limited watershed area for Wister Reservoir is the entire watershed and drainage area of Wister Reservoir, including the Poteau River upstream from Wister Reservoir and all direct and indirect tributaries and Fourche Maline Creek and all direct and indirect tributaries.

(12) ~~Taylor (Marlow) Lake near Rush Springs.~~ The nutrient limited watershed area for Taylor Lake is the entire watershed and drainage area of Taylor Lake, including all direct and indirect tributaries.

(13) ~~Fort Cobb Lake.~~ The nutrient limited watershed area for Fort Cobb Lake is the entire watershed and drainage area of both Fort Cobb Lake and Crowder Lake, including all direct and indirect tributaries in the HUCs 11130302130 and 11130302120.

(14) ~~Vanderwork Lake.~~ The nutrient limited watershed area for Vanderwork Lake is the entire watershed and drainage area of Vanderwork Lake, including all direct and indirect tributaries.

(15) ~~Elk City Lake.~~ The nutrient limited watershed area for Elk City Lake is the entire watershed and drainage area of Elk City Lake, including all direct and indirect tributaries.

(16) ~~Ozzie Cobb Lake.~~ The nutrient limited watershed area for Ozzie Cobb Lake is the entire watershed and drainage area of Ozzie Cobb Lake, including Rock Creek and all direct and indirect tributaries.

(17) ~~Great Salt Plains Reservoir.~~ The nutrient limited watershed area for Great Salt Plains Reservoir is the entire watershed and drainage area of the Great Salt Plains Reservoir, including Clay Creek and the Salt Fork of the Arkansas River and all direct and indirect tributaries.

(18) ~~Fort Supply Reservoir.~~ The nutrient limited watershed area for Fort Supply Reservoir is the entire watershed and drainage area of Fort Supply Reservoir, including Wolf Creek and all direct and indirect tributaries.

(19) ~~Tenkiller Reservoir.~~ The nutrient limited watershed area for Tenkiller Reservoir is the entire watershed and drainage area of Tenkiller Reservoir, including the Illinois River and Caney Creek and all direct and indirect tributaries.

(20) ~~Lake Thunderbird.~~ The nutrient limited watershed area for Lake Thunderbird is the entire watershed and drainage area of Lake Thunderbird, including Little River above Lake Thunderbird and all direct and indirect tributaries.

(21) ~~Lake Chickasha.~~ The nutrient limited watershed area for Lake Chickasha is the entire watershed and drainage area of Lake Chickasha, including Stinking Creek and Spring Creek above Lake Chickasha and all direct and indirect tributaries.

SUBCHAPTER 7. GROUNDWATER QUALITY STANDARDS [REVOKED]

785:45-7-1. Scope and Applicability; Purpose [REVOKED]

- (a) The provisions of this Subchapter apply only to fresh groundwater.
- (b) The purposes of the rules in this Subchapter are to protect beneficial uses and classifications of groundwater, to assure that degradation of the existing quality of groundwater does not occur, and to provide minimum standards for remediation when groundwater becomes polluted by humans.

785:45-7-2. Groundwater Quality Antidegradation Policy [REVOKED]

- (a) The groundwaters of the state of Oklahoma are an important and valuable resource that shall be maintained and protected.
- (b) Beneficial uses shall be maintained and protected and human degradation of groundwater quality that would cause or contribute to the nonattainment of beneficial uses shall not be allowed.
- (c) Whenever existing groundwater quality exceeds the level necessary for beneficial uses to be maintained and protected, the existing groundwater quality shall be maintained and protected, unless it is demonstrated to the State that any lowering of groundwater quality:
 - (1) After an analysis of alternatives, is necessary to accommodate important economic and social development and is in the public interest; and
 - (2) Protective measures sufficient to protect beneficial uses shall be maintained at all times.
- (d) In certain groundwaters, whenever existing groundwater quality exceeds the level necessary for beneficial uses to be maintained and protected, the existing groundwater quality shall be maintained and protected.

(1) **Special Source Groundwaters**

(A) Special source groundwaters are defined as groundwaters where exceptional water quality exists, where there is an irreplaceable source of water, where it is necessary to maintain an outstanding resource, or where the quality of the groundwater may be important for maintaining a uniquely designated characteristic of certain surface waters, as defined in i-iv below:

- (i) All groundwater likely to influence the quality of waters designated as a "Scenic River" in Appendix A of this Chapter and their watersheds; and
- (ii) All groundwater likely to influence the quality of waters located within the boundaries of the areas described in Appendix B of this Chapter; and
- (iii) All groundwater likely to influence the quality of waters designated as "HQW" in Appendix A of this Chapter; and

(iv) All groundwater likely to influence the quality of waters located within the boundaries of a State approved source water protection area for public water supply.

(B) Groundwaters designated as special source groundwaters are prohibited from receiving any discrete discharge(s), surface water from constructed infiltration basins, or surface application of waste, unless the activity maintains or improves existing water quality.

(C) Discharges proximate and/or adjacent to special source groundwaters shall take into consideration the requirement to maintain or improve existing water quality in special source groundwaters and shall ensure that any activity provides for the maintenance or improvement of water quality in special source groundwaters.

785:45-7-3. Groundwater classifications, beneficial uses and vulnerability levels [REVOKED]

(a) **Classifications.** Classification of all groundwater shall be designated as follows:

(1) ~~(Class I): RESERVED~~

(2) **General Use Groundwater (Class II):** These are groundwaters which have good quality due to natural conditions and generally have a mean concentration of total dissolved solids of less than 3,000 milligrams per liter.

(3) **Limited Use Groundwater (Class III):** These are groundwaters which have poor quality due to natural conditions and generally have a mean concentration of total dissolved solids of greater than or equal to 3000 milligrams per liter but less than 5000 milligrams per liter.

(4) ~~Highly Mineralized Treatable Groundwater (Class IV):~~ These are groundwaters which have very poor quality due to natural conditions and generally have a mean concentration of total dissolved solids of greater than or equal to 5000 milligrams per liter but less than 10,000 milligrams per liter.

(b) **Beneficial uses.** This subsection lists the various beneficial uses of groundwater and designates certain beneficial uses for certain classifications of groundwater.

(1) **List of beneficial uses for groundwater.**

(A) ~~Public Water Supply.~~ The beneficial use designation of Public Water Supply refers to those groundwaters capable of delivering suitable quantities of groundwater for municipal consumption whether or not treatment is required.

(B) ~~Domestic Untreated Water Supply.~~ The beneficial use designation of Domestic Untreated Water Supply refers to those groundwaters capable of delivering suitable quantities of untreated groundwater for domestic consumption.

(C) **Agriculture.** The beneficial use designation of Agriculture refers to that groundwater which is or could be used for irrigation or livestock watering.

(D) **Industrial and Municipal Process and Cooling Water.** The beneficial use designation of Industrial and Municipal Process and Cooling Water refers to that groundwater that is or could be used for a municipal or industrial process or cooling function.

(2) **Beneficial use designations.**

(A) The beneficial uses for General Use Groundwater (Class II), not identified in Appendix H of this Chapter, shall be Domestic Untreated Water Supply, Public Water Supply, Agriculture, and Industrial and Municipal Process and Cooling Water.

(B) The beneficial uses for Limited Use Groundwater (Class III) and Highly Mineralized Treatable Groundwater (Class IV), not identified in Appendix H of this Chapter, shall be Agriculture and Industrial and Municipal Process and Cooling Water.

(C) The beneficial uses for any groundwater identified in Appendix H of this Chapter shall be as designated in that appendix.

(D) The beneficial use for groundwater which is used for water supply purposes on or after July 1, 2000, has a mean concentration of total dissolved solids of less than 5,000 milligrams per liter, and has not been determined by any state environmental agency to be not suitable for human consumption, shall be Public Water Supply and or Domestic Untreated Water Supply.

(E) A beneficial use designation for groundwater may be amended or removed only after a demonstration to the satisfaction of the Board that meets one of the following tests:

(i) The designated use does not exist due to a condition that was not caused by humans, and treatment using Best Available Technology will not achieve the designated use, or

(ii) The designated use does not exist due to a condition that is attributable to irreversible impacts caused by humans, and the remedy would cause substantial and widespread economic and social impact.

(F) Groundwater which has had a beneficial use designation amended or removed pursuant to (e) of this paragraph shall be identified in Appendix H of this Chapter.

(c) **Vulnerability level.** Groundwater in certain hydrogeologic basins is further classified according to its vulnerability to contamination as determined by DRASTIC. Such vulnerability levels of hydrogeologic basins shall be identified as Very Low, Low, Moderate, High, and Very High as prescribed in Table 1 of Appendix D of this Chapter. The vulnerability level may vary within each hydrogeologic basin, depending on site specific hydrogeologic factors.

(d) **Nutrient vulnerable groundwater.** Certain specified groundwaters shall be further subject to designation in Table 2 of Appendix D of this Chapter as nutrient vulnerable groundwater.

785:45-7-4. Criteria for groundwater quality protection [REVOKED]

(a) Groundwaters of the state support many different beneficial uses. The criteria below do not require improvement over naturally occurring background concentrations. When naturally occurring background concentrations exceed the criterion for a given parameter, the naturally occurring background concentration may be utilized as a criterion, if suitable. If a given parameter has more than one criterion associated with it, the most stringent criteria shall apply to ensure beneficial use protection. (b) The following criteria apply to all groundwaters for the protection of beneficial uses except those groundwaters specifically referenced in 785:45-7-4(c).

(1) The groundwaters of the state shall be maintained to prevent alteration of their chemical properties by harmful substances not naturally found in groundwater.

(2) Protective measures adequate to preserve and protect background quality of the groundwater and existing and designated groundwater basin classifications shall be maintained at all times.

(3) Protective measures shall also be sufficient to minimize the impact of pollutants on groundwater quality.

(4) The concentration of any synthetic substance or any substance not naturally occurring in that location shall not exceed the PQL in an unpolluted groundwater sample using laboratory technology. If the concentration found in the test sample exceeds the PQL, or if other substances in the groundwater are found in concentrations greater than those found in background conditions, that groundwater shall be deemed to be polluted and corrective action may be required.

(c) For artificial aquifer recharge and or aquifer storage and recovery activities, the criteria below and presented in Tables 1 and 2 of Appendix I shall apply to ensure the protection of beneficial uses, as specified. Artificial recharge and or aquifer storage and recovery activities shall not cause or contribute to a condition of pollution or nuisance or result in nonattainment of any applicable groundwater quality standard.

(1) **Chemical Constituents.** Groundwaters shall not contain chemical constituents in concentrations that adversely affect any beneficial use. At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels specified in the following provisions:

(A) Organic Contaminants in 40 CFR 141.61(a)

(B) Synthetic Organic Contaminants in 40 CFR 141.61(e)

(C) Inorganic Contaminants in 40 CFR 141.62(b)

(D) Disinfection Byproducts in 40 CFR 141.64

(E) Disinfectants in 40 CFR 141.65(a)

(2) **Toxicity.** Groundwaters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life associated with any beneficial use(s). This criterion applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple

substances or the mobilization and or transformation of a substance due to changes in physiochemical properties within the aquifer. At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not exceed limits specified in Table 1 of Appendix I of this chapter.

(3) **Secondary Contaminants.** At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not exceed the criteria limits presented in Table 2 of Appendix I of this chapter and consistent with 40 CFR 143.3.

(4) **Microorganisms.** Groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply microorganisms shall not exceed the limits specified in 40 CFR 141.63 and 40 CFR 141.70-73.

(5) **Taste and Odor.** Groundwaters shall be free from taste and odor producing substances, in concentrations that cause nuisance or adversely affect any beneficial use.

(6) **Radioactivity.** At a minimum, groundwaters with the designated beneficial uses of public water supply and domestic untreated water supply shall not contain concentrations of radionuclides in excess of limits specified in 40 CFR 141.66.

(7) **Geochemical and Physical Composition.** The geochemical and physical composition of groundwaters shall not be altered such that mobilization of any introduced or in situ contaminants, natural or non natural, occurs and impairs any beneficial use.

(8) **Minerals.** Increased mineralization, in comparison to existing water quality, from elements such as, but not limited to, calcium, magnesium, sodium and their associated anions shall not impair any beneficial use.

(d) Measures to prevent noncompliance with this Section caused by any person, or activity, shall be the responsibility

of each state environmental agency within their jurisdictional areas of environmental responsibility. Such measures shall be prescribed in the Water Quality Standards Implementation Plan of each such agency. When regulating activities that have the potential to contaminate groundwater from the surface, the vulnerability level of an affected hydrogeologic basin (for example, more stringent measures such as siting limitations, lagoon liners, or additional monitoring wells may be required to protect groundwater in hydrogeologic basins with High or Very High vulnerability levels) shall be considered. When regulating groundwater quality activities that have the potential to cause or contribute to impairment of a surface water beneficial use, provisions to prevent the impairment of any surface water beneficial use shall be included.

785:45-7-5. Corrective action [REVOKED]

(a) Groundwater that has been polluted as a result of human activities shall be restored to a quality that will support the beneficial uses designated in OAC 785:45-7-3 for that groundwater, or as otherwise specified in a site specific remediation plan approved by an agency of competent jurisdiction.

(b) Measures to remedy, control or abate groundwater pollution caused by any person shall be the responsibility of each state environmental agency within its jurisdictional areas. Such measures shall be prescribed in the Water Quality Standards Implementation Plan of each such agency. When regulating activities that have the potential to contaminate groundwater from the surface, state environmental agencies shall consider the vulnerability level of an affected hydrogeologic basin (for example, more stringent measures such as siting limitations, lagoon liners, or additional monitoring wells may be required to protect groundwater in hydrogeologic basins with High or Very High vulnerability levels).

APPENDIX A. DESIGNATED BENEFICIAL USES FOR SURFACE WATERS [REVOKED]

(a) **Introduction.** The Tables in the following Appendices A.1 through A.7 identify certain waterbodies throughout the state of Oklahoma and designate beneficial uses for those waterbodies. The waterbodies are identified by their name (e.g., "Horse Creek") or other description (e.g., "Tributary of Lebos Creek at Sec. 2, T2N, R 26W, IM", "Red River from the Arkansas State Line to the Kiamichi River") and a Waterbody ID Number. The Waterbody ID numbers are used in the State of Oklahoma "Water Quality Assessment Integrated Report" published by the Oklahoma Department of Environmental Quality. The first digit of the Waterbody ID number indicates the basin number; the next three digits indicate the major drainage segment within that basin; the next two digits indicate the subdivision of the major drainage segment, the next two digits indicate a smaller section of that six digit basin, and the last four digits represent a hydrologic sequence of waterbodies, going from the most downstream point in the eight-digit watershed up to the furthest upstream point in the watershed. In some cases, two additional digits are added to indicate further delineations within the waterbody segment. Not all waterbodies have a Waterbody ID number, primarily due to limited resources and need. Where a specific Waterbody ID has not been assigned, the six-digit Water Quality Management Segment is listed until such time as the waterbody is assigned a specific Waterbody ID number. The Tables in Appendices A.1 through A.7 also set forth columns to show the beneficial uses or subcategories of uses which are designated for each identified waterbody.

(b) **Beneficial Use Designations.** Designations of beneficial uses for a waterbody are reflected in the Tables in Appendices A.1 through A.7 by the presence of the following codes or a dot ("•") in the columns to the right of the waterbody name. An empty space in a column means that column's beneficial use or subcategory thereof is not designated for that waterbody.

- (1) EWS - Emergency Water Supply beneficial use
- (2) PPWS - Public and Private Water Supply beneficial use
- (3) F&W Prop. - Fish and Wildlife Propagation beneficial use
 - (A) WWAC - Warm Water Aquatic Community subcategory
 - (B) HLAC - Habitat Limited Aquatic Community subcategory
 - (C) CWAC - Cool Water Aquatic Community subcategory
 - (D) Trout - Trout Fishery (put and take) subcategory
- (4) Ag - Agriculture beneficial use
- (5) Rec - Recreation beneficial use
 - (A) PBCR - Primary Body Contact beneficial use
 - (B) SBGR - Secondary Body Contact beneficial use
- (6) Nav - Navigation beneficial use
- (7) Aes - Aesthetics beneficial use

A dot ("•") used in a column indicates that the beneficial use in that column's heading is designated for that waterbody without a more specific subcategory or other designation. The criteria to protect the beneficial uses are provided in Subchapter 5 and Appendix G of this Chapter.

(c) **Limitations for Additional Protection.**

- (1) Limitations for additional protection are described in 785:45-5-25.

(2) Waterbodies that are subject to limitations for additional protection in 785:45-5-25 are identified by the designation of any of the following codes in the "Limitations" column to the right of the waterbody's name:

- (A) "ORW" - indicates waters designated Outstanding Resource Waters;
- (B) "HQW" - indicates waters designated High Quality Waters; and
- (C) "SWS" - indicates waters designated Sensitive Public and Private Water Supplies.
- (D) "SWS-R" means waterbodies classified as sensitive public and private water supplies that may be augmented with reclaimed municipal water for the purpose of indirect potable reuse.

(d) **Remarks used in Appendices A.1 through A.7.** The presence of any of the following footnotes in the "Remarks" column to the right of a waterbody's name denotes special circumstances which are applicable to that waterbody.

(1) A footnote (1) excludes the Scenic River designation from that portion of Lee Creek necessary for a dam to be built in the State of Arkansas with a crest elevation of no more than the 420 foot MSL elevation according to plans, specifications and conditions contained in U.S. Army Corps of Engineer Permit WD-050-03-3541 and in the Federal Energy Regulatory Commission License for Project No. 5251-002, which were approved by the U.S. Environmental Protection Agency. Changes in water quality caused by the impoundment of water by said dam shall not constitute a violation of Oklahoma's Water Quality Standards.

(2) The remark "CSW" designates those waters identified as Culturally Significant Waters.

(3) The remark "NLW" designates a nutrient-limited watershed. Specific delineations of nutrient-limited watersheds are provided in 785:45-5-29.

(4) A footnote (4) designates those streams for which further investigations are pending. Beneficial use designations for those streams are provided in Subchapter 5 of this Chapter.

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APPENDIX A.1. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 1, MIDDLE ARKANSAS RIVER [REVOKED]

Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 1, Middle Arkansas River

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Arkansas River from mouth of Canadian River to the mouth of the Verdigris River including Webbers Falls Reservoir	120400010260, 120400010010, 120400010070, 121500010005	EWS	WWAC	•	PBCR	•	•		
Dirty Creek	120400020010	PPWS	WWAC	•	PBCR		•		
Tributary of Dirty Creek at SW 1/4, Sec. 31, T12N, R21E, IM	120400020015_00		HLAC	•	SBCR		•		
South Fork of Dirty Creek	120400020030		WWAC	•	PBCR		•		
East Pourum Creek at NE SE SE, Sec. 2, T10N, R19E, IM	120400020060		HLAC	•	SBCR		•		
Georges Fork	120400020110	EWS	WWAC	•	PBCR		•		
Tributary of Georges Fork at SE 1/4, Sec. 35, T12N, R19E, IM (Howland Creek)	120400020120_00	EWS	HLAC	•	SBCR		•		
Warner (Connors) Lake	120400020140	PPWS	WWAC	•	PBCR		•		
Tributary of Dirty Creek at SE 1/4, Sec. 1, T12N, R18E, IM	120400020250		WWAC	•	PBCR		•		
Lower Illinois River from headwater of Robert S. Kerr Reservoir to Tenkiller Dam	121700010010	PPWS	Trout	•	PBCR	•	•	HQW	
Upper Illinois River from Tenkiller Dam, including Tenkiller Lake upstream to Barren Fork confluence	121700020300_00, 121700020020, 121700020220	PPWS	CWAC	•	PBCR		•	HQW	NLW
Cato Creek	121700020090	PPWS	WWAC	•	PBCR		•		
Terrapin Creek	121700020130	PPWS	WWAC	•	PBCR		•		
Caney Creek	121700040010,	PPWS	CWAC	•	PBCR		•		
Negro Jake (Hollow) Creek	121700040020		CWAC		PBCR		•		
Park Hill Branch	121700020270		WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Barren Fork from mouth upstream to Hwy. 59	121700020310, 121700050010, 121700050170_00	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
North Mining Camp (Hollow) Creek	121700050040		CWAC		PBCR		•		
Tyner Creek	121700050090	PPWS	CWAC	•	PBCR		•	ORW	
Dennison Hollow	121700050110	PPWS	CWAC	•	PBCR		•	ORW	
Peachater Creek	121700050120	PPWS	CWAC	•	PBCR		•	ORW	
Scraper Hollow	121700050130	PPWS	CWAC	•	PBCR		•	ORW	
England Hollow	121700050140	PPWS	CWAC	•	PBCR		•	ORW	
Green Creek	121700050150	PPWS	CWAC	•	PBCR		•	ORW	
Shell Branch	121700050180	PPWS	CWAC	•	PBCR		•	ORW	
(East) Peavine Creek	121700050190		CWAC		PBCR		•		
Barren Fork from Hwy. 59 to Arkansas State Line	121700050170_10	PPWS	CWAC	•	PBCR		•	ORW	
Evansville Creek	121700050200	PPWS	CWAC	•	PBCR		•	ORW	
Upper Illinois River upstream of Barren Fork confluence	121700020300_10, 121700030010, 121700030080, 121700030280, 121700030350	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
Luna (Branch) Creek	121700030260		CWAC		PBCR		•		
Winset Hollow Creek	121700030230	PPWS	WWAC	•	PBCR		•		
Steely Hollow Creek	121700030120		CWAC		PBCR		•		
Tahlequah Creek (Town Branch)	121700030020, 121700030040	PPWS	CWAC	•	PBCR		•	ORW	
Flint Creek	121700030290, 121700060010_00, 121700060010_10	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
Sager Creek	121700060080	PPWS	CWAC	•	PBCR		•	ORW	
Ballard Creek	121700030370	PPWS	CWAC	•	PBCR		•	ORW	
Tributary of Arkansas River at Sec. 7, T12N, R21E, IM	120400010035_00		WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Greenleaf Creek including Greenleaf Lake and Watershed	120400010110, 120400010120, 120400010130, 120400010140, 120400010150, 120400010160, 120400010170, 120400010180, 120400010190, 120400010200	PPWS	WWAC	•	PBCR		•	SWS	
Star (Oxbow) Lake	120400010230		WWAC	•	PBCR		•		
Sand Creek	120400010240		HLAC	•	SBCR		•		
Bayou Manard	120400010280	PPWS	WWAC	•	PBCR		•		
Coody Creek	120400010400	PPWS	WWAC	•	PBCR		•		
Grand River Main Stem (Grand Neosho River) from mouth to Kansas State Line, including Lake Hudson and (Grand) Lake O' the Cherokees but excluding Fort Gibson Lake	121600010010, 121600010040, 121600010280, 121600020010, 121600020020, 121600020140, 121600020170, 121600030020, 121600030030, 121600030040, 121600040010, 121600040120, 121600040220	PPWS	WWAC	•	PBCR		•		
Fort Gibson Lake	121600010050, 121600010200	PPWS	WWAC	•	PBCR		•		NLW
Ranger Creek	121600010060	PPWS	WWAC	•	PBCR		•		
Fourteen Mile Creek	121600010100	PPWS	CWAC	•	PBCR		•	HQW	
Black Bird Creek	121600010130	PPWS	CWAC	•	PBCR		•		
Double Springs Creek	121600010090	PPWS	WWAC	•	PBCR		•		
Clear Creek	121600010210	PPWS	CWAC	•	PBCR		•		
Spring Creek	121600010290	PPWS	CWAC	•	PBCR		•	HQW	
Snake Creek	121600010330		CWAC	•	PBCR		•	HQW	
Little Spring Creek	121600010340	PPWS	CWAC	•	PBCR		•	HQW	
Double Spring Creek	121600010390	PPWS	CWAC	•	PBCR		•		
Chouteau Creek	121600010430	PPWS	WWAC	•	PBCR		•		
Tributary of Chouteau Creek at SE 1/4, Sec.13, T20N, R18E, IM	121600010435_00		WWAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Chouteau Creek at SE 1/4, Sec. 29, T20N, R19E, IM	121600010432_00		HLAC	•	SBCR		•		
Pryor Creek downstream from the road crossing in Sec. 30, T21N, R19E, IM	121610000010, 121610000050_00		WWAC	•	PBCR		•		
Pryor Creek upstream from the road crossing in Sec. 30, T21N, R19E, IM to the road crossing in Sec. 12, T21N, R18E, IM	121610000050_10	PPWS	WWAC	•	PBCR		•		
Pryor Creek upstream from the road crossing in Sec. 12, T21N, R18E, IM	121610000090_00, 121610000090_10		WWAC	•	SBCR		•		
Crutchfield Branch	121600010440		WWAC	•	PBCR		•		
W.R. Holway Reservoir	121600020050	PPWS	WWAC	•	PBCR		•		
Saline Creek	121600020030	PPWS	CWAC	•	PBCR		•	HQW	
Little Saline Creek	121600020070	PPWS	CWAC	•	PBCR		•	HQW	
Horse Creek	121600030160	EWS	WWAC	•	PBCR		•		
Little Horse Creek	121600030190		WWAC		PBCR		•		
Spavinaw Creek below Spavinaw Lake dam	121600020150_00	PPWS	CWAC	•	PBCR		•		
Spavinaw Lake and watershed upstream of Spavinaw Lake dam	121600050020, 121600050030, 121600050040, 121600050050, 121600050060,	PPWS	CWAC	•	PBCR		•	SWS	NLW
Eucha Lake and watershed	121600050060, 121600050070, 121600050080, 121600050090, 121600050100, 121600050110, 121600050120, 121600050130, 121600050150, 121600050170, 121600050180, 121600050190, 121600050200, 121600050210, 121600050220	PPWS	CWAC	•	PBCR		•	SWS	NLW
Brush Creek	121600050140	PPWS	CWAC	•	PBCR		•	HQW	
Beaty Creek	121600050160	PPWS	CWAC	•	PBCR		•	HQW	
Rock Creek	121600020180	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Big Cabin Creek downstream from the road crossing in Sec. 10, T24N, R20E, IM	121600020190, 121600060010, 121600060060_00	PPWS	WWAC	•	PBCR		•		
Mustang Creek	121600060040		WWAC	•	PBCR		•		
Big Cabin Creek upstream from the road crossing in Sec. 10, T24N, R20E, IM to the road crossing in Sec. 8, T26N, R20E, IM	121600060060_10, 121600060220, 121600060300_00		WWAC	•	SBCR		•		
Little Cabin Creek	121600060080		WWAC	•	PBCR		•		
Bull Creek	121600060200		WWAC	•	PBCR		•		
Big Cabin Creek upstream from the road crossing in Sec. 8, T26N, R20E, IM	121600060300_10		WWAC	•	PBCR		•		
Drowning Creek	121600030090	PPWS	CWAC	•	PBCR		•		
Tributary of Muskrat Creek (Hollow) in Sec.36, T23N, R 23E, IM (Jay Creek)	121600030120_00		HLAC	•	SBCR		•		
Honey Creek	121600030445	PPWS	CWAC	•	PBCR		•	HQW	
Elm Creek	121600030310	PPWS	CWAC	•	PBCR		•		
Whitewater Creek	121600030320	PPWS	CWAC	•	PBCR		•		
Cave Springs Branch	121600030340	PPWS	CWAC	•	PBCR		•	HQW	
Elk River	121600030440	PPWS	CWAC	•	PBCR		•		
(Council) Hollow Creek	121600030490	PPWS	CWAC	•	PBCR		•		
Sycamore Creek	121600030510	PPWS	CWAC	•	PBCR		•		
Brush Creek	121600030520	PPWS	CWAC	•	PBCR		•		
Lost Creek	121600030560	PPWS	CWAC	•	PBCR		•		
Spring River	121600070010	PPWS	CWAC	•	PBCR		•		
Shawnee Branch	121600070020	PPWS	CWAC	•	PBCR		•		
Flint Branch	121600070040	PPWS	CWAC	•	PBCR		•		
Warren Branch	121600070050	PPWS	CWAC	•	PBCR		•	HQW	
Devil's Hollow	121600070070	PPWS	CWAC	•	PBCR		•		
Five Mile Creek	121600070110	PPWS	CWAC	•	PBCR		•		
Hudson Creek	121600040040		WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Hudson Creek at SE 1/4, Sec. 30, T27N, R23E, IM	121600040043_00		HLAC	•	SBCR		•		
Tar Creek	121600040060		HLAC		SBCR				
Verdigris River from its mouth to Oologah Lake Dam	121500010010, 121500010060, 121500010200, 121500020010, 121500020120, 121500020260, 121500030010_00, 121500030010_10	PPWS	WWAC	•	PBCR	•	•		
Tributary of Verdigris River at SW 1/4, Sec. 20, T16N, R19E, IM(Okay Creek)	121500010280		HLAC	•	SBCR		•		
Coal Creek (near Wagoner)	121500010100	PPWS	WWAC	•	PBCR		•		
Tributary of Verdigris River at SE 1/4, Sec. 34, T17N, R17E, IM(Strawberry Creek)	121500010170		HLAC	•	SBCR		•		
Coal Creek	121500010270	PPWS	WWAC	•	PBCR		•		
Inola Creek	121500020110		WWAC	•	PBCR		•		
Pea Creek	121500020100		WWAC	•	PBCR		•		
Adams Creek	121500020150	PPWS	WWAC	•	PBCR		•		
Salt Creek	121500020270		WWAC	•	SBCR		•		
Tributary of Salt Creek at NW 1/4, Sec. 1, T19N, R15E, IM	121500020275_00		HLAC	•	SBCR		•		
Dog Creek downstream from Lake Claremore	121500020360, 121500040010	PPWS	WWAC	•	PBCR		•		
Cat Creek	121500020390	EWS	WWAC	•	PBCR		•		
Tributary of Cat Creek at NW 1/4, Sec. 21, T21N, R16E, IM	121500	EWS	HLAC	•	SBCR		•		
Lake Claremore and Watershed	121500040010, 121500040020, 121500040030	PPWS	WWAC	•	PBCR		•	SWS	NLW
Chambers Creek	121500	EWS	HLAC	•	SBCR		•		
Mossy Creek	121500020430	EWS	HLAC	•	SBCR		•		
Spunky Creek	121500020480, 121500020470		WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Spunky Creek at Sec. 6, T19N, R15E	121500020500_00		HLAC	•	SBCR		•		
Tributary of Verdigris River at Sec. 28, T20N, R15E, IM	121500020465_00		HLAC	•	SBCR		•		
Bird Creek	121300010010, 121300020010, 121300030010	PPWS	WWAC	•	PBCR		•		
Mingo Creek	121300010030	EWS	WWAC	•	PBCR		•		
Unnamed tributary of Mingo Creek	121300010035_00	EWS	HLAC	•	SBCR		•		
Elm Creek	121300010020		WWAC	•	PBCR		•		
Owasso Creek	121300010055_00		HLAC	•	SBCR		•		
Tributary of Owasso Creek at SE1/4, Sec. 31, T21N, R14E, IM	121300010057_00		HLAC	•	SBCR		•		
Ranch Creek	121300010060		WWAC		PBCR		•		
Lake Yahola and Watershed	121300010130	PPWS	WWAC	•	PBCR		•	SWS	
Flat Rock Creek	121300010120		WWAC	•	SBCR		•		
Tributary of Flat Rock Creek at SE 1/4, Sec. 18, T20N, R13E, IM (Dirty Butter Creek)	121300010140		HLAC	•	SBCR		•		
Delaware Creek	121300010150	PPWS	WWAC	•	PBCR		•		
Hominy Creek downstream from Skiatook Lake	121300040010, 121300040070	PPWS	WWAC	•	PBCR		•		
Hominy Creek upstream from and including Skiatook Lake	121300040070, 121300040080, 121300040280	PPWS	WWAC	•	PBCR		•	SWS	
Claremore Creek	121300040320	PPWS	WWAC	•	PBCR		•		
Hominy Municipal Lake and Watershed	121300040320, 121300040330	PPWS	WWAC	•	PBCR		•	SWS	
Candy Creek	121300020080	PPWS	WWAC	•	PBCR		•		
Pecan Hollow Creek	121300020090	PPWS	WWAC	•	PBCR		•	SWS	
Avant Public Utility Lake	121300020100	PPWS	WWAC	•	PBCR		•		
Waxoma Lake	121300020190	PPWS	WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Bird Creek at Sec. 19, T24N, R11E, IM	121300030070_00		HLAC	•	SBCR		•		
Birch Creek downstream from Birch Reservoir	121300030020	PPWS	WWAC	•	PBCR		•		
Birch Reservoir and Watershed	121300030020, 121300030030, 121300030040, 121300030050	PPWS	WWAC	•	PBCR		•	SWS	
Tributary of Birch Creek at Sec. 14, T24N, R9E, IM	121300030055_00		HLAC	•	SBCR		•	SWS	
Clear Creek	121300030200	PPWS	WWAC	•	PBCR		•		
Pawhuska Lake	121300030230	PPWS	WWAC	•	PBCR		•		
Bluestem Lake and Watershed	121300030280, 121300030290, 121300030300, 121300030310	PPWS	WWAC	•	PBCR		•	SWS	
Tributary of Verdigris River at Sec. 11, T21N, R15 E, IM (Keetonville Creek)	121500030050		HLAC	•	SBCR		•		
Caney River from the mouth to the Kansas State Line	121400010010, 121400020010, 121400030010	PPWS	WWAC	•	PBCR		•		
Hulah Lake and watershed	121400030010, 121400030020, 121400030030, 121400030040, 121400030050, 121400030060, 121400030080, 121400030090, 121400030100, 121400030110, 121400030120, 121400030130, 121400030140, 121400030150, 121400030160, 121400030170, 121400030180, 121400030190, 121400030200	PPWS	WWAC	•	PBCR		•		NLW
Rabb Creek	121400010090	PPWS	WWAC	•	PBCR		•		
Nellie Bly Creek	121400010180	PPWS	WWAC	•	PBCR		•		
Hogshooter Creek	121400010300		WWAC		PBCR		•		
Keeler Creek	121400010320		WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Keeler Creek at NW 1/4 Sec. 19, T25N, R13E, IM (East Keeler Creek)	121400010322		HLAC	•	SBCR		•		
Sand Creek	121400040010	PPWS	WWAC	•	PBCR		•		
Buck Creek	121400040050	PPWS	WWAC	•	PBCR		•		
Coon Creek	121400020040	PPWS	WWAC	•	PBCR		•		
Deer Creek	121400020050		WWAC	•	PBCR		•		
Lake Hudson on Butler Creek	121400020090	PPWS	WWAC	•	PBCR		•		
Little Caney River including Copan Lake and Watershed	121400020140, 121400050010, 121400050020, 121400050030, 121400050040, 121400050050, 121400050060, 121400050070, 121400050080	PPWS	WWAC	•	PBCR		•	SWS	
Pond Creek	121400030090	PPWS	WWAC	•	PBCR		•		
Buck Creek	121400030170	PPWS	WWAC	•	PBCR		•		
Fourmile Creek	121500030070		WWAC	•	PBCR		•		
Verdigris River from and including Oologah Lake to the Kansas State Line	121510010010, 121510010020, 121510020010	PPWS	WWAC	•	PBCR	•	•		
Blue Creek	121510010030	PPWS	WWAC	•	PBCR		•		
Spencer Creek including Chelsea Reservoir and Watershed	121510010040, 121510010060	PPWS	WWAC	•	PBCR		•	SWS	
Lightning Creek	121510010130	PPWS	WWAC	•	PBCR		•		
Salt Creek	121510010190	PPWS	WWAC	•	PBCR		•		
Big Creek	121510030010	PPWS	WWAC	•	PBCR		•		
California Creek	121510020050	PPWS	WWAC	•	PBCR		•		
Tributary to Oologah Lake NW 1/4, Sec. 5, T26N, R16E, IM (Delaware Creek)	121510020060	EWS	HLAC	•	SBCR		•		
Snow Creek	121510020250	PPWS	WWAC	•	PBCR		•		
Onion Creek	121510020340	PPWS	WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Arkansas River from mouth of Verdigris River to Keystone Dam	120410010010, 120410010080_00, 120410010080_10, 120420010010_00, 120420010010_10, 120420010130	EWS	WWAC	•	PBCR	•	•		
Pecan Creek	120410010030	PPWS	WWAC	•	PBCR		•		
Cloud Creek	120410010100, 120410020010	PPWS	WWAC	•	PBCR		•		
Ash Creek	120410010110	PPWS	WWAC	•	PBCR		•		
Mountain Creek including Bixhoma Lake	120410010180	PPWS	WWAC	•	PBCR		•		
Snake Creek	120410010220	PPWS	WWAC	•	PBCR		•		
Rock Creek	120410030020	PPWS	WWAC	•	PBCR		•		
Lake Boren	120410030080	PPWS	WWAC	•	PBCR		•		
Posey Creek	120420010030		WWAC	•	PBCR		•		
Polecat Creek downstream from Heyburn Lake	120420020050_00, 120420020050_10, 120420020290		WWAC	•	PBCR		•		
Coal Creek downstream from Sec. 35, T18N, R12E, IM	120420020030_00	PPWS	WWAC	•	PBCR		•		
Coal Creek upstream from Sec. 35, T18N, R12E, IM	120420020030_10	PPWS	HLAC	•	PBCR		•		
Rock Creek downstream from Sahoma Lake	120420020060, 120420020120		WWAC	•	PBCR		•		
Country Club Lake (Middle Lake)	120420020090	PPWS	WWAC	•	PBCR		•		
Sapulpa Lake	120420020110	PPWS	WWAC	•	PBCR		•		
Childress Creek	120420020160		HLAC	•	SBCR		•		
Jackson Creek	120420020200	PPWS	WWAC	•	PBCR		•		
Little Polecat Creek	120420020260		WWAC	•	SBCR		•		
Sahoma Lake and Watershed	120420020120, 120420020130, 120420020140	PPWS	WWAC	•	PBCR		•	SWS	

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Heyburn Lake and Watershed	120420020290, 120420020300, 120420020310, 120420020320, 120420020330, 120420020340, 120420020350, 120420020360, 120420020370, 120420020380, 120420020390, 120420020400, 120420020410	PPWS	WWAC	•	PBCR		•	SWS	
Shell Creek downstream from Shell Lake	120420010230	PPWS	WWAC	•	PBCR		•		
Shell (Creek) Lake and Watershed	120420010230, 120420010240, 120420010250, 120420010260, 120420010270	PPWS	WWAC	•	PBCR		•	SWS	

APPENDIX A.2. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 2, LOWER ARKANSAS RIVER BASIN [REVOKED]

**Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 2, Lower Arkansas River Basin**

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Arkansas River from the Arkansas State Line to the mouth of the Canadian River including R.S. Kerr Reservoir	220200010010, 220200020010, 220200020020	PPWS	WWAC	•	PBCR	•	•		
Lee Creek downstream from the 420 ft. elevation level	220200050010_00	PPWS	CWAC	•	PBCR		•	HQW	HQW
Lee Creek upstream from the 420 ft. elevation level	220200050010_10	PPWS	CWAC	•	PBCR		•	ORW	Scenic River(1)
Webber(s) Creek	220200050020	PPWS	CWAC	•	PBCR		•	ORW	
Briar Creek (Bear Creek)	220200050030	PPWS	CWAC	•	PBCR		•	ORW	
Little Lee Creek	220200050040	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
Jenkins Creek	220200050050	PPWS	CWAC	•	PBCR		•	ORW	
Poteau River downstream from Brazil Creek	220100010010	PPWS	WWAC	•	PBCR		•		
Tributary of Cedar Creek at Sec. 8, T9N, R27E, IM	220100010030		WWAC	•	PBCR		•		
Hoil-Tuska Creek including New Spiro Lake	220100010050	PPWS	WWAC	•	PBCR		•	SWS	NLW
James Fork	220100010070	PPWS	WWAC	•	PBCR		•		
Brazil Creek	220100030010	PPWS	WWAC	•	PBCR		•		
Red Oak Pit	220100	PPWS	WWAC	•	PBCR		•		
Poteau River upstream from Brazil Creek	220100010010, 220100020010_10	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Wister Lake and watershed	220100020010, 220100020020, 220100020030, 220100020040, 220100020050, 220100020070, 220100020080, 220100020090, 220100020100, 220100020110, 220100040010, 220100040020, 220100040030, 220100040040, 220100040050, 220100040060, 220100040070, 220100040080, 220100040090, 220100040110, 220100040120, 220100040160, 220100040170, 220100040180	PPWS	WWAC	•	PBCR		•		NLW
Riddle Creek	220100010120		HLAC	•	SBCR		•		
Tributary of Riddle Creek at SE 1/4 Sec. 4, T07N, R26E, IM (Cameron Creek)	220100010130		HLAC	•	SBCR		•		
Sugarloaf Creek	220100010160	PPWS	WWAC	•	PBCR		•		
Morris Creek	220100010170		WWAC	•	PBCR		•		
Caston Creek	220100010180	PPWS	WWAC	•	PBCR		•		
Coal Creek	220100010200	EWS	WWAC	•	PBCR		•		
Fourche Maline Creek including Lake Wayne Wallace	220100040010, 220100040020, 220100040150	PPWS	WWAC	•	PBCR		•		
Little Fourche Maline Creek	220100040070	PPWS	WWAC	•	PBCR		•		
Red Oak Creek	220100040050		WWAC		PBCR		•		
Bandy Creek	220100040080		WWAC	•	PBCR		•		
Tributary of Bandy Creek at NE 1/4, Sec. 17, T5N, R19E, IM	220100		WWAC	•	SBCR		•		
Lloyd Church Lake and Watershed	220100040090, 220100040100	PPWS	WWAC	•	PBCR		•	SWS	
Tributary to Bandy Creek (Cunneo Bandy)	220100040090	PPWS	WWAC	•	PBCR		•		
Tributary of Fourche Maline Creek at SE 1/4, Sec. 12, T5N, R19E, IM	220100040110		HLAC	•	SBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Coon Creek Lake and Watershed	220100040120, 220100040130	PPWS	WWAC	•	PBCR		•	SWS	
Lake Wayne Wallace	220100040150	PPWS	WWAC	•	PBCR		•		
Black Fork downstream from Cedar Creek	220100020030, 220100020040	PPWS	WWAC	•	PBCR		•		
Black Fork upstream from Cedar Creek	220100020040	PPWS	CWAC	•	PBCR		•	HQW	
Cedar Creek including Cedar Lake	220100020050, 220100020060	PPWS	WWAC	•	PBCR		•		
Shawnee Creek	220100020070	PPWS	WWAC	•	PBCR		•		
Big Creek	220100020080	PPWS	CWAC	•	PBCR		•		
Tributary of Big Creek at NE 1/4, Sec. 22, T3N, R26E, IM	220100020090	EWS	WWAC	•	PBCR		•		
Oil Branch	220100020100		WWAC	•	PBCR		•		
Garrison Creek	220200050060	PPWS	WWAC	•	PBCR		•		
Unnamed tributary of Garrison Creek at sect. 18, T11N, R27E, IM	220200050070_00		HLAC		SBCR		•		
Camp Creek	220200010020	PPWS	CWAC	•	PBCR		•		
Big Skin Bayou Creek	220200010030	PPWS	WWAC	•	PBCR		•		
Muldrow City Lake	220200010025_00	PPWS	WWAC	•	PBCR		•		
Cache Creek	220200010060	PPWS	WWAC	•	PBCR		•		
Onion Creek	220200010100		HLAC	•	SBCR		•		
Sans Bois Creek	220200040010	PPWS	WWAC	•	PBCR		•		
Lake John Wells and Watershed	220200040030	PPWS	WWAC	•	PBCR		•	SWS	
Beaver Creek	220200040060	EWS	WWAC	•	PBCR		•		
Sallisaw Creek downstream from U.S. Hwy. 64	220200030010_10	PPWS	CWAC	•	PBCR		•		
Shilo(h) Branch	220200030020		WWAC	•	PBCR		•		
Tributary of Shilo Branch at SW 1/4, Sec. 1, T11N, R23E, IM	220200030035_00		HLAC	•	SBCR		•		
Little Sallisaw Creek (Cedar Creek)	220200020040	PPWS	WWAC	•	PBCR		•		
Sallisaw Creek upstream from U.S. Hwy 64	220200030010_10, 220200030010_20, 220200030010_30	PPWS	CWAC	•	PBCR		•	HQW	

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Stillwell City Lake	220200030120	PPWS	WWAC	•	PBCR		•		
Brushy Creek downstream from Brushy (Creek) Reservoir	220200030030	PPWS	CWAC	•	PBCR		•		
Brushy (Creek) Reservoir and Watershed	220200030030, 220200030040, 220200030050	PPWS	CWAC	•	PBCR		•	SWS	
Greasy Creek	220200030080	PPWS	CWAC	•	PBCR		•		
Vian Creek	220200020130	PPWS	CWAC	•	PBCR		•		
Little Vian Creek	220200020140	PPWS	CWAC	•	PBCR		•		
Canadian River from mouth to Eufaula Lake Dam	220300000010	PPWS	WWAC	•	PBCR	•	•		
Taloka Creek	220300000020	PPWS	WWAC	•	PBCR		•		
Snake Creek	220300000030		WWAC	•	SBCR		•		
Emachaya Creek	220300000040	PPWS	WWAC	•	PBCR		•		
Canadian River including Eufaula Lake (excluding the North Canadian River) to its confluence with Little River	, 220300010020, 220600040050, 220600010060, 220600010119, 220600050010	PPWS	WWAC	•	PBCR		•		
Mud Creek	220600050060	PPWS	WWAC	•	PBCR		•		
Longtown Creek	220600010070	PPWS	WWAC	•	PBCR		•		
Gibson Creek	220600050020		HLAC	•	SBCR		•		
Tributary of Gibson Creek at NW NW Sec.18,T8N,R16E, IM	220600050023_00		HLAC	•	SBCR		•		
Gaines Creek	220600040010	PPWS	WWAC	•	PBCR		•		
Coal Creek	220600020010	PPWS	WWAC	•	PBCR		•		
Talawanda Lakes #1 and #2	220600020050, 220600020060	PPWS	WWAC	•	PBCR		•		
Lake McAlester and Watershed	220600020020, 220600020030	PPWS	WWAC	•	PBCR		•	SWS	
Deer Creek	220600020080		WWAC	•	PBCR		•		
Sandy Creek	220600020090		WWAC	•	SBCR		•		
Tributary of Sandy Creek at NW 1/4, Sec. 3, T5N, R14E, IM	220600020093_00		WWAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Coal Creek at SW NW SW Sec. 18, T5N, R12E, IM	220600		HLAC	•	SBCR		•		
Ash Creek	220600050040	PPWS	WWAC	•	PCBR		•		
Mud Creek	220600050060		WWAC	•	PBCR		•		
Brushy Creek	220600030010	PPWS	WWAC	•	PBCR		•		
Blue Creek	220600030020	PPWS	WWAC	•	PBCR		•		
Peaceable Creek	220600030050	PPWS	WWAC	•	PBCR		•		
Chun Creek upstream from Sec. 15, T4N, R14E, IM	220600030060_10	EWS	WWAC	•	SBCR		•		
Tributary of Chun Creek at SW 1/4, Sec. 16, T4N, R14E, IM	220600030065_00		HLAC	•	SBCR		•		
Chun Creek in and downstream from Sec. 15, T4N, R14E, IM	220600030060_00	EWS	WWAC	•	PBCR		•		
Bull Creek downstream from Brown Lake	220600030080		WWAC	•	PBCR		•		
Brown Lake and Watershed	220600030080, 220600030090	PPWS	WWAC	•	PBCR		•	SWS	
Mill Creek	220600010100_10, 220600010100_20	PPWS	WWAC	•	PCBR		•		
Big Creek	220600010170		WWAC	•	PBCR		•		
Unnamed tributary of Canadian River at SE 1/4, Sec. 22, T6N, R10E, IM	220600010128_00		HLAC	•	SBCR		•		

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APPENDIX A.3. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 3, UPPER RED RIVER BASIN [REVOKED]

**Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 3, Upper Red River Basin**

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Lake Texoma	311100010020, 311100010030, 311100010080, 310800010011, 310800010050	PPWS	WWA C	•	PBCR		•		
Glasses Creek including Carter Lake	310800010020, 310800010040	PPWS	WWA C	•	PBCR		•		
Tributary at Old Channel Washita, NE 1/4, Sec. 33, T5S, R7E, IM	310800010055_00	EWS	HLAC	•	SBCR		•		
Pennington Creek	310800010120	PPWS	CWAC	•	PBCR		•	HQW	
Spring Creek	310800010160	PPWS	WWA C	•	PBCR		•		
Mill Creek	310800010190	PPWS	WWA C	•	PBCR		•		
Tributary of Three Mile Creek at SW Sec. 7, T2S, R5E, IM to SE Sec. 12, T2S, R4E	310800010205		HLAC	•	SBCR		•		
Washita River upstream from the headwaters of Lake Texoma including Foss Reservoir	310800010010, 310800020010, 310810010010, 310810020010, 310820010010, 310830010010, 310830020010, 310830030010, 310840010010, 310840010020, 310840020010	PPWS	WWA C	•	PBCR		•		
Cool Creek	310800020010	PPWS	WWA C	•	PBCR		•		
Oil Creek	310800010240	PPWS	WWA C	•	PBCR		•		
Caddo Creek	310800030010	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Sand Creek	310800030020		WWA C	•	PBCR		•		
Unnamed tributary to Caddo Creek	310800030035		HLAC		SBCR				
Ardmore City Lake	310800030070		WWA C	•	PBCR		•		
Rock Creek downstream from Lake Scott King Dam	310800030100	PPWS	WWA C	•	PBCR		•		
Lake Scott King (Rock Creek Reservoir) including Watershed	310800030100, 310800030110, 310800030120	PPWS	WWA C	•	PBCR		•	SWS	
Lake Jean Neustadt	310800030140	PPWS	WWA C	•	PBCR		•		
Hickory Creek downstream from Mountain Lake	310800030190_00	PPWS	WWA C	•	PBCR		•		
Mountain Lake and Watershed	310800030190, 310800030200, 310800030210	PPWS	WWA C	•	PBCR		•	SWS	
Rock Creek including Lake of the Arbuckles	310800020080, 310800020090, 310800020100, 310800020122	PPWS	WWA C	•	PBCR		•	SWS	
Guy Sandy Creek	310800020130	PPWS	WWA C	•	PBCR		•	HQW	
Falls Creek	310800020140	PPWS	WWA C	•	PBCR		•		
Dry Sandy Creek	310800020150	PPWS	WWA C	•	PBCR		•		
Tributary of Dry Sandy Creek at Sec. 7, T1S, R2E, 1M	310800020152_00		HLAC	•	SBCR		•		
Honey Creek	310800020160	PPWS	WWA C	•	PBCR		•	HQW	
Chigley Sandy Creek	310800020190	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Wildhorse Creek	310810010020, 310810030010, 310810040010, 310810040140	PPWS	WWA C	•	PBCR		•		
Sandy Creek	3108100030020	PPWS	WWA C	•	PBCR		•		
Rock Creek	310810030040	PPWS	WWA C	•	PBCR		•		
Elmore City Lake	310810030060	PPWS	WWA C	•	PBCR		•		
Salt Creek	310810030080	PPWS	WWA C	•	PBCR		•		
Black Bear Creek downstream from Lake Fuqua	310810040030, 310810040040	PPWS	WWA C	•	PBCR		•		
Lake Fuqua and Watershed	310810040030, 310810040040, 310810040050	PPWS	WWA C	•	PBCR		•	SWS	
Duncan Lake and Watershed	310810040070, 310810040080, 310810040090	PPWS	WWA C	•	PBCR		•	SWS	
Clear Creek downstream from Clear Creek Lake	310810040130	PPWS	WWA C	•	PBCR		•		
Clear Creek Lake and Watershed	310810040110, 310810040120, 310810040130	PPWS	WWA C	•	PBCR		•	SWS	
Lake Humphreys and Watershed	310810040140, 310810040150, 310810040160	PPWS	WWA C	•	PBCR		•	SWS	
Kickapoo Sandy Creek	310810010050	PPWS	WWA C	•	PBCR		•		
Turkey Sandy Creek	310810010060		WWA C	•	PBCR		•		
Tributary of Turkey Sandy Creek at SE 1/4, Sec. 26, T2N, R1E, IM	310810010062_00		WWA C	•	PBCR		•		
W. Sandy Creek (upper) upstream from Sec. 34, T2N, R1E, IM	310810010065_10		HLAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
W. Sandy Creek (lower) downstream from Sec. 27, T2N, R1E, IM	310810010065_00		WWA C	•	PBCR		•		
Red Branch	310810010070		WWA C	•	SBCR		•		
Rush Creek downstream from U.S. Hwy. 77 near Pauls Valley	310810010090_00		WWA C	•	SBCR		•		
Rush Creek upstream from U.S. Hwy. 77 near Pauls Valley	310810010090_10, 310810050010		WWA C	•	PBCR		•		
Taylor (Marlow) Lake near Rush Springs	310810050060	PPWS	WWA C	•	PBCR		•		NLW
Cherokee Sandy Creek	310810010100	PPWS	WWA C	•	PBCR		•		
R. C. Longmire Lake	310810010186		WWA C	•	PBCR		•		
Peavine Creek	310810010120	PPWS	WWA C	•	PBCR		•		
Washington Creek	310810010170, 310810010190	PPWS	WWA C	•	PBCR		•		
Pauls Valley Lake and Watershed	310810010170, 310810010180, 310810010190	PPWS	WWA C	•	PBCR		•	SWS	
Owl Creek	310810010200		WWA C	•	PBCR		•		
Wiley Post Memorial Lake	310810010220	PPWS	WWA C	•	PBCR		•		
Beef Creek	310810010230	EWS	HLAC	•	SBCR		•		
Tributary of Beef Creek at SE 1/4, Sec.15, T4N, R2W, IM	310810010232_00	EWS	HLAC	•	SBCR		•		
Finn Creek	310810020020	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Criner Creek	310810020050	PPWS	WWA C	•	PBCR		•		
Colbert Creek	310810020160	PPWS	WWA C	•	PBCR		•		
Roaring Creek	310810020170	PPWS	WWA C	•	PBCR		•		
East Roaring Creek	310810020180		WWA C		PBCR		•		
Laflin Creek	310810020200	PPWS	WWA C	•	PBCR		•		
Winter Creek	310810020220	PPWS	WWA C	•	PBCR		•		
Little Washita River	310820020010	PPWS	WWA C	•	PBCR		•		
Lake Burtschi	310800020070		WWA C	•	PBCR		•		
Gladys Creek downstream from U.S. Hwy. 277	310820020150_00		HLAC	•	SBCR		•		
Gladys Creek upstream from U.S. Hwy. 277	310820020150_10	PPWS	WWA C	•	PBCR		•		
Bitter Creek	310820010030	PPWS	WWA C	•	PBCR		•		
East Fork of Bitter Creek	310820010040	PPWS	WWA C	•	PBCR		•		
West Fork of Bitter Creek	310820010060	PPWS	WWA C	•	PBCR		•		
Tributary of Washita River at NE 1/4, Sec. 35, T7N, R7W, IM	310820		HLAC	•	SBCR		•		
Ionine Creek	310820010160	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Jack Hollow Creek	310820010170	PPWS	WWA C	•	PBCR		•		
Spring Creek including Lake Chickasha	310830040010, 310830040020	PPWS	WWA C	•	PBCR		•		NLW
Stinking Creek	310830040030	PPWS	WWA C	•	PBCR		•		
Delaware Creek	310830010030		WWA C	•	SBCR		•		
Sugar Creek	310830050010		WWA C	•	SBCR		•		
Tributary of Sugar Creek at NW 1/4, Sec. 29, T11N, R11W, IM	310830		HLAC	•	SBCR		•		
Cobb Creek downstream from Fort Cobb Reservoir	310830060010	PPWS	WWA C	•	PBCR		•		
Fort Cobb Lake and Watershed including Crowder Lake and watershed	310830060010, 310830060020, 310830060030, 310830060040, 310830060050, 310830060060, 310830060070, 310830060080, 310830060090, 310830060100, 310830060110, 310830060120, 310830060130, 310830060140	PPWS	WWA C	•	PBCR		•	SWS	NLW
Lake Creek	310830060040	PPWS	WWA C	•	PBCR		•	SWS	
Stinking Creek	310830020020	PPWS	WWA C	•	PBCR		•		
Rainy Mountain Creek downstream from S.H. 9	310830020060_00		WWA C	•	PBCR		•		
Rainy Mountain Creek upstream from S.H. 9	310830020060_10		WWA C	•	SBCR		•		
Oak Creek	310830020090	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Lake Vanderwork and watershed	310830020100, 310830020110		WWA C	•	PBCR		•		NLW
Two Baby Creek	310830030060		WWA C	•	PBCR		•		
Cavalry Creek	310830030070	PPWS	WWA C	•	PBCR		•		
South Fork of Cavalry Creek	310830030080		WWA C	•	PBCR		•		
N. Cavalry Creek	310830030090	EWS	HLAC	•	SBCR		•		
Tributary to N. Cavalry Creek at NW 1/4, Sec. 11, T9N, R17W, IM	310830030095_00	EWS	HLAC	•	SBCR		•		
Boggy Creek	310830030100		WWA C	•	PBCR		•		
Beaver Creek	310830030190		WWA C	•	SBCR		•		
Barnitz Creek	310830030200	PPWS	WWA C	•	PBCR		•		
East Barnitz Creek	310830030210	PPWS	WWA C	•	PBCR		•		
West Barnitz Creek	310830030230	PPWS	WWA C	•	PBCR		•		
Turkey Creek downstream from Clinton Lake	310830030260		WWA C	•	PBCR		•		
Clinton Lake	310830030280	PPWS	WWA C	•	PBCR		•	SWS	NLW
Oak Creek	310830030310	PPWS	WWA C	•	PBCR		•		
Panther Creek	310840010050	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Quartermaster Creek	310840010060	PPWS	WWA C	•	PBCR		•		
Tributary of Quartermaster Creek at Sec. 17, T16N, R20W, IM (North Branch)	310840010080		HLAC	•	SBCR		•		
Hay Creek	310840010100	PPWS	WWA C	•	PBCR		•		
White Shield Creek	310840010120		HLAC	•	SBCR		•		
Sandstone Creek	310840020020, 310840020070	PPWS	WWA C	•	PBCR		•		
Dead Indian Creek	310840020120	PPWS	WWA C	•	PBCR		•		
Sergeant Major Creek	310840020140	PPWS	HLAC	•	SBCR		•		
Croton Creek	310840020190	PPWS	WWA C	•	PBCR		•		
Rush Creek	310840020210	PPWS	WWA C	•	PBCR		•		
Buncombe Creek	311100010070	PPWS	WWA C	•	PBCR		•		
Hauani Creek including Hauani Lake	311100010130, 311100010140	PPWS	WWA C	•	PBCR		•		
Hickory Creek	311100020010	PPWS	WWA C	•	PBCR		•		
Anadarche Creek downstream from Lake Murray	311100020020	PPWS	WWA C	•	PBCR		•		
Lake Murray and Watershed	311100020020, 311100020030, 311100020040, 311100020050, 311100020060, 311100020070, 311100020080, 311100020090	PPWS	WWA C	•	PBCR		•	SWS	
Red River from headwaters of Lake Texoma to Cache Creek	311100010190, 311200000010	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Walnut Bayou	311100030010, 311100010250	PPWS	WWA C	•	PBCR		•		
Simon Creek	311100030020	PPWS	WWA C	•	PBCR		•		
Walnut Creek	311100030070	PPWS	WWA C	•	PBCR		•		
Tributary of Walnut Creek at Sec. 28, T4S, R2W, IM	311100030180_00		HLAC	•	SBCR		•		
Healdton Lake	311100030130	PPWS	WWA C	•	PBCR		•		
Whiskey Creek	311100030140		HLAC	•	SBCR		•		
Cottonwood Creek	311100030090	PPWS	WWA C	•	PBCR		•		
Tributary of Cottonwood Creek at Sec. 28, T4S, R1W, IM	311100030190_00		HLAC	•	SBCR		•		
Bull Creek	311100030060		HLAC	•	SBCR		•		
Mud Creek	311100040010	PPWS	WWA C	•	PBCR		•		
Clear Creek	311100040020	PPWS	WWA C	•	PBCR		•		
North Mud Creek	311100040030	PPWS	HLAC	•	PBCR		•		
Tributary of North Mud Creek at SW 1/4, Sec. 34, T4S, R4W, IM	311100040035_00		HLAC	•	SBCR		•		
West Mud Creek	311100040200	PPWS	WWA C	•	PBCR		•		
Negro Creek	311100040100	PPWS	WWA C	•	PBCR		•		
Willow Branch	311100040110	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Crooked Creek	311100040120	PPWS	WWA C	•	PBCR		•		
Deer Creek	311100040130	PPWS	WWA C	•	PBCR		•		
Comanche Lake	311100040170		WWA C	•	PBCR		•		
Red Creek	311100010290	PPWS	WWA C	•	PBCR		•		
Fleetwood Creek	311100010300	PPWS	WWA C	•	PBCR		•		
Beaver Creek downstream from Waurika Lake	311200000030, 311200000010	PPWS	WWA C	•	PBCR		•		
Cow Creek	311200000060	EWS	WWA C	•	PBCR		•		
Dry Creek	311200000080	PPWS	WWA C	•	PBCR		•		
Cotton Creek	311200000090	PPWS	WWA C	•	PBCR		•		
Claridy (Clarity) Creek	311200000110	EWS	WWA C		PBCR		•		
East Cow Creek	311200000100	EWS	HLAC	•	SBCR		•		
Tributary of East Cow Creek SW 1/4, Sec. 15, T1S, R7W, IM	311200000160_00	EWS	HLAC	•	SBCR		•		
Beaver Creek upstream from and including Waurika Lake	311210000010, 311210000020	PPWS	WWA C	•	PBCR		•	SWS	
Walker Creek	311210000030	PPWS	WWA C	•	PBCR		•	SWS	
Little Beaver Creek	311210000050	PPWS	WWA C	•	PBCR		•	SWS	

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Stage Stand Creek	311210000060	PPWS	WWA C	•	PBCR		•	SWS	
Hell Creek	311210000080	PPWS	WWA C	•	PBCR		•	SWS	
Ninemile Beaver Creek	311210000130	PPWS	WWA C	•	PBCR		•		
Cache Creek	311300010010	PPWS	WWA C	•	PBCR		•		
West Cache Creek downstream from Panther Creek	311310020010, 311310020020, 311310020140	PPWS	WWA C	•	PBCR		•		
Deep Red Creek including Lake Fredrick	311310030010, 311310030110, 311310030120	PPWS	WWA C	•	PBCR		•		
Pecan Creek	311310020030	PPWS	WWA C	•	PBCR		•		
Little Deep Red Creek	311310030040	PPWS	WWA C	•	PBCR		•		
Jack Creek	311310030030	PPWS	WWA C	•	PBCR		•		
East Jack Creek	311310030070	PPWS	WWA C	•	PBCR		•		
Horse Creek	311310030080	PPWS	WWA C	•	PBCR		•		
Deadman Creek	311310030090	PPWS	WWA C	•	PBCR		•		
Blue Beaver Creek	311310020050, 311310020060	PPWS	WWA C	•	PBCR		•		
Post Oak Creek	311310020070	PPWS	WWA C	•	PBCR		•		
Crater Creek	311310020100	PPWS	WWA C	•	PBCR		•	HQW	

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Panther Creek	311310020150	PPWS	WWA C	•	PBCR		•	HQW	
West Cache Creek upstream from Panther Creek	311310020140	PPWS	WWA C	•	PBCR		•	HQW	
East Cache Creek downstream from Lake Ellsworth	311300010020, 311300020010	PPWS	WWA C	•	PBCR		•		
Temple Lake (Mooney) and Watershed	311300010040, 311300010050	PPWS	WWA C	•	PBCR		•	SWS	
Walters Lake (Dave Boyer Lake) and Watershed	311300010070, 311300010080	PPWS	WWA C	•	PBCR		•	SWS	
Ninemile Creek	311300020030		WWA C	•	PBCR		•		
Tributary to Ninemile Creek within Sec. 23, T 1 N, R 11 WIM including Comanche Lake	311300020032_00		WWA C		PBCR		•		
Wolf Creek	311300020040	PPWS	WWA C	•	PBCR		•		
Medicine Creek downstream from Lake Lawtonka	311300040010, 311300040060	PPWS	WWA C	•	PBCR		•		
Elmer Thomas Lake and Watershed	311300040040, 311300040050	PPWS	WWA C	•	PBCR		•	SWS	
Lake Lawtonka and Watershed	311300040060, 311300040070, 311300040080, 311300040090, 311300040110_00, 311300040100_00	PPWS	WWA C	•	PBCR		•	SWS	
Lake Ellsworth and Watershed	311300030010, 311300030020, 311300030030, 311300030040, 311300030050, 311300030060, 311300030070, 311300030080	PPWS	WWA C	•	PBCR		•	SWS	
Red River from Cache Creek to North Fork of the Red River	311310010010	EWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Rabbit Creek	311310010020	PPWS	WWA C	•	PBCR		•		
Tributary of Red River at Sec. 29, T4S, R13W, IM	311310010035_00		HLAC	•	SBCR		•		
Blue Creek	311310010040	PPWS	WWA C	•	PBCR		•		
Suttle Creek	311310010070		WWA C	•	SBCR		•		
Tributary of Suttle Creek at SW 1/4, Sec. 20, T3S, R17W, IM	311310010090_00		HLAC	•	SBCR		•		
North Fork of the Red River including Lugert-Altus Reservoir	311500010020, 311510010010, 311510010020, 311510020010	PPWS	WWA C	•	PBCR		•		
Stinking Creek	311500010050	PPWS	WWA C	•	PBCR		•		
Tributary of Stinking Creek at SE 1/4, Sec. 30, T2N, R19W, IM	311500010055_00	EWS	HLAC	•	SBCR		•		
Otter Creek	311500010080	PPWS	WWA C	•	PBCR		•		
West Otter Creek downstream from Tom Steed Reservoir	311500020040	PPWS	WWA C	•	PBCR		•		
Tom Steed Reservoir (Mountain Park) and Watershed	311500020040, 311500020050, 311500020060, 311500020070	PPWS	WWA C	•	PBCR		•	SWS	
Glen Creek	311500020070	PPWS	WWA C	•	PBCR		•	SWS	
Elk Creek downstream from the confluence with Little Elk Creek	311500030010, 311500030030_00	PPWS	WWA C	•	PBCR		•		
Elk Creek from headwaters to confluence with Little Elk Creek	311500030030_10		HLAC	•	SBCR		•		
Little Elk Creek downstream from Lake Hobart	311500030040	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Hobart (Rocky Hobart) Lake	311500030060	PPWS	WWA C	•	PBCR		•	SWS	NLW
Spring Creek	311500030080	PPWS	WWA C	•	PBCR		•		
Elk City Reservoir	311500030120		WWA C	•	PBCR		•		NLW
Elm Fork of the Red River	311800000010	PPWS	WWA C	•	PBCR		•		
Haystack Creek	311800000040	PPWS	WWA C	•	PBCR		•		
Deer Creek	311800000070	PPWS	WWA C	•	PBCR		•		
Fish Creek	311800000130	PPWS	WWA C	•	PBCR		•		
Bull Creek	311800000150	PPWS	WWA C	•	PBCR		•		
North Elm Creek (West Elm Creek)	311800000170	PPWS	WWA C	•	PBCR		•		
Flat Creek	311510010070		WWA C	•	PBCR		•		
Timber Creek	311510010090	PPWS	WWA C	•	PBCR		•		
Sand Creek	311510020040	PPWS	WWA C	•	PBCR		•		
Long Creek	311510020050	PPWS	WWA C	•	PBCR		•		
Turkey Creek	311510020060	PPWS	WWA C	•	PBCR		•		
Starvation Creek	311510020070	PPWS	WWA C	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Buffalo Creek	311510020090	PPWS	WWA C	•	PBCR		•		
Sweetwater Creek	311510020120	PPWS	WWA C	•	PBCR		•		
Red River from confluence of the North Fork of the Red River to Buck Creek	311600010010	EWS	WWA C	•	PBCR		•		
Salt Fork of the Red River to the Texas State Line	311600020010	PPWS	WWA C	•	PBCR		•		
Turkey Creek	311600020060	PPWS	WWA C	•	PBCR		•		
Bitter Creek downstream of the boundary of Sections 3 & 2, T1N, R21W, IM	311600020110_00	EWS	WWA C	•	SBCR		•		
Bitter Creek upstream of the boundary of Sections 3 & 2, T1N, R21W, IM	311600020110_05, 311600020110_10	EWS	HLAC	•	SBCR		•		
Gypsum Creek	311600010020	PPWS	WWA C	•	PBCR		•		
Sandy Creek (Lebos)	311600010040	EWS	HLAC	•	SBCR		•		
Lebos Creek	311600010060_00		HLAC	•	SBCR		•		
Tributary of Lebos Creek at Sec. 2, T2N, R26W, IM	311600010065_00		HLAC	•	SBCR		•		
Prairie Dog Town Fork of the Red River from confluence of Buck Creek to 100 degree West Longitude	311600010080	EWS	WWA C	•	PBCR		•		

APPENDIX A.4. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 4, LOWER RED RIVER [REVOKED]

**Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 4, Lower Red River**

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Red River from the Arkansas State Line to the Kiamichi River	410100010010	PPWS	WWA C	•	PBCR		•		
Norwood Creek	410100010050	PPWS	WWA C	•	PBCR		•		
Waterhole Creek	410100010340	PPWS	WWA C	•	PBCR		•		
Buzzard Creek	410100010450		WWA C	•	PBCR		•		
Tributary of Buzzard Creek at NW 1/4, Sec. 5, T7S, R22E, IM (Millerton Trib)	410100010456_00		HLAC	•	SBCR		•		
Garland Creek	410100010460		WWA C		PBCR				
Tributary of Garland Creek at SE 1/4, Sec. 34, T6S, R21E, IM (Valiant Creek)	410100010470		HLAC	•	SBCR		•		
Little River from the Arkansas State Line to Pine Creek Dam	410200010010, 410200010200, 410210010010, 410210020010	PPWS	CWAC	•	PBCR		•	HQW	
Rock Creek	410200010220	PPWS	CWAC	•	PBCR		•		
Mountain Fork River downstream from U.S. Hwy 70 bridge	410210040010_00	PPWS	CWAC	•	PBCR		•	HQW	
Mountain Fork River upstream from U.S. Hwy 70 bridge to Broken Bow Dam	410210040010_10, 410210040050, 410210050010	PPWS	Trout	•	PBCR		•	HQW	
Upper Mountain Fork River from Dam including Broken Bow Lake to the 600 foot elevation level	410210050010, 410210050020, 410210060010_00	PPWS	CWAC	•	PBCR		•	SWS	
Egypt Creek	410210050140	PPWS	CWAC	•	PBCR		•	SWS	
Otter Creek	410210050190	PPWS	CWAC	•	PBCR		•	SWS	
Panther Creek	410210050360	PPWS	CWAC	•	PBCR		•	ORW	

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Buffalo Creek	410210060020	PPWS	CWAC	•	PBCR		•	SWS	
Big Hudson	410210060030		CWAC		PBCR		•		
Mine Creek	410210060060		CWAC	•	PBCR		•		
Upper Mountain Fork River upstream from the 600 foot elevation level	410210060010_10	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
Boktuklo Creek	410210060100	PPWS	CWAC	•	PBCR		•	ORW	
Blue Creek	410210060110	PPWS	CWAC	•	PBCR		•	ORW	
Big Eagle Creek	410210060160	PPWS	CWAC	•	PBCR		•	ORW	
Little Eagle Creek	410210060170	PPWS	CWAC	•	PBCR		•	ORW	
Dry Creek	410210060270		CWAC	•	PBCR		•		
Cucumber Creek	410210060210	PPWS	CWAC	•	PBCR		•	ORW	
Beech Creek	410210060320	PPWS	CWAC	•	PBCR		•	ORW	
Cow Creek	410210060350	PPWS	CWAC	•	PBCR		•	ORW	
Yanubbe Creek	410200010150	PPWS	CWAC	•	PBCR		•		
Tributary of Yanubbe Creek at NE 1/4, Sec. 29, T6S, R25E, IM	410200010155_00		HLAC	•	SBCR		•		
Mud Creek	410200010210	EWS	WWA C	•	SBCR		•		
Tributary of Mud Creek at SE 1/4, Sec. 31, T7S, R24E, IM	410200010218_00		HLAC	•	SBCR		•		
Yashau (Yashoo) Creek	410200010230	PPWS	CWAC	•	PBCR		•		
Lukfata Creek	410210070010	PPWS	CWAC	•	PBCR		•	HQW	
Glover River	410210080010	PPWS	CWAC	•	PBCR		•	HQW	
Cedar Creek	410210080120	PPWS	CWAC	•	PBCR		•	HQW	
Carter Creek	410210080210	PPWS	CWAC	•	PBCR		•	HQW	
Pine Creek	410210080270	PPWS	CWAC	•	PBCR		•	HQW	
West Fork	410210090070	PPWS	CWAC	•	PBCR		•	HQW	
Silver Creek	410210090100		CWAC	•	PBCR		•		
Bluff Creek	410210090160	PPWS	CWAC	•	PBCR		•	HQW	
East Fork	410210090010	PPWS	CWAC	•	PBCR		•	HQW	

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Horse Head Creek	410210010060	PPWS	WWA C	•	PBCR		•		
Tributary of Horse Head Creek at Sec. 10, T6S, R22E, IM	410210010065_00		HLAC	•	SBCR		•		
Cypress Creek	410210010070	PPWS	CWAC	•	PBCR		•	HQW	
Little River upstream from and including Pine Creek Lake	410210020010, 410210020140, 410210020020, 410210030010	PPWS	CWAC	•	PBCR		•	HQW	
Pine Creek	410210020030	PPWS	CWAC	•	PBCR		•	HQW	
Terrapin Creek	410210020150	PPWS	CWAC	•	PBCR		•	HQW	
Houston Creek	410210020210	PPWS	CWAC	•	PBCR		•	HQW	
Caney Creek	410210020240		CWAC	•	PBCR		•		
Cloudy Creek	410210020300	PPWS	CWAC	•	PBCR		•	HQW	
Jack Creek	410210020430	PPWS	CWAC	•	PBCR		•	HQW	
Black Fork	410210030020	PPWS	CWAC	•	PBCR		•	HQW	
Red River upstream from the Kiamichi River to the Blue River	410400010010	PPWS	WWA C	•	PBCR		•		
Kiamichi River including Hugo Lake to U.S. Hwy. 271 Bridge near Clayton	410300010010, 410300020010, 410300020020, 410300030010_00	PPWS	WWA C	•	PBCR		•		
Gates Creek	410300010020, 410300010030	PPWS	CWAC	•	PBCR		•		
Lake Raymond Gary	410300010040		WWA C	•	PBCR		•		
Negro Creek	410300010060		HLAC	•	SBCR		•		
Bird Creek	410300010100	PPWS	WWA C	•	PBCR		•		
Long Creek	410300020080	PPWS	WWA C	•	PBCR		•		
North Fork	410300020060	PPWS	WWA C	•	PBCR		•		
Frazier Creek	410300020130	PPWS	CWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Rock Creek	410300020190	PPWS	CWAC	•	PBCR		•		
Cedar Creek	410300030020	PPWS	CWAC	•	PBCR		•	HQW	
Beaver Creek	410300030200	PPWS	WWA C	•	PBCR		•		
Tenmile Creek	410300030270	PPWS	WWA C	•	PBCR		•		
Buck Creek	410300030420	PPWS	WWA C	•	PBCR		•		
Clayton Lake and Watershed	410300030760, 410300030780	PPWS	WWA C	•	PBCR		•	SWS	
Kiamichi River upstream from U.S. Hwy 271 Bridge near Clayton	410300030010 10, 410300030570, 410310010010, 410310020010	PPWS	WWA C	•	PBCR		•		
Jackfork Creek including Sardis Lake	410310010020, 410310030020, 410310030100	PPWS	WWA C	•	PBCR		•	SWS	
Buffalo Creek	410310030030	PPWS	WWA C	•	PBCR		•	SWS	
Lake Nanih Waiya	410310010050		WWA C	•	PBCR		•		
Rock Creek	410310010170	PPWS	WWA C	•	PBCR		•		
Lake Ozzie Cobb and watershed	410300020190, 410300020220		WWA C	•	PBCR		•		NLW
Carl Albert Lake and Watershed	410310010210, 410310010220	PPWS	WWA C	•	PBCR		•	SWS	
Talihina Lake and Watershed	410310010230	PPWS	WWA C	•	PBCR		•	SWS	
Pigeon Creek	410310020110	PPWS	CWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Horse Creek downstream from the borders of Sections 10 & 15, T7S, R17E, IM	410400010040_00	PPWS	WWA C	•	PBCR		•		
Horse Creek upstream from the borders of Sections 10 & 15, T7S, R17E, IM	410400010040_10		WWA C	•	SBCR		•		
Tributary of Horse Creek at NE 1/4, Sec. 4, T7S, R17E, IM	410400010045_00		HLAC	•	SBCR		•		
Unnamed tributary of Red River at SW SE SE Sec. 22, T7S, R17E, IM	410400010090_00		HLAC	•	SBCR		•		
Muddy Boggy Creek	410400010070, 410400050010, 410400050270, 410400060010	PPWS	WWA C	•	PBCR		•		
Tributary of Muddy Boggy Creek at NW 1/4, Sec. 12, T2S, R11E, IM	410400050495_00		HLAC	•	SBCR		•		
Lick Creek	410400010130	PPWS	WWA C	•	PBCR		•		
Clear Boggy Creek	410400020010, 410400030010, 410400030230, 410400040010	PPWS	WWA C	•	PBCR		•		
Mayhew Creek	410400020020		WWA C	•	PBCR		•		
Unnamed tributary to Mayhew Creek at sect. 7, T6S, R14E, IM (Boswell Creek)	410400020025_00		HLAC		SBCR		•		
Caney Creek	410400030020		WWA C	•	SBCR		•		
Delaware Creek	410400030240	PPWS	WWA C	•	PBCR		•		
Sandy Creek	410400030280	PPWS	WWA C	•	PBCR		•		
Tributary of Sandy Creek at SE 1/4, Sec. 14, T2S, R8E, IM (Wapanucka Creek)	410400030290		HLAC	•	SBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Wide Springs Branch	410400030320	PPWS	WWA C	•	PBCR		•		
Bois D' Arc Creek	410400020160		WWA C		PBCR		•		
(Byrds) Mill Creek	410400040090	PPWS	WWA C	•	PBCR		•		
McGee Creek including McGee Creek Reservoir	410400070010, 410400070020	PPWS	WWA C	•	PBCR		•	SWS	
North Boggy Creek downstream from Atoka Reservoir	410400050410_00	PPWS	WWA C	•	PBCR		•		
Tributary of North Boggy Creek at NW1/4, Sec. 29, T1S, R12E, IM	410400050415_00		HLAC	•	SBCR		•		
North Boggy Creek upstream from and including Atoka Reservoir	410400080010, 410400080020	PPWS	WWA C	•	PBCR		•	SWS	
Sub Penitentiary Lake (Blue Stem)	410400080060	PPWS	WWA C	•	PBCR		•		
Kiowa City Lake on trib to Buck Creek	410400080200	PPWS	WWA C	•	PBCR		•		
Coal Creek	410400050540	PPWS	WWA C	•	PBCR		•		
Tributary of Brier Creek at Sec. 35, T1N, R10E, IM	410400050585_00		HLAC	•	SBCR		•		
Caney Creek	410400060020	PPWS	WWA C	•	PBCR		•		
Coon Creek	410400060030	PPWS	WWA C	•	PBCR		•		
Coalgate Reservoir and Watershed	410400060030, 410400060040, 410400060050	PPWS	WWA C	•	PBCR		•	SWS	
Caney Boggy Creek	410400060120	PPWS	WWA C	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Sandy Creek	410400030280	PPWS	WWA C	•	PBCR		•		
Little Sandy Creek	410400060270		HLAC	•	SBCR		•		
Town Branch	410400060310_00		HLAC	•	SBCR		•		
Whitegrass Creek	410400010210	PPWS	WWA C	•	PBCR		•		
Blue River downstream from the State Hwy. 48A Bridge	410600010010, 410600010290, 410600020010	PPWS	WWA C	•	PBCR		•		
Tributary of Bokchito Creek at Sec. 22, T6S, R11E, IM	410600010095		HLAC	•	SBCR		•		
Caddo Creek	410600010140		WWA C	•	PBCR		•		
Mineral Bayou	410600010300	EWS	WWA C	•	PBCR		•		
Little Blue River	410600010340	PPWS	WWA C	•	PBCR		•		
Sandy Creek	410600010250	PPWS	WWA C	•	PBCR		•		
Blue River upstream from State Hwy. 48A Bridge to State Hwy. 7 Bridge	410600020010_10	PPWS	Trout	•	PBCR		•	HQW	
Blue River upstream from State Hwy. 7 Bridge	410700020010_20	PPWS	CWAC	•	PBCR		•	HQW	
Red River upstream from the Blue River to Lake Texoma Dam	410700000010	PPWS	WWA C	•	PBCR		•		
Island Bayou	410700000040	EWS	WWA C	•	SBCR		•		
Sandy Creek	410700000250	PPWS	WWA C	•	PBCR		•		
Tributary of Sandy Creek at Sec. 20, T8S, R8E, IM	410700000250_00		HLAC	•	SBCR		•		

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APPENDIX A.5. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 5, CANADIAN RIVER [REVOKED]

Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 5, Canadian River

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
North Canadian River from Canadian River to S.H. 99 bridge	520500010110_10, 520510000010, 520510000110_00	PPWS	WWAC	•	PBCR		•		
Deep Fork of Canadian River downstream from Arcadia Lake	520700010120, 520700020010, 520700030010, 520700040010, 520700050010, 520710010010, 520710020010	PPWS	WWAC	•	PBCR		•		
Wolf Creek downstream from Lake Henryetta	520700010130, 520700010170_00		WWAC	•	PBCR		•		
Coal Creek	520700010140	EWS	WWAC	•	SBCR		•		
Henryetta Lake and Watershed	520700010170_10, 520700010180	PPWS	WWAC	•	PBCR		•	SWS	
Moore Creek	520700010190		WWAC	•	PBCR		•		
Burgess Creek at Montezuma Creek NE 1/4, Sec. 8, T12N, R13E, IM	520700010230	EWS	WWAC	•	PBCR		•		
Cussetah (Cossetta) Creek	520700010250		WWAC	•	PBCR		•		
Tributary of Cussetah at NE 1/4, Sec. 12, T13N, R13E, IM	520700010310_00		HLAC	•	SBCR		•		
Salt Creek downstream from Okmulgee Lake	520700020020	PPWS	WWAC	•	PBCR		•		
Dripping Springs Lake	520700020060	PPWS	WWAC	•	PBCR		•		
Okmulgee Lake and Watershed	520700020040, 520700020050, 520700020060	PPWS	WWAC	•	PBCR		•	SWS	
Adams Creek including Beggs Lake	520700020080, 520700020110	PPWS	WWAC		PBCR		•		
Flat Rock Creek	520700020090	PPWS	WWAC	•	PBCR		•		
New Beggs Lake	520700020130	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Adams Creek at NW1/4, Sec. 5, T14N, R12E, IM (West Beggs Creek)	520700020100	EWS	WWAC	•	PBCR		•		
Little Deep Fork Creek downstream from Sand Creek	520700060010, 520700060100		WWAC	•	PBCR		•		
Brown's Creek	520700060050	PPWS	WWAC		PBCR		•		
Little Deep Fork Creek upstream from Sand Creek to State Hwy. 48 Bridge	520700060130_00	PPWS	HLAC	•	SBCR		•		
Little Deep Fork Creek upstream from State Hwy. 48 Bridge	520700060130_10	PPWS	WWAC	•	PBCR		•		
Catfish Creek	520700060140	PPWS	WWAC	•	PBCR		•		
Tributary of Little Deep Fork Creek at SE 1/4, Sec. 6, T15N, R8E, IM	520700060220_00		HLAC	•	SBCR		•		
Nuyaka Creek	520700020200	PPWS	WWAC	•	PBCR		•		
Buckeye Creek	520700020270, 520700020280	PPWS	WWAC	•	PBCR		•		
Okemah Lake and Watershed	520700020280, 520700020290, 520700020300	PPWS	WWAC	•	PBCR		•	SWS	
Salt Creek	520700030100	PPWS	WWAC	•	PBCR		•		
Camp Creek downstream from Stroud Lake	520700030220	PPWS	WWAC	•	PBCR		•		
Stroud Lake and Watershed	520700030220, 520700030230, 520700030240	PPWS	WWAC	•	PBCR		•	SWS	
Gray Horse Creek	520700040030		HLAC	•	SBCR		•		
Dry Creek	520700040020	PPWS	WWAC	•	PBCR		•		
Chuckaho Creek	520700040060	PPWS	WWAC	•	PBCR		•		
West Beaver Creek	520700040170		WWAC	•	SBCR		•		
Deer Creek	520700040190	PPWS	WWAC	•	PBCR		•		
Robinson Creek	520700040180	PPWS	WWAC	•	PBCR		•		
Prague Lake	520720040025		WWAC	•	PBCR		•		
Quapaw Creek	520700040260	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Sparks City Lake	520700040280	PPWS	WWAC	•	PBCR		•		
Meeker Lake and Watershed	520700040350, 520700040360, 520700040370	PPWS	WWAC	•	PBCR		•	SWS	
Bellcow Creek including Bellcow Lake	520700050020, 520700050030, 520720050025	PPWS	WWAC	•	PBCR		•		
Chandler Lake and Watershed	520700050050, 520700050060, 520700050250	PPWS	WWAC	•	PBCR		•	SWS	
Tributary of Bellcow Creek at Sec. 6, T15N, R3E, IM	520700050260_00		HLAC	•	SBCR		•		
Kickapoo Creek	520700050090	PPWS	WWAC	•	PBCR		•		
East Captain Creek	520700050150	PPWS	WWAC	•	PBCR		•		
Bear Creek	520700050170	PPWS	WWAC	•	PBCR		•		
Smith Creek	520710010020	PPWS	HLAC	•	PBCR		•		
Coon Creek	520710010030		WWAC	•	PBCR		•		
Coffee Creek downstream from the boundaries of Sec. 22 & 23, T14N, R02W, IM	520710010090_00	PPWS	HLAC	•	PBCR		•		
Coffee Creek upstream from the boundaries of Sec. 22 & 23, T14N, R02W, IM	520710010090_10, 520710010100	PPWS	WWAC	•	PBCR		•		
Arcadia Lake and Watershed	520710020010, 520710020020, 520710020030, 520710020040, 520710020050, 520710020060, 520710020070, 520710020080, 520710020090, 520710020100, 520710020110, 520710020120, 520710020130, 520710020140, 520710020150, 520710020160	PPWS	WWAC	•	PBCR		•	SWS	
Bad Creek	520500010170	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Dustin Lake	520500010152	PPWS	WWAC	•	PBCR		•		
Alabama Creek	520500010200	PPWS	WWAC	•	PBCR		•		
Weleetka Lake and Watershed	520500010210, 520500010220	PPWS	WWAC	•	PBCR		•	SWS	
Wewoka Creek downstream from the boundaries of Secs. 27 & 28, T9N, R6E, IM	520500020010, 520500020240_00	EWS	WWAC	•	PBCR		•		
Sportsman Lake	520500020220	PPWS	WWAC	•	PBCR		•		
Fish Creek	520500020030	PPWS	WWAC	•	PBCR		•		
Tributary of Wewoka Creek at SE NE SW Sec. 27, T9N, R10E, IM (Wetumka Creek)	520500020035		HLAC	•	SBCR		•		
Graves Creek	520500020060	PPWS	WWAC	•	PBCR		•		
Little Wewoka Creek	520500020090	PPWS	WWAC	•	PBCR		•		
Tributary of Wewoka Creek at Sec. 20, T8N, R8E, IM (Oakwood Cemetery Creek)	520500020280		HLAC	•	SBCR		•		
Wewoka Lake and Watershed	520500020170, 520500020180, 520500020190	PPWS	WWAC	•	PBCR		•	SWS	
Wewoka Creek upstream from the boundaries of Sec. 27 & 28, T9N, R6E, IM	520500020240_10	PPWS	HLAC	•	SBCR		•		
Tributary of Wewoka Creek at NW 1/4, Sec. 16, T9N, R5E, IM	520500020290_00		HLAC	•	SBCR		•		
Tributary of North Canadian River at Sec. 22, T10N, R11E, IM	520500		HLAC	•	SBCR		•		
Lake Wetumka	520500010270	PPWS	WWAC	•	PBCR		•		
Flat Rock Creek	520500010280_00	PPWS	WWAC	•	PBCR		•		
Sand Creek	520510000050		HLAC	•	SBCR		•		
Tributary of Sand Creek at SW 1/4, Sec. 34, T11N, R8E, IM	520510000053_00		HLAC	•	SBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Boley Creek	520510000055		HLAC	•	SBCR		•		
Turkey Creek	520510000100	PPWS	WWAC	•	PBCR		•		
Tecumseh Lake and Watershed	520510000200, 520510000210, 520510000220	PPWS	WWAC	•	PBCR		•	SWS	
Shan Creek	520510000120		HLAC	•	SBCR		•		
Tributary of Squirrel Creek at SE 1/4 of NW 1/4 of SW 1/4 of Sec. 6, T9N, R4E, IM	520510000390_00		WWAC	•	PBCR		•		
Shawnee Twin Lakes and Watershed	520510000250, 520510000280, 520510000290, 520510000300	PPWS	WWAC	•	PBCR		•	SWS	
North Deer Creek including Wes Watkins Reservoir (N. Deer Creek Lake)	520510000310, 520510000255	PPWS	WWAC	•	PBCR		•		
Tributary of the North Canadian River at NE 1/4, Sec. 36, T12N, R1E, IM	520510000320_00		HLAC	•	SCBR		•		
Horseshoe Lake	520510000330		WWAC		PBCR		•		
North Canadian River from State Hwy. 99 Bridge to Portland Street Bridge, Oklahoma City	520510000110, 520520000010_40	EWS	WWAC	•	PBCR		•		
Choctaw Creek	520520000030	EWS	HLAC	•	SBCR		•		
Tributary of Choctaw Creek at NW 1/4, Sec. 27, T12N, R1W, IM	520520000035_00		HLAC	•	PBCR		•		
Crutcho Creek from North Canadian River to S.E. 15th Street, Del City	520520000070_00		WWAC	•	PBCR		•		
Soldier Creek	520520000080		WWAC	•	PBCR		•		
Tributary of Soldier Creek at NW 1/4, Sec. 13, T11N, R02W, IM	520520000290		WWAC	•	SBCR		•		
Crutcho Creek upstream from S.E. 15th Street, Del City	520520000070_10, 520520000090		HLAC	•	SBCR		•		
Tributary of Crutcho Creek at SW 1/4, Sec. 16, T11N, R2W, IM	520520000190_00		WWAC	•	PBCR		•		
Cherry Creek	520520000110		HLAC	•	SBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Crooked Oak Creek	520520000150	PPWS	WWAC	•	PBCR		•		
North Canadian River from Portland Street Bridge to Canton Lake Dam	520520000010_50, 520520000250, 520530000010	PPWS	WWAC	•	PBCR		•		
Mustang Creek	520520000240		WWAC	•	PBCR		•		
Lake Overholser	520520000260	PPWS	WWAC	•	PBCR		•		NLW
Shell Creek	520530000030	PPWS	WWAC	•	PBCR		•		
Purcell Creek	520530000040	PPWS	WWAC	•	PBCR		•		
Six Mile Creek	520530000050	PPWS	WWAC	•	PBCR		•		
Lake El Reno	520530000080		WWAC	•	PBCR		•		
Unnamed tributary of North Canadian River at Sec. 6, T13N, R10W, IM and NW SE NE 1/4 of Sec. 31, T14N, R10W, IM	520530000200_00		HLAC	•	SBCR		•		
Minnehaha Creek	520530000190	PPWS	WWAC	•	SBCR		•		
Canadian River from its confluence with Little River to Buckhead Creek	520600010010, 520600020010, 520610010010	PPWS	WWAC	•	PBCR		•		
Little River	520800010010, 520800010090, 520800010130, 520800020010	PPWS	WWAC	•	PBCR		•		
Lake Holdenville and Watershed	520800010030, 520800010040	PPWS	WWAC	•	PBCR		•	SWS	
Bird Creek	520800010050		HLAC	•	SBCR		•		
Tributary of Bird Creek at NW 1/4, Sec. 6, T6N, R9E, IM	520800010150_00		WWAC	•	SBCR		•		
Salt Creek	520800030010	PPWS	WWAC	•	PBCR		•		
Tributary to Salt Creek at NW SW Sec. 33, T8N R5E, IM (Maud Creek)	520800030040_00		WWAC	•	PBCR		•		
Unnamed tributary of Little River at Sec. 33, T8N, R6E, IM	520800010200_00		HLAC	•	SBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Lake Thunderbird and Watershed	52081000010, 52081000020, 52081000030, 52081000040, 52081000050, 52081000060, 52081000070, 52081000080, 52081000090, 52081000100, 52081000110, 52081000120, 52081000130, 52081000140, 52081000150, 52081000170, 52081000175, 52081000180	PPWS	WWAC	•	PBCR		•	SWS	NLW
Stanley Draper Lake	520810000130	PPWS	WWAC	•	PBCR		•		
Tributary of Canadian River at SE 1/4, Sec.18, T5N, R7E, IM	520600010120_00		HLAC	•	SBCR		•		
Jumper Creek including Lake Konawa	520600010080, 520600010090, 520600010100	EWS	WWAC	•	PBCR		•		
Canadian Sandy Creek	520600030010	PPWS	WWAC	•	PBCR		•		
Little Sandy Creek	520600030020	PPWS	WWAC	•	PBCR		•		
Spring Brook Creek	520600030030	PPWS	WWAC	•	PBCR		•		
Tributary of Cat Creek at Sec. 7, T6N, R4E, IM	520600020165_00		HLAC	•	SBCR		•		
Pond Creek	520600020190	PPWS	WWAC	•	PBCR		•		
Canadian River upstream from its confluence with Buckhead Creek to the US Hwy. 81 bridge	520610010010, 520610020010, 520610020150_00		WWAC	•	PBCR		•		
Buckhead Creek	520610010020	PPWS	WWAC	•	PBCR		•		
Tributary of Canadian River at NE 1/4, Sec. 35, T6N, R1W, IM	520610		HLAC	•	SBCR		•		
Walnut Creek	520610030010		WWAC	•	PBCR		•		
Purcell Lake	520610030040		WWAC	•	PBCR		•		
Bridge Creek at Sec. 22, T9N, R5W, IM	520610030100		WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Pond Creek (return flow, City of Newcastle)	520610010210	PPWS	WWAC	•	PBCR		•		
Tributary of Pond Creek at NE 1/4, Sec. 14, T9N, R4W, IM (Tim's Creek)	520610010215		HLAC	•	SBCR		•		
Cow Creek	520610010230	PPWS	WWAC	•	PBCR		•		
Dry Creek	520610020070	PPWS	WWAC	•	PBCR		•		
Store Creek	520610020080	PPWS	WWAC	•	PBCR		•		
West Creek	520610020090		HLAC	•	SBCR		•		
Buggy Creek	520610020120	EWS	WWAC	•	PBCR		•		
Tributary of Canadian River at SW 1/4, Sec. 3, T10N, R7W, IM	520610020155_00		HLAC	•	SBCR		•		
Canadian River upstream from US Hwy. 81 bridge	520610020150_10, 520620010010, 520620020010, 520620030010, 520620040010, 520620050010	EWS	WWAC	•	PBCR		•		
Deer Creek	520620060010	PPWS	WWAC	•	PBCR		•		
Little Deep Creek	520620060040		HLAC	•	PBCR		•		
Little Deer Creek	520620060070	PPWS	WWAC	•	PBCR		•		
Horse Creek	520620060080	PPWS	WWAC	•	PBCR		•		
American Horse Lake	520620010100		WWAC	•	PBCR		•		
Tributary of Canadian River at SE 1/4, Sec. 4, T15N, R14W, IM (West Fay Creek)	520620010160		HLAC	•	SBCR		•		
Squirrel Creek	520620020080	PPWS	WWAC	•	PBCR		•		
Lone Creek	520620030020	PPWS	WWAC	•	PBCR		•		
Trail Creek	520620020090	EWS	HLAC	•	SBCR		•		
Gyp Creek	520620030100	PPWS	WWAC	•	PBCR		•		
Red Creek	520620030110	PPWS	WWAC	•	PBCR		•		
Turkey Creek	520620030130	PPWS	WWAC	•	PBCR		•		
South Turkey Creek	520620030150	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Hackberry Creek	520620040050	PPWS	WWAC	•	PBCR		•		
Trib to Mosquito Creek downstream from Sec. 31, T19N, R24W, IM	520620050110	PPWS	WWAC	•	PBCR		•		
Trib to Mosquito Creek upstream from Sec. 6, T18N, R24W, IM	520620050120	EWS	HLAC	•	SBCR		•		
Red Bluff Creek	520620050140	PPWS	WWAC	•	PBCR		•		
Commission Creek	520620050160	PPWS	WWAC	•	PBCR				
Lake Lloyd Vincent	520620050200		WWAC	•	PBCR		•		

APPENDIX A.6. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 6, UPPER ARKANSAS RIVER [REVOKED]

**Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 6, Upper Arkansas River**

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Arkansas River upstream from and including Keystone Reservoir to Kaw Dam	620900010020, 620900010090, 621200010020, 621200010040, 621200010050, 621200020010	PPWS	WWAC	•	PBCR		•		
Cimarron River upstream from Keystone Reservoir to the Kansas State Line	620900010170, 620900020010, 620900030010, 620910010010, 620910020010, 620920010010, 620920020010, 620920030010	EWS	WWAC	•	PBCR		•		
Buckeye Creek	620900010220		WWAC		PBCR		•		
Tiger Creek	620900010250		WWAC	•	PBCR		•		
Euheee Creek downstream from Sec. 5, T17N, R6E, IM	620900010290_00	EWS	WWAC	•	PBCR		•		
Euheee Creek upstream from Sec. 5, T17N, R6E, IM	620900010290_10	EWS	WWAC	•	SBCR		•		
Cottonwood Creek	620900010310	EWS	WWAC	•	PBCR		•		
Wildhorse Creek	620900010320	EWS	WWAC	•	PBCR		•		
Skull Creek	620900010360	EWS	WWAC	•	PBCR		•		
Salt Creek	620900020020	PPWS	WWAC	•	PBCR		•		
Council Creek	620900020050	PPWS	WWAC	•	PBCR		•		
Big Creek downstream from Cushing Lake	620900020100	PPWS	WWAC	•	PBCR		•		
Cushing Lake and Watershed	620900020110, 620900020120, 620900020130	PPWS	WWAC	•	PBCR		•	SWS	
Stillwater Creek downstream from Little Stillwater Creek	620900040040	PPWS	WWAC	•	PBCR		•		
Little Stillwater Creek	620900040050	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Stillwater Creek from Little Stillwater Creek to Sec. 32, T19N, R3E, IM	620900040070_00	EWS	HLAC	•	PBCR		•		
Stillwater Creek upstream from Sec. 33, T19N, R3E to the Carl Blackwell Lake Dam	620900040070_10, 620900040270_00	EWS	HLAC	•	SBCR		•		
Brush Creek	620900040090		HLAC	•	SBCR		•		
Boomer Creek below Boomer Lake	620900040140, 620900040180	PPWS	WWAC	•	PBCR		•		
Boomer Lake and Watershed	620900040180, 620900040190	PPWS	WWAC	•	PBCR		•	SWS	
Lake McMurtry and Watershed	620900040220, 620900040230, 620900040240	PPWS	WWAC	•	PBCR		•	SWS	
Carl Blackwell Lake and Watershed	620900040270_10, 620900040280, 620900040290, 620900040300	PPWS	WWAC	•	PBCR		•	SWS	
Sand Creek	620900030040		HLAC	•	SBCR		•		
Dugout Creek	620900030080	PPWS	WWAC	•	PBCR		•		
Fitzgerald Creek	620900030150	PPWS	WWAC	•	PBCR		•		
Langston Lake and Watershed	620900030170, 620900030180	PPWS	WWAC	•	PBCR		•	SWS	
Beaver Creek	620900030230	PPWS	WWAC	•	PBCR		•		
Skeleton Creek downstream from Bitter Creek	620910030010, 620910030170_00	PPWS	WWAC	•	PBCR		•		
Wolf Creek	620910030020	PPWS	WWAC	•	PBCR		•		
Otter Creek	620910030040	PPWS	WWAC	•	PBCR		•		
Horse Creek	620910030110	PPWS	WWAC	•	PBCR		•		
Bitter Creek	620910030180	PPWS	WWAC	•	PBCR		•		
Skeleton Creek from Bitter Creek to Boggy Creek	620910030170_10,	EWS	HLAC	•	SBCR		•		
Hackberry Creek	620910030220	EWS	WWAC	•	SBCR		•		
Tributary of Skeleton Creek at Sec. 27, T22N, R5W, IM (Fairmont Creek)	620910030230_00		HLAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Skeleton Creek upstream from Boggy Creek	620900030240_00	PPWS	WWAC	•	PBCR		•		
Tributary of Boggy Creek at NW 1/4, Sec. 14, T22N, R6W, IM	621010		HLAC	•	SBCR		•		
Cottonwood Creek	620910040010	PPWS	WWAC	•	PBCR		•		
Guthrie Lake and Watershed	620910040050, 620910040060	PPWS	WWAC	•	PBCR		•	SWS	
Liberty Lake and Watershed	620910040070, 620910040080	PPWS	WWAC	•	PBCR		•	SWS	
Chisholm Creek	620910040100	PPWS	WWAC	•	PBCR		•		
Deer Creek	620910040120	PPWS	WWAC	•	PBCR		•		
Bluff Creek	620910040140	PPWS	WWAC	•	PBCR		•		
Hefner Lake	620910040200_00	PPWS	WWAC	•	PBCR		•		
Kingfisher Creek	620910050010		WWAC	•	PBCR		•		
Uncle John Creek	620910050030		WWAC	•	PBCR		•		
Winter Camp Creek	620910050080	PPWS	WWAC	•	PBCR		•		
Tributary of Winter Camp Creek at NE 1/4, Sec. 19, T15N, R8W, IM	620910050085_00	EWS	HLAC	•	SBCR		•		
Otter Creek	620910050130	PPWS	WWAC	•	PBCR		•		
Turkey Creek	620910060010	PPWS	WWAC	•	PBCR		•		
Unnamed tributary of Turkey Creek at Sec. 23, T19N, R7W, IM (Narragansett Creek)	620910060025_00		HLAC	•	SBCR		•		
Dry Salt Creek	620910060140		HLAC	•	SBCR		•		
Tributary of Dry Salt Creek at NW 1/4, Sec. 15, T21N, R8W, IM	620910060145_00		HLAC	•	SBCR		•		
Cooper Creek	620910020040	PPWS	WWAC	•	PBCR		•		
Salt Creek downstream from the Blaine-Kingfisher County Line	620910020100_00	EWS	WWAC	•	SBCR		•		
Salt Creek upstream from the Blaine-Kingfisher County Line	620910020100_10	EWS	HLAC	•	SBCR		•		
Spring Creek	620910020110	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Spring Creek at Sec. 19, T19N, R10W, IM	620910020115_00		HLAC	•	SBCR		•		
Tributary of Salt Creek at Sec. 11, T17N, R11W, IM (Hitchcock Creek)	620910020120_00		HLAC	•	SBCR		•		
Hoyle Creek	620910020210	PPWS	WWAC	•	PBCR		•		
Deep Creek	620910020250	PPWS	WWAC	•	PBCR		•		
Elm Creek	620910020270	PPWS	WWAC	•	PBCR		•		
Indian Creek	620910020310	PPWS	WWAC	•	PBCR		•		
Sand Creek	620920010020	PPWS	WWAC	•	PBCR		•		
Gypsum Creek	620920010030	PPWS	WWAC	•	PBCR		•		
Cottonwood Creek	620920010080	PPWS	WWAC	•	PBCR		•		
Eagle Chief Creek	620920040010	PPWS	WWAC	•	PBCR		•		
Tributary of Eagle Chief Creek at Sec. 36, T24N, R12W, IM (Big Timber Lake Creek)	620920040030		HLAC	•	SBCR		•		
Lake Creek	620920040100		WWAC	•	PBCR		•		
Cheyenne Creek	620920010100	PPWS	WWAC	•	PBCR		•		
Barney Creek	620920010110	PPWS	WWAC	•	PBCR		•		
Griever Creek	620920010130	PPWS	WWAC	•	PBCR		•		
East Griever Creek	620920010140	PPWS	WWAC	•	PBCR		•		
Main Creek	620920010180	PPWS	WWAC	•	PBCR		•		
Ewers Creek	620920010190	PPWS	WWAC	•	PBCR		•		
Dog Creek	620920020020	EWS	WWAC	•	PBCR		•		
Sand Creek	620920020030	PPWS	WWAC	•	PBCR		•		
Chimney Creek	620920020040	PPWS	WWAC	•	PBCR		•		
White Horse Creek	620920020050	PPWS	WWAC	•	PBCR		•		
Doe Creek	620920020060	PPWS	WWAC	•	PBCR		•		
Long Creek	620920020080	PPWS	WWAC	•	PBCR		•		
Red Horse Creek	620920020110	PPWS	WWAC	•	PBCR		•		
Anderson Creek	620920020120	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Traders Creek	620920020170	PPWS	WWAC	•	PBCR		•		
Moccasin Creek	620920020180	PPWS	WWAC	•	PBCR		•		
Sand Creek	620920020200	PPWS	WWAC	•	PBCR		•		
Buffalo Creek	620920050010	PPWS	WWAC	•	PBCR		•		
Sleeping Bear Creek	620920050030	PPWS	WWAC	•	PBCR		•		
Sand Creek	620920050050	PPWS	WWAC	•	PBCR		•		
Day Creek	620920030030	PPWS	WWAC	•	PBCR		•		
Keno Creek	620920030040	PPWS	WWAC	•	PBCR		•		
Cimarron River from Kansas State Line near Englewood, Kansas to the Kansas State Line near Forgan, Oklahoma	620930000010	PPWS	WWAC	•	PBCR		•		
Snake Creek	620930000020	PPWS	WWAC	•	PBCR		•		
Redoubt Creek	620930000030	PPWS	WWAC	•	PBCR		•		
Horse Creek	620930000060	EWWS	WWAC	•	SBCR		•		
Crooked Creek	620930000100	PPWS	WWAC	•	PBCR		•		
Cottonwood Creek	620930000110	PPWS	WWAC	•	PBCR		•		
Bug Creek	621200010320	PPWS	WWAC	•	PBCR		•		
Ranch Creek including Cleveland Lake	621200010260, 621200010270	PPWS	WWAC	•	PBCR		•		
Black Bear Creek	621200030010, 621200030260	PPWS	WWAC	•	PBCR		•		
Camp Creek including Lone Chimney Lake	621200030040, 621200030060	PPWS	WWAC	•	PBCR		•		
Pawnee Lake and Watershed	621200030080, 621200030090, 621200030100, 621200030110, 621200030120	PPWS	WWAC	•	PBCR		•	SWS	
Oak Creek	621200030190	PPWS	WWAC	•	PBCR		•		
Tributary of Oak Creek at SE 1/4, Sec. 27, T21N, R3E, IM	621200030195_00		WWAC	•	PBCR		•		
Mule Creek	621200030230	PPWS	WWAC	•	PBCR		•		
Cow Creek downstream from Lake Perry	621200030270,	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Lake Perry and Watershed	621200030340, 621200030350	PPWS	WWAC	•	PBCR		•	SWS	
West Warren Creek	621200030390	PPWS	WWAC	•	PBCR		•		
Salt Creek	621200040010	PPWS	WWAC	•	PBCR		•		
Fairfax City Lake and Watershed	621200040030, 621200040040	PPWS	WWAC	•	PBCR		•	SWS	
Little Chief Creek	621200040070	PPWS	WWAC	•	PBCR		•		
Phillips Lake (Shidler) and Watershed	621200040170, 621200040180	PPWS	WWAC	•	PBCR		•	SWS	
Tributary of Salt Creek at SW 1/4, Sec. 34, T27N, R6E, IM	621200040270_00		HLAC	•	SBCR		•		
Elm Creek	621200040210	PPWS	WWAC	•	PBCR		•		
Doga Creek	621200020020	PPWS	WWAC	•	PBCR		•		
Greasy Creek including Sooner Lake	621200020110, 621200020130		WWAC	•	PBCR		•		
Red Rock Creek	621200050010		WWAC	•	PBCR		•		
Tributary of Red Rock Creek at NW 1/4, Sec. 7, T23N, R2E, IM (Marland Creek)	621200050070_00		HLAC	•	SBCR		•		
Salt Fork of the Arkansas River	621000010010, 621000020010, 621010010010, 621010010160, 621010010220	PPWS	WWAC	•	PBCR		•		
Great Salt Plains Reservoir	621010010010, 621010010050, 621010010060, 621010010100, 621010010020_00		WWAC		PBCR		•		NLW
Bois d'Arc Creek	621000030010	PPWS	WWAC	•	PBCR		•		
Spring Creek downstream from Sec. 3, T27N, R2E, IM	621000030070, 621000030090_00	EWS	WWAC	•	PBCR		•		
Spring Creek upstream from Sec. 10, T27N, R2E, IM to Sec. 27, T28N, R2E, IM	621000030110_00	EWS	HLAC	•	SBCR		•		
Spring Creek upstream from Sec. 34, T28N, R2E, IM	621000030110_10	EWS	WWAC	•	PBCR		•		
Chikaskia River	621100000010, 6211000000190	PPWS	WWAC	•	PBCR		•		
Duck Creek	621100000030	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Stink Creek	621100000050	PPWS	WWAC	•	PBCR		•		
Bitter Creek	621100000100	PPWS	WWAC	•	PBCR		•		
Doe Creek	621100	PPWS	WWAC	•	PBCR		•		
Bluff Creek	621100000230	PPWS	WWAC	•	PBCR		•		
Deer Creek	621000040010	PPWS	WWAC	•	PBCR		•		
Pond Creek	621000050010	PPWS	WWAC	•	PBCR		•		
Polecat Creek	621000050030	PPWS	WWAC	•	PBCR		•		
Bullwacker Creek	621000050080	EWS	HLAC	•	SBCR		•		
Osage Creek	621000050100	PPWS	WWAC	•	PBCR		•		
Crooked Creek	621000060010	PPWS	WWAC	•	PBCR		•		
Sand Creek	621000060030	PPWS	WWAC	•	PBCR		•		
Wagon Creek	621000020200	PPWS	WWAC	•	PBCR		•		
Tributary of Wagon Creek at Sec. 10, T25N, R9W, IM	621000020210_00		HLAC	•	SBCR		•		
Clay Creek	621010010090	EWS	WWAC	•	PBCR		•		
East Clay Creek	621010010110	PPWS	WWAC	•	PBCR		•		
West Clay Creek	621010010130	PPWS	WWAC	•	PBCR		•		
Sandy Creek	621010020010	PPWS	WWAC	•	PBCR		•		
Little Sandy Creek	621010020030	PPWS	WWAC	•	PBCR		•		
Medicine Lodge River	621010030010	PPWS	WWAC	•	PBCR		•		
Driftwood Creek	621010030030	PPWS	WWAC	•	PBCR		•		
Turkey Creek	621010010230	PPWS	WWAC	•	PBCR		•		
Greenleaf Creek	621010010250	PPWS	WWAC	•	PBCR		•		
Yellowstone Creek	621010010270	PPWS	WWAC	•	PBCR		•		
Hoover Ditch	621200		HLAC	•	SBCR		•		
Lake Ponca and Watershed	621200020190, 621200020200, 621200020210, 621200020220	PPWS	WWAC	•	PBCR		•	SWS	
Arkansas River upstream from Kaw Dam to Kansas State Line including Kaw Lake	62121000020, 62121000030, 62121000040	PPWS	WWAC	•	PBCR		•		
Beaver Creek	621210000050	PPWS	WWAC	•	PBCR		•		

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APPENDIX A.7. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 7, PANHANDLE REGION [REVOKED]

Designated Beneficial Uses of Surface Waters
Water Quality Management Basin 7, Panhandle Region

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
North Canadian River upstream from and including Canton Lake (Crystal Beach Lake) to Hwy 50	720500010010, 720500010020, 720500010140_00	PPWS	WWAC	•	PBCR		•		
Cheyenne Creek	720500010040	PPWS	WWAC	•	PBCR		•		
Deep Creek	720500010060	PPWS	WWAC	•	PBCR		•		
Bent Creek	720500010070	PPWS	WWAC	•	PBCR		•		
Camp Creek	720500010080	PPWS	WWAC	•	PBCR		•		
Kizer Creek	720500010090	PPWS	WWAC	•	PBCR		•		
Cottonwood Creek	720500010110	PPWS	WWAC	•	PBCR		•		
Persimmon Creek	720500010150	PPWS	WWAC	•	PBCR		•		
North Persimmon Creek	720500010170	PPWS	WWAC	•	PBCR		•		
South Persimmon Creek	720500010180	PPWS	WWAC	•	PBCR		•		
Indian Creek	720500010200	PPWS	WWAC	•	PBCR		•		
North Canadian (Beaver) River upstream from Hwy. 50 to Optima Lake	720500010140_10, 720500010140_20, 720500020010, 720500020140, 720500020290, 720500020450		WWAC	•	PBCR		•		
Wolf Creek	720500020030, 720500030010	PPWS	WWAC	•	PBCR		•	SWS	
Fort Supply Reservoir	720500030020	PPWS	WWAC	•	PBCR		•	SWS	NLW
Sixteenmile Creek	720500030050	PPWS	WWAC	•	PBCR		•	SWS	
Little Wolf Creek	720500030070	PPWS	WWAC	•	PBCR		•	SWS	
Buzzard Creek	720500030080	PPWS	WWAC	•	PBCR		•	SWS	
Twentyfive mile Creek	720500030090	PPWS	WWAC	•	PBCR		•	SWS	
Willow Creek	720500030100	PPWS	WWAC	•	PBCR		•	SWS	
Rock Creek	720500030110	PPWS	WWAC	•	PBCR		•	SWS	
Otter Creek	720500020050	PPWS	WWAC	•	PBCR		•		

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Clear Creek	720500020070	PPWS	WWAC	•	PBCR		•		
Kiowa Creek	720500020130	PPWS	WWAC	•	PBCR		•		
Camp Creek	720500020150	PPWS	WWAC	•	PBCR		•		
Sand Creek	720500020160	PPWS	WWAC	•	PBCR		•		
Coon Creek	720500020190	PPWS	WWAC	•	PBCR		•		
Mexico Creek	720500020210	PPWS	WWAC	•	PBCR		•		
Duck Pond Creek	720500020250	PPWS	WWAC	•	PBCR		•		
Camp Creek	720500020260	PPWS	WWAC	•	PBCR		•		
Clear Creek	720500020300	PPWS	WWAC	•	PBCR		•		
Cottonwood Creek	720500020310	PPWS	WWAC	•	PBCR		•		
South Fork of Clear Creek	720500020330	PPWS	WWAC	•	PBCR		•		
North Fork of Clear Creek	720500020340	PPWS	WWAC	•	PBCR		•		
Home Creek	720500020380	PPWS	WWAC	•	PBCR		•		
Sixmile Creek	720500020390	PPWS	WWAC	•	PBCR		•		
Willow Creek	720500020420	PPWS	WWAC	•	PBCR		•		
Sharp Creek	720500020430	PPWS	WWAC	•	PBCR		•		
Jackson Creek	720500020460	PPWS	WWAC	•	PBCR		•		
Bull Creek	720500020480	PPWS	WWAC	•	PBCR		•		
Fulton Creek	720500020510	PPWS	WWAC	•	PBCR		•		
Sand Creek	720500020520	PPWS	WWAC	•	PBCR		•		
Palo Duro Creek	720500020500	PPWS	WWAC	•	PBCR		•		
Chiquita Creek	720500020530	PPWS	WWAC	•	PBCR		•		
Hackberry Creek	720500020560	PPWS	WWAC	•	PBCR		•		
North Canadian (Beaver) River upstream from Optima Lake to Texas State Line	720510010020, 720510000100, 720510000190_00	PPWS	WWAC	•	PBCR		•		
Coldwater Creek	720510000040	PPWS	WWAC	•	PBCR		•		
Pony Creek	720510000090	PPWS	WWAC	•	PBCR		•		
Goff Creek	720510000110	PPWS	WWAC	•	PBCR		•		
Dry Sand Draw	720510000150								(4)

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Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tepee Creek	720510000200	PPWS	WWAC	•	PBCR		•		
Sand Creek	720510000220	PPWS	WWAC	•	PBCR		•		
North Canadian (Beaver) River upstream from Texas State Line to New Mexico State Line	720510000190 10, 720510000275	PPWS	WWAC	•	PBCR		•	HQW	
Cieneguilla Creek from mouth to New Mexico State Line	720510000240	PPWS	WWAC	•	PBCR		•		
Cimarron River upstream from the Colorado State Line to the New Mexico State Line	720900000010, 720900000180	PPWS	WWAC	•	PBCR		•	HQW	
South Picket House Draw	720900000050	PPWS	WWAC	•	PBCR		•		
Cold Springs Creek	720900000100	PPWS	WWAC	•	PBCR		•		
Gallinas Cañon	720900000130	PPWS	WWAC	•	PBCR		•		
Water Canyon	720900000190	PPWS	WWAC	•	PBCR		•		
South Carrizo Creek	720900000200	PPWS	WWAC	•	PBCR		•		
Lake Carl Etling	720900000240	PPWS	WWAC	•	PBCR		•		NLW
Cottonwood Canyon Creek	720900000210	PPWS	WWAC	•	PBCR		•		
Tesquite Creek	720900000260	PPWS	WWAC	•	PBCR		•		
North Carrizo Creek	720900000280	PPWS	WWAC	•	PBCR		•		
Carrizozo Creek	720900000320	PPWS	WWAC	•	PBCR		•		

**APPENDIX B. AREAS WITH WATERS OF RECREATIONAL AND/OR ECOLOGICAL SIGNIFICANCE
[REVOKED]**

The following tables list National and State parks, National forests, wildlife areas, wildlife management areas, wildlife refuges (Table 1) and areas which contain federally listed threatened or endangered species pursuant to the Federal Endangered Species Act (Table 2).

TABLE 1 - National and State Parks, National Forests, Wildlife Areas, Wildlife Management Areas, and Wildlife Refuges

PROTECTED AREA / WATER	WQM Segment
Adair State Park	121700
Alabaster Caverns State Park	620920
Altus-Lugert Wildlife Management Area	311510
Arrowhead State Park	220600
Atoka Wildlife Management Area	410400
Beaver River Wildlife Management Area	720500
Beaver State Park	720500
Beavers Bend Resort State Park	410200
Bernice State Park	121600
Black Kettle National Grasslands	310840
Black Kettle Wildlife Management Area	310840
Black Mesa State Park/Preserve	720900
Blue River Wildlife Management Area	310800
Boggy Depot State Park	410400
Boiling Springs State Park	720500
Boswell State Park	410400
Broken Bow Wildlife Management Area	410210
Brushy Lake State Park	220200
Candy Creek Wildlife Management Area	121300
Canton Wildlife Management Area	720500
Cherokee State Parks I, II, III	121600
Cherokee Landing State Park	121700
Cherokee Wildlife Management Area	120400
Chickasaw National Recreation Area	310800
Chickasaw Wildlife Management Area	310800
Chouteau Wildlife Management Area	121500
Cimarron Bluff Wildlife Management Area	620920
Cimarron Hills Wildlife Management Area	620920
Clayton Lake State Park	410300

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PROTECTED AREA / WATER	WQM Segment
Cookson Hills Wildlife Management Area	220200
Cooper Wildlife Management Area	720500
Copan Wildlife Management Area	121400
Cross Timbers Wildlife Management Area	311100
Crowder Lake State Park	310830
Deep Fork National Wildlife Refuge	520700
Deep Fork Wildlife Management Area	520700
Disney/Little Blue State Parks	121600
Dripping Springs State Park (Delaware)	121700
Dripping Springs State Park (Okmulgee)	520700
Drummond Flats Wildlife Management Area	620910
Ellis Co. Wildlife Management Area	520600
Eufaula Wildlife Management Area	520500 520700 220600
Five Civilized Tribes State Park	121600
Fobb Bottom Wildlife Management Area	311100
Fort Cobb State Park	310830
Fort Cobb Wildlife Management Area	310830
Fort Gibson Wildlife Management Area	121600
Fort Supply Wildlife Management Area	720500
Foss State Park	310830
Fountainhead State Park	520700
Gary Sherrer Wildlife Management Area	410310
Grady County Wildlife Management Area	310810
Great Plains State Park	621010
Great Salt Plains State Park	621010
Greenleaf State Park	120400
Gruber/Cherokee Wildlife Management Area (Camp) Gruber Training Center	120400
Hackberry Flat Wildlife Management Area	311310
Heavener Runestone State Park	220100
Heyburn Wildlife Management Area	120400
Hickory Creek Wildlife Management Area	311100
Hochatown State Park	410200
Honey Creek State Park	121600
Honobia Creek Wildlife Management Area	410210
Hugo Lake State Park	410300
Hugo Wildlife Management Area	410300
Hulah Wildlife Management Area	121400

PROTECTED AREA / WATER	WQM Segment
James M. Collins Wildlife Management Area	220600
John Dahl Wildlife Management Area	621200
Kaw Wildlife Management Area	621210
Keystone State Park	620900
Keystone Wildlife Management Area	620900
Lake Eucha State Park	121600
Lake Eufaula State Park	520700
Lake Murray State Park	311100
Lake Texoma State Park	310000
Lake Wister State Park	220100
Lexington Wildlife Management Area	520600
Little River National Wildlife Refuge	410200
Little River State Park	520810
Little Sahara State Park	620920
Love Valley Wildlife Management Area	311100
McCurtain Co. Wilderness Area	410210
McGee Creek State Park	410400
McGee Creek Wildlife Management Area	410400
Mountain Park Wildlife Management Area	311500
Natural Falls State Park	121700
North Grand Lake State Park	121600
Okmulgee State Park	520700
Okmulgee Wildlife Management Area	520700
Oologah Wildlife Management Area	121510
Optima National Wildlife Refuge	720510
Optima Wildlife Management Area	720510
Osage Hills State Park	121400
Osage-Western Wall Rock Creek Wildlife Management Area	121400
Ouachita National Forest	410210
	410310
	220100
Ouachita Wildlife Management Area	220100
Ozark Plateau Wildlife Management Area	220200
Ozark Plateau National Wildlife Refuge	220200
Packsaddle Wildlife Management Area	520620
Pine Creek Wildlife Management Area	410201
Pushmataha Wildlife Management Area	410300
Quartz Mountain State Resort Park	311510

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PROTECTED AREA / WATER	WQM Segment
Raymond Gary State Park	410300
Red Rock Canyon State Park	310830
Redbud Valley Conservancy Area	121300
Rita Blanca National Grasslands	720510
Robbers Cave State Park	220100
Robbers Cave Wildlife Management Area	220100
Robert S. Kerr State Wildlife Management Area	220200
Roman Nose State Park	620910
Sandy Sanders Wildlife Management Area	311800
Sequoyah National Wildlife Refuge	220200
Sequoyah State Park/Western Hills Resort Park	121600
Sheppard Point Recreational Area	120400
Shorb Wildlife Management Area	720500
Skiatook Wildlife Management Area	121300
Snowdale State Park	121600
Spavinaw State Park	121600
Spavinaw Hills Wildlife Management Area	121600
Sparrow Hawk Wildlife Management Area	121700
Spiro Mound State Park	220200
Stinchcomb Wildlife Refuge	520520
Stringtown Wildlife Management Area	410400
Sutton Wilderness Area	520810
Talimena State Park	410310
Tenkiller State Park	121700
Tenkiller Wildlife Management Area	121700
Texoma/Washita Arm Wildlife Management Area	310800
Three Rivers Wildlife Management Area	410210
Tishomingo National Wildlife Refuge	310800
Tishomingo Wildlife Management Unit	310800
Turkey Creek Recreational Area	410210
Wahshashe State Park	121400
Walnut Creek State Park	621200
Washita National Wildlife Refuge	310840
Waurika Wildlife Management Area	311210
Webbers Falls Wildlife Management Area	120400
Wichita Mountains National Wildlife Refuge	311310 311500
Yourman Wildlife Management Area	220600

Table 2 - Areas Which contain federally listed Threatened (T) or Endangered (E) Species pursuant to the Federal Endangered Species Act (ESA)

PROTECTED AREA / WATER	WQM SEGMENT	FEDERALLY-LISTED SPECIES under the ESA
Black Fork Creek in Pushmataha County from its junction with Little River, upstream to Oklahoma Highway 144 crossing	410210	Leopard Darter (T)
Canadian River main channel from the state line in Ellis and Roger Mills Counties downstream to the Indian Nation Turnpike bridge west of Eufaula Reservoir	220600 520600 520610 520620	Arkansas River Shiner (T), including critical habitat
Cimarron River, main channel west of I-35 crossing in Logan County, upstream to the state line and including the portion in northern Beaver and Harper counties	620910 620920	Arkansas River Shiner (T), including critical habitat;
East Fork of Glover River, main channel in McCurtain County from its junction with the West Fork of Glover River, upstream to 4 air miles north-northeast of the community of Bethel in Section 5, T 2 S, R 24 E1M	410210	Leopard Darter (T), including critical habitat
Glover River, main channel in McCurtain County from Oklahoma Highway 3 crossing, upstream to the junction of the East Fork and West Fork of Glover River	410210	Leopard Darter (T), including critical habitat
Kiamichi River above Hugo Reservoir	410300	Scaleshell Mussel (E), Ouachita Rock Pocketbook mussel (E)
Little River, main channel in Pushmataha County from the mouth of Cloudy Creek, upstream to the Pushmataha County Line	410210	Leopard Darter (T), including critical habitat; Ouachita Rock Pocketbook mussel (E); Rabbitsfoot mussel (T)
Little River below Pine Creek Reservoir	410200 410210	Ouachita Rock Pocketbook mussel (E); Rabbitsfoot mussel (T), including critical habitat; Winged Mapleleaf mussel (E)
Mountain Fork Creek (River), main channel in McCurtain County from mouth of Boktuklo Creek 6 air miles south-southwest of Smithville, upstream to the Oklahoma-Arkansas State line	410210	Leopard Darter (T), including critical habitat; Scaleshell Mussel (E)
Neosho (Grand) River above Miami	121600	Neosho Madtom (T), Neosho Mucket mussel (E)

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PROTECTED AREA / WATER	WQM SEGMENT	FEDERALLY-LISTED SPECIES under the ESA
Salt Plains National Wildlife Refuge	621010	Whooping Crane (E), including critical habitat
West Fork of Glover River, main channel in McCurtain County from its junction with the East Fork of Glover River, upstream to the community of Battiest	410210	Leopard Darter (T), including critical habitat
Verdigris River below Oologah Reservoir, downstream to Highway 266, Rogers County	121500	Rabbitsfoot mussel (T), including critical habitat
Illinois River, from Oklahoma-Arkansas State line, downstream to Barren Fork	121700	Neosho Mucket mussel (E), including critical habitat; Rabbitsfoot mussel (T)
Elk River, from Oklahoma-Arkansas State line, west to Buffalo Creek	121600	Neosho Mucket mussel (E), including critical habitat

APPENDIX D. CLASSIFICATIONS FOR GROUNDWATER IN OKLAHOMA [REVOKED]

(a) **Vulnerability levels of hydrogeologic basins.** Identification of vulnerability levels of hydrogeologic basins shall be as set forth in Table 1 of this Appendix. The boundaries of such hydrogeologic basins shall be as defined in the Oklahoma Water Resources Board publication number 99-1 entitled "Statewide Groundwater Vulnerability Map of Oklahoma".

(b) **Designations of "nutrient-vulnerable groundwater".** Additional designations of certain hydrogeologic basins of groundwater as "nutrient-vulnerable groundwater" shall be as set forth in Table 2 of this Appendix. The boundaries of such "nutrient-vulnerable groundwater" hydrogeologic basins shall be as defined in the Oklahoma Water Resources Board publication number 99-1 entitled "Statewide Groundwater Vulnerability Map of Oklahoma".

Table 1. Identification of Vulnerability Levels of Hydrogeologic Basins

NAME OF HYDROGEOLOGIC BASIN		VULNERABILITY LEVEL
Alluvium and Terrace Deposits	of the North Fork of the Red River	Very High
	of the Salt Fork of the Arkansas River	Very High
	of the Red River	Very High
	of the Washita River	Very High
	Enid Isolated Terrace	Very High
	Canadian River	Very High
	of the Arkansas River	Very High
	of the Cimarron River	Very High
	of the North Canadian River	Very High
	Gerty Sand	High
	all other alluvium and terrace deposits	High-Very High
Bedrock	Boone	High
	Arbuckle-Simpson	High
	Blaine	High
	Elk City	High
	Cedar Hills	Moderate
	Antlers	Moderate
	Arbuckle-Timbered Hills	Moderate
	Arkansas Novaculite	Moderate
	Rush Springs	Moderate
	Vamoosa-Ada	Moderate
	Central Oklahoma	Moderate
	Ouachita Mountains	Low
	Ogallala	Low
	Cretaceous	Low
	Permian	Low
	Pennsylvanian	Low
	Mesozoic	Very Low
Tishomingo Granite	Very Low	
Washita Igneous	Very Low	

The vulnerability level may vary within each hydrogeologic basin, depending on site-specific hydrogeologic factors.

Table 2. Designations of Nutrient-Vulnerable Groundwater

NAME OF HYDROGEOLOGIC BASIN		VULNERABILITY LEVEL
Alluvium and Terrace Deposits	of the North Fork of the Red River	Very High
	of the Salt Fork of the Arkansas River	Very High
	of the Red River	Very High
	of the Washita River	Very High
	Enid Isolated Terrace	Very High
	Canadian River	Very High
	of the Arkansas River	Very High
	of the Cimarron River	Very High
	of the North Canadian River	Very High
	Gerty Sand	High
	all other alluvium and terrace deposits	High-Very High
Bedrock	Boone	High
	Arbuckle-Simpson	High
	Blaine	High
	Elk City	High

APPENDIX E. REQUIREMENTS FOR DEVELOPMENT OF SITE SPECIFIC CRITERIA FOR CERTAIN PARAMETERS [REVOKED]

A. General Applicability to Metals

Numerical criteria for metals to protect aquatic life are referenced in OAC 785:45-5-12(f)(6)(G) and Table 2 of Appendix G of this Chapter. For permitting purposes, such criteria for total recoverable Arsenic, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Silver, and Zinc may be translated into dissolved metals criteria using the conversion factors referenced in OAC 785:45-5-12(f)(6)(H) and Table 3 of Appendix G. Criteria for parameters other than metals are also located in Table 2 of Appendix G.

An additional alternative which may be utilized for permitting purposes is to determine site-specific criteria from either the total recoverable or the dissolved criteria. However, federal regulations found at 40 CFR 122.45(C) require that NPDES permit limits must express metals concentrations as total recoverable, not dissolved. Therefore, if dissolved criteria for metals are implemented, they must be translated to site-specific total metals criteria to be used in the issuance of permit limits consistent with OAC 785:46.

The permitting authority may issue a total recoverable permit limit if statewide total recoverable criteria are appropriate in the permitting authority's view, and/or satisfactory in the permittee's view. If permit limits obtained using total recoverable criteria are unsatisfactory to the permittee, the permittee may attempt to obtain different permit limits by developing site-specific criteria in accordance with the provisions of this Appendix.

Implementation of site-specific criteria may reduce the margin of safety afforded by implementation of criteria per 785:45-5-12(f)(6)(G) and Table 2 of Appendix G. Therefore, it is important that background concentration (which reduces the assimilation capacity of receiving water) be accounted for when site-specific criteria are implemented. Determination of background concentration requires a minimum of twelve samples collected over twelve months.

In order to develop permissible site-specific criteria, this Appendix must be followed to the satisfaction of the permitting authority and the OWRB. A work plan explaining sampling and analysis procedures and quality assurance/quality control must be approved by the OWRB prior to commencing the site-specific study. Upon completion, results must be submitted to OWRB and the permitting authority. Additional technical guidance is available in OWRB technical report 2001-2, "Guidance for Developing Site Specific Criteria for Metals and through Appendices J and L of the "Water Quality Standards Handbook", EPA publication no. 823-B-94-005a (August 1995). Permittees are strongly encouraged to evaluate both the discharge and receiving water using clean sampling techniques.

Upon OWRB approval, site-specific criteria shall be promulgated as part of this Appendix following the next subsequent permanent rulemaking to amend OAC 785:45. These site-specific criteria supersede other numeric criteria promulgated elsewhere in this chapter if it is shown to the satisfaction of the Board that properties of the discharge or the circumstances surrounding the

development of the site-specific criteria have not significantly changed since the promulgation of those site-specific criteria. Such criteria and the conditions around which they were derived, including but not limited to local environmental factors and effluent characteristics, shall be re-evaluated by the permit holder with each subsequent discharge permit renewal application or major modification request to determine if any significant changes have affected the propriety of the site-specific criteria.

B. Site-Specific Criteria Applicability for NPDES Permit Activities

Oklahoma's site-specific criteria, except as otherwise specified, apply where the maximum concentration on the chronic regulatory mixing zone boundary occurs under critical conditions for receiving streams where $Q^* > 0.1823$ and on the acute regulatory mixing zone boundary for streams where $Q^* \leq 0.1823$. Critical conditions include regulatory effluent and receiving stream flows. OAC 785:46-5-2(C) requires that effluent flow, Q_e , be the highest monthly averaged discharge if sufficient data is available or the design flow otherwise. When chronic criteria implementation is appropriate, OAC 785:45-5-4 requires that the receiving stream flow, Q_u , be the larger of $7Q2$ or 1 cfs. One cfs shall be used if the $7Q2$ cannot be determined. The discharger shall be required to determine the $7Q2$ per OAC 785:46-1-6 prior to the next permit cycle at which time the permit limits may be revised using the newly calculated Q_u (785:46-1-6(d)).

The maximum concentration on the mixing zone boundary may be simulated by mixing effluent and receiving water. Percent effluent in receiving water, PE, depends upon the dilution capacity of the stream and shall not exceed 100%. Dilution capacity, for streams, is represented as $Q^* = Q_e / Q_u$.

The following formulas shall be used to determine PE for receiving streams:

For streams with large dilution capacities ($Q^* < \text{or equal to } 0.1823$), PE equals $(194Q^*)$ divided by $(1 + Q^*)$. PE for $Q^* < \text{or equal to } 0.1823$ shall not be less than 10%.

For streams with intermediate dilution capacities ($0.1823 < Q^* < 0.3333$), PE equals (100) divided by $(6.17 - 15.51Q^*)$.

For streams with small dilution capacities ($Q^* > \text{or equal to } 0.3333$), PE equals 100%.

Site-specific criteria in Oklahoma lakes are also based on the maximum concentration on the mixing zone boundary. The following formulas shall be used to determine PE for lakes:

PE equals $4.96D$, $D > \text{or equal to } 3$ feet where D is pipe diameter.

PE equals $23.8\sqrt{W}$, $W > \text{or equal to } 3$ feet where W is canal width.

As with streams, PE is always less than or equal to 100% for lakes.

If PE is calculated to be less than 10%, then effluent water effect ratios shall use PE = 10%.

“Waterbody-specific” criteria, such as segment-specific metals, may not have limitations on its applicability. Rather, it may be used a substitute for other applicable statewide criteria for the entire waterbody.

Site-specific criteria are dependent, in part, on specific properties of the effluent that influence the bioavailability and toxicity of metals. Substantial changes in the quality or quantity of the effluent may affect the resulting site-specific criterion. Therefore, if the existing permit contains requirements for toxicity reduction evaluations (TREs) or pollution prevention efforts, a site-specific criterion should not be developed until after these efforts have been completed. A new site-specific criteria study would likely have to be performed after those requirements are met because the characteristics of the effluent may significantly change (e.g., hardness, pH, TDS). In cases where the quality or quantity of an effluent changes, the burden rests on the permittee to demonstrate that the effluent characteristics are not significantly altered to a degree that would affect the validity of the outcomes of the original site-specific criteria study. A site-specific criterion may need to be re-evaluated periodically to reflect changes in the system that may alter the characteristics of either the receiving water or effluent.

C. Site-Specific Criteria Applicability for Activities Not Related to NPDES Permits

In certain circumstances, statewide numeric criteria for parameters other than metals may be replaced by segment-specific criteria for specific parameters applicable to just one waterbody. These criteria will be applicable to any point in the waterbody. These criteria must be shown to be protective of native aquatic life through procedures similar to those used in the WER procedures detailed here and in OWRB technical report 2001-2, “Guidance for Developing Site Specific Criteria for Metals”.

Development of segment-specific criteria for minerals should follow the guidance contained in OWRB technical report TRWQ2001-2 (“Guidance For Developing Site-Specific Minerals Criteria”). Certain cases may require additional data or justification, but this document should provide sufficient basic guidance for the development of alternative criteria. Development of site-specific or segment-specific criteria for parameters for other than metals or minerals and lacking specific guidance documents will require extensive coordination with technical staff from OWRB and the permitting authority.

D. Sampling Procedures

General guidance for field sampling can be found in Appendix B of OWRB technical guidance document 2001-2, “Guidance for Developing Site Specific Criteria for Metals”. The permittee shall collect both receiving water and effluent, and mix them together to obtain PE. Ambient water collections shall be representative of low stream flow events and collected at a location unaffected by the discharge being permitted. Twenty-four (24) hour composite effluent samples representative of normal operation shall be collected at the outfall such that any periodic toxic discharges are captured and average effluent conditions are represented. Outfalls may be combined proportional to flow if in close proximity. Clean sampling techniques shall be used where possible and samples shall be analyzed by an Oklahoma certified laboratory utilizing generally accepted methods. Dilution water must be made in accordance with EPA's acute

biomonitoring manual entitled "Methods for Measuring the Acute Toxicity of Effluents to Aquatic Organisms", EPA publication no. 600/4-90-027 (1991). The pH, hardness, conductivity and alkalinity must be similar to that of the receiving water.

Site-specific criteria development for lakes should employ sampling procedures detailed in OWRB guidance document for BUMP Standard Operating Procedures. Deviation from these prescribed techniques must be justified to OWRB and the permitting authority prior to initiation of the sampling. Excursions from these techniques that occur as a result of on-site conditions must be reported to OWRB and the permitting authority as soon as possible. Implications of these deviations on the data quality and their appropriateness to the outcomes of the study must be reviewed and agreed upon by OWRB and the permitting authority prior to their use in the derivation of any criteria.

For systems lacking NPDES permitted dischargers, sampling procedures for determining background concentration detailed in the OWRB technical guidance 2001-2 shall be sufficient for characterizing local conditions.

E. Site-Specific Criteria Development Options for Metals:

Prior to the initiation of any work toward development of a site-specific criterion, interested parties must coordinate with OWRB technical staff. Such coordination will require, at a minimum, a workplan addressing project goals, collection and testing methods, quality assurance measures, and output schedules. This workplan will need to be reviewed and approved by OWRB and the permitting authority prior to initiation of any work.

Three options are available if the permittee decides to develop site-specific metals criteria for permitting purposes instead of utilizing the total recoverable criteria referenced in 785:45-5-12(f)(6)(G) and Table 2 of Appendix G.

1. Option 1: Water Effects Ratio (WER)

The permittee may obtain a site-specific water effects ratio (WER) to translate a state wide total criterion to a site-specific total criterion if the existing permit does not contain requirements for toxicity reduction evaluations or implementation of pollution prevention efforts. Toxicity tests using both laboratory dilution water and PE water must be performed. PE water is obtained by first determining the amount of water required for the toxicity test (e.g. 1L). Since $PE = 100V_e / (V_e + V_r)$, where V_e and V_r are volumes of effluent and receiving water required for the toxicity test, respectively, then $V_e = PE/100$ (L). If $PE = 25\%$, then $V_e = 0.25L$. Given that $V_e + V_r = 1$ (L) in this example, $V_r = 1 - PE/100$, or $0.75L$.

Toxicity tests using two different species are required. Acute 48-hour static renewal definitive toxicity tests shall be performed by the permittee in accordance with the EPA guidance for acute testing identified above. LC_{50} tests shall be used to determine WER's for both acute and chronic criteria. Toxicity tests require adding metal to both PE and dilution water. It shall not be acceptable to estimate metal concentrations by measuring the amount

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added. Total recoverable concentrations must be used to obtain LC50's for both test species for PE and laboratory water in Option 1.

Multiple WER's must be performed. At a minimum, three tests in three different seasons must be performed for two test species. WER is computed as $LC_{50\text{dilution}}/LC_{50\text{PE}}$. A geometric mean of the WER's is the final water effect ratio, FWER. A minimum of four WER's must be used in the computation of FWER. An explanation of any WER's obtained but not used in computation of FWER must be provided to the permitting authority and OWRB. The total criterion specified in Table 2 of Appendix G is divided by FWER to obtain a site-specific total criterion. Background concentration must be determined to use with the site-specific criterion to develop permit limits.

2. Option 2: Dissolved to Total Fraction

Dissolved and total recoverable concentrations must be obtained to determine a dissolved to total fraction. Samples must be taken from the effluent, receiving water and PE water. The dissolved to total fraction must be successfully computed a minimum of ten times.

The dissolved to total fraction is defined as $f_i = C_{Di}/C_{Ti}$, where C_{Di} is the dissolved concentration in the i th PE sample, and C_{Ti} is the total recoverable concentration. The dissolved fraction for the site shall be determined as the geometric mean for the n samples.

$$\therefore f = \exp \left[\sum_{i=1}^n [\ln(f_i)]/n \right]$$

To develop a site-specific criterion from the dissolved fraction alone, divide the dissolved criterion determined from Table 3 of Appendix G by f . The result is a site-specific total recoverable criterion.

3. Option 3: Combining f and FWER

The most definitive method of developing a site-specific criterion is to modify a dissolved criterion to account for both the fraction of the concentration biologically available and the difference between the toxicity of the metal in the laboratory dilution water and in PE water. In order to perform option 3, WER's must be obtained using dissolved concentrations. This accounts for differences between the toxicity of the dissolved metal in laboratory dilution water and dissolved metal in PE water.

A translator, T , is obtained as the product of f and dissolved FWER. T is divided into the dissolved criterion determined from Table 3 of Appendix G to obtain a site-specific total recoverable criterion.

F. Site-Specific Criteria for Metals Which Have Been Developed for Particular Waterbodies

Subsequent to the initial promulgation of this Appendix, there have been cases in which interested persons have developed site-specific criteria for particular discharges or other circumstances in accordance with this Appendix. Such site-specific criteria are set forth below. These site-specific criteria shall be interpreted according to the following:

- C_{ast} = acute statewide total criterion
- C_{cst} = chronic statewide total criterion
- C_{asd} = acute statewide dissolved criterion
- C_{csd} = chronic statewide dissolved criterion
- S_{ast} = acute site-specific total criterion
- S_{cst} = chronic site-specific total criterion
- $FWER_t$ = final total water effects ratio
- $FWER_d$ = final dissolved water effect ratio
- f = dissolved to total fraction

Acute site-specific criteria are appropriate for large streams and chronic site-specific criteria are appropriate for small and medium size streams.

Options Allowed In Appendix E:

Option 1

$$S_{ast} = C_{ast}/FWER_t$$

$$S_{cst} = C_{cst}/FWER_t$$

Option 2

$$S_{ast} = C_{asd}/f$$

$$S_{cst} = C_{csd}/f$$

Option 3

$$S_{ast} = C_{asd}/(f \times FWER_d)$$

$$S_{cst} = C_{csd}/(f \times FWER_d)$$

1. City of Blackwell Discharge to Chikaskia River: Cadmium

A site-specific criteria modification study has been satisfactorily completed for cadmium for the City of Blackwell.

$$FWER_t = 0.0989$$

$$FWER_d = 0.2905$$

$$f = 0.18$$

The results of the study allow any of the four following criteria to be utilized.

$$C_{cst} = 0.51 \mu\text{g/L} \qquad \text{Statewide criterion}$$

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$S_{cst} = 5.1 \mu\text{g/L}$	Option 1
$S_{cst} = 2.45 \mu\text{g/L}$	Option 2
$S_{cst} = 8.45 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

2. AES Shady Point Discharge to Poteau River: Copper

A site-specific criteria modification study has been satisfactorily completed for copper for AES Shady Point.

$$\begin{aligned} \text{FWER}_t &= 0.0876 \\ \text{FWER}_d &= 0.1306 \\ f &= 0.5936 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 9.50 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 65 \mu\text{g/L}$	Option 1
$S_{cst} = 15.3 \mu\text{g/L}$	Option 2
$S_{cst} = 74 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

3. City of Idabel Discharge to Mud Creek at SW 1/4 of SW 1/4 of SW 1/4 of Section 15, T 8 S, R 24 E1M, McCurtain County, Oklahoma (Latitude 33° 51' 14.621" North, Longitude 94° 47' 22.200" West)

A. Lead

A site-specific criteria modification study has been satisfactorily completed for lead for the City of Idabel.

$$\begin{aligned} \text{FWER}_t &= 2.5912 \\ \text{FWER}_d &= 0.2914 \\ f &= 0.7157 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 2.3492 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 0.9066 \mu\text{g/L}$	Option 1
$S_{cst} = 2.7104 \mu\text{g/L}$	Option 2
$S_{cst} = 9.3036 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

B. Nickel

A site-specific criteria modification study has been satisfactorily completed for nickel for the City of Idabel.

$$\begin{aligned} \text{FWER}_t &= 1.1244 \\ \text{FWER}_d &= 0.9735 \\ f &= 0.5798 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{\text{cst}} = 46.82 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 41.6 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 80.50 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 82.69 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

C. Zinc

A site-specific criteria modification study has been satisfactorily completed for zinc for the City of Idabel.

$$\begin{aligned} \text{FWER}_t &= 0.6714 \\ \text{FWER}_d &= 0.7178 \\ f &= 0.6213 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized.

$C_{\text{ast}} = 107.52 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 160.14 \mu\text{g/L}$	Option 1
$S_{\text{ast}} = 169.24 \mu\text{g/L}$	Option 2
$S_{\text{ast}} = 235.78 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

D. Copper

A site-specific criteria modification study has been satisfactorily completed for copper for the City of Idabel discharge to Mud Creek. All criteria are calculated at an in-stream hardness of 32.00 mg/L.

$$\begin{aligned} \text{FWER}_t &= 0.1409 \\ \text{FWER}_d &= 0.1541 \end{aligned}$$

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$$f = 0.7527$$

The results of the study allow any of the four following criteria to be utilized.

$C_{cst} = 4.83 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 31.34 \mu\text{g/L}$	Option 1
$S_{cst} = 6.16 \mu\text{g/L}$	Option 2
$S_{cst} = 39.97 \mu\text{g/L}$	Option 3
$C_{ast} = 6.56 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 42.56 \mu\text{g/L}$	Option 1
$S_{ast} = 8.37 \mu\text{g/L}$	Option 2
$S_{ast} = 54.28 \mu\text{g/L}$	Option 3

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

4. Oklahoma Gas & Electric Mustang Generating Station Discharge to North Canadian River at NE 1/4 of NE 1/4 of SE 1/4 of Section 36, T 12 N, R 5 WIM, Canadian County, Oklahoma: Copper

A site-specific criteria modification study has been satisfactorily completed for copper for the Oklahoma Gas & Electric Mustang Generating Station discharge to the North Canadian River.

$$\begin{aligned} \text{FWER}_t &= 0.053 \\ \text{FWER}_d &= 0.224 \\ f &= 0.368 (0.37) \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 334 mg/L.

$C_{cst} = 35.9 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 677 \mu\text{g/L}$	Option 1
$S_{cst} = 94.0 \mu\text{g/L}$	Option 2
$S_{cst} = 416.0 \mu\text{g/L}$	Option 3 (Recommended in OG&E study)
$C_{ast} = 59.8 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 1128 \mu\text{g/L}$	Option 1
$S_{ast} = 156.0 \mu\text{g/L}$	Option 2
$S_{ast} = 692.0 \mu\text{g/L}$	Option 3 (Recommended in OG&E study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

5. City of Poteau Discharge to Poteau River at SE 1/4 of NW 1/4 of Section 30, T 7 N, R 26 EIM, LeFlore County, Oklahoma

A. Copper

A site-specific criteria modification study has been satisfactorily completed for copper for the City of Poteau discharge to the Poteau River.

$$\begin{aligned} \text{FWER}_t &= 0.1850 \\ \text{FWER}_d &= 0.1765 \\ f &= 0.2969 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{\text{cst}} = 4.02 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 21.73 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 13.0 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 73.66 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)
$C_{\text{ast}} = 5.35 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 28.92 \mu\text{g/L}$	Option 1
$S_{\text{ast}} = 17.31 \mu\text{g/L}$	Option 2
$S_{\text{ast}} = 98.09 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

B. Zinc

A site-specific criteria modification study has been satisfactorily completed for zinc for the City of Poteau discharge to the Poteau River.

$$\begin{aligned} \text{FWER}_t &= 0.4040 \\ \text{FWER}_d &= 0.4276 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L. However, option 1 was deemed sufficient to provide relief from a zinc limit in the discharge permit.

$C_{\text{ast}} = 37.95 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 93.95 \mu\text{g/L}$	Option 1 (Recommended in Poteau study)

C. Cadmium

A site-specific criteria modification study has been satisfactorily completed for cadmium for the City of Poteau discharge to the Poteau River. **[Effective as state water quality criteria only; not effective for Clean Water Act programs.]**

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$$\text{FWER}_t = 0.2427$$
$$\text{FWER}_d = 0.2400$$

The results of the study allow any of the following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{\text{cst}} = 0.39 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 1.61 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 0.38 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 1.58 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

$C_{\text{ast}} = 7.30 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 30.08 \mu\text{g/L}$	Option 1
$S_{\text{ast}} = 7.31 \mu\text{g/L}$	Option 2
$S_{\text{ast}} = 30.46 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

D. Silver

A site-specific criteria modification study has been satisfactorily completed for silver for the City of Poteau discharge to the Poteau River. **[Effective as state water quality criteria only; not effective for Clean Water Act programs.]**

$$\text{FWER}_t = 0.2075$$
$$\text{FWER}_d = 0.2908$$

The results of the study allow any of the following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

Statewide chronic criteria are available for this parameter.

$C_{\text{ast}} = 0.39 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 1.88 \mu\text{g/L}$	Option 1
$S_{\text{ast}} = 0.94 \mu\text{g/L}$	Option 2
$S_{\text{ast}} = 3.24 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

E. Lead

A site-specific criteria modification study has been satisfactorily completed for lead for the City of Poteau discharge to the Poteau River. **[Effective as state water quality criteria only; not effective for Clean Water Act programs.]**

$$\text{FWER}_t = 0.1782$$

$$FWER_d = 0.1828$$

The results of the study allow any of the following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{cst} = 0.57 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 3.20 \mu\text{g/L}$	Option 1
$S_{cst} = 0.59 \mu\text{g/L}$	Option 2
$S_{cst} = 3.25 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

$C_{ast} = 14.52 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 81.48 \mu\text{g/L}$	Option 1
$S_{ast} = 15.15 \mu\text{g/L}$	Option 2
$S_{ast} = 82.88 \mu\text{g/L}$	Option 3 (Recommended in Poteau study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

6. City of Heavener Discharge to Morris Creek at SE 1/4 of NW 1/4 of Section 30, T 7 N, R 26 EIM, LeFlore County, Oklahoma: Copper

A site-specific criteria modification study has been satisfactorily completed for copper for the City of Heavener discharge to Morris Creek.

$$FWER_t = 0.1294$$

$$FWER_d = 0.1216$$

$$f = 0.8595$$

The results of the study allow any of the four following criteria to be utilized. All criteria are calculated at an in-stream hardness of 25.75 mg/L.

$C_{cst} = 4.02 \mu\text{g/L}$	Statewide criterion
$S_{cst} = 31.07 \mu\text{g/L}$	Option 1
$S_{cst} = 4.68 \mu\text{g/L}$	Option 2
$S_{cst} = 38.50 \mu\text{g/L}$	Option 3 (Recommended in Morris Ck. study)

$C_{ast} = 5.35 \mu\text{g/L}$	Statewide criterion
$S_{ast} = 41.34 \mu\text{g/L}$	Option 1
$S_{ast} = 6.22 \mu\text{g/L}$	Option 2
$S_{ast} = 51.19 \mu\text{g/L}$	Option 3 (Recommended in Morris Ck. study)

The discharger may choose the above criterion it wishes to use for discharge permit calculations.

7. City of Broken Bow to Unnamed Tributary of Yanubbe Creek at SE 1/4 of SE 1/4 of SE 1/4 of Section 18, T 6 S, R 24 EIM, McCurtain County, Oklahoma (Latitude 34° 01' 37.165" North, Longitude 94° 43' 22.270" West)

A. Copper

A site-specific criteria modification study has been satisfactorily completed for copper for the City of Broken Bow Public Works Authority discharge to Unnamed Tributary of Yanubbe Creek. All criteria are calculated at an in-stream hardness of 34.9 mg/L.

$$\begin{aligned} \text{FWER}_t &= 0.0995 \\ \text{FWER}_d &= 0.1253 \\ f &= 0.6544 \end{aligned}$$

The results of the study allow any of the four following criteria to be utilized

$C_{\text{cst}} = 5.20 \mu\text{g/L}$	Statewide criterion
$S_{\text{cst}} = 52.28 \mu\text{g/L}$	Option 1
$S_{\text{cst}} = 7.628 \mu\text{g/L}$	Option 2
$S_{\text{cst}} = 60.87 \mu\text{g/L}$	Option 3

$C_{\text{ast}} = 7.12 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 71.58 \mu\text{g/L}$	Option 1
$S_{\text{ast}} = 10.45 \mu\text{g/L}$	Option 2
$S_{\text{ast}} = 83.34 \mu\text{g/L}$	Option 3

B. Zinc

A site-specific criteria modification study has been satisfactorily completed for zinc for the City of Broken Bow Public Works Authority discharge to Unnamed Tributary of Yanubbe Creek. All criteria are calculated at an in-stream hardness of 34.9 mg/L.

$$\begin{aligned} \text{FWER}_t &= 0.6312 \\ \text{FWER}_d &= 0.7502 \\ f &= 0.7343 \end{aligned}$$

$C_{\text{ast}} = 49.11 \mu\text{g/L}$	Statewide criterion
$S_{\text{ast}} = 77.77 \mu\text{g/L}$	Option 1
$S_{\text{ast}} = 65.32 \mu\text{g/L}$	Option 2
$S_{\text{ast}} = 86.87 \mu\text{g/L}$	Option 3

G. Site-Specific Criteria for Parameters Other Than Metals

The purpose of site-specific criteria investigations may not necessarily be intended to prevent toxicity as a result of the substance of concern. Various substances may produce various types of adverse impacts in the environment. For example, minerals may produce a toxic response due to ionic imbalance while nutrients may produce various impacts depending upon algal response to

various conditions within the system. Examples of such systems include those where there may be nitrogen, phosphorus or light limitations. Resulting site-specific criteria may involve seasonal, spatial or other limitations as well as specific numeric limitations.

“Waterbody-specific” criteria, such as certain nutrients in waters designated SWS or SWS-R, or segment-specific metals, may not have limitations on its applicability. Rather, it may be used a substitute for other applicable statewide criteria.

Development of site-specific criteria for minerals should follow the guidance contained in OWRB technical report TRWQ2001-2 (“Guidance For Developing Site-Specific Minerals Criteria”). Certain cases may require additional data or justification, but this document should provide sufficient basic guidance for the development of site-specific criteria.

Development of site-specific criteria for parameters other than metals or minerals and lacking specific guidance documents will require extensive coordination with technical staff from OWRB and the permitting authority. Such coordination will require, at a minimum, a workplan addressing project goals, collection and testing methods, quality assurance measures and output schedules. This workplan will need to be reviewed and approved by OWRB and the permitting authority prior to initiation of any work.

Those instances in which site-specific phosphorus or nitrogen criteria may be promulgated pursuant to OAC 785:45-5-10(7) titled “Chlorophyll-a numerical criterion for certain waters” will be limited to those waterbodies that have been shown to be impaired by nutrients and a numeric nutrient criterion has been determined to be the best way to affect reductions in the target nutrient. Such a demonstration will follow procedures outlined in OAC 785:46-15-10. Criteria may be derived from the result of “Clean Lake Studies” or other site-specific investigations performed by an agency of competent authority or a designee.

In cases where toxicity may be a concern due to the parameter in question, toxicity testing using two different species is required. Such testing should comply with the procedures detailed in OAC 252:690 and guidance found in OWRB technical report TRWQ2002-1 (*Guidance Document for the Development of Site-Specific Water Quality Criteria for Metals*). Exceptions to or deviations from these protocols should be brought to the attention of the OWRB and permitting authority prior to completion of the testing and thoroughly detailed in the final report.

H. Site-Specific Criteria for Nutrients Which Have Been Developed for Particular Waterbodies
(reserved)

I. Site-Specific Criteria for Other Parameters Which Have Been Developed for Particular Waterbodies

- 1. American Electric Power discharge to a tributary of Nine Mile Creek and Nine Mile Creek upstream of the confluence with East Cache Creek at Section 4, T 1 S, R 11 WIM, Comanche County.**

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A site-specific mineral study has been satisfactorily completed on these waterbodies indicating that the actual agricultural uses of the waterbody are capable of tolerating more mineral input than currently allowed by the default values in Appendix F for segment 311300. The following criteria are allowed for the protection of the actual agricultural usage of the water.

	Total Dissolved Solids	Sulfate	Chloride
Yearly mean standard (mg/L)	1680	338	499
Sample standard (mg/L)	2100	423	624

APPENDIX F. STATISTICAL VALUES OF THE HISTORICAL DATA FOR MINERAL CONSTITUENTS OF WATER QUALITY (BEGINNING OCTOBER 1976 ENDING SEPTEMBER 1983, EXCEPT AS INDICATED) [REVOKED]

The numbers in the "Segment" column on the far left of this Appendix refer to "WQM Segment" numbers which are described in Appendix A of this Chapter. Wherever a segment appears that is identified with an eight-digit segment number, such segment is a sub-watershed of the preceding six-digit WQM Segment. Details of the locations of these sub-watersheds are available from the Department of Environmental Quality 2002 Integrated Water Quality Assessment Report on file at the office of the Oklahoma Water Resources Board. The numbers in the "Monitoring Station" column refer to the abbreviated numbers of the monitoring stations administered by the U.S. Geological Survey ("USGS"); to change an abbreviated number to the complete number used by the USGS, add the prefix digits "07" and add suffix digits of zeroes in order to produce an eight-digit number. In some cases, "Ambient Trend Monitoring" ("ATM") stations were used from streams where no USGS gauge was located. Numbering of these ATM stations complied with the USGS numbering format. The ATM station data have been considered for all stations, including USGS gauges, where available and have been incorporated into the results for that segment where appropriate. The letters "AVG" in the "Monitoring Station" column indicate an average wherever there are multiple monitoring stations in a WQM Segment; the numbers to the right of the "AVG" represent the averages of the historical data for the various monitoring stations.

SEGMENT	MONITORING STATION	CHLORIDE (mg/l)		SULFATE (mg/L)		TOTAL DISSOLVED SOLIDS AT 180°C (mg/L)	
		YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD
120400	1945	492	703	116	153	726	998
	1946	304	393	91	115		
	AVG	398	548	104	134	726	998
120410	16557	629	810	140	172	1419	1782
120420	1644	743	971	143	172	1608	2033
	1645	694	878	150	183	1482	1827
	(1)					1398	1743
	AVG	719	925	147	178	1496	1868
121300	1765	89	123	30	41	334	396
	17805	93	119	60	76		
	1784	85	109	60	78		
	(1)					440	544
	AVG	89	117	50	65	387	470
121400	1730	40	55	27	35	264	313
	1742	123	172	32	45	457	590
	1755	131	177	42	56	457	576
	(1)					461	585
	AVG	98	135	34	45	410	516

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SEGMENT	MONITORING STATION	CHLORIDE (mg/l)		SULFATE (mg/L)		TOTAL DISSOLVED SOLIDS AT 180°C (mg/L)	
		YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD
121500	1714	38	51	86	129	367	512
	1760	74	102	69	93		
	17862	62	81	64	80	332	399
	1788	56	72	67	90		
	1790	70	96	58	76		
	AVG	60	80	69	94	350	456
121510	1710	65	88	88	135	326	411
121600	1850	29	41	126	183	442	547
	1880	19	27	62	82	283	324
	1905	15	20	43	57	184	205
	19122	18	24	29	48		
	1915	29	43	53	73	176	195
	19155	23	34	60	88	241	287
	1935	16	20	43	50	189	207
AVG	21	30	59	83	253	294	
121610	19156	100	148	121	162		
121700	1955	17	23	20	27	184	230
	1960	19	26	23	32	171	219
	1965	17	25	26	37	158	184
	1970	13	19	22	31	133	156
	1980	37	56	35	57	160	195
	AVG	21	30	25	37	161	197
220100	2485	13	19	21	29	104	125
	24944	41	67	48	69	171	228
	AVG	27	43	35	49	138	177
220200	2464	225	295	71	87	534	644
	(1)					490	596
AVG	225	295	71	87	512	620	
220300	2450	83	96	52	60	320	357
220600	2315	346	456	244	335	1062	1328
	2316	63	109	70	112		
	2317	281	371	232	317		
	(1)					612	777
AVG	230	312	182	255	837	1053	
310800	3310	134	184	521	702	1187	1524
310810	3281	109	142	788	983		
	3285	144	198	721	933	3008	4409
	AVG	127	170	755	958	3008	4409

SEGMENT	MONITORING STATION	CHLORIDE (mg/l)		SULFATE (mg/L)		TOTAL DISSOLVED SOLIDS AT 180°C (mg/L)	
		YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD
31081001(4) 31081002(4) 31081003(4) 31081004(4) 31081005(4)		106	161	154	248		
310820							
31082001(4) 31082002(4)		137	200	720	997		
310830	3244	92	131	1196	1461	2010	2396
	3255	137	176	1190	1463	2237	2733
	3265	247	387	1004	1287	2457	3157
	AVG	159	231	1130	1404	2235	2762
310840	3242	115	173	1281	1654	2368	3042
311100	3155	1797	2464	866	1161	4746	6290
	3157	310	451	150	237		
	3159	328	447	172	253		
	3160	1594	2175	751	1013	3956	5154
AVG	1007	1384	485	666	4351	5722	
31110003(4) 31110004(4)		239	352	206	298		
311200	31272	2112	2834	948	1231		
	3135	142	195	221	307	904	1137
	3136	395	561	266	376		
	AVG	883	1197	478	638	904	1137
31120000(4)		92	130	248	358		
311210	3134	69	93	344	478		
31121000(4)		92	130	248	358		
311300	3090	65	92	135	173		
	3110	81	102	82	102	472	560
	AVG	73	97	109	138	472	560
311300 trib to Nine Mile Ck ²		231	262	128	145	809	879
311300 Nine Mile Ck ²		232	279	124	150	830	950
311500	3045	243	353	781	1040	1777	2284
311310	3112	16	23	21	27	126	151
	311505	357	547	136	209		
	AVG	187	285	79	118	126	151

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SEGMENT	MONITORING STATION	CHLORIDE (mg/l)		SULFATE (mg/L)		TOTAL DISSOLVED SOLIDS AT 180°C (mg/L)	
		YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD
311510	3015	2328	3924	1413	1869		
	3030	5612	8948	1308	1703		
	(1)					2334	2815
	AVG	3970	6436	1361	1786	2334	2815
311600	3005	645	963	1720	2114		
	30111	690	856	1451	1755	3331	3969
	AVG	668	910	1586	1935	3331	3969
311800	3035	9875	13569	1939	2401		
	(1)					37568	58087
	AVG	9875	13569	1939	2401	37568	58087
410100	33682	285	397	200	277	913	1220
410200	3385	42	64	20	28	125	165
410210	3371	10	14	17	22	62	81
	3379	12	17	19	25	69	89
	AVG	11	16	18	24	66	85
410300	3362	16	24	21	28	1174	2023
410310	3357	7	10	13	18	31	38
410400	3340	38	53	44	65	235	283
	3350	106	149	59	90	427	537
	(1)					114	172
	AVG	72	101	52	78	259	331
410400 Red River Near Hugo ³	3355	388	503	345	478	1080	1405
410600	3325	34	55	31	44	312	357
410700							
520500	2420	349	451	168	217	1030	1284
	2422	319	409	141	189		
	AVG	334	430	155	203	1030	1284
520510	2417	305	395	148	192		
520520	2399	219	261	260	317		
	24155	451	620	188	239	1196	1523
	AVG	335	441	224	278	1196	1523
520530	2390	270	318	369	469	1156	1240
	2395	267	337	475	640	1300	1552
	(1)					1145	1399
	AVG	269	328	422	555	1200	1397
520600	2294	259	342	309	414		
52060001(4) 52060002(4)		127	197	112	185		
520610	2292	255	353	433	570	1114	1410

SEGMENT	MONITORING STATION	CHLORIDE (mg/l)		SULFATE (mg/L)		TOTAL DISSOLVED SOLIDS AT 180°C (mg/L)	
		YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD
520620	2285	336	488	568	724	1458	1849
52062002(4) 52062003(4) 52062006(4)		38	49	1612	1918		
520700	2424	211	276	127	175		
	2425	219	291	117	165		
	2435	222	292	98	134	721	926
	AVG	217	286	114	158	721	926
520710	24235	253	342	159	207	841	1085
520800	2300	104	130	50	73	486	581
	2310	765	1065	75	115	1538	2063
	(1)					1551	2083
	AVG	435	598	63	94	1192	1576
520810	(1)					265	294
620900	1610	4233	5650	519	650	7941	10357
62090001(4)		89	123	73	100		
62090003(4)		135	220	376	657		
620910	1584	12076	17506	1670	2171	18760	26005
	1591	7464	10162	729	921	14809	19580
	15972	174	218	255	304	901	1072
	15975	182	233	242	301	879	1091
	1600	4813	6431	633	799		
	AVG	4218	5902	680	873	7437	10028
62091003(4)		135	220	376	657		
620920	15795	8436	12508	1141	1740	16954	25129
	15796	423	604	2058	2616	3752	4781
	AVG	4430	6556	1600	2178	10353	14955
62092004(4)		158	230	1673	2446		
62092005(4)		349	467	2394	3129		
621000	1505	5658	8174	706	918	10577	14972
	15226	1089	1473	283	360		
	AVG	3374	4824	495	639	10577	14972
62100001(4) 62100003(4) 62100004(4) 62100005(4)		197	273	272	364		
621010	14845	288	388	936	1173	1886	2306
62101001(4)		158	230	1673	2446		

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SEGMENT	MONITORING STATION	CHLORIDE (mg/l)		SULFATE (mg/L)		TOTAL DISSOLVED SOLIDS AT 180°C (mg/L)	
		YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD	YEARLY MEAN STANDARD	SAMPLE STANDARD
621100	1520	388	586	175	247	1091	1417
62110000(4)		1073	1690	817	1111		
621200	14814	252	321	115	157		
	1525	536	738	144	185	1111	1405
	1530	544	811	45	65		
	AVG	444	623	101	136	1111	1405
621210	(1)	482	728	132	182		
720500	2340	1455	1893	890	1192	3847	4938
	2375	450	562	597	785	1878	2359
	2380	300	379	681	955	1602	1732
	AVG	735	945	723	977	2442	3010
720900							
Notes:							
(1)	Indicates data obtained from Appendix B, OWQS 1982						
(2)	Data collected from June 1999 through September 2000						
(3)	Data collected from November 1959 through December 1982 AND November 1998 through August 2000						
(4)	Data collected 1998 through 2003						

APPENDIX G. NUMERICAL CRITERIA TO PROTECT BENEFICIAL USES [REVOKED]

- (a) **Introduction.** This Appendix prescribes numerical limits for certain criteria which are necessary to protect beneficial uses. Table 1 is a chart that states the numerical limits to protect the beneficial use and subcategories of Fish and Wildlife Propagation for the single parameter of dissolved oxygen as set forth in OAC 785:45-5-12(f)(1). The latter limits vary depending upon several factors including the pertinent subcategory or fishery class, the time of the year, and the seasonal temperature. Table 2 prescribes the numerical limits for certain substances or parameters in order to protect beneficial uses and subcategories as set forth in OAC 785:45-5-10(1), 785:45-5-10(6), 785:45-5-12(f)(6), and 785:45-5-20. The numerical limits may vary from one beneficial use or subcategory to another according to how the criteria are required by OAC 785:45 or OAC 785:46 to be implemented.

For the Fish and Wildlife Propagation criteria in Table 2, unless otherwise noted, the acute criterion is the Criterion Maximum Concentration (CMC) applied as a one-hour average concentration, and the chronic criterion is the Criterion Continuous Concentration (CCC) applied as a 96-hour (4 days) average concentration. The CMC and CCC criteria may not be exceeded more than once every three years on the average. Footnotes 1 and 2, associated with 14 pollutants in Table 2, provide exceptions to the duration and frequency components the described in this paragraph.

Table 3 is a chart that sets forth conversion factors that can be used to determine Fish and Wildlife Propagation criteria for dissolved metals (where not already expressed as dissolved criteria in Table 2) in order to protect the beneficial use of Fish and Wildlife Propagation and all its subcategories as set forth in OAC 785:45-5-12(f)(6)(H).

- (b) **Explanations for abbreviations and certain terms in Tables.**
- (1) "CAS #" refers to a parameter's Chemical Abstract Service registry number. Each of these numbers is a unique identifier of a particular compound with a particular structure; the number provides additional and further specificity for the parameter in question than simply identifying it by a systematic, generic, proprietary, or [trivial] name. The CAS number has no particular chemical significance.
 - (2) Equations are prescribed for those substances the toxicity of which varies with water chemistry.

TABLE 1.
Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation
and All Subcategories Thereof¹

SUBCATEGORY OF FISH AND WILDLIFE PROPAGATION (FISHERY CLASS)	DATES APPLICABLE	D.O. CRITERIA ⁴ (MINIMUM) (mg/L)	SEASONAL TEMPERATURE (°C)
Habitat Limited Aquatic Community			
Early Life Stages	4/1 - 6/15	4.0	25 ³
Other Life Stages			
Summer Conditions	6/16 - 10/15	3.0	32
Winter Conditions	10/16 - 3/31	3.0	18
Warm Water Aquatic Community⁵			
Early Life Stages	4/1 - 6/15	6.0 ²	25 ³
Other Life Stages			
Summer Conditions	6/16 - 10/15	5.0 ²	32
Winter Conditions	10/16 - 3/31	5.0	18
Cool Water Aquatic Community & Trout			
Early Life Stages	3/1 - 5/31	7.0 ²	22
Other Life Stages			
Summer Conditions	6/1 - 10/15	6.0 ²	29
Winter Conditions	10/16 - 2/28	6.0	18

¹ For use in calculation of the allowable load.

² Because of natural diurnal dissolved oxygen fluctuation, a 1.0 mg/l dissolved oxygen concentration deficit shall be allowed for not more than eight (8) hours during any twenty-four (24) hour period.

³ Discharge limits necessary to meet summer conditions will apply from June 1 of each year. However, where discharge limits based on Early Life Stage (spring) conditions are more restrictive, those limits may be extended to July 1.

⁴ DO shall not exhibit concentrations less than the criteria magnitudes expressed above in greater than 10% of the samples as assessed across all life stages and seasons.

⁵ For Lakes, the warm water aquatic community dissolved oxygen criteria expressed above are applicable to the surface waters.

TABLE 2.
Numerical Criteria to Protect Beneficial Uses and All Subcategories Thereof

PARAMETER	CAS #	Fish & Wildlife Propagation		Public & Private Water Supply (Raw Water)	Fish Consumption (+ Other Organisms) and Water	Fish Consumption (+ Other Organisms)
		ACUTE	CHRONIC			
		µg/L	µg/L	µg/L	µg/L	µg/L
INORGANICS						
Arsenic III	7440382	340	150	40		205.0
Barium	7440393			1000		
Cadmium (Dissolved)	7440439	$e(1.0166[\ln(\text{hardness})]-3.924)*[1.136672-0.041838 \ln(\text{hardness})]$	$e(0.7409[\ln(\text{hardness})]-4.719)*[1.101672-0.041838 \ln(\text{hardness})]$	20	14.49	84.13
Chromium (total)				50	166.3	3365.0
Chromium (III) (Dissolved)	16065831	$e(0.819[\ln(\text{hardness})]+3.7256)*0.316$	$e(0.819[\ln(\text{hardness})]+0.6848)*0.860$			
Chromium (VI) (Dissolved)	18540299	16	11			
Copper	7440508	$e(0.9422[\ln(\text{hardness})]-1.3844)$	$e(0.8545[\ln(\text{hardness})]-1.386)$	1000		
Cyanide	57125	45.93	10.72	200		
Fluoride @ 90° F				4000		
Lead	7439921	$e(1.273[\ln(\text{hardness})]-1.460)$	$e(1.273[\ln(\text{hardness})]-4.705)$	100	5.0	25.0
Mercury	7439976	2.4	1.302	2	0.050	0.051
Nickel (Dissolved)	7440020	$e(0.846[\ln(\text{hardness})]+2.255)*0.998$	$e(0.8460[\ln(\text{hardness})+0.0584]*0.997$		607.2	4583.0
Nitrates (as N)	14797558			10,000		
Selenium	7782492	20.0	5	10		

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Silver (Dissolved)	7440224	$e^{(1.72[\ln(\text{hardness})] - 6.59)} * 0.85$ (Footnote 1)		50	104.8	64620.0
Thallium	7440280	1400.0 (Footnote 2)			0.24	0.47
Zinc (Dissolved)	7440666	$e^{(0.8473[\ln(\text{hardness})] + 0.884)} * 0.978$		5000		
<p>1 This criterion is based on EPA 304(a) recommendations issued in 1980 that were derived using guidelines that differed from EPA's 1985 <i>Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses</i> (1985 Guidelines), which update minimum data requirements and derivation procedures. Therefore, the acute criterion (CMC) may not be exceeded at any time and the chronic criterion (CCC) may not be exceeded based on a 24-hour average. However, the acute criterion may be applied using a one hour averaging period not to be exceeded more than once every three years on the average, if the acute value given in Table 2 is divided by 2 to obtain a value that is more comparable to an acute criterion derived using the 1985 Guidelines.</p> <p>2 This criterion was adopted as a magnitude value only.</p>						

PARAMETER	CAS #	Fish & Wildlife Propagation		Public & Private Water Supply (Raw Water)	Fish Consumption (+ Other Organisms) and Water	Fish Consumption (+ Other Organisms)
		ACUTE	CHRONIC			
		µg/L	µg/L	µg/L	µg/L	µg/L
ORGANICS						
1-1-1 TCE	71556				3094.0	173100.0
2-4-5-TP Silvex	93721			10		
2-4-6-TNT		450.0 (Footnote 2)				
2-4-D	94757			100		
Acrolein	107028				6.0	9.0
Acrylonitrile	107131	7550.0 (Footnote 2)			0.51	2.5
Aldrin	309002	3.0 (Footnote 1)			0.00049	0.00050
Benzene	71432		2200.0 (Footnote 2)		22	510
Benzidine	92875			1		
Carbon Tetrachloride	56235				2.3	16
Chlordane	57749	2.4 (Footnote 1)	0.17 (Footnote 1)		0.0080	0.0081
Chloroform	67663				56.69	4708.0
Chlorpyrifos (Dursban)	2921882	0.083	0.041			
4,4'-DDD	72548				0.0031	0.0031
4,4'-DDT	50293	1.1 (Footnote 1)	0.001 (Footnote 1)		0.0022	0.0022
Demeton	8065483		0.1			
Detergents (total)				200		
Diazinon	333415	0.17				
Dichlorobromomethane	75274				5.5	170
Dieldrin	60571	0.24	0.056		0.00052	0.00054

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Dioxin (TCDD)	1746016				5.0E-08	5.1E-08
Endosulfan		0.22 (Footnote 1)	0.056 (Footnote 1)			
Endrin	72208	0.086	0.036	0.2	0.059	0.060
Ethylbenzene	100414				530	2100
Guthion	86500		0.01			
gamma BHC (Lindane)	58899	0.95		4	0.98	1.8
Heptachlor	76448	0.52 (Footnote 1)	0.0038 (Footnote 1)		0.00079	0.00079

PARAMETER	CAS #	Fish & Wildlife Propagation		Public & Private Water Supply (Raw Water)	Fish Consumption (+ Other Organisms) and Water	Fish Consumption (+ Other Organisms)
		ACUTE	CHRONIC			
		µg/L	µg/L	µg/L	µg/L	µg/L
Hexachlorobenzene	118741				0.0028	0.0029
Malathion	121755		0.10			
Methoxychlor	72435		0.03	100		
Methylene blue active substances				500		
Mirex	2385855		0.001			
Nonylphenol	25154523	28	6.6			
Parathion	56382	0.065	0.013			
PCB			0.044		0.00064	0.00064
PCE (Tetrachloroethylene)	127184	5280.0 (Footnote 2)			6.9	33
Pentachlorophenol	87865	e[1.005(pH)-4.869]	e[1.005(pH)-5.134]		2.7	30
Perchlorate	7601-90-3	6600 (Footnote 2)	1800 (Footnote 2)		9	
Phenol	108952				10,000.0	860,000.0
Phthalate esters				3		
Bis(2-ethylhexyl) phthalate (BEHP)	117817				12	22
Butylbenzyl phthalate	85687			150	1500	1900
Diethyl phthalate	84662				17000	44000
Dimethyl phthalate	131113				2.7E+05	1.1E+06
Di-n-Butyl phthalate	84742				2000	4500
RDX	121824	2591.5 (Footnote 2)				
Toluene	108883		875.0 (Footnote 2)		1300	15000

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Toxaphene	8001352	0.78	0.0002	5		
<p>1 This criterion is based on EPA 304(a) recommendations issued in 1980 that were derived using guidelines that differed from EPA's <i>1985 Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses</i> (1985 Guidelines), which update minimum data requirements and derivation procedures. Therefore, the acute criterion (CMC) may not be exceeded at any time and the chronic criterion (CCC) may not be exceeded based on a 24-hour average. However, the acute criterion may be applied using a one hour averaging period not to be exceeded more than once every three years on the average, if the acute value given in Table 2 is divided by 2 to obtain a value that is more comparable to an acute criterion derived using the 1985 Guidelines.</p>						
<p>2 This criterion was adopted as a magnitude value only.</p>						

TABLE 3
 Conversion Factors for Total to Dissolved Fractions
 [H=hardness as CaCO₃ (mg/L)]

METAL	CAS#	ACUTE	CHRONIC
Arsenic	7440382	1.000	1.000
Cadmium	7440439	1.136672 – 0.041838 InH	1.101672 – 0.041838 InH
Copper	7440508	0.960	0.960
Chromium III	16065831	0.316	0.860
Chromium IV	18540299	0.982	0.962
Lead	7439921	1.46203 – 0.145712 InH	1.46203 – 0.145712 InH
Mercury	7439976	0.85	N/A
Nickel	7440020	0.998	0.997
Silver	7440224	0.85	N/A
Zinc	7440666	0.978	0.986

APPENDIX H. BENEFICIAL USE DESIGNATIONS FOR CERTAIN LIMITED AREAS OF GROUNDWATER [REVOKED]

A. Within Oklahoma there are some bodies or areas of groundwater the quality of which is not suitable for the beneficial uses that are designated on a default basis in OAC 785:45-7-3(b). In most cases this unsuitability is caused by natural conditions or irreversible human-induced impacts such as pollution. Consequently, it is necessary to provide for beneficial use designations for these limited areas of groundwater which are more accurate and appropriate than the default designations in 785:45-7-3(b). The absence of an area of a groundwater formation from this appendix does not indicate that area is free from contamination or has quality suitable for any beneficial use.

B. The groundwater formations or portions thereof that require special designations are identified in the tables that follow in this Appendix. The groundwater formations or units are identified by their name (e.g., "Garber Wellington") and legal description (e.g., "2-4, 9-11, 13-16 T2N R20W " denoting section(s), Township and Range). The area identified may be localized and not necessarily inclusive of the entire hydrogeologic basin or groundwater formation. The tables also set forth a general description of the physical location above the groundwater formation or unit for use as a general point of reference. The tables also set forth columns to show the groundwater classifications and beneficial uses which are designated for each identified area of groundwater. A "Depth Zone" also is indicated, to which the beneficial uses and "Remarks" listed in following columns are applicable.

C. Designations of beneficial uses for an identified groundwater formation or portion thereof are reflected in the tables by the presence of a dot (".") in the columns to the right of the groundwater name and location. An empty space in a column means that column's beneficial use or subcategory thereof is not designated for that groundwater. Groundwater not identified in this Appendix is subject to the default designations detailed in OAC 785:45-7-3.

D. The state environmental agency that requested the groundwater formation or unit to be so identified and designated with certain beneficial uses and/or limitations is shown in the column headed "Agency". A specific division within that agency may also be listed. Questions relating to the quality of the groundwater found in any particular formation or unit, or concerns related to any comment in the "Remarks" column, should be addressed to the agency denoted in the "Agency" column.

E. The presence of any comment in the "Remarks" column denotes special circumstances which are applicable only to the groundwater formation or unit so identified. These comments may refer to certain constituents of the groundwater at that location, special well construction requirements, or other information deemed pertinent by the agency that requested this listing.

F. Definitions

"ACOG" means Association of Central Oklahoma Governments
"Corp Comm" means Oklahoma Corporation Commission
"DEQ" means Oklahoma Department of Environmental Quality
"SEP" means Supplemental Environmental Projects
"RCRA" means Resource Conservation and Recovery Act
"VCP" means Voluntary Compliance Program

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Garber-Wellington (Thunderhead Hills)	W 1/2 of W 1/2 of Section 20, T 14 N, R 2 W1M; W 1/2 of NW 1/4 and NW 1/4 of SW 1/4 of Section 29, T 14 N, R 2 W1M	Along and 1/4 mile east of Coltrane from Danforth Rd to Sherrywood Rd, Edmond, Oklahoma County	85 – 200 ft. deep; 1/4 mile wide by at least 1 3/4 mile long	2		•		Corp Comm, Oil & Gas Division, & ACOG	Brine plume moving south about 80 ft/year. Case/cement new wells through upper affected zone.
Garber-Wellington (Double Eagle / 4 th St Superfund site)	SE 1/4 of Section 35, T 12 N, R 3 W1M and SW 1/4 of Section 36, T 12 N, R 3 W1M	Oklahoma County	0 – 160 ft.	2		•	•	DEQ	Brine: chlorinated solvents and hydrocarbons. Special well construction required.

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Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Boone (Tar Creek Superfund site)	Sections 13, 14, 23, 24, 25, 26, 35, and 36 of T 29 N, R 22 EIM. Sections 13-36 of T 29 N, R 23 EIM. Sections 17-19, W 1/2 of Section 20, W 1/2 of Section 29, and Sections 30-32 of T 29 N, R 24 EIM. Section 1, E 1/2 of Section 2, E 1/2 of Section 11, Section 12, N 1/2 of Section 13, NE 1/4 of Section 14 all in T 28 N, R 22 EIM. Section 1, W 1/2 of Section 5, Section 6, Section 7, W 1/2 of Section 8, NW 1/4 of Section 17, N 1/2 of Section 18 all in T 28 N, R 23 EIM, W 1/2 of Section 5, Section 6 all in T 28 N, R 24 EIM.	Ottawa County	0 – 350 ft.	2	•	•	•	DEQ Land Protection Division	Acidic conditions, mine voids, and toxic metals (lead, cadmium and arsenic exceeding MCLs) may be present in the Boone aquifer. Therefore special protective well construction is required to seal off the Boone to protect the underlying Roubidoux aquifer. For Boone wells, competent ground-water testing for toxic metals is required for potable and domestic use; and treatment may be required when groundwater exceeds the MCLs for lead (15 µg/l), arsenic (10 µg/l), or cadmium (5 µg/l).

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Quaternary Terrace (Kingfisher Wellhead Protection Area)	Section 33, SW 1/4 of Section 36 in T 18 N, R 7 WIM. SW 1/4 of Section 1, NW 1/4 and S 1/2 of Section 2, N 1/2 of Section 3, N 1/2 of Section 4, NE 1/4 of Section 11, and Section 12 all in T 17 N, R 7 WIM	Kingfisher County	0 – 100 ft.	1	•	•	•	DEQ	Zone 1 Wellhead Protection Area - no pollution sources
Southwestern Oklahoma (Altus AFB area)	Sections 34-36 in T 3 N, R 20 WIM. Sections 1-3, Sections 10-15, and Sections 22-24 all in T 2 N, R 20 WIM	North of US 62, eastern edge of City of Altus and entire AFB, Jackson County	0 – 60 ft.	3		•	•	OWRB	TCE & by-products - Remediation activity in-place
Ogallala (Dobson Ranch)	One square acre within NW 1/4 of Section 17, T11N, R26W 1M	State Highway 152, approx. four miles west of Sweetwater, OK, Roger Mills County	0 – 20 ft.	2	•	•	•	DEQ – VCP	Restriction on groundwater use within the 1 square mile recorded on a deed notice due to Benzene contamination. See DEQ or county clerk for location details
Quaternary Terrace Deposits – (Cornerstone Shopping Center)	SE 1/4 of Section 16, T 12 N, R 4 WIM, Approx six (6) acres of WEST PARK ADDITION to Oklahoma County, Oklahoma..	3900 N. MacArthur Avenue, Oklahoma City, Oklahoma County, Oklahoma	0 – 22 ft.	2	•	•	•	DEQ – VCP	Tetrachloro-ethylene - Deed restriction on file. See DEQ or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Alluvium & Terrace Deposits – (OKC Urban Renewal, Phase I)	21.6 acres of the NW 1/4 of Section 3, T 11 N, R 3 W1M	An area bounded to the South of Reno Avenue, East of the BNSF railroad tracks, North of Interstate 40/or its replacement street and west of a line extended from Stiles Avenue to Interstate 40/or its replacement street in Oklahoma City, Oklahoma County, Oklahoma.	0 – 30 ft.	2	•	•	•	DEQ – VCP	Deed restriction on groundwater use. See DEQ or county clerk for location details.
Coffeyville Formation (Compass Industries Landfill Superfund site)	SE 1/4 of NE 1/4 and NE 1/4 of SE 1/4 of Section 13, T 19 N, R 11 E1M, and S 1/2 of NW 1/4 and N 1/2 of SW 1/4 of Section 18, T 19 N, R 12 E1M	7600 W 26th St, Tulsa, Tulsa County, Oklahoma	0 – 105 ft.	2	•	•	•	DEQ – Superfund	Deed restriction on groundwater use for any purpose. See DEQ or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Weatherford Member of the Cloud Chief Formation & Rush Springs Sandstone Formation (Oklahoma Refining Company Superfund site)	S 1/2 of SW 1/4 of Section 18, T 5 N, R 9 W1M and NW 1/4 of Section 19, T 5 N, R 9 W1M, and NW 1/4 of Section 19, T 5 N, R 9 W1M, and SE 1/4 of SE 1/4 of Section 13, T 5 N, R 10 W1M and E 1/2 of NE 1/4 of NE 1/4 of Section 24, T 5 N, R 10 W1M	South Baskett St, Cyril, Caddo County, Oklahoma	0 – 145 ft.	2	•	•	•	DEQ – Superfund	Deed restriction on disturbing landfill caps & on groundwater use for any purpose due to hydrocarbon contamination. See DEQ or county clerk for location details.
North Canadian Alluvium (Tenth Street Superfund site)	2.931 acres in the NW 1/4 of Section 31, T 12 N, R 2 W1M	3200 NE 10th St Oklahoma City, Oklahoma	0 – 20 ft.		•	•	•	DEQ – Superfund	Deed restriction on drilling of any type of wells through the landfill cap or into the landfill. See DEQ or county clerk for location details.
North Canadian Alluvium and Garber Landfill Superfund site)	71.765 acres in NE 1/4 of Section 21, T 12 N, R 2 W1M	Mosley Road Between NE 23 & NE 36 Oklahoma City, Oklahoma	0 – 150 ft.	2	•	•	•	DEQ – Superfund	Restriction on groundwater use for any purpose. See DEQ or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Tallant Formation (Blackstar Performance)	SE 1/4 of Section 25, T 20 N, R 8 EIM and NE 1/4 of Section 25, T 20 N, R 8 EIM	East of Highway OK-48, about 4 miles north of Highway OK-51 intersection, in Terton, Pawnee County, Oklahoma	0 – 30 ft., depth of contamination not yet defined.	2	•	•	•	DEQ – RCRA	1,1,1-Trichloroethane & 1,1-Dichloroethane - Depth of contamination unknown, private wells to 200 feet are impacted. See DEQ for additional details.
N. Canadian Terrace Deposits underlain by Hennessey Group (OKC Solvent Plume)	Approximately 80 acres in NE 1/4 of Section 27, T 12 N, R 4 WIM and NW 1/4 of Section 27, T 12 N, R 4 WIM	Between NW 23rd and NW 19th and N Meridian and Ann Arbor, Oklahoma City, Oklahoma County, Oklahoma	0 – 30 ft., depth of contamination not yet defined.	2	•	•	•	DEQ – SEP	Tetrachloroethylene (max. 1200 ppb) & Trichloroethylene (max. 35 ppb) - Plume not delineated; private wells impacted. See DEQ for details.
Garber-Wellington (Eagle Industries)	Approximately 6 acres in SE 1/4 of Section 7, T 11 N, R 1 WIM	North of SE 29th & West of Westminster Road, Midwest City, Oklahoma County, Oklahoma	0 – 50 ft., depth of contamination not yet defined.	2	•	•	•	DEQ – RCRA	Trichloroethylene (max 2280 ppb) - Plume not delineated. See DEQ for details.
East Central Oklahoma bedrock	SE 1/4 of SE 1/4 of SE 1/4 of Section 5, T 7 N, R 9 EIM	Hughes County	200 ft. deep; Aerial extent unknown	2	•	•	•	Corp Comm, Oil & Gas Division	Brine affecting aquifer. Disposal well offsetting old (now plugged) oil well was the most likely conduit.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Garber-Wellington Sandstone Formation	NW 1/4 of SE 1/4 of Section 1, T 9 N, R 2 EIM	Pottawatomie County	160 – 200 ft. deep; 20 Acres	2	•	•	•	Corp Comm, Oil & Gas Division	Brine affecting aquifer. Now plugged disposal well was the most likely source.
Rush Springs Sandstone, Marlow Formation. (Cyril Plume)	Portions of Sections 1 and 12 in T 5 N, R 10 WIM and Sections 6 and 7 in T 5 N, R 9 WIM and Section 36, T 6 N, R 10 WIM and Section 31, T 6 N, R 9 WIM	2-3 miles north of Cyril, Caddo County.	Up to 450 ft. deep, some saline groundwater discharge into Little Washita River tributaries; ~960 acre plume	2	•	•	•	Corp Comm, Oil & Gas Division	~960 acre plume moving S-SW @ 90/year; 30 year monitoring program started in 1999. Cyril municipal wells affected were abandoned.
Blaine (Drummond Flats)	NE 1/4 of Section 33, T 22 N, R 8 WIM	From NE corner of Drummond 4 miles north, 1 west, 1 south and 3/8 west. Near Turkey creek.	20 – 50 ft. in affected wells.	2	•	•	•	Corp Comm, Oil & Gas Division	Drummond Flats, water has historical contamination.
Terrace Deposits (Drummond Flats)	SW 1/4 of Section 12, R 21 N, R 9 WIM	From Ames, 1/2 mile east, 4 miles north, 3 3/4 east, north into site.	About 40 ft. deep in affected wells.	2	•	•	•	Corp Comm, Oil & Gas Division	Drummond Flats, water has historical contamination.
Arkansas River Alluvium (Sand Springs Petrochemical Superfund site)	W 1/2 of NW 1/4 of Section 13, T 19 N, R 11 EIM and NWE 1/4 of Section 14, T 19 N, R 11 EIM	Tulsa County	0 – 37 ft.	2	•	•	•	DEQ Land Protection Division	Metals, VOC Special Well Construction Required.

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Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
North-Central Oklahoma (former Farmland Feedmill site)	36.26 acres in SW/4 19, T22N, R6W/1M	3013 South Van Buren Street, Enid, Garfield County, Oklahoma	0 – 30 ft. depth of contamination not defined.	2	•	•	•	DEQ, Water Quality Division	Restriction on groundwater use due to nitrate contamination. Nitrate concentrations exceed drinking water standards. Therefore, drinking water wells should not be constructed in this area. See DEQ Water Quality Division for location details.
Vanoss Group (Hudson Refinery Superfund site)	NE 1/4 of NW 1/4 of Section 4, T 17 N, R 5 EIM and SW 1/4 of Section 33, T 18 N, R 5 EIM	Payne County	18 – 168 ft.	2	•	•	•	DEQ, Land Protection Division	Deed restriction was filed with county prohibiting groundwater use for any purpose due to hydrocarbon contamination. See DEQ-Land Protection Division or county clerk for location details.

Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
North-Central Oklahoma (Blackwell Zinc Company (BZC) site	Portions of Sections 14, 15, 16, 21, 22, 23, 26, 27 and 28 of T27N-R1W. It is generally located to the north and south between 500 ft. north of Doolin Avenue and Adams Avenue and to the west and east between 21st Street and 200 ft. east of Main Street, City of Blackwell	Kay County	0 – 40 ft.	2	•	•	•	DEQ, Land Protection Division	City of Blackwell Ordinance No. 2801 prohibiting installation of groundwater wells within the groundwater protective area due to cadmium, & zinc contamination. Contact DEQ Land Protection Division or city for location details.
Hennessey Shale/Garber-Wellington	NE 1/4 of NE 1/4 of Sec. 31, T 14 N, R 3 W1M	West of the Intersection of N. 178 th Street & Pennsylvania, Oklahoma County	0 – 50 ft.	2	•	•	•	Corp Comm, ACOG, OWRB	Chloride impacted groundwater in upper zone of Hennessey Shale/Garber-Wellington formations, case and cement to a depth of 50 ft.

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Groundwater Formation Name (Site name)	Location	Address	Depth Zone (upper-lower limit) feet	Class* (1-4)	Water Supply	Ag	M&I	Agency	Remarks
Rush Springs Aquifer (Putnam-Oswego former Gas Plant)	NW1/4 of Section 35, T 16 N, R 16 W & NENENE 1/4 of Section 34, T 16 N, R 16 W	SE & SW corners of intersection of County Road N2310 & County Road E0820 in Putnam, Dewey County, Oklahoma	0 - 50 ft.	2	•	•	•	Corp Comm	Petroleum hydrocarbons impacting shallow aquifer. Case off from zero to fifty (0-50) ft. below ground surface, completing any water well below this zone

APPENDIX I. CRITERIA FOR GROUNDWATER PROTECTION [REVOKED]

Table 1. Numerical criteria to protect the Public Water Supply and Domestic Untreated Water Supply beneficial uses.

Parameter	CAS #	Criteria (ug/L, unless otherwise noted)
Nickel	7440020	140
Acrolein	107028	3.5
Acrylonitrile	107131	0.65
Aldrin	309002	0.021
Chloroform	67663	70
4,4"-DDD	72548	1.5
4,4'-DDT	50293	1
Dichlorobromomethane	75274	5.6
Dieldrin	60571	0.022
Perchlorate	7601-90-3	4.9
Phenol	108952	4,200
Bis(2-ethylhexyl)phthalate (BEHP)	117817	25
Butylbenzyl phthalate	85687	1,400
Diethyl Phthalate	84662	5,600
Dimethyl Phthalate	131113	70,000
Di-n-Butyl Phthalate	84742	700

Table 2. Secondary drinking water contaminants and associated criteria as listed in 40 CFR 143.3.

Parameter	Criteria
Aluminum	0.05 mg/L
Color	15 color units
Corrosivity	Non-corrosive
Copper	1.0 mg/L
Fluoride	2.0 mg/L
Foaming Agents	0.5 mg/L
Iron	0.3 mg/L
Manganese	0.05 mg/L
Odor	3 TON (threshold odor number)
pH	6.5 – 8.5
Silver	0.1 mg/L
Chloride	250 mg/L
Sulfate	250 mg/L
Total Dissolved Solids (TDS)	500 mg/L
Zinc	5.0 mg/L

[OAR Docket #23-459; filed 6-7-23]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #23-460]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 785:46-1-1. Purpose, scope and applicability [REVOKED]
 - 785:46-1-3. Procedural and substantive authority [AMENDED]
 - 785:46-1-4. Testing procedures [REVOKED]
 - 785:46-1-6. Determination of regulatory low flow [REVOKED]
- Subchapter 3. Implementation of Narrative Toxics Criteria to Protect Aquatic Life Using Whole Effluent Toxicity (WET) Testing [REVOKED]
 - 785:46-3-1. Applicability and scope [REVOKED]
 - 785:46-3-2. Dilutions for whole effluent toxicity testing [REVOKED]
 - 785:46-3-3. Sampling for whole effluent toxicity testing [REVOKED]
 - 785:46-3-5. Reasonable potential to exceed narrative toxicity criterion for Fish and Wildlife Propagation [REVOKED]
- 785:46-3-6. Regulatory flow determination [REVOKED]
- Subchapter 5. Implementation of Numerical Criteria to Protect Fish and Wildlife from Toxicity Due to Conservative Substances [REVOKED]
 - 785:46-5-1. Applicability and scope [REVOKED]
 - 785:46-5-2. Regulatory flow determination [REVOKED]
 - 785:46-5-3. Reasonable potential [REVOKED]
 - 785:46-5-8. pH and hardness dependent toxicity [REVOKED]
- Subchapter 7. Implementation of Numerical Criteria to Protect Human Health from Toxicity Due to Conservative Substances [REVOKED]
 - 785:46-7-1. Applicability and scope [REVOKED]
 - 785:46-7-2. Determination and use of regulatory flow [REVOKED]
 - 785:46-7-3. Reasonable potential [REVOKED]
- Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use [REVOKED]
 - 785:46-9-1. Applicability and scope [REVOKED]
 - 785:46-9-2. Applicable mineral criteria [REVOKED]
 - 785:46-9-3. Regulatory flows [REVOKED]
 - 785:46-9-5. Reasonable potential [REVOKED]
- Subchapter 11. Implementation of Temperature Criteria to Protect Fish and Wildlife Propagation [REVOKED]
 - 785:46-11-1. Applicability and scope [REVOKED]
 - 785:46-11-2. Applicable temperatures [REVOKED]
 - 785:46-11-3. Regulatory flows [REVOKED]
 - 785:46-11-5. Reasonable potential [REVOKED]
 - 785:46-11-6. Reasonable potential equations [REVOKED]
- Subchapter 13. Implementation of Antidegradation Policy [REVOKED]
 - 785:46-13-1. Applicability and scope [REVOKED]
 - 785:46-13-2. Definitions [REVOKED]
 - 785:46-13-3. Tier 1 protection; attainment or maintenance of an existing or designated beneficial use [REVOKED]
 - 785:46-13-4. Tier 2 protection; maintenance and protection of Sensitive Water Supply-Reuse and other Tier 2 waterbodies [REVOKED]
 - 785:46-13-5. Tier 2.5 protection; maintenance and protection of high quality waters, sensitive water supplies, and other tier 2.5 waterbodies [REVOKED]
 - 785:46-13-6. Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters [REVOKED]
 - 785:46-13-7. Protection for Appendix B areas [REVOKED]
 - 785:46-13-8. Antidegradation review in surface waters [REVOKED]
- Subchapter 19. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation [REVOKED]
 - 785:46-19-1. Applicability and scope [REVOKED]
 - 785:46-19-2. Regulatory flows [REVOKED]
 - 785:46-19-3. Reasonable potential determination [REVOKED]
- Appendix B. Mean Hardness and PH by Stream Segment [REVOKED]
- Appendix C. Index of Biological Integrity [REVOKED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2; Senate Bill 1325 (2022).

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n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board ("Board") is proposing to revoke Chapter 45 of the Board's rules. Senate Bill 1325 (2022) transfers the authority for the Water Quality Standards program to the Oklahoma Department of Environmental Quality ("ODEQ"). The current rules and any future amendments will be promulgated by ODEQ.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

785:46-1-1. Purpose, scope and applicability [REVOKED]

~~(a) According to 82 O.S., §1085.30, the Oklahoma Water Resources Board is authorized to promulgate rules to be known as "Oklahoma Water Quality Standards" which establish classifications of uses of waters of the state, criteria to maintain and protect such classifications, and other standards or policies pertaining to the quality of such waters [82:1085.30(A)]. The "Oklahoma Water Quality Standards" are codified at OAC 785:45. Section 1085.30 of Title 82 O.S. also provides for the Oklahoma Water Resources Board to adopt and promulgate accompanying rules to implement the Oklahoma Water Quality Standards. Such implementation rules are set forth in OAC 785:46 and shall be enforced by all state agencies within the scope of their jurisdiction [82:1085.30(D)]. Implementation rules promulgated by other state environmental agencies shall not be inconsistent with the implementation rules in OAC 785:46.~~

(b) If an affected person can demonstrate to the satisfaction of the permitting authority that scientific methods, data, or implementation procedures different than those specified in this Chapter will achieve a more appropriate or representative implementation of the Standards, then the permitting authority shall use or apply such methods, data, or procedures to implement the Standards. In those circumstances where the permitting authority does not agree that the affected person's proposed scientific methods, data, or implementation will result in a more appropriate or representative implementation of the Standards, the affected person may request a review of the proposed scientific methods, data, or implementation by the agency responsible for Standards implementation who shall determine its appropriateness.

(c) Implementation rules promulgated in this Chapter by the OWRB and promulgated elsewhere by other state environmental agencies with authority for implementation provide a bridge between water quality standards in OAC 785:45 and water quality management. For example, water quality standards contain numerical criteria to protect aquatic life. Permits incorporating these criteria must be issued to limit effluent concentrations so that the criteria are not violated outside the mixing zone. In this case the implementation rules describe how the criteria are translated into permit limits.

(d) Subchapters in OAC 785:46 are arranged in the sequence in which they were drafted by the Oklahoma Water Resources Board staff and adopted by the Oklahoma Water Resources Board. Following the initial promulgation of OAC 785:46, additional subchapters and implementation rules may be promulgated as the need arises.

785:46-1-3. Procedural and substantive authority

The rules in OAC 785:46 provide for implementation of the "Oklahoma Water Quality Standards". The rules in this Chapter are promulgated as rules by the Oklahoma Water Resources Board pursuant to the procedures specified in the Oklahoma Administrative Procedures Act, 75 O.S. Section 250 et. seq., and pursuant to the substantive law provided in 82 O.S. Section 1085.30.

785:46-1-4. Testing procedures [REVOKED]

All methods of sample collection, preservation, and analysis used in implementing OAC 785:45 shall be in accordance with "The Guidelines Establishing Test Procedures for the Analysis of Pollutants" as provided by 40 C.F.R. Part 136, or other procedures approved by the Oklahoma Laboratory Accreditation Program of the Oklahoma Department of Environmental Quality or practices that are institutionally recognized and appropriate for the parameter of concern and documented in accordance with 785:46-15-3(e) and (g)

785:46-1-6. Determination of Regulatory Low Flow [REVOKED]

(a) General.

(1) **7Q2.** The 7Q2 is calculated as a moving average of seven consecutive days for each year in a given record. These seven day low flow values are ranked in ascending

order. An order number (m) is calculated based upon the number of years of record (n), with a recurrence interval (R) of two years, as $m = (n+1)/R$, where R = two years. A value of flow corresponding to the mth order is taken as the seven day, two year low flow for those historical data.

(2) **Seasonal 7Q2.** The seasonal 7Q2 is calculated as a moving average of seven consecutive days for the applicable dates specified in Table 1 of Appendix G of OAC 785:45 in a given period of record. These seven day low flow values are ranked in ascending order. An order number (m) is calculated based upon the number of seasons (n) specified in Table 1 of OAC 785:45 Appendix G during the period of record, with a recurrence interval (R) of two years, as $m = (n+1)/R$, where R = two years. A value of flow corresponding to the mth order is taken as the seasonal seven day, two year low flow for those historical data.

(b) **Primary method for determination.** If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is determinable from the United States Geological Survey publication entitled "Statistical Summaries of Streamflow in and near Oklahoma Through 2007" or the latest version of the Water Quality Management Plan published by the Department of Environmental Quality, then that 7Q2 and seasonal 7Q2 shall be conclusive except as provided otherwise in this section.

(c) Alternative methods for determination of 7Q2 or seasonal 7Q2.

(1) In lieu of determining the 7Q2 or seasonal 7Q2 as provided in (b) of this Section, the 7Q2 for a given stream or stream segment may be determined by an affected person or the permitting authority if all of the following conditions are satisfied:

(A) A hydrological modification affecting the flow in the stream is documented to the satisfaction of the Oklahoma Water Resources Board and permitting authority;

(B) At least 10 years of daily flow data comporting with the requirements of this section are available; and

(C) Data from the entire period of record for the stream, unless a different time frame of record is approved by the Board and the permitting authority, are used in the calculation.

(2) If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is not determinable as provided in (b) or (c)(1) of this Section or if additional daily flow data have been collected, then the 7Q2 or seasonal 7Q2 for that stream or stream segment may be determined by an affected person or the permitting authority using the calculations provided in (a) of this Section, provided at least 10 years of daily flow data are available for that stream.

(3) If the flow is affected by contributions from gaged tributaries or other permitted discharges, then the 7Q2 or seasonal 7Q2 for a given stream or stream segment may be determined taking those contributions at 7Q2 or seasonal 7Q2, or both, into account on a case by case basis if approved by either the Board or the permitting authority.

(4) If the 7Q2 or seasonal 7Q2 for a given stream or stream segment is not determinable as provided in (b),

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(c)(1), (c)(2) or (c)(3) of this Section, then the 7Q2 or seasonal 7Q2 for that stream or stream segment may be determined by an affected person or the permitting authority using an estimate based upon limited data only if both the method for estimating, and the estimate itself, are approved by both the Board and permitting authority.

(d) Additional rules for 7Q2 and seasonal 7Q2 determinations.

(1) Any 7Q2 or seasonal 7Q2 determined with a period of record less than 20 years shall be invalid for any purpose except the issuance of the permit or establishment of the site specific criteria based upon and developed contemporaneously with such 7Q2 or seasonal 7Q2. Any subsequent renewal of such permit must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 until the pertinent period of record equals or exceeds 20 years.

(2) Any subsequent renewal of a permit based upon a 7Q2 or seasonal 7Q2 determined pursuant to (c)(3) or (c)(4) of this Section must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 that takes into account all discharge and flow data from the time the 7Q2 or seasonal 7Q2 was previously determined.

(3) Any subsequent renewal of a permit based upon a 7Q2 or seasonal 7Q2 determined pursuant to (c)(1) of this Section must be based upon a fresh determination of the 7Q2 or seasonal 7Q2 that takes into account whether the hydrological modification continues to exist.

(e) Alternative method for determination of regulatory low flow. In stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, including but not limited to the portions of the Verdigris and Arkansas Rivers constituting the McClellan Kerr Arkansas River Navigation System, on a site specific basis a properly designed and implemented hydrologic study approved by the permitting authority and the Board may be used to determine the appropriate regulatory low flow.

SUBCHAPTER 3. IMPLEMENTATION OF NARRATIVE TOXICS CRITERIA TO PROTECT AQUATIC LIFE USING WHOLE EFFLUENT TOXICITY (WET) TESTING [REVOKED]

785:46-3-1. Applicability and scope [REVOKED]

(a) The rules in this Subchapter provide a portion of the framework for implementing narrative criteria in OAC 785:45 which prohibit toxicity to aquatic life in waters of the state. This framework is based upon a testing method known as whole effluent toxicity (WET) testing. WET testing is to be used to address point source activities which have the potential for persistent effluent toxicity. The rules in this Subchapter prescribe the method for determining regulatory flow, dilutions required for WET tests, and the method for determining whether there is a reasonable potential to exceed the narrative criteria for the Fish and Wildlife Propagation beneficial use.

(b) If it is determined that toxicity is related to a particular chemical constituent, a numerical permit limit may be imposed for that toxicant.

(c) Toxicity from halogens (e.g. chlorine, bromine and bromo-chloro compounds) will be controlled by dehalogenation rather than WET testing. However, use of dehalogenation shall not exempt an effluent from the WET testing requirements of this Subchapter.

785:46-3-2. Dilutions for whole effluent toxicity testing [REVOKED]

(a) **General.** Generally, two whole effluent toxicity tests shall be used to implement the narrative criteria to protect fish and wildlife propagation. The 48 hour acute test will be used to protect against acute toxicity in receiving water, and the 7 or 21 day chronic test will be used to protect against chronic toxicity outside the chronic regulatory mixing zone.

(b) Differing requirements for WET tests.

(1) Three different toxicity testing requirements exist. Each is based upon dilution capacity, represented by Q^* .

(2) When Q^* is less than 0.054, acute testing only shall be required.

(3) When Q^* is greater than 0.33, chronic testing only shall be required.

(4) When Q^* is greater than or equal to 0.054 and less than or equal to 0.33, both acute and chronic testing shall be required.

(5) For a discharge directly to a lake, acute testing only shall be required.

(c) **Dilutions for chronic WET tests for streams.** Whole effluent chronic toxicity testing requires that test organisms be subjected to various effluent dilutions. The dilution series for chronic toxicity testing is based on the critical dilution (CD). The chronic critical dilution equations are as follows: $CD = (1.94Q^*) / (1 + Q^*)$ when Q^* is less than or equal to 0.1823, or $CD = 1 / (6.17 - 15.51Q^*)$ when Q^* is greater than 0.1823 and less than 0.3333, or $CD = 1$ when Q^* is greater than or equal to 0.3333. $Q^* = Q_d / Q_w$. Q_w is the largest thirty day average flow for an industrial discharge, if known, and the design flow otherwise. Q_d is 1 cfs or the 7Q2 receiving stream flow, if known to be larger.

(d) **Dilutions for acute WET tests.** The acute critical dilution is 100%.

785:46-3-3. Sampling for whole effluent toxicity testing [REVOKED]

(a) Discharges with overlapping mixing zones may be combined, at the discretion of the permitting agency, and whole effluent toxicity tests may be required on the combined effluent. Samples shall be combined in proportion to the flow for each outfall. If some of the discharges are not toxic, combining discharges may allow intermittent instream toxicity if the discharge rates fluctuate. In these cases combined discharge testing will be disallowed. If the outfall originates from a lagoon with a retention time greater than 24 hours, composite samples may not be necessary. The permitting agency may determine that a grab sample near the discharge is sufficient.

(b) The toxicity test must be initiated within 36 hours after sample collection. No sample may be held for more than 72 hours prior to use.

785:46-3-5. Reasonable potential to exceed narrative toxicity criterion for Fish and Wildlife Propagation [REVOKED]

Reasonable potential to exceed the narrative criterion to protect the beneficial use of Fish and Wildlife Propagation against toxicity exists whenever persistent lethality is demonstrated. A permitting authority may deem reasonable potential to be demonstrated whenever intermittent lethality or persistent sublethality occurs. Reasonable potential is assumed to exist when a known toxicant is present, or expected to be present, in a discharge in toxic amounts.

785:46-3-6. Regulatory flow determination [REVOKED]

- (a) The regulatory flow for a receiving stream is determined according to OAC 785:45-5-12(f)(6)(G) and 785:46-1-6.
- (b) No regulatory flow determination is required for a lake.

SUBCHAPTER 5. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT FISH AND WILDLIFE FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES [REVOKED]

785:46-5-1. Applicability and scope [REVOKED]

Rules in this Subchapter prescribe the method for determining regulatory flow and the method for determining whether there is a reasonable potential to exceed the criteria, all in order to implement numerical criteria identified in OAC 785:45-5-12(f)(6)(G) and Table 2 of 785:45 Appendix G for protection of the beneficial use of Fish and Wildlife Propagation.

785:46-5-2. Regulatory flow determination [REVOKED]

- (a) **Regulatory receiving stream flow.** Section 785:45-5-12(f)(6)(G) of the OAC defines the regulatory receiving stream flow upstream of the discharge, Q_w , to be used in implementing fish and wildlife propagation criteria. The Q_w is the greater of the 7Q2 or 1 cfs. 7Q2 shall be determined according to 785:46-1-6. Q_w is assumed to be 1 cfs if the 7Q2 is unknown or the permittee chooses not to develop an actual 7Q2.
- (b) **Regulatory flow for lakes.** No regulatory flow determination is required for lakes.
- (c) **Regulatory effluent flows.** The regulatory effluent flow, Q_e , is the highest monthly averaged flow over the previous two years for industrial discharges if the permitting authority determines that sufficient data are available. For other dischargers (e.g. municipalities), Q_e is the design flow. If a significant daily or seasonal variability in effluent flow is present, a regulatory effluent flow should take this variability into account.

785:46-5-3. Reasonable potential [REVOKED]

(a) **General.** The need for a permit limit will be determined, on a pollutant by pollutant basis, after determination of reasonable potential, which considers assimilation capacity of the receiving water and effluent variability.

(b) **Use of reasonable potential factor; relationship with wasteload allocation process.**

(1) The technical report produced by the Oklahoma Water Resources Board entitled "The Incorporation Of Ambient Concentration With That Due To Effluent For Wasteload Allocation" shall be used to determine if there is a reasonable potential for a criterion exceedance outside the mixing zone. $C_{95} = 2.13C_{mean}$ is used for effluent concentration in the reasonable potential calculation. C_{mean} is the geometric mean of all effluent concentrations analyzed for the toxicant. If the geometric mean cannot be determined, an arithmetic mean may be substituted. If a large dataset of effluent concentrations is available, the permitting authority may not need to estimate C_{95} ; the 95th percentile value can be calculated from the data.

(2) The wasteload allocation process is used to determine reasonable potential. C is the reasonable potential concentration on the chronic regulatory mixing zone boundary. C is calculated for chronic criteria in streams as: $C = C_b + (1.94Q^*(C_{95} - C_b)) / (1 + Q^*)$ when Q^* is less than or equal to 0.1823, or $C = C_b + (C_{95} - C_b) / (6.17 - 15.51Q^*)$ when Q^* is greater than 0.1823 and less than 0.3333, or $C = C_{95}$ when Q^* is greater than or equal to 0.3333. $Q^* = Q_e / Q_w$. Q^* is the dilution capacity. C is calculated for lakes as: *pipe:* $C = C_b + (D(C_{95} - C_b)) / 20.15$ when D is greater than or equal to 3 feet, or *canal:* $C = C_b + (W^{1/2}(C_{95} - C_b)) / 4.2$ when W is greater than or equal to 3 feet. D is the diameter of the discharge pipe in feet and W is the width of the canal in feet. D and W shall not be less than three feet for implementation purposes. When C is the concentration on the acute regulatory mixing zone boundary it is calculated as $C = C_b + (Q_e(C_{95} - C_b)) / 100$. If Q_e is greater than 100 cfs, then 100 cfs shall be substituted for Q_e .

(3) For regulatory purposes, there is a reasonable potential for chronic toxicity if concentrations of ammonia outside the chronic regulatory mixing zone exceed 6 mg/L.

785:46-5-8. pH and hardness dependent toxicity [REVOKED]

The criteria for some of the substances listed in 785:45-5-12(f)(6) are hardness or pH dependent. The segment averaged pH in Appendix B of this Chapter shall be used to determine the criterion if there is insufficient site specific data to determine receiving stream pH. The mean hardness of the receiving stream, collected near the outfall but not affected by the discharge (as $CaCO_3$) may be used if at least 10 monthly samples were collected over a ten month period. The segment averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site specific data to determine receiving stream hardness. If the required pH or hardness is not specified for a particular waterbody segment, appropriate data from surrounding waterbody segments may be used.

SUBCHAPTER 7. IMPLEMENTATION OF NUMERICAL CRITERIA TO PROTECT HUMAN HEALTH FROM TOXICITY DUE TO CONSERVATIVE SUBSTANCES [REVOKED]

785:46-7-1. Applicability and scope [REVOKED]

- (a) **General.** Rules in this Subchapter prescribe the method for determining regulatory flow and to determine whether there is a reasonable potential to exceed the criteria, all in order to implement numerical criteria to protect human health for consumption of fish flesh and/or water.
- (b) **Applicable Public and Private Water Supply criteria.** Applicable criteria for waters designated Public and Private Water Supplies are found in OAC 785:45-5-10(1) and OAC 785:45-5-10(6) and OAC 785:45 Appendix G.
- (c) **Applicable Fish Consumption criteria.** Applicable criteria for waters designated Warm Water Aquatic Community and/or Cool Water Aquatic Community and/or Trout Fisheries are found in 785:45-5-20 and OAC 785:45 Appendix G.
- (d) **Appropriate criterion.** If several criteria apply to human health implementation, the most stringent is used for implementation purposes.
- (e) **Applicable receiving waters.** The human health criteria apply in receiving waters designated as Public and Private Water Supplies and certain designated sub-categories of Fish and Wildlife Propagation. Some streams in Appendix A of OAC 785:45 are designated Habitat Limited Aquatic Communities, and are not designated for the Public and Private Water Supply beneficial use. Therefore, human health criteria do not apply to these streams. For implementation purposes these streams are considered conduits to the downstream water body. Human health criteria must be implemented on the first downstream water body to which they apply.

785:46-7-2. Determination and use of regulatory flow [REVOKED]

- (a) **General.** OAC 785:45-5-10(1), 785:45-5-10(6)(B) and 785:45-5-20(b) require that long term average receiving stream flows shall be used to implement water column numerical criteria to protect human health.
- (b) **Long-term average flow on gaged receiving streams.** Mean annual average flow as determined in the technical report produced by the Oklahoma Water Resources Board entitled "Estimation Of Mean Annual Average Flows" shall be used for long term average flow in receiving streams which are or have been measured by USGS gages.
- (c) **Mean annual average flows on ungaged receiving streams.** Mean annual average flow may be estimated on streams where flow is not routinely measured. This method for estimation is demonstrated in the technical report produced by the Oklahoma Water Resources Board entitled "Estimation Of Mean Annual Average Flows". Other scientifically defensible methods of long term average flow estimation are permissible if approved by the permitting authority.
- (d) **Long-term average flow in lakes.** Q_w cannot be estimated in a lake as easily as it can be for a stream. Therefore,

mean annual average discharge from the lake shall be used for Q_w .

- (e) **Long-term effluent flow.** The regulatory effluent flow, Q_e , is long term average effluent flow over the previous two years for industrial discharges if the permitting authority determines that sufficient data are available. For other discharges, Q_e is the design flow.

785:46-7-3. Reasonable potential [REVOKED]

- (a) **General.** Complete mixing of effluent and receiving water shall be used to determine appropriate permit limits. A mass balance model shall be used for implementation purposes.
- (b) **Determination of reasonable potential factor**
- (1) The mass balance equation will be used in the determination of human health reasonable potential: $C = (C_e Q^* + C_b) / (Q^* + I)$, $Q^* = Q_e / Q_w$, where Q_e is the regulatory effluent flow. C must be considered a long term average concentration after complete mixing. C_b is the background concentration. To determine if there is a reasonable potential to exceed the criterion after complete mixing, choose $C_e = 2.13 C_{mean}$, where C_{mean} is a geometric mean of all effluent concentrations analyzed for the toxicant. If the geometric mean cannot be determined, an arithmetic mean may be used instead.
 - (2) Representative background concentrations will be used if available. Such representative data should reflect long term average pollutant concentrations for implementation purposes. Otherwise, C_b is assumed zero.
 - (3) C must be compared with the applicable water quality criterion to determine if there is a reasonable potential for the pollutant discharge to cause a criterion exceedance. If concentration after complete mixing is greater than the human health criterion, a permit limit will be required.

SUBCHAPTER 9. IMPLEMENTATION OF CRITERIA TO PROTECT THE AGRICULTURE BENEFICIAL USE [REVOKED]

785:46-9-1. Applicability and scope [REVOKED]

Rules in this Subchapter prescribe the method for determining whether there is a reasonable potential to exceed the criteria identified in OAC 785:45-5-13(h) and OAC 785:45 Appendix F for protection of the beneficial use of Agriculture. Included are criteria for chlorides, sulfates and total dissolved solids.

785:46-9-2. Applicable mineral criteria [REVOKED]

- (a) **General.** OAC 785:45 Appendix F contains yearly mean standards and sample standards for protection of the Agriculture beneficial use. Historical values for chlorides, sulfates and TDS for water quality segments identified in OAC 785:45 Appendix F will not be updated. Data from surrounding segments shall be used by the permitting authority to develop yearly mean standards and sample standards for those segments with inadequate historical data.

(b) **Segment averages.** Segment averages of yearly mean standards and sample standards or more appropriate determinations as prescribed in (e) and (f) of OAC 785:45-5-13 or (a) of 785:46-9-2 shall be the criteria for chlorides, sulfates and TDS to protect the Agriculture beneficial use.

785:46-9-3. Regulatory flows [REVOKED]

(a) **General.** Six regulatory flows are required for implementation of yearly mean standards and sample standards. They include stream flows, regulatory flows for lakes and regulatory effluent flows.

(b) **Long-term average flows for streams.** The greater of 1.47 cfs or mean annual average flow, A, will be used by the permitting authority for long term average flows to implement yearly mean standards. Mean annual average flows may be obtained from the USGS publication entitled "Statistical Summaries of Streamflow in and near Oklahoma Through 2007". They may also be estimated on streams without gages using the Oklahoma Water Resources Board publication entitled "Estimation of Mean Annual Average Flows" (OWRB Technical Report 96-2).

(c) **Long-term average flow for lakes.** Mean annual average discharge from the lake, A, shall be used to implement the Agriculture beneficial use.

(d) **Regulatory long-term effluent flows.** If the permitting authority determines that sufficient data is available to calculate the mean annual effluent discharge, then such discharge shall be the long term effluent flow, Q_{et} . If the permitting authority determines insufficient data is available to calculate the mean annual effluent discharge, then the design flow shall be the long term effluent flow, Q_{et} .

(e) **Short-term average flow for streams.** OAC 785:45-5-4(d) requires that short term average flow, Q_s , be used to implement sample standards. The short term average flow is determined so that short term and long term wasteload allocations are equally likely to be more stringent, depending on the historical concentration distribution for a particular segment. Q_s shall equal the greater of 1.0 cfs or 0.68 A, where A is mean annual average stream flow.

(f) **Short-term average flows for lakes.** Short term average flows for lakes are also determined by the formula in OAC 785:46-9-3(e). In this case A is the mean annual average lake discharge.

(g) **Short-term average effluent flows.** If the permitting authority determines that sufficient data is available to calculate the highest monthly average discharge for industrial discharges, then such discharge shall be the short term average effluent flow, Q_{es} . If the permitting authority determines insufficient data is available to calculate the highest monthly average discharge for industrial discharges, then the design flow shall be the short term average effluent flow, Q_{es} .

785:46-9-5. Reasonable potential [REVOKED]

(a) **General.** The need for a permit limit will be determined on a mineral constituent basis, after application of the reasonable potential equation specified in (b) of this Section, which

considers assimilation capacity of the receiving water and effluent variability.

(b) **Reasonable potential equation.** OAC 785:45-5-13(d) requires that complete mixing of effluent and receiving water be taken into account in the reasonable potential equation. The use of mass balance to obtain wasteload allocations for complete mixing is codified at OAC 785:46-7-3(a). Therefore, the reasonable potential equation for mineral constituents is $C = (Q_u BC + Q_e C_{95}) / (Q_u + Q_e)$, where $C_{95} = 2.13 C_{mean}$, where C_{mean} is the geometric mean of all effluent concentrations analyzed for the mineral. If the geometric mean cannot be determined, an arithmetic mean may be used. If sufficient effluent concentration observations exist as determined by the permitting authority, then the permitting authority may compute the 95th percentile concentration and use it as C_{95} , in accordance with OAC 785:46-5-3(b)(1).

(c) **Reasonable potential to exceed yearly mean standard.** $Q_u = A$ and $Q_e = Q_{et}$ in OAC 785:46-9-5(b) to obtain a long term average concentration in stream after complete mixing. If C is greater than the higher of the YMS or 700 milligrams per liter for TDS or 200 milligrams per liter for chlorides and sulfates, there is a reasonable potential to exceed an Agriculture beneficial use criterion, and a permit limit is required.

(d) **Reasonable potential to exceed sample standard.** $Q_u = 0.68A$ and $Q_e = Q_{es}$ in OAC 785:46-9-5(b) to obtain a short term average concentration in stream after complete mixing. If C is greater than the higher of the SS or 700 milligrams per liter for TDS or 200 milligrams per liter for chlorides and sulfates, there is a reasonable potential to exceed an Agriculture beneficial use criterion, so a permit limit is required.

SUBCHAPTER 11. IMPLEMENTATION OF TEMPERATURE CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION [REVOKED]

785:46-11-1. Applicability and scope [REVOKED]

(a) OAC 785:45-5-12(f)(2) provides that at no time shall heat be added in excess of the amount that will raise receiving water temperature more than 2.8 C outside the mixing zone. Therefore, the temperature criterion will be implemented with respect to regulatory flow and reasonable potential at the maximum temperature on the edge of the mixing zone.

(b) OAC 785:45-5-26 provides generally to the effect that in streams the mixing zone encompasses 25% of the total flow. The mixing zone in lakes may be designated by the permitting authority on a case by case basis. To be consistent, the mixing zone used for numerical criteria implementation to protect fish and wildlife propagation from toxicity will be employed for temperature implementation in lakes. This mixing zone is defined to extend 100 feet into the lake from the source.

(c) Temperature implementation does not apply to privately owned cooling water reservoirs. Such reservoirs are specifically exempted in OAC 785:45-5-12(f)(2)(F) from implementation of temperature criteria to protect aquatic life. However, implementation of the antidegradation policy includes a maximum temperature (52C) which applies to all waters of the state including privately owned cooling water reservoirs. Privately

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owned cooling water reservoirs, however, that demonstrate no reasonable potential to exceed the antidegradation temperature shall not be limited in permits by such temperature.

(d) All calculations to implement temperature criteria shall be done in C at critical temperature conditions.

785:46-11-2. Applicable temperatures [REVOKED]

(a) **General.** OAC 785:45-5-12(f)(2) governs what the applicable temperature criteria are.

(b) **Habitat Limited and Warm Water Aquatic Community.**

(1) In waters which are designated in OAC 785:45 to be Habitat Limited Aquatic Community and/or Warm Water Aquatic Community, no heat of artificial origin shall be added that causes the receiving water to exceed the critical temperature plus 2.8C outside the mixing zone.

(2) The temperature criterion for Habitat Limited Aquatic Community and/or Warm Water Aquatic Community, T_e , is the critical temperature plus 2.8C. In the absence of data, T_e is 32.24 C. Where data exist, the critical temperature is the higher of 29.44C or the seven day maximum temperature likely to occur with a 50% probability each year, 7T2. The 7T2 is calculated using a moving average of seven consecutive days for each year in a given record. These seven day receiving stream temperature values are ranked in descending order. An order number, m, is calculated based on the number of years of record, n, with a recurrence interval of 2 years, as $m = (n + 1)/2$. The mth highest average temperature is the 7T2. Provided, in the segment of the Arkansas River from Red Rock Creek to the headwaters of Keystone Reservoir, the maximum temperature outside the mixing zone shall not exceed 34.4C.

(3) To implement the temperature criterion for Habitat Limited Aquatic Community and/or Warm Water Aquatic Community protection, the critical temperature also is the regulatory ambient temperature, T_a .

(c) **Cool Water Aquatic Communities.** In waters designated in OAC 785:45 to be Cool Water Aquatic Community, T_e is 28.9C. To be consistent with implementation for Warm Water and Habitat Limited Aquatic Communities, the regulatory ambient temperature must be 2.8C less than T_e . Therefore, $T_a = 26.1$ C for Cool Water Aquatic Communities.

(d) **Trout Fisheries.** In waters designated in OAC 785:45 to be Trout Fishery, no artificial heat shall be added such that the temperature in the receiving water exceeds 20C outside the mixing zone. However, water temperatures regularly reach in excess of 20C in Oklahoma's summers. When background levels exceed this criterion, the effluent level should equal the criterion. Therefore, the wasteload allocation for Trout Fisheries is 20C.

785:46-11-3. Regulatory flows [REVOKED]

(a) Regulatory receiving stream flow to protect the Fish and Wildlife Propagation beneficial use, Q_w , is the greater of the 7Q2 or 1 cfs. Q_w is assumed to be 1 cfs if the 7Q2 is unknown.

(b) The regulatory effluent flow, Q_e , is defined as the highest monthly averaged flow in cfs over the past two years for industrial discharges with adequate data. Q_e is the design flow in cfs for other dischargers.

785:46-11-5. Reasonable potential [REVOKED]

A permit limit for temperature is required if there is a reasonable potential that the temperature increase at the edge of the mixing zone is greater than 2.8C. EPA Region 6 uses a reasonable potential factor to determine if there is a reasonable potential that concentration of a given substance will exceed the criterion. An analogous reasonable potential factor, T_f , will be used to determine if there is a reasonable potential that temperature will exceed the criterion by 2.8C at the edge of the mixing zone. T_f is determined such that only approximately 5% of the observed temperatures are higher. Therefore, T_f is the upper 95th percentile of the effluent temperature distribution.

785:46-11-6. Reasonable potential equations [REVOKED]

(a) The maximum temperature difference on the mixing zone boundary must be computed using the following equation to determine if there is a reasonable potential to exceed 2.8C outside the mixing zone: $T' = (T_f - T_a)/df$. The dilution factor, df, must be that which yields the maximum temperature difference on the mixing zone boundary.

(b) Substituting for df, the following equations shall be used for discharges to streams: $T' = (1.94Q^*(T_f - T_a))/(1 + Q^*)$ when Q^* is less than or equal to 0.1823, or $T' = (T_f - T_a)/(6.17 - 15.51Q^*)$ when Q^* is greater than 0.1823 and less than 0.3333, or $T' = T_f - T_a$ when Q^* is greater than or equal to 0.3333. $Q^* = Q_e/Q_w$ (the dilution capacity).

(c) The following equations shall be used for discharges to lakes: $T' = (D(T_f - T_a))/20.15$ when D is greater than or equal to 3 feet. D is pipe diameter, and $T' = (W^{+2}(T_f - T_a))/4.2$ when W is greater than or equal to 3 feet. W is canal width.

(d) There is a reasonable potential that the effluent may cause a criterion exceedance at the maximum concentration on the mixing zone boundary if $T' > 2.8C$.

SUBCHAPTER 13. IMPLEMENTATION OF ANTIDegradation POLICY [REVOKED]

785:46-13-1. Applicability and scope [REVOKED]

(a) The rules in this Subchapter provide a framework for implementing the antidegradation policy stated in OAC 785:45-3-2 and OAC 785:45-5-25 for all waters of the state. This policy and framework includes four tiers, or levels, of protection.

(b) The four tiers of protection are as follows:

(1) Tier 1. Attainment or maintenance of an existing or designated beneficial use.

(2) Tier 2. Maintenance and protection Sensitive Water Supply Reuse waterbodies.

(3) Tier 2.5 Maintenance and protection of High Quality Waters, Sensitive Public and Private Water Supply waters.

(4) Tier 3. No degradation of water quality allowed in Outstanding Resource Waters.

(e) In addition to the four tiers of protection, this Subchapter provides rules to implement the protection of waters in areas listed in Appendix B of OAC 785:45. Although Appendix B areas are not mentioned in OAC 785:45-3-2, the framework for protection of Appendix B areas is similar to the implementation framework for the antidegradation policy.

(d) In circumstances where more than one beneficial use limitation exists for a waterbody, the most protective limitation shall apply. For example, all antidegradation policy implementation rules applicable to Tier 1 waterbodies shall be applicable also to Tier 2, Tier 2.5 and Tier 3 waterbodies or areas, and implementation rules applicable to Tier 2 waterbodies shall be applicable also to Tier 2.5 and Tier 3 waterbodies.

(e) Publicly owned treatment works may use design flow, mass loadings or concentration, as appropriate, to calculate compliance with the increased loading requirements of this section if those flows, loadings or concentrations were approved by the Oklahoma Department of Environmental Quality as a portion of Oklahoma's Water Quality Management Plan prior to the application of the ORW, HQW, SWS, or SWS-R limitation.

785:46-13-2. Definitions [REVOKED]

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

"Specified pollutants" means

- (A) Oxygen demanding substances, measured as Carbonaceous Biochemical Oxygen Demand (CBOD) and/or Biochemical Oxygen Demand (BOD);
- (B) Ammonia Nitrogen and/or Total Organic Nitrogen;
- (C) Phosphorus;
- (D) Total Suspended Solids (TSS); and
- (E) Such other substances as may be determined by the Oklahoma Water Resources Board or the permitting authority.

785:46-13-3. Tier 1 protection; attainment or maintenance of an existing or designated beneficial use [REVOKED]

(a) **General.**

(1) Beneficial uses which are existing or designated shall be maintained and protected.

(2) The process of issuing permits for discharges to waters of the state is one of several means employed by governmental agencies and affected persons which are designed to attain or maintain beneficial uses which have been designated for those waters. For example, Subchapters 3, 5, 7, 9 and 11 of this Chapter are rules for the permitting process. As such, the latter Subchapters not only

implement numerical and narrative criteria, but also implement Tier 1 of the antidegradation policy.

(b) **Thermal pollution.** Thermal pollution shall be prohibited in all waters of the state. Temperatures greater than 52 degrees Centigrade shall constitute thermal pollution and shall be prohibited in all waters of the state.

(c) **Prohibition against degradation of improved waters.** As the quality of any waters of the state improves, no degradation of such improved waters shall be allowed.

785:46-13-4. Tier 2 protection; maintenance and protection of Sensitive Water Supply-Reuse and other Tier 2 waterbodies [REVOKED]

(a) **General rules for Sensitive Water Supply—Reuse (SWS-R) Waters**

(1) **Classification of SWS-R Waters.** The Board may consider classification of a waterbody as an SWS-R waterbody based upon required documentation submitted by any interested party. The interested party shall submit documentation presenting background information and justification to support the classification of a waterbody as SWS-R including, but not limited to, the following:

- (A) Determination of the waterbody's assimilative capacity pursuant to 785:46-13-8, including all supporting information and calculations.
- (B) Documentation demonstrating that municipal wastewater discharge for the purpose of water supply augmentation has been considered as part of a local water supply plan or other local planning document.
- (C) Any additional information or documentation necessary for the Board's consideration of a request for the classification of a waterbody as SWS-R.
- (D) Prior to consideration by the Board, any interested party seeking the classification of a waterbody as SWS-R shall submit documentation to OWRB staff demonstrating that local stakeholders, including those that use the waterbody for any designated or existing beneficial uses, have been afforded notice and an opportunity for an informal public meeting, if requested, regarding the proposed classification of the waterbody as SWS-R at least one hundred eighty (180) days prior to Board consideration. In addition, all information or documentation submitted pursuant to this subsection shall be available for public review.

(2) The drought of record waterbody level shall be considered the receiving water critical condition for SWS-R waterbodies.

- (A) All beneficial uses shall be maintained and protected during drought of record conditions.
- (B) Drought of record shall be determined with the permitting authority approved monthly time step model using hydrologic data with a minimum period of record from 1950 to the present. If empirical data are not available over the minimum period of record, modeled data shall be included in the analysis, if available.

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(3) ~~In accordance with OAC 785:45-5-25(c)(8)(D), SWS R waterbodies with a permitted discharge shall be monitored and water quality technically evaluated to ensure that beneficial uses are protected and maintained and use of assimilative capacity does not exceed that prescribed by permit. Prior to any monitoring and/or technical analysis, the permittee shall submit a Receiving Water Monitoring and Evaluation Plan to the permitting authority for review and approval.~~

(A) ~~The Receiving Water Monitoring and Evaluation Plan shall include, at a minimum, the following sections:~~

(i) ~~Monitoring section that meets the required spatial, temporal, and parametric coverage of this subchapter, OAC 785:46-15, and OAC 252:628-11.~~

(ii) ~~Analysis and reporting section that meets the requirements of this subchapter, OAC 785:46-15, and OAC 252:628-11.~~

(iii) ~~Quality Assurance Project Plan that meets the most recent requirements for United States Environmental Protection Agency Quality Assurance Project Plans.~~

(B) ~~The monitoring section of the Receiving Water Monitoring and Evaluation Plan, at a minimum shall:~~

(i) ~~Include parametric, temporal (including frequency of sampling events), and spatial sampling design adequate to characterize water quality related to limnological, hydrologic, seasonal, and diurnal influences and variation.~~

(ii) ~~Include nutrient monitoring adequate to characterize both external and internal loading and nutrient cycling.~~

(iii) ~~Include algal biomass monitoring consistent with this sub paragraph (B) and phytoplankton monitoring sufficient to evaluate general shifts and/or trends in phytoplankton community dynamics over time.~~

(iv) ~~Include in situ monitoring of dissolved oxygen, temperature, and pH adequate to characterize diurnal changes and fluctuations during periods of thermal stratification and complete mix.~~

(v) ~~Include monitoring of pollutants with a permit effluent limit and/or permit monitoring requirements.~~

(C) ~~The Receiving Water Monitoring and Evaluation Plan may include special studies, as necessary.~~

(D) ~~At least biennially and prior to permit renewal, the permittee shall submit a Receiving Water Monitoring and Evaluation Report to the permitting authority that includes, at a minimum:~~

(i) ~~Summarized review of monitoring objectives and approach.~~

(ii) ~~Presentation and evaluation of monitoring results, including an analysis of both short term and long term trends.~~

(iii) ~~An assessment of beneficial use attainment that is at a minimum in accordance with OAC 785:46-15.~~

(iv) ~~Summarized assessment of data quality objectives, including an explanation of any data quality issues.~~

(v) ~~All monitoring data shall be submitted electronically.~~

(E) ~~If the report documents nonattainment of a beneficial use(s) resulting from the discharge, the permitting authority shall consider actions including, but not limited to, additional permit requirements, cessation of the discharge, and/or a recommendation to OWRB to revoke the SWS R waterbody classification.~~

(b) ~~**General rules for other Tier 2 Waterbodies.** General rules for other Tier 2 waterbodies shall be developed as waters are identified.~~

785:46-13-5. Tier 2.5 protection; maintenance and protection of high quality waters, sensitive water supplies, and other tier 2.5 waterbodies [REVOKED]

(a) ~~**General rules for High Quality Waters.** New point source discharges of any pollutant after June 11, 1989, and increased load or concentration of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 785:45 with the limitation "HQW". Any discharge of any pollutant to a waterbody designated "HQW" which would, if it occurred, lower existing water quality shall be prohibited. Provided however, new point source discharges or increased load or concentration of any specified pollutant from a discharge existing as of June 11, 1989, may be approved by the permitting authority in circumstances where the discharger demonstrates to the satisfaction of the permitting authority that such new discharge or increased load or concentration would result in maintaining or improving the level of water quality which exceeds that necessary to support recreation and propagation of fishes, shellfishes, and wildlife in the receiving water.~~

(b) ~~**General rules for Sensitive Public and Private Water Supplies.** New point source discharges of any pollutant after June 11, 1989, and increased load of any specified pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 785:45 with the limitation "SWS". Any discharge of any pollutant to a waterbody designated "SWS" which would, if it occurred, lower existing water quality shall be prohibited. Provided however, new point source discharges or increased load of any specified pollutant from a discharge existing as of June 11, 1989, may be approved by the permitting authority in circumstances where the discharger demonstrates to the satisfaction of the permitting authority that such new discharge or increased load will result in maintaining or improving the water quality in both the direct receiving water, if designated SWS, and any downstream waterbodies designated SWS.~~

(c) **Stormwater discharges.** Regardless of subsections (a) and (b) of this Section, point source discharges of stormwater to waterbodies and watersheds designated "HQW", "SWS" may be approved by the permitting authority.

(d) **Nonpoint source discharges or runoff.** Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds of waterbodies designated "HQW", or "SWS" in Appendix A of OAC 785:45.

785:46-13-6. Tier 3 protection; prohibition against degradation of water quality in outstanding resource waters [REVOKED]

(a) **General.** New point source discharges of any pollutant after June 11, 1989, and increased load of any pollutant from any point source discharge existing as of June 11, 1989, shall be prohibited in any waterbody or watershed designated in Appendix A of OAC 785:45 with the limitation "ORW" and/or "Scenic River", and in any waterbody located within the watershed of any waterbody designated with the limitation "Scenic River". Any discharge of any pollutant to a waterbody designated "ORW" or "Scenic River" which would, if it occurred, lower existing water quality shall be prohibited.

(b) **Stormwater discharges.** Regardless of 785:46-13-6(a), point source discharges of stormwater from temporary construction activities to waterbodies and watersheds designated "ORW" and/or "Scenic River" may be permitted by the permitting authority. Regardless of 785:46-13-6(a), discharges of stormwater to waterbodies and watersheds designated "ORW" and/or "Scenic River" from point sources existing as of June 25, 1992, whether or not such stormwater discharges were permitted as point sources prior to June 25, 1992, may be permitted by the permitting authority; provided, however, increased load of any pollutant from such stormwater discharge shall be prohibited.

(c) **Nonpoint source discharges or runoff.** Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds of waterbodies designated "ORW" in Appendix A of OAC 785:45, provided, however, that development of conservation plans shall be required in sub-watersheds where discharges or runoff from nonpoint sources are identified as causing or significantly contributing to degradation in a waterbody designated "ORW".

(d) **LMFO's.** *No licensed managed feeding operation (LMFO) established after June 10, 1998 which applies for a new or expanding license from the State Department of Agriculture after March 9, 1998 shall be located...[w]ithin three (3) miles of any designated scenic river area as specified by the Scenic Rivers Act in 82 O.S. Section 1451 and following, or [w]ithin one (1) mile of a waterbody [2:9-210.3(D)] designated in Appendix A of OAC 785:45 as "ORW".*

785:46-13-7. Protection for Appendix B areas [REVOKED]

(a) **General.** Appendix B of OAC 785:45 identifies areas in Oklahoma with waters of recreational and/or ecological significance. These areas are divided into Table 1, which includes

national and state parks, national forests, wildlife area, wildlife management areas and wildlife refuges; and Table 2, which includes areas which contain threatened or endangered species listed as such by the federal government pursuant to the federal Endangered Species Act as amended.

(b) **Protection for Table 1 areas.** New discharges of pollutants after June 11, 1989, or increased loading of pollutants from discharges existing as of June 11, 1989, to waters within the boundaries of areas listed in Table 1 of Appendix B of OAC 785:45 may be approved by the permitting authority under such conditions as ensure that the recreational and ecological significance of these waters will be maintained.

(c) **Protection for Table 2 areas.** Discharges or other activities associated with those waters within the boundaries listed in Table 2 of Appendix B of OAC 785:45 may be restricted through agreements between appropriate regulatory agencies and the United States Fish and Wildlife Service. Discharges or other activities in such areas shall not substantially disrupt the threatened or endangered species inhabiting the receiving water.

(d) **Nonpoint source discharges or runoff.** Best management practices for control of nonpoint source discharges or runoff should be implemented in watersheds located within areas listed in Appendix B of OAC 785:45.

785:46-13-8. Antidegradation review in surface waters [REVOKED]

(a) The antidegradation review process below presents the framework to be used when making decisions regarding the intentional lowering of water quality, where water quality is better than the minimum necessary to protect beneficial uses. OWRB technical guidance TRWQ2017-01 provides additional information.

(b) Determination of Assimilative Capacity in Tier 2, Tier 2.5, and Tier 3 Waters

(1) All water quality monitoring and technical analyses necessary to determine receiving waterbody assimilative capacity for all applicable numeric and narrative criteria and associated parameters protective of waterbody beneficial uses shall be conducted by the interested party.

(2) Prior to initiating any monitoring or technical analysis to support determination of waterbody assimilative capacity, the interested party shall submit a workplan consistent with the requirements of OWRB technical guidance TRWQ2017-01 for review and approval by OWRB staff.

(3) As part of an approved workplan, the interested party shall characterize existing water quality of the receiving waterbody for each applicable criteria and associated parameters and evaluate if there is available assimilative capacity. Consistent with OWRB technical guidance TRWQ2017-01, characterization of existing water quality shall address, at a minimum:

- (A) Measurement of load and or concentration for all applicable criteria and associated parameter(s) in the receiving water; and

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- (B) The measurement of both existing and proposed point and nonpoint source discharge concentrations and or loadings, including the measurement of external and internal nutrient loading, where required by OWRB technical guidance TRWQ2017 01; and
- (C) The critical low flow or critical lake level of the receiving waterbody, including drought of record in waterbodies receiving IPR discharges; and
- (D) The limnological, hydrologic, seasonal, spatial and temporal variability and critical conditions of the waterbody; and
- (E) Volumetric determination of anoxic dissolved oxygen condition consistent with OAC 785:45 and 785:46; and
- (F) The bioaccumulative nature of a pollutant shall be considered when determining assimilative capacity; and
- (G) The 303(d) list as contained in the most recently approved Integrated Water Quality Assessment Report shall be reviewed and any difference between the water quality assessment information and the characterization of existing water quality shall be reconciled.
- (4) Assimilative capacity shall be determined by comparing existing water quality, as determined consistent with subsection (a)(3) above to the applicable narrative and numeric criteria. In Tier 2 waters, assimilative capacity shall be determined and used with a margin(s) of safety (46 13 8(d)(1)(D)), which takes into account any uncertainty between existing or proposed discharges and impacts on receiving water quality.
- (5) When existing water quality does not meet the criterion or associated parameter necessary to support beneficial use(s) or is identified as impaired on Oklahoma's 303(d) list as contained in the most recently approved Integrated Water Quality Assessment Report, no assimilative capacity shall exist for the given criterion.
- (e) **Use of Assimilative Capacity in Tier 1 Waters** Available assimilative capacity may be used in Tier 1 waters such that, water quality is maintained to fully protect all designated and existing beneficial uses.
- (d) **Use of Assimilative Capacity in Tier 2 Waters**
- (1) If it is determined that assimilative capacity is available, the consumption of assimilative capacity may be allowed in a manner consistent with the requirements in 40 CFR 131.12(a)(2) and this subchapter. In allowing the use of assimilative capacity, the state shall assure that:
- (A) Water quality shall be maintained to fully protect designated and existing beneficial uses.
- (B) Assimilative capacity shall be reserved such that all applicable narrative criteria in OAC 785:45 are attained and beneficial uses are protected.
- (C) Fifty percent (50%) of assimilative capacity shall be reserved for all applicable water quality criteria listed in OAC 785:45, Appendix G, Table 2.
- (D) In order to preserve a margin of safety; in no case shall any activity be authorized without the application of margin(s) of safety specified below:
- (i) A twenty percent (20%) margin of safety shall be applied to an applicable numeric criterion for chlorophyll a, total phosphorus, and total nitrogen. If numeric criteria are not available, the narrative nutrient criterion (785:45 5 9(d)) shall be applied and a twenty percent (20%) margin of safety shall be applied to the parameters listed in the criterion.
- (ii) No more than forty five percent (45%) of the lake volume shall be less than the dissolved oxygen criterion magnitude in OAC 785:45 5 12(f)(1)(C)(ii).
- (iii) If the existing value of a criterion is within the margin of safety, no assimilative capacity is available and existing water quality shall be maintained or improved.
- (E) When existing water quality does not satisfy the applicable criterion and support beneficial use(s) or has been designated as impaired in Oklahoma's 303(d) list as contained in the most recently approved Integrated Water Quality Assessment Report, the applicable criterion shall be met at the point of discharge. If a TMDL has been approved for the impairment, loading capacity for the parameter may be available if TMDL load allocations include the proposed load from the discharge.
- (2) An analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the water quality degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation.
- (3) After an analysis of alternatives and an option that utilizes any or all of the assimilative capacity is selected, the discharger must demonstrate that the lowering of water quality is necessary to accommodate important economic or social development in the area in which the waters are located.
- (e) **Use of Assimilative Capacity in Tier 2.5 or 3.0 Waters** Consistent with 785:45 3 2(a) (e), 785:45 5 25(a), 785:45 5 25(b), and 785:45 5 25(c)(1) (e)(6) all available assimilative capacity shall be reserved in waterbodies classified as Tier 2.5 or 3.0 waters.
- (f) **Public Participation** Agencies implementing subsection 8(d), shall conduct all activities with intergovernmental coordination and according to each agency's public participation procedures, including those specified in Oklahoma's continuing planning process.

SUBCHAPTER 19. IMPLEMENTATION OF DISSOLVED OXYGEN CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION [REVOKED]

785:46-19-1. Applicability and scope [REVOKED]

Rules in this Subchapter are designed to implement the criteria for dissolved oxygen prescribed in OAC 785:45 Appendix G Table 1 for protection of the beneficial use of Fish and Wildlife Propagation.

785:46-19-2. Regulatory flows [REVOKED]

(a) The flow in the receiving stream, Q_w , shall be deemed to be the greater of the 7Q2 or 1 cfs. If the 7Q2 is unknown, then Q_w shall be deemed to be 1 cfs.

(b) For industrial dischargers with adequate data as determined by the permitting authority, the effluent flow, Q_e , shall be deemed to be the highest monthly averaged flow over the previous two years. For all other discharges, the effluent flow shall be deemed to be the design flow.

(c) Provided, in stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, including but not limited to the portions of the Verdigris and Arkansas Rivers constituting the McClellan-Kerr Arkansas River Navigation System, the appropriate regulatory low flow in the receiving stream, Q_w , shall be as determined on

a site specific basis pursuant to properly designed and implemented hydrologic study approved by the permitting authority and the Board.

785:46-19-3. Reasonable potential determination [REVOKED]

(a) A permit limit for oxygen demanding substances is required if there is a reasonable potential that the dissolved oxygen criteria will not be satisfied. Such a reasonable potential is demonstrated whenever an existing discharger proposes to increase the concentration or load of oxygen demanding substances, a new discharge of oxygen demanding substances is created, or a receiving waterbody is reclassified to a subcategory of the Fish and Wildlife Propagation beneficial use with a more stringent dissolved oxygen criterion.

(b) The permitting authority may base its determination of the reasonable potential upon meeting the dissolved oxygen standard at the applicable regulatory low flow and at the applicable seasonal temperatures prescribed in Table 1 of Appendix G of OAC 785:45.

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APPENDIX B. MEAN HARDNESS AND PH BY STREAM SEGMENT [REVOKED]

SEGMENT	MEAN pH	MEAN HARDNESS
120400	7.87	197.40
120410	8.02	262.00
120420	7.77	267.83
121300	7.50	153.00
121400	7.62	170.41
121500	7.47	162.38
121510	7.67	186.00
121600	7.52	169.27
121610	7.40	133.65
121700	7.46	106.55
220100	6.96	25.76
220200	7.74	165.00
220600	7.66	253.48
250510	7.81	294.00
310800	7.89	532.00
310810	7.90	756.44
310830	7.84	924.35
310840	7.96	1137.00
311100	7.86	593.20
311200	7.78	532.94
311210	7.67	470.00
311300	7.65	268.33
311310	7.77	296.00
311500	8.04	838.12
311510	7.95	1041.00
311600	7.95	1540.00
311800	7.81	2095.00

SEGMENT	MEAN pH	MEAN HARDNESS
331510	8.03	1147.00
410200	6.82	32.00
410210	6.89	18.76
410300	7.17	28.42
410400	7.62	192.98
410600	7.84	234.00
520500	7.97	282.00
520520	7.70	344.00
520530	8.07	454.43
520600	8.04	380.00
520610	8.22	442.00
520620	8.08	612.00
520700	7.82	276.16
520710	7.80	272.00
520800	7.69	332.99
620900	8.10	506.01
620910	7.85	802.56
620920	7.99	1297.07
621000	8.08	512.06
621010	8.02	865.00
621100	7.80	367.00
621200	7.83	264.55
720500	8.16	622.00

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APPENDIX C. INDEX OF BIOLOGICAL INTEGRITY [REVOKED]

		5	3	1	SCORE
Sample Composition	Total no. of species	See figure 1			
	Shannon's diversity* based upon numbers	>2.50	2.49-1.50	<1.50	
	No. of sunfish species	>3	2-3	<2	
	No. of species comprising 75% of sample	>5	4-3	<3	
	No. of intolerant species <100mi ² area	>5	3-5	<3	
		>100mi ² area	See figure 2		
Percentage of tolerant species	See figure 3				
Fish Condition	Percentage of lithophils	>36	18-36	<18	
	Percentage of DELT anomalies**	<0.1	0.1-1.3	>1.3	
	Fish numbers (total individuals)	>200	200-75	<75	

$$* d = - \sum \frac{n_i}{N} \ln \frac{n_i}{N}$$

** DELT = deformities, eroded fins, lesions, tumors

FIGURE 1.

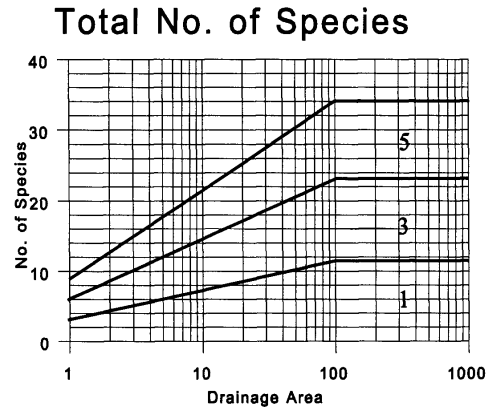


FIGURE 2.

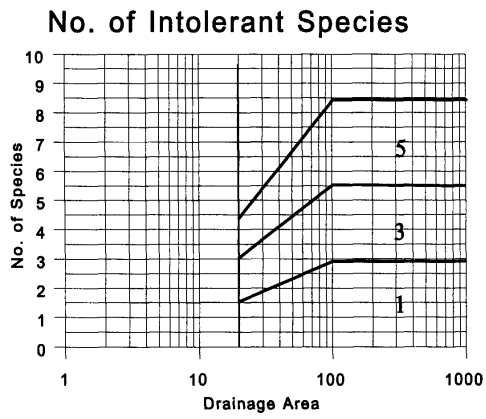
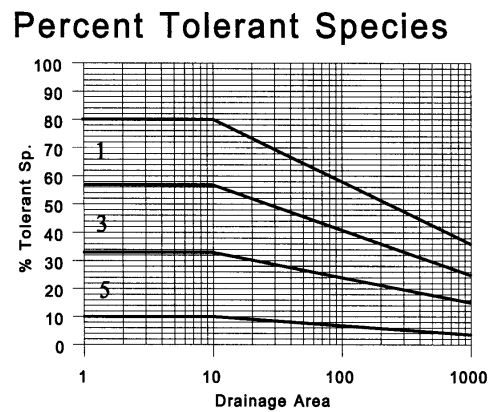


FIGURE 3.



[OAR Docket #23-460; filed 6-7-23]

**TITLE 785. OKLAHOMA WATER
RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE**

[OAR Docket #23-461]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 15. American Rescue Plan Act (ARPA) Water and Wastewater Infrastructure Grant Program Requirements [NEW]
 - 785:50-15-1. Program description [NEW]
 - 785:50-15-2. Definitions [NEW]
 - 785:50-15-3. Application review and disposition [NEW]
 - 785:50-15-4. Applicable law; deadline for applications; eligible project costs [NEW]
 - 785:50-15-5. ARPA grant priority points system [NEW]
 - 785:50-15-6. Disbursement of funds [NEW]
- Subchapter 17. Oklahoma Dam Rehabilitation (OKDR) Grant Program Requirements and Procedures [NEW]
 - 785:50-17-1. Program description [NEW]
 - 785:50-17-2. Definitions [NEW]
 - 785:50-17-3. Application review and disposition [NEW]
 - 785:50-17-4. Applicable law; deadline for applications; eligible project costs [NEW]
 - 785:50-17-5. Period of performance [NEW]
 - 785:50-17-7. OKDR grant priority system [NEW]
 - 785:50-17-8. Disbursement of funds [NEW]
- Subchapter 19. American Rescue Plan Act (ARPA) Tribal Cooperation Grant Program Requirements and Procedures [NEW]
 - 785:50-19-1. Program description [NEW]
 - 785:50-19-2. Definitions [NEW]
 - 785:50-19-3. Application review and disposition [NEW]
 - 785:50-19-4. Applicable law; deadline for applications; eligible project costs [NEW]
 - 785:50-19-5. Project Selection [NEW]
 - 785:50-19-6. Disbursement of funds [NEW]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S., § 1085.2.; Senate Bills 429, 4xx, 13xx (2022).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET

SECRETARY:

November 7, 2022

COMMENT PERIOD:

December 1, 2022 to January 17, 2023

PUBLIC HEARING:

January 17, 2023

ADOPTION:

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SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 1, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

August 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The Oklahoma Water Resources Board proposed to make permanent the emergency rules related to programs authorized by the Legislature under the American Rescue Plan Act ("ARPA").

Subchapter 15 is proposed to add language to implement provisions of Senate Bill 429, and Senate Bill 13xx of the Second Extraordinary Session of the 58th Oklahoma Legislature (2022). This measure allocates funds to OWRB for water and wastewater infrastructure as authorized by the ARPA.

The legislation directs OWRB to create a water and wastewater infrastructure grant program for communities 7,000 or less and a water and wastewater infrastructure grant program for communities 7,001 or more from funds available from the ARPA. The intended effect of the emergency rules is to provide a structure for the OWRB to review ARPA water and wastewater infrastructure grant applications, create a priority point system, clarify the approval process, and disburse funds as well as provide necessary information to potential applicants regarding laws, guidelines, and the process.

Subchapter 17 is proposed to add language to implement provisions of Senate Bill 429, and Senate Bill 13xx of the Second Extraordinary Session of the 58th Oklahoma Legislature (2022). This measure allocates funds to OWRB for a publicly owned deficient dams grant program from funds available from ARPA. The intended effect of the emergency rules is to provide a structure for the OWRB to review Oklahoma Dam Rehabilitation Grant applications, create a priority point system, clarify the approval process, and disburse funds as well as provide necessary information to potential applicants regarding laws, guidelines, and the process.

Subchapter 19 is proposed to add language to implement provisions of Senate Bill 4and Senate Bill 13 of the Second Extraordinary Session of the 58th Oklahoma Legislature (2022). This measure allocates funds to OWRB to establish a grant program to match tribal investment in rural water infrastructure projects as authorized by the American Rescue Plan Act ("ARPA"). The funds shall be used as recommended and approved by the Joint Committee on Pandemic Relief Funding on March 10, 2022. The legislation directs OWRB to create rules and establish procedures for evaluation and awarding grant applications. The intended effect of the emergency rules is to provide a structure for the OWRB to review ARPA Tribal Cooperation Grant program requirements, clarify the approval process, disburse funds, and provide necessary information to potential applicants regarding laws, guidelines, and the process. This subchapter has been amended from the emergency rules to add "a federally recognized Indian tribe or authorized Indian tribal organization" to the definition of "Qualified Entity".

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 11, 2023:

**SUBCHAPTER 15. WATER AND WASTEWATER
AMERICAN RESCUE PLAN ACT GRANT
PROGRAM REQUIREMENTS AND
PROCEDURES**

785:50-15-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act "ARPA") grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments. The Board's rules applicable to water and wastewater ARPA grants shall be construed so as to consider only the ARPA grant program administered by the Board and shall not be construed so as to consider ARPA grant programs administered by other governmental persons or other grant programs administered by the Board.

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785:50-15-2. Definitions

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

"Applicant" means a qualified entity which submits an application for an ARPA grant on its own behalf, or for whom an application is submitted.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"Project" means any project that meets the federal eligibility requirements of the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments, a part of the American Rescue Plan Act, Public Law 117-2.

"Qualified entity" means a Community as defined above.

785:50-15-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the ARPA grant program shall be as follows:

(1) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity.

(B) In all instances, applications must be in a form which meets the requirements of the Board.

(C) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(3) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the ARPA grant program, the Board shall follow the priority point system set forth in 785:50-15-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be qualified, and the proposed project must be for a qualified purpose as defined in 785:50-15-2.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

(5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.

(6) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(7) **ARPA grant amount, availability of funds.** In sizing an ARPA grant, the Board shall take into consideration the current and anticipated availability of ARPA program funds.

(8) **Conservation measures.** The Board shall consider whether the applicant has taken all reasonable measures to limit waste and conserve water.

(c) **Criteria applicability.**

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board. Such criteria shall not be deemed exclusive. In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(2) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) **Criteria for denying an application.** The Board may deny an application for an ARPA grant for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.
- (2) Failure to complete the application and provide the required documentation.
- (3) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) Board action.

- (1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:
 - (A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.
 - (B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.
 - (C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.
 - (D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.
- (2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements of funds and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-15-4. Applicable law; deadline for applications; eligible project costs

- (a) The Board shall administer applications for ARPA funds in accordance with any provisions of law applicable to such applications and ARPA funds, which may include, but is not limited to:
 - (1) Recipients are required to complete procurement procedures according to 2 CFR 200.317-200.327.
 - (2) Recipients may be required to complete a Single Audit pursuant to 2 CFR Part 200, Subpart F.
 - (3) Recipients are required to have an active registration on Sam.gov pursuant to 2 CFR Part 25.
- (b) To be considered for and receive funding from funds available for the ARPA grant program, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all material attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(c) For purposes of evaluating, approving, and funding an application for an ARPA grant, categories of project costs which are eligible for assistance shall include, but are not limited to:

- (1) Architecture and/or engineer fees related to the project.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector. Provided, however, administrative expenses shall not be eligible project costs.
- (d) The ARPA grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted, unless the applicant can provide sufficient justification for why their application was not received during the open application period.
- (e) The Board will not approve nor fund any grant applications for communities with a population greater than 7,000 or rural water districts with more than 2,300 non-pasture taps unless the applicant contributes a percentage of the total cost of the proposed project.

785:50-15-5. Water and Wastewater ARPA grant priority point system

(a) Basis of priority system and formula.

- (1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is seventy-two (72). The Board may consider grants for approval at each Board meeting, and in order from the highest rating. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration.
- (2) **Total priority points.** Total priority points will be calculated according to the priority formula set forth in subsection 785:50-15-5(b) below. Seniority date and time of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) Priority formula for eligible entities.

- (1) **Formula.** The following formula has been devised to rank grant applications: $T = WR + I + APCI + C + BP + PG + S + LP$, Where:
 - (A) T = Total of priority points
 - (B) WR = Water and sewer rate structure
 - (C) I = Indebtedness per connection
 - (D) APCI = Adjusted Per Capita Income

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- (E) C=Consent Order
- (F) BP = Project benefit to other systems
- (G) PG = Previous OWRB ARPA grant assistance
- (H) S = Sustainability
- (I) LP = Proposals submitted to the Legislative ARPA Committees

(2) **Explanation.** Each of these criteria are explained below:

(A) **Water and Sewer rate structure (WR).**

(i) For systems providing water service only:

- (I) If the cost per 5,000 gallons is \$50.00 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5,000 gallons is \$45.00 to \$49.99, the applicant shall be given 9 points.
- (III) If the cost per 5,000 gallons is \$40.00 to \$44.99, the applicant shall be given 8 points.
- (IV) If the cost per 5,000 gallons is \$35.00 to \$39.99, the applicant shall be given 7 points.
- (V) If the cost per 5,000 gallons is \$30.00 to \$34.99, the applicant shall be given 6 points.
- (VI) If the cost per 5,000 gallons is \$25.00 to \$29.99, the applicant shall be given 5 points.
- (VII) If the cost per 5,000 gallons is \$23.00 to \$24.99, the applicant shall be given 4 points.
- (VIII) If the cost per 5,000 gallons is \$21.00 to \$22.99, the applicant shall be given 3 points.
- (IX) If the cost per 5,000 gallons is \$19.00 to \$20.99, the applicant shall be given 2 points.
- (X) If the cost per 5,000 gallons is \$18.00 to \$18.99, the applicant shall be given 1 point.
- (XI) If the cost per 5,000 gallons is less than \$18.00, the applicant shall be given 0 points.

(ii) For systems providing water and sewer services:

- (I) If the cost per 5,000 gallons is \$56.00 or greater, the applicant shall be given 10 points.
- (II) If the cost per 5,000 gallons is \$53.00 to \$55.99, the applicant shall be given 9 points.
- (III) If the cost per 5,000 gallons is \$49.00 to \$52.99, the applicant shall be given 8 points.
- (IV) If the cost per 5,000 gallons \$45.00 to \$48.99, the applicant shall be given 7 points.
- (V) If the cost per 5,000 gallons is \$41.00 to \$44.99, the applicant shall be given 6 points.
- (VI) If the cost per 5,000 gallons is \$37.00 to \$40.99, the applicant shall be given 5 points.
- (VII) If the cost per 5,000 gallons is \$34.00 to \$36.99, the applicant shall be given 4 points.
- (VIII) If the cost per 5,000 gallons is \$32.00 to \$33.99, the applicant shall be given 3 points.
- (IX) If the cost per 5,000 gallons is \$31.00 to \$31.99, the applicant shall be given 2 points.
- (X) If the cost per 5,000 gallons is \$30.00 to \$30.99, the applicant shall be given 1 point.
- (XI) If the cost per 5,000 gallons is less than \$30.00, the applicant shall be given 0 points.

(iii) For systems providing sewer service only:

(I) If the cost per connection per month is \$34.00 or greater, the applicant shall be given 10 points.

(II) If the cost of connection per month is \$32.00 to \$33.99, the applicant shall be given 9 points.

(III) If the cost of connection per month is \$30.00 to \$31.99, the applicant shall be given 8 points.

(IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant shall be given 7 points.

(V) If the cost of connection per month is \$26.00 to \$27.99, the applicant shall be given 6 points.

(VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant shall be given 5 points.

(VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant shall be given 4 points.

(VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant shall be given 3 points.

(IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant shall be given 2 points.

(X) If the cost of connection per month is \$16.00 to \$17.99, the applicant shall be given 1 point.

(XI) If the cost of connection per month is less than \$16.00, the applicant shall be given 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat-water rate (unmetered) without regard to the amount of water used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for connections using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons. Two (2) points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points.

(B) **Indebtedness per connection (I).** The indebtedness per connection ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of connections served.

(i) If the indebtedness per connection is \$20.00 or greater, the applicant shall be given 10 points.

- (ii) If the indebtedness per connection is \$17.50 to \$19.99, the applicant shall be given 9 points.
 - (iii) If the indebtedness per connection is \$16.00 to \$17.49, the applicant shall be given 8 points.
 - (iv) If the indebtedness per connection is \$14.50 to \$15.99, the applicant shall be given 7 points.
 - (v) If the indebtedness per connection is \$13.00 to \$14.49, the applicant shall be given 6 points.
 - (vi) If the indebtedness per connection is \$11.50 to \$12.99, the applicant shall be given 5 points.
 - (vii) If the indebtedness per connection is \$10.00 to \$11.49, the applicant shall be given 4 points.
 - (viii) If the indebtedness per connection is \$8.50 to \$9.99, the applicant shall be given 3 points.
 - (ix) If the indebtedness per connection is \$7.00 to \$8.49, the applicant shall be given 2 points.
 - (x) If the indebtedness per connection is \$5.50 to \$6.99, the applicant shall be given 1 point.
 - (xi) If the indebtedness per connection is less than \$5.50, the applicant shall be given 0 points.
- (C) **Adjusted Per Capita Income (APCI).** The affordability criteria is calculated based on a Communities per capita income, population trends, and unemployment rate and compared to the United States criteria in each of the categories. All data is taken from the United States Census Bureau.
- (i) if the APCI of an applicant is 81%, then the applicant falls into Tier 4 and shall be given 6 points.
 - (ii) if the APCI of an applicant is less than 81% but more than or equal to 71% then the applicant falls into Tier 3 and shall be given 12 points.
 - (iii) if the APCI of an applicant is less than 71% but more than or equal to 56% then the applicant falls into Tier 2 and shall be given 18 points.
 - (iv) if the APCI of an applicant is less than or equal to 55% then the applicant falls into Tier 1 and shall be given 24 points.
- (D) **Consent order (C).** An applicant who is subject to a consent order issued by a governmental agency with environmental jurisdiction shall be given 5 priority points for a proposed project which will remedy the problem out of which the consent order arose.
- (E) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.
- (F) **Previous OWRB ARPA grant assistance (PG).** For purposes of this subparagraph a political

subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has received a previous ARPA grant from the Board in the past, 8 points shall be deducted from the application.

(G) **Sustainability.** Points will be awarded for an applicant's sustainability and long-range planning as follows:

- (i) Have and have implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 10 points.
- (ii) Have but have not implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff shall be awarded 6 points.
- (iii) Applicant is willing to develop and implement a Fiscal Sustainability Plan prior to funding that meets the requirements of the Board Staff shall be awarded 3 points.

(H) **Proposals submitted to the Legislative ARPA Committees (LP).** Five (5) points will be awarded to applicants who submitted their proposals to the Legislative ARPA committee portal.

- (3) **Evaluation of application from a master conservancy district.** When evaluating an application from a master conservancy district, Board Staff shall determine the score for the master conservancy district's application by looking through to each and every participating member of the master conservancy district. Board Staff shall assign a raw score to each and every participating member of the master conservancy district, as if such participating member had made application on their own behalf, applying the criteria for each component of the formula to such participating member based on such participating member's underlying facts and circumstances. The resulting raw score for each of the participating members of the master conservancy district shall then be weighted by multiplying such participating member's raw score by a fraction that is equal to that participating member's relative participating share of the master conservancy district's total water allocation as of the date the master conservancy district's application is filed with the Board. The resulting weighted score for all participating members of the master conservancy district shall be summed together to determine the score for the master conservancy district's application. If the proposed project will only benefit a portion of the members of the master conservancy district, then the Board will consider the participating members of the project when evaluating the project priority points.

785:50-15-6. Disbursement of funds

(a) **Action following Board approval and prior to disbursement of funding.**

- (1) **Notification of approval.** Upon approval of an ARPA grant application, the Board shall furnish to the

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applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid in compliance with the Competitive Bidding Act for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

(3) **Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the ARPA grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

- (A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or
- (B) that the Board reconsider the application with an increased ARPA grant amount.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant

monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of ARPA grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments by pay requests or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(4) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of ARPA grant funds, all as may be deemed appropriate by the Board.

SUBCHAPTER 17. OKLAHOMA DAM REHABILITATION (OKDR) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-17-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act ("ARPA") grant program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for Oklahoma dams in poor or unsatisfactory condition. Projects funded by this grant program shall be limited to up to One Million Dollars (\$1,000,000.00) per community. The Board's rules applicable to OKDR grants shall be construed to consider only the OKDR grant program administered by the Board and shall not be construed to consider OKDR grant programs administered by other governmental persons.

785:50-17-2. Definitions

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

"Applicant" means a qualified entity which applies for an OKDR grant on its own behalf, or for whom an application is submitted shall be deemed not to be an applicant.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"High hazard-potential dam" means dams where failure will probably cause loss of human life as classified under the provisions of 785:25-3-3(a) (2) (C).

"Improvements" means correction of design flaws, including but not limited to, engineering and/or construction deficiencies considered inconsistent with current state-of-practice dam design and construction.

"Qualified project" means any necessary investment to rehabilitate public non-federal dams subject to the Board's jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

"Qualified entity" means a community which own a public non-federal dam subject to the Board's jurisdiction which are of poor or unsatisfactory condition and fail to meet minimum dam safety standards stated in Chapter 25.

"Routine maintenance and repair" means activities performed routinely to prevent deterioration of structures and equipment required to maintain a dam in a safe and functioning condition, failure of which to perform timely results in dam

deterioration or impairment. Routine maintenance activities include but are not limited to replacement of parts, systems, or components; and other activities needed to preserve or maintain the dam.

785:50-17-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the OKDR grant program shall be as follows:

(1) **Notification of potential eligibility.** The Board may notify potentially eligible dam owners of the availability of the OKDR grant program.

(2) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to contact the Board for purposes of arranging participation in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be discussed to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(3) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity

(B) In all instances, applications must be written and in a form which meets the requirements of Subchapter 5.

(C) All applicants shall submit a proposed scope of work, operation and maintenance plan, schedule, and budget packet outlining the proposed activities that will be completed using grant funds.

(D) Engineering studies, plans, or design drawings and specification must be approved, signed, and stamped by a qualified design professional registered in Oklahoma.

(E) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(4) **Submittal to Board.** Upon completion of staff review, the submitted application (with recommendations, if any from the Board Dam Safety Program Manager) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance

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under the OKDR grant program, the Board shall follow the priority ranking system set forth in 785:50-17-5. The Board shall also give consider the following general and non-exclusive criteria for application approval:

- (1) **Compliance with laws.** The application and proposed project must be found to be in complying with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation. Prior to commencement of construction, recipients shall submit a dam safety construction permit application form along with all construction documents to OWRB as stated in the OAC:785-25 to be approved by the Board.
 - (2) **Dam rehabilitation.** Qualified projects must result in improvements to the overall condition of the dam and shall not be used for routine maintenance and repair.
 - (3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.
 - (4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.
 - (5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project is feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.
 - (6) **Statewide needs and public interest.** The Board shall consider the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.
 - (7) **OKDR grant amount and availability of funds.** In sizing an OKDR grant, the Board shall take into consideration the current and anticipated availability of OKDR program funds.
 - (8) **Commitment by applicant.** The applicant shall commit to provide operation and maintenance of the project for the expected life of the dam following completion of rehabilitation.
- (c) **Criteria applicability.**
- (1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.
 - (2) Such criteria shall not be deemed exclusive.
 - (3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.
 - (4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) **Criteria for denying an application.** The Board may deny an application for an OKDR grant for any of the following reasons:

- (1) The applicant or the entity which stands to receive the benefit of the grant assistance is not a qualified entity.
 - (2) Any other reason based upon applicable law or the Board's judgment and discretion.
- (e) **Board action.**
- (1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:
 - (A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.
 - (B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.
 - (C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.
 - (D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.
 - (2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-17-4. Applicable law; deadline for applications; eligible project costs

- (a) The Board shall administer applications for OKDR funds in accordance with any provisions of law applicable to such applications and OKDR funds. To be considered for and receive funding from funds available for OKDR, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.
- (b) For purposes of evaluating, approving, and funding an application for an OKDR grant, categories of project costs which are eligible for assistance shall include architecture and/or engineer fees construction costs, and other costs related to construction of a qualified project. Provided, however, that for construction costs to be eligible for award, applicants shall provide documentation that all construction funding is

available. Failure to secure construction funding timely shall result in forfeiture of grant assistance for construction costs

(c) Funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant as approved by the Board.

(d) The OKDR grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted unless the applicant can provide sufficient justification for why their application was not received during the open application period.

785:50-17-5. Period of performance

Period of performance for selected projects commences upon finalization of the funding agreement by the Board and dam owner and shall have a term of twenty-four (24) months following finalization or until the project has been completed, whichever is shorter.

785:50-17-6. Evaluation of performance

Progress of selected projects may be monitored during the period of performance by the Board Dam Safety Program as described in Chapter 25 and may include evaluation of subrecipients ability to meet proposed deadlines and ability to provide required documentation to the Board. Subrecipient's consulting engineer shall function as the primary technical assistance provider throughout the period of performance. Board staff may provide technical assistance at their discretion.

785:50-17-7. OKDR grant priority system

(a) Basis of priority system and formula.

(1) **Prioritization.** The Board or its staff shall prioritize the selection of projects. Prioritization criteria include community size, dam hazard-potential classification, dam condition, and number of persons at risk from dam failure.

(A) **Community size.** Communities with a population of 7,000 people or less shall receive higher priority than communities with a population of over 7,000 as reported in the most recent decennial census published by the United States Bureau of the Census.

(B) **Dams hazard-potential classification.** Following prioritization for community population, project dams shall be prioritized by hazard-potential classification as defined in 785:25-3-3. High hazard-potential dams are prioritized highest; significant hazard-potential dams shall be prioritized second highest, and low hazard-potential dams shall be prioritized lowest.

(C) **Dam condition rating.** Following prioritization for hazard-potential classification, project dams shall be prioritized by a combination of condition rating and the number of persons at risk due to dam failure. The inspecting engineer for the project dam shall report condition ratings for verification by the Board Dam Safety staff. Dam condition ratings are reported to USACE for the National Inventory of Dams (NID) by the Board which has final authority on assignment of official condition ratings. Only dams assigned a

condition rating of poor or unsatisfactory are eligible for funding through this program.

(D) **Number of persons at risk.** The number of persons at risk due to dam failure (PAR) shall be calculated by Board staff using dam breach inundation maps required by 785:25-7-6, population data obtained from the Department of Homeland Security, and roadway maps. PAR is calculated by overlaying breach inundation maps with population grid datasets for both day and night scenarios.

(b) **Final ranking.** Once all eligible projects have been prioritized as set forth above, they are then ranked by the following priority system based on dam condition and PAR.

(A) **Unsatisfactory condition, greater than 1,000 PAR**

(B) **Unsatisfactory condition, between 100 and 1,000 PAR**

(C) **Poor condition, greater than 1,000 PAR**

(D) **Unsatisfactory condition, between 10 and 100 PAR**

(E) **Poor condition, between 100 and 1,000 PAR**

(F) **Unsatisfactory condition, between 1 and 10 PAR**

(G) **Poor condition, between 10 and 100 PAR**

(H) **Poor condition, between 1 and 10 PAR**

(I) **Unsatisfactory condition, 0 PAR**

(J) **Poor condition, 0 PAR**

785:50-17-8. Disbursement of funds

(a) **Action following Board approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of an OKDR grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six (6) months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) **Additional conditions prior to disbursement of grant funds.**

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(A) Applicant shall establish and maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant. Once the Board or its staff has deemed the proposed activities listed in the invoice are eligible for OKDR Grant funding, are within the approved scope of work, and meet all legal requirements, the Board shall deposit the grant funds into the (appropriate account). The applicant shall then expend funds from the account only as permitted in the grant agreement, Board rules, and state guidelines

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project.

(C) If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

(i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and

(ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(D) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) Board action on request for increase in approved amount. If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the OKDR grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased OKDR grant amount during the following fiscal year. The request for an increased OKDR grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

(5) Board action on request for change in scope of approved project. If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written

request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) Disbursement of funding to applicant; action following disbursement.

(1) Disbursement contingent on completion of conditions; reduction from approved amount. At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of OKDR grant funds to the applicant for the approved project.

(2) Disbursement in whole or part; timing. As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) Post-disbursement requests for increases in funding amount. If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the OKDR grant amount disbursed by the Board, then any request for additional OKDR grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) Post-disbursement requests for changes in scope of approved project. If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(5) Post-disbursement action regarding unexpended funding. If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return or de-obligate the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of OKDR grant funds, all as may be deemed appropriate by the Board.

SUBCHAPTER 19. AMERICAN RESCUE PLAN ACT TRIBAL COOPERATION GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-19-1. Program description

The Oklahoma Legislature has authorized the American Rescue Plan Act ("ARPA") Tribal Collaboration program. This law authorizes the Board to make grants to certain qualified entities for qualified project purposes according to certain requirements. This Subchapter interprets and implements the law authorizing this grant program by the Board for the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments. The Board's rules applicable to ARPA grants shall be construed so as to consider only the ARPA grant program administered by the Board and shall not be construed so as to consider ARPA grant programs administered by other governmental persons or other grant programs administered by the Board.

785:50-19-2. Definitions

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

"Applicant" means a qualified entity which submits an application for an ARPA grant on its own behalf, or for whom an application is submitted.

"Community" means any city, town, county or the State of Oklahoma, and any rural sewer district, rural water district, public trust, master conservancy district, any other political subdivision, or any combination thereof.

"Project" means any project that meets the federal eligibility requirements of the U.S. Treasury's Coronavirus State and Local Fiscal Recovery Funds Final Rule for water and wastewater investments, a part of the American Rescue Plan Act, Public Law 117-2.

"Qualified entity" means a Community as defined above or a federally recognized Indian tribe or authorized Indian tribal organization.

785:50-19-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review, and consideration process for financial assistance under the ARPA grant program shall be as follows:

(1) **Pre-application conference.**

(A) While not specifically required, all potential applicants are encouraged to initially contact the Board for purposes of making arrangements for

participating in a pre-application conference between Board staff, applicant (or representative), applicant's legal, financial, and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial.

(B) At the pre-application conference, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) **Application.**

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion an authorized representative of the qualified entity.

(B) In all instances, applications must be in a form which meets the requirements of the Board.

(C) All applicants must have the verification form signed and notarized by the applicant representative and must have a signature of an attorney representing applicant.

(D) All applicants shall have executed all necessary and incidental instruments, commitments, and documents from all other revenue or funding sources needed to finance and complete the project.

(E) All applicants shall provide documentation stating the financial commitment for the project that is being matched from the identified tribal entity.

(3) **Submittal to Board.** Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) **General approval standards and criteria.** In the review and consideration of applications for financial assistance under the ARPA grant program, the Board shall give consideration to the following general and non-exclusive criteria for application approval:

(1) **Compliance with laws.** The application and proposed project must be found to be in compliance with all applicable and relevant federal, state, and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) **Eligibility.** The applicant must be qualified, and the proposed project must be for a qualified purpose as defined in 785:50-15-2.

(3) **Local need, support, and priority.** The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs.

(4) **Economic feasibility.** The Board shall consider the overall apparent economic viability and feasibility of the project.

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- (5) **Project feasibility.** The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible and must determine as a prerequisite to application approval and funding that the project is cost effective.
- (6) **Statewide needs and public interest.** The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.
- (7) **ARPA grant amount, availability of funds.** In sizing an ARPA grant, the Board shall take into consideration the current and anticipated availability of ARPA program funds.
- (8) **Conservation Measures.** The Board shall consider whether the applicant has taken all reasonable measures to limit waste and conserve water.
- (c) **Criteria applicability.**
- (1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board. Such criteria shall not be deemed exclusive. In all instances, each individual application and project must be reviewed and considered on its own individual merits.
- (2) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.
- (d) **Criteria for denying an application.** The Board may deny an application for an ARPA grant for any of the following reasons:
- (1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.
- (2) Failure to complete the application and provide the required documentation.
- (e) **Board action.**
- (1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:
- (A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.
- (B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.
- (C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.
- (D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate

and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

- (2) **Post board approval of application.** Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements of funds and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-19-4. Applicable law; deadline for applications; eligible project costs

(a) The Board shall administer applications for ARPA funds in accordance with any provisions of law applicable to such applications and ARPA funds, which may include, but is not limited to:

- (1) Recipients are required to complete procurement procedures according to 2 CFR 200.317-200.327.
- (2) Recipients may be required to complete a Single Audit pursuant to 2 CFR Part 200, Subpart F.
- (3) Recipients are required to have an active registration on Sam.gov pursuant to 2 CFR Part 25.

(b) To be considered for and receive funding from funds available for the ARPA grant program, an application must be completed in accordance with the Board's rules and prescribed application form in all material respects with all material attachments and filed by the applicant and received by the Board. Any application not properly completed and filed shall not be considered.

(c) For purposes of evaluating, approving, and funding an application for an ARPA grant, categories of project costs which are eligible for assistance shall include, but are not limited to:

- (1) Architecture and/or engineer fees related to the project.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector. Provided, however, administrative expenses shall not be eligible project costs.

(d) The ARPA grant applications are accepted and scored in a closed cycle. Once a cycle is closed no applications will be accepted, unless the applicant can provide sufficient justification for why their application was not received during the open application period.

785:50-19-5. Project selection

(a) Projects for this grant program shall be selected by the Cabinet Secretary for Energy and Environment in cooperation

with representatives from tribal entities, as identified in the authorizing legislation.

(b) The Office of the Secretary for Energy and Environment shall provide the project list to Board staff no later than November 1, 2022. If additional funding becomes available after the submission of the original list, the Office of the Secretary for Energy and Environment shall submit a list of additional projects within thirty (30) days of the funding becoming available.

785:50-19-6. Disbursement of funds

(a) Action following Board approval and prior to disbursement of funding.

(1) **Notification of approval.** Upon approval of an ARPA grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid in compliance with the Competitive Bidding Act for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within 6 months following the date of Board approval of the application, then the Board's approval shall expire, and no funds shall be released.

(3) **Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall maintain, in such manner as is acceptable to the Board or its staff, a federally insured account through which the grant proceeds shall be administered and separately accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications, and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

- (i) the amount of funds needed for initial commencement of the project, and
- (ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the ARPA grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

- (A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or
- (B) that the Board reconsider the application with an increased ARPA grant amount.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of ARPA grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments by pay requests or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Disbursement of funds for project costs.** ARPA funds shall be expended for the designated project only after the other identified sources of funds for the project have been expended. This shall in no way limit the Board from expending ARPA funds according to the Public Law 117-2 and in order to meet the required deadlines.

(4) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the ARPA grant amount disbursed by the Board, then any request for additional ARPA grant money shall follow the rules in this Subchapter governing new applications.

(5) **Post-disbursement requests for changes in scope of approved project.** If it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change to use undisbursed

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funds. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. If the request is denied the applicant shall either proceed with the project as approved or abandon the project and deobligate the grant monies in accordance with the grant agreement.

(6) **Post-disbursement action regarding unexpended funding.** If following completion of the project, it develops that the applicant needed less money for the project the applicant shall deobligate the unexpended amount to the Board in accordance with the grant agreement.

(7) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of ARPA grant funds, all as may be deemed appropriate by the Board.

[OAR Docket #23-461; filed 6-7-23]

TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION CHAPTER 1. GENERAL INFORMATION

[OAR Docket #23-443]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

810:1-1-6 [AMENDED]

AUTHORITY:

Workers' Compensation Commission; 85A O.S. §§ 19, 22, 120.

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n/a

GIST/ANALYSIS:

The proposed amendment updates the way electronic records searches may be conducted utilizing the agency's new CaseOK system; requires an email address to be provided by an individual requesting records; and adds a comma to correct punctuation.

CONTACT PERSON:

Lauren Hammonds Johnson, Commission Executive Director & General Counsel, 405-522-3222, LaurenH.Johnson@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2023:

810:1-1-6. Requests for agency public information

(a) Public access to Commission records is subject to the Oklahoma Open Records Act, 51 O.S. § 24A.1, et seq. and 85A O.S. § 120. Any person making a request for a Commission record shall comply with the following:

(1) The request must be in writing and directed to the Clerk of the Commission when the request is to access information on workers' compensation claims, and to the General Counsel for all other requests.

(2) Requests to access information on workers' compensation claims are subject to the written request and search fee requirements of 85A O.S. § 120, unless an exemption outlined in the law applies. The Commission may request information of a requester sufficient to determine whether or not an exemption pertains.

(A) To access information on workers' compensation claims, the request must be made in writing, on a form prescribed by the Commission. The request form requires identification of the person requesting the information and the person for whom a search is being made. The request form must contain an affidavit signed by the requester under penalty of perjury stating that the information sought is not requested for a purpose in violation of state or federal law. Those making a request shall pay the Commission One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker, plus applicable copy charges set forth in 85A O.S. § 119(A), any applicable fees according to the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and certification fees if any.

(B) Electronic searches of workers' compensation claims data may be made using the CaseOK system from a requester's personal computer or from public terminals at the Commission's offices ~~may be made. The search function permits searches using the name of a claimant or the Commission file number. Certain information related to the search criteria will be displayed in the search results on the terminal.~~ Access to additional information on claims pertaining to the search results is subject to the written request and search fee requirements described in this Paragraph.

(C) The one dollar (\$1.00) fee for each page copied, described in 85A O.S. § 119(A), includes physical paper pages copied and digital copies. However, digital copies that are downloaded shall be capped at \$1.00 for the complete download, regardless of how many digital pages are included in the file.

(3) Requests not subject to Paragraph (2) of this Sub-section, should describe the record(s) requested, indicate the name of the party making the request, and include the party's mailing address, email address, and telephone number. The requesting party shall pay for copies and research of such records in accordance with 85A O.S. § 119(A) and the Oklahoma Open Records Act, 51 O.S. § 24A.5(4), and, if applicable, for certification of the record according to a fee established by the Commission, if any.

(4) Copy charges may be waived at the Commission's discretion for copies requested by the media or by a public officer or public employee in the performance of his or her duties on behalf of a governmental entity.

(b) This Section does not apply to records specifically required by state or federal law, or by state or federal administrative rule, or by order of a court of competent jurisdiction, to be kept confidential, including, but not limited to, financial data obtained by or submitted to the Commission for the purpose of obtaining a license or permit and records subject to proprietary agreements, confidentiality orders and sealed exhibits.

[OAR Docket #23-443; filed 6-6-23]

**TITLE 810. OKLAHOMA WORKERS'
COMPENSATION COMMISSION
CHAPTER 10. PRACTICE AND
PROCEDURE**

[OAR Docket #23-444]

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RULES:

- Subchapter 1. General Provisions
 - 810:10-1-3 [AMENDED]
 - 810:10-1-12 [AMENDED]
- Subchapter 5. Hearings Conducted by Administrative Law Judges and Commissioners
 - Part 7. Initial and Subsequent Proceedings
 - 810:10-5-46 [AMENDED]
 - Part 15. Settlements
 - 810:10-5-95 [AMENDED]

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GIST/ANALYSIS:

The proposed rules include clarifying a citation in the definitions section by striking reference to a federal act that has been repealed; updating rule language to conform with a statutory change to 85A O.S. § 56 made by SB 1375 (Reg. Sess. 2020), which expressly added chiropractic services to allowable medical treatment; amending language to more accurately follow 85A O.S. § 45 regarding which edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment should be used; and adding language to allow Joint Petition Settlements to be made by written interrogatories, unless otherwise permitted or required by the Commission, instead of only "in cases of extreme circumstances".

CONTACT PERSON:

Lauren Hammonds Johnson, Commission Executive Director & General Counsel, 405-522-3222, LaurenH.Johnson@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

810:10-1-3. Definitions

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

"**Acceptable Electronic Signature Technology**" means technology that is capable of creating a signature that is unique to the person using it; is capable of verification, is under the sole control of the person using it, and is linked to the data in such a manner that if the data is changed, the electronic signature is invalidated.

"**Administrative Law Judge**" means an Administrative Law Judge of the Commission to whom the Commission has delegated by order or otherwise, the authority to conduct a hearing.

"**Attorney**" means an attorney licensed to practice law in Oklahoma and a member in good standing of the Oklahoma Bar Association, or an out-of-state attorney.

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

"**Business day**" means a day that is not a Saturday, Sunday, or legal holiday.

"**Certified workplace medical plan**" means an organization that is certified by the Oklahoma State Department of Health to provide management of quality treatment to injured employees for injuries and diseases compensable pursuant to the workers' compensation laws of the State of Oklahoma.

"**Claim administrator**" means the trading partner sending electronic transactions to the Commission, which can be an insurer filing directly with the Commission on its own behalf, or a servicing company/third party administrator filing on behalf of the insurer.

"**Claim for compensation**" means a Commission prescribed form filed by or on behalf of an injured worker or the worker's dependents to initiate a claim for benefits pursuant to

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the AWCA for an alleged work injury, occupational disease or illness, or death.

"Claim Information" means data submitted via First Report of Injury (FROI) or Subsequent Report of Injury (SROI).

"Claimant" means a person who claims benefits for an alleged work injury, occupational disease or illness, or death, pursuant to the provisions of the AWCA.

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

"Commission Chair" means the Chair of the Oklahoma Workers' Compensation Commission.

"Continuance" means postponing a hearing from the time or date set, and rescheduling it on a later time or date.

"Controverted claim" means there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation.

"Discovery" means the process by which a party may, before the hearing, obtain evidence relating to the disputed issue or issues from the other parties and witnesses.

"Document" means any written matter filed in a cause, including any attached appendices.

"EDI" means electronic data interchange.

"Electronic Data Interchange" means the transmission of claim information through electronic means, in a format established by the Commission.

"Electronic equivalent" means a Commission-approved means of filing an electronic form through the Commission's case system. In all cases where a party is required to mail a Commission form to the opposing party, a copy may be sent by electronic mail when an electronic mail address is known. In all cases where a paper form is required to be filed to effect a certain purpose, an electronic equivalent, if available, may also be filed to effect that purpose.

"Electronic Signature" means an electronic symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Employee" means any person who meets the definition provided in 85A O.S. § 2(18). For purposes of the agriculture, ranching, or horticulture exempt status defined at 85A O.S. § 2(18)(b)(2), the exemption applies to employees engaged in agriculture, ranching, or horticulture activities as defined.

(A) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15(g) of the Federal Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry.

(B) In general, "agricultural or horticultural commodities" refers to commodities resulting from the

application of agricultural or horticultural techniques. Insofar as the term refers to products of the soil, it means commodities that are planted and cultivated by man. Among such commodities are the following: Grains, forage crops, fruits, vegetables, nuts, sugar crops, fiber crops, tobacco, and nursery products. Thus, employees engaged in growing wheat, corn, hay, onions, carrots, sugar cane, seed, or any other agricultural or horticultural commodity are engaged in "agriculture." In addition to such products of the soil, however, the term includes domesticated animals and some of their products such as milk, wool, eggs, and honey. The term does not include commodities produced by industrial techniques, by exploitation of mineral wealth or other natural resources, or by uncultivated natural growth. For example, peat humus or peat moss is not an agricultural commodity.

(C) "Livestock" is confined to the ordinary use of the word and includes only domestic animals ordinarily raised or used on farms. The term includes the following animals, among others: Cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys, and goats. It does not include such animals as albino and other rats, mice, guinea pigs, and hamsters, which are ordinarily used by laboratories for research purposes. Fish are not "livestock", but employees employed in propagating or farming of fish may qualify for exemption.

(D) "Crops" are defined in accordance with 7 C.F.R. § 1437.13.

(E) "Agricultural commodity", as used in this subchapter, means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, hemp, aquacultural species (including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment), or any other agricultural commodity, excluding stored grain, determined by the Board, or any one or more of such commodities, as the context may indicate.

(F) The crop, commodity, or livestock grown or raised by the employer must be federally funded and recognized by the United States Department of Agriculture to be eligible to claim this exemption under the AWCA.

"Executive Director" means the Executive Director of the Commission.

"FROI" means first report of injury.

"Good cause" means, in the context of a request for continuance or failure of a party to comply with the Rules of this Chapter, circumstances beyond the party's control or that the

party could not reasonably foresee. In the context of a claim, defense, or order, it means a reasonable legal basis.

"Insurance carrier" means any stock company, mutual company, or reciprocal or interinsurance exchange authorized to write or carry on the business of workers' compensation insurance in this state, and includes an individual own risk employer or group self-insurance association duly authorized by the Commission to self fund its workers' compensation obligations.

"Insurer" means the entity responsible for making electronic filings as prescribed by law and these rules. This term includes self-insurers.

"Joint Petition Settlement" means a settlement between the employer/insurance carrier and the employee, of all or some issues and matters in a claim for compensation.

"Legal holiday" means only those days declared legal holidays pursuant to 25 O.S. § 82.1 or by proclamation of the Governor of Oklahoma.

"Mandatory EDI implementation date" means September 1, 2018.

"Mediation" means the process of resolving disputes with the assistance of a mediator, outside of a formal administrative hearing.

"Out-of-state attorney" means a person who is not admitted to practice law in the State of Oklahoma, but who is admitted in another state or territory of the United States, the District of Columbia, or a foreign country.

"Pro se" means without an attorney.

"Proceeding" means any action, case, hearing, or other matter pending before the Commission.

"Representative" means a person designated in writing by an injured employee, person claiming a death benefit, employer, insurance carrier or health or rehabilitation provider, to assist or represent them before the Commission in a matter arising under the AWCA.

"Sanction" means a penalty or other punitive action or remedy imposed by the Commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of the AWCA or a rule, judgment, order, or decision of the Commission.

"Self-insurer" means any duly qualified individual employer or group self-insurance association authorized by the Commission to self fund its workers' compensation obligations.

"SROI" means subsequent report of injury.

"Subpoena" means a Commission issued writ commanding a person to attend as a witness to testify or to produce documents, including books, papers and tangible things, at a deposition or at a hearing.

"Trading Partner" means an entity that has registered with the Commission to exchange data through Electronic Data Interchange.

"Workers' compensation fee schedule" means a state mandated schedule of maximum allowable reimbursement levels for health care providers, including hospitals, ambulatory surgical centers, and inpatient rehabilitation facilities, rendering reasonable and necessary health care services and supplies

to an injured employee for a compensable injury pursuant to the Oklahoma workers' compensation laws.

"Written" means that which is expressed in writing, and includes electronic records.

810:10-1-12. Prohibited communications

(a) Ex parte communications by an Administrative Law Judge of the Commission with any party, witness or medical provider are proscribed in 85A O.S. § 105, and may subject the Administrative Law Judge to disqualification from the action or matter upon presentation of an application for disqualification.

(b) Parties, attorneys, mediators, case managers, Commission counselors, Commissioners, vocational rehabilitation evaluators, witnesses and medical providers shall have no ex parte communications with the assigned Administrative Law Judge regarding the merits of a specific matter pending before the judge.

(c) Direct or indirect ex parte communications by a party or their attorney, agent, employees, or anyone else acting on their behalf, with a Commission appointed professional regarding specific cases or claimants are prohibited except as authorized in Paragraph (2) of this Subsection.

(1) For purposes of this Subsection, "Commission appointed professionals" means independent medical examiners, vocational rehabilitation counselors, case managers, and others who have been appointed by the Commission to provide services or treatment to the claimant. The term also includes the office staff of the professional and any physician or chiropractor who accepts a referral from a Commission appointed professional for treatment or evaluation of the claimant when such referral is authorized by the Commission. The term excludes a treating physician or chiropractor selected pursuant to 85A O.S. § 56 regarding change of physician or chiropractor.

(2) The following communications are permitted communications:

(A) Joint letter of the parties requesting information or opinions from the Commission appointed professional after approval by the assigned Administrative Law Judge;

(B) Communication with the staff of a Commission appointed independent medical examiner to schedule or verify an appointment, or to authorize diagnostic testing, treatment or surgery;

(C) Communication with a Commission appointed medical case manager concerning light duty issues consistent with the physician's or chiropractor's restrictions;

(D) Any communication between the claimant and the Commission appointed professional necessary to complete the claimant's treatment, testing or evaluation; and

(E) Communication between Commission appointed professionals.

(3) Failure to comply with this Subsection may, in the discretion of the assigned Administrative Law Judge,

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result in the imposition of costs, a citation for contempt, or sanctions against the offending party.

(4) Instances of prohibited communications with a Commission appointed professional shall be communicated by the Commission appointed professional to the assigned Administrative Law Judge and all parties or counsel, in writing.

SUBCHAPTER 5. HEARINGS CONDUCTED BY ADMINISTRATIVE LAW JUDGES AND COMMISSIONERS

PART 7. INITIAL AND SUBSEQUENT PROCEEDINGS

810:10-5-46. Evaluation of permanent impairment

(a) **Generally.** Except for scheduled member injuries enumerated in 85A O.S. § 46, evaluations of permanent impairment for injuries occurring on or after February 1, 2014 shall be evaluated as a percentage of whole body impairment, not to exceed 350 weeks, and must be based solely on criteria established by the ~~current~~ edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment listed in 85A O.S. § 45. Deviations from the Guides are permitted only when specifically provided for in the Guides, or pursuant to an alternative method of evaluation approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides. Such deviations must be medically reasonable and necessary, as shown by clear and convincing evidence.

(b) **Change of condition.** Evaluations of permanent impairment which are prepared in support of a Motion of Change of Condition occurring on or after February 1, 2014 shall be performed using the appropriate edition of the AMA Guides, including any approved alternative method of evaluation developed as provided in 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury.

(c) **Hearing impairment.** The ~~current~~appropriate edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, or any alternative method approved pursuant to 85A O.S. § 60 that deviates from or is used in place of or in combination with the Guides, in effect on the date of injury, shall be used to evaluate permanent impairment caused by hearing loss where the last exposure occurred on or after February 1, 2014. Objective findings necessary to prove permanent disability in occupational hearing loss cases may be established by medically recognized and accepted clinical diagnostic methodologies, including, but not limited to audiological tests that measure air and bone conduction thresholds and speech discrimination ability. Differences in baseline hearing levels shall be confirmed by subsequent testing given within four (4) weeks of the initial baseline hearing level test.

(d) **Eye impairment.**

(1) The criteria for measuring and calculating the percentage of eye impairment for an injury occurring on or

after February 1, 2014 shall be pursuant to this Subsection. A physician may deviate from the method of evaluation provided for in this Subsection or may use some other recognized method of evaluation, if the deviation or the method of evaluation is fully explained.

(2) Physicians should consult the American Medical Association's Guides to the Evaluation of Permanent Impairment regarding the equipment necessary to test eye function and for methods of evaluating vision loss. Evaluation of visual impairment may be based upon visual acuity for distance and near, visual fields and ocular motility with absence of diplopia.

(3) Use of corrective lenses may be considered in evaluating the extent of vision loss, 85A O.S. § 46(E).

PART 15. SETTLEMENTS

810:10-5-95. Joint petition settlements

(a) Under 85A O.S. § 87 and 85A O.S. § 115, upon and after the filing of a claim for compensation, or, in the absence of a claim for compensation, the filing of the applicable Employer's First Notice of Injury or FROI per 810:10-1-4(a) in a claim involving a pro se employee, the parties may engage in a compromise and release of any and all liability which is claimed to exist under the AWCA on account of the injury or occupational disease or illness, subject to approval by the Commission, an Administrative Law Judge, or a Benefit Review Officer.

(b) The parties in interest to a claim for compensation may settle upon and determine any and all issues and matters by agreement, subject to the terms and conditions of this Section.

(c) Any agreement submitted to the Commission, Administrative Law Judge or Benefit Review Officer of the Commission's Counselor Division, for approval shall be set forth in a Commission prescribed CC-Joint Petition Settlement, or electronic equivalent. Nothing in this rule shall preclude the Multiple Injury Trust Fund from compromising a claim as authorized by 85A O.S. § 32(F).

(d) No CC-Joint Petition Settlement agreement shall be binding on the parties in interest unless it is approved by the Commission pursuant to 85A O.S. § 22, Administrative Law Judge of the Commission pursuant to 85A O.S. § 115, or a Commission Benefit Review Officer pursuant to 85A O.S. § 70. The CC-Joint Petition Settlement, including any attached appendix as provided in 85A O.S. § 115(B), identifying the outstanding issues that are subject to the Commission's continuing jurisdiction and possible reopen, shall be approved unless it is determined that:

(1) The agreement is unfair, unconscionable, or improper as a matter of law; or

(2) The agreement is the result of an intentional misrepresentation of a material fact; or

(3) The agreement, if for permanent disability, is not supported by competent medical evidence as required by 85A O.S. § 2(33).

(e) As used in this Section, "parties in interest" means the respondent (employer and the employer's insurance carrier if insured), and an employee. An employee who is not represented

by legal counsel may effect a CC-Joint Petition Settlement upon the employer's filing of the applicable Employer's First Notice of Injury or FROI as provided in 810:10-1-4(a), or the employee's filing of a claim for compensation (CC-Form-3 or CC-Form-3B), regarding the injury or occupational disease or illness which is the subject of the CC-Joint Petition Settlement. (f) In no instance shall the total attorney's fee amount provided for in a CC-Joint Petition Settlement exceed the maximum attorney fee allowed by law.

(g) ~~No CC-Joint Petition Settlement shall be made upon written interrogatory or deposition except in cases where the claimant is currently engaged in the military service of the United States, is outside of the state, is a nonresident of Oklahoma, or in cases of extreme circumstances. The testimony required to effect a Joint Petition Settlement shall be submitted by written interrogatories, unless otherwise permitted or required by the Commission.~~

(h) A stenographic record of the terms and conditions of an approved joint petition settlement and the understanding of the claimant concerning the effect of the settlement must be made by a Commission court reporter and transcribed at the expense of the employer or insurance carrier. The transcript shall be prepared and provided to the parties within ninety (90) days. Medical reports and other exhibits submitted in support of a CC-Joint Petition Settlement shall not be transcribed. The original exhibits or duplicate copies thereof shall be affixed to the original transcript and placed in the Commission file.

(i) A file-stamped copy of an approved CC-Joint Petition Settlement shall be mailed by the Commission to all unrepresented parties and attorneys of record.

(j) A CC-Joint Petition Settlement that fully and finally resolves all issues in a claim for compensation between the employee and the employer, shall not be deemed an adjudication of the rights between the medical or rehabilitation provider and the employer for reasonable and necessary medical and rehabilitation expenses incurred by the employee due to the injury before the file-stamped date of the approved CC-Joint Petition Settlement.

(k) Within seven (7) days of the date a medical provider provides initial treatment for a work-related accident, the medical provider shall provide notice in writing to the Commission, if and only if, a CC-Form-3 or CC-Form-3B has been filed with the Commission, and in all cases shall provide notice in writing to the patient's employer, and if known, the employer's insurance carrier. If the medical provider fails to provide the required notification, the medical provider forfeits any rights to future notification, including those circumstances where a case is fully and finally settled by a CC-Joint Petition Settlement, unless the medical provider is actually known to the employer or insurance carrier or is listed by the employee.

(l) If the issue of medical treatment is fully and finally settled by a CC-Joint Petition Settlement, the employee shall provide to the employer or insurance carrier a list of all medical providers known to the employee. The Commission prescribed Form CC-Joint Petition Settlement, or electronic equivalent, shall be used for that purpose. Within ten (10) days from the file-stamped date of the CC-Joint Petition Settlement, the employer or insurance carrier shall send notice

of the CC-Joint Petition Settlement to all medical providers listed by the employee and to all medical providers known to the employer or insurance carrier. The employee is liable for payment of any medical services rendered after the CC-Joint Petition Settlement is filed. The employee also is responsible for informing any future medical providers that the case or issue of medical treatment was fully and finally disposed of by a CC-Joint Petition Settlement and that the employee, rather than the employer or insurance carrier, is the party financially responsible for such services.

[OAR Docket #23-444; filed 6-6-23]

**TITLE 810. OKLAHOMA WORKERS' COMPENSATION COMMISSION
CHAPTER 15. MEDICAL SERVICES**

[OAR Docket #23-445]

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RULES:

Subchapter 13. Change of Treating Physician
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810:15-13-2 [AMENDED]

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The proposed rule changes update language to conform with a statutory change to 85A O.S. § 56 made by SB 1375 (Reg. Sess. 2020), which expressly added chiropractic services to allowable medical treatment.

CONTACT PERSON:

Lauren Hammonds Johnson, Commission Executive Director & General Counsel, 405-522-3222, LaurenH.Johnson@wcc.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 14, 2023:

Permanent Final Adoptions

SUBCHAPTER 13. CHANGE OF TREATING PHYSICIAN

810:15-13-1. Scope

(a) This Subchapter applies to requests to the Commission for a change of treating physician or chiropractor made by a claimant who is not subject to a certified workplace medical plan. These requests are authorized in 85A O.S. § 56(B).

(b) Requests for a change of treating physician or chiropractor sought by an injured employee of an employer that previously contracted with a certified workplace medical plan are not subject to this Subchapter. Such requests must be made by utilizing the plan's dispute resolution process on file with the State Department of Health.

(c) Each certified workplace medical plan shall notify the Executive Director in writing of the plan's appropriate internet website address where its dispute resolution form(s) and current list of providers may be accessed electronically by the general public. A plan shall notify the Executive Director in writing upon a change of the website address where the required information may be accessed.

810:15-13-2. Change of treating physician or chiropractor; no certified workplace medical plan

(a) A claimant seeking a change of treating physician or chiropractor pursuant to 85A O.S. § 56(B) for a work-related injury occurring on and after February 1, 2014, shall file a Commission prescribed Application for Change of Treating Physician with the Commission. Upon such application, the Commission shall grant one (1) change of treating physician or chiropractor. At that time, the employer shall provide the claimant a list of three (3) licensed physicians, one of which may be a chiropractor, from which to select the replacement ~~treating physician~~. Each physician or chiropractor listed shall be qualified to treat the affected body part or condition for which a change of physician or chiropractor is sought.

(b) Nothing in this Section is intended to preclude the parties from agreeing upon a change of treating physician or chiropractor without the necessity of complying with Subsection (a) of this Section, or from utilizing mediation to resolve a request for change of treating physician or chiropractor.

[OAR Docket #23-445; filed 6-6-23]

Executive Orders

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

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

TITLE 1. EXECUTIVE ORDERS

1:2023-18.

EXECUTIVE ORDER 2023-13

I, Greg Treat, Acting Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 2 and 15 of Article VI of the Oklahoma Constitution, hereby declare the following:

1. Severe storms, straight-line winds, tornadoes, and hail, beginning June 17, 2023, have caused damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this State.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by the severe storms, straight-line winds, tornadoes, and hail, in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health, and safety. The counties included in this declaration are:

Choctaw, Creek, Delaware, Harper, Mayes, Pawnee, Payne, Rogers, Tulsa, and Wagoner

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

Based on the foregoing, 63 O.S. §§ 683.1 *et seq.*, and pursuant to 49 C.F.R. Part 390.23, I hereby declare that there is a State of Emergency continuing in the State of Oklahoma.

Due to impacts from severe storms, straight-line winds, tornadoes, and hail, beginning June 17, 2023, and ongoing, including extensive damage to power lines and infrastructure, it is necessary to assist and expedite all efforts of relief. In order to accommodate this need and to provide assistance to the residents of the State of Oklahoma in this extraordinary situation, I hereby order the temporary suspension of the following in all 50 states as they apply to vehicles in the support efforts:

1. The requirements for size and weights permits of oversized vehicles under Title 47 of the Oklahoma Statutes whose sole purpose is transportation of materials and supplies used for emergency relief and power restoration;

2. The cost and fees of overweight permits required of carriers whose purpose is the transportation of materials and supplies used for emergency relief and power restoration, which require an overweight permit under Title 47 of Oklahoma statutes;

3. The requirements under Parts 390 through 399 pursuant to part 390.23 of Title 49 of the Federal Motor Carrier Safety Administration Regulations;

4. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission; and

5. The requirements for licensing/registration authority as required by the Oklahoma Tax Commission.

Nothing contained in this declaration shall be construed as an exemption from the Controlled Substance and Alcohol Use and Testing requirements (49 C.F.R. Part 382), the Commercial Driver License requirements (49 C.F.R. Part 383), the Financial Responsibility requirements (49 C.F.R. Part 387), or any other portion of the regulations not specifically identified herein. Motor carriers that have an Out-Of-Service Order in effect cannot take advantage of the relief from regulation that this declaration provides.

This Executive Order shall be effective for thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management, Oklahoma Corporation Commission, Oklahoma Department of Transportation, Oklahoma Tax Commission, Oklahoma Adjutant General's Office, Office of Management and Enterprise Services, and the

Executive Orders

Oklahoma Department of Public Safety, who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 20th day of June, 2023.

BY THE ACTING GOVERNOR
OF THE STATE OF OKLAHOMA

Greg Treat

ATTEST:
Brian Bingman
Secretary of State

[OAR Docket #23-575; filed 6-20-23]

1:2023-19.

EXECUTIVE ORDER 2023-19

I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby order the creation of the MODERN (Modernizing Operations through Data and Evidence-based Restoration Now) Justice Task Force until February 2, 2024.

The Task Force shall study, evaluate, and make recommendations regarding policies and programs and propose legislation that will:

1. Protect lives and property;
2. Respect and support victims of crime;
3. Deter criminal activity;
4. Enhance and establish diversion programs, including alternative sentencing, supervision, and treatment options;
5. Reduce recidivism;
6. Reduce Oklahoma's incarceration rate and associated costs consistent with these goals;
7. Increase the cost-effectiveness of our state and local justice systems through expanding the use of technology;
8. Apply resources toward high performing strategies to increase public safety; and
9. Improve any other aspects of Oklahoma's justice system.

The Task Force shall submit to the Governor, the President Pro Tempore of the Oklahoma Senate, the Speaker of the Oklahoma House of Representatives, the Minority Leader of the Oklahoma Senate, and the Minority Leader of the Oklahoma House of Representatives a report on or before December 29, 2023, detailing its findings and recommendations.

The Task Force shall be composed of eleven (11) members determined as follows:

1. The Secretary of Public Safety or designee;
2. The Speaker of the Oklahoma House of Representatives or designee;
3. The President Pro Tempore of the Oklahoma Senate or designee;
4. The Commissioner for the Oklahoma Department of Mental Health and Substance Abuse Services or designee;
5. A District Attorney for a county or district with a population of five hundred thousand (500,000) or less as determined by the latest Federal Decennial Census, to be selected by the Speaker of the Oklahoma House of Representatives;
6. The Administrative Director of the Administrative Office of the Courts or designee;
7. A sheriff of a county with a population of five hundred thousand (500,000) or more as determined by the latest Federal Decennial Census, to be selected by the President Pro Tempore of the Oklahoma Senate;
8. A public defender to be selected by the Administrative Director of the Courts;
9. A retired district judge to be selected by the Presiding Judge of the Court of Criminal Appeals;
10. Someone with demonstrated knowledge of successful diversion programs, with a specific emphasis on programs in rural areas, to be selected by the Secretary of Public Safety; and
11. A crime victims advocate to be selected by the Secretary of Public Safety.

The Secretary of Public Safety or designee shall serve as the Chair of the Task Force and shall have the authority to create committees and name committee chairs to facilitate the work of the Task Force and shall have the authority to appoint Task Force members and non-members to serve on committees. The Task Force shall meet as often as deemed necessary by the Chair allowing for timely completion of its work. A majority of the members shall constitute a quorum for the purpose of

conducting the business of the Task Force. Members, including those appointed to committees who are not members of the Task Force, shall serve without compensation.

The Office of Management and Enterprise Services shall provide staff and administrative support for the Task Force. Technical assistance will be provided by the Crime and Justice Institute as a part of the Justice Reinvestment Initiative. All Executive departments, officers, agencies, and employees of the State shall cooperate with the Task Force, including providing any information, data, records, and reports as may be requested.

This Executive Order shall be distributed to each member of the Task Force specifically identified herein and to each person appointed to a Task Force committee and to the Minority Leader of the Oklahoma Senate and the Minority Leader of the Oklahoma House of Representatives.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 11th day of July, 2023.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:
Brian Bingman
Secretary of State

[OAR Docket #23-700; filed 7-11-23]
