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# Table of Contents

<b>Agency/Action/Subject Index</b> .....	iii
<b>Rules Affected Index</b> .....	v
<b>Agency Index (Title numbers assigned)</b> .....	xxvii
<b>Notices of Rulemaking Intent</b>	
Environmental Quality, Department of (Title 252) .....	1479
<b>Legislative Disapprovals</b>	
Medical Licensure and Supervision, State Board of (Title 435) .....	1481
<b>Emergency Adoptions</b>	
Health Care Authority, Oklahoma (Title 317) .....	1483, 1485, 1494, 1495, 1496, 1498
<b>Permanent Final Adoptions</b>	
Agriculture, Food, and Forestry, Oklahoma Department of (Title 35) .....	1499, 1500, 1501, 1504, 1521, 1524, 1528, 1531, 1532, 1533
Chiropractic Examiners, Board of (Title 140) .....	1534
Funeral Board, Oklahoma (Title 235) .....	1537
Health, Oklahoma State Department of (Title 310) .....	1541, 1543, 1545, 1554, 1559, 1563, 1566, 1568, 1569, 1570, 1576, 1577, 1580, 1582, 1584, 1586, 1588, 1606
Horse Racing Commission, Oklahoma (Title 325) .....	1608, 1609, 1611, 1614, 1615
Insurance Department (Title 365) .....	1616, 1621, 1624, 1628
Investigation, Oklahoma State Bureau of (Title 375) .....	1629
Liquefied Petroleum Gas Board, Oklahoma (Title 420) .....	1636, 1637
Real Estate Appraiser Board (Title 600) .....	1648, 1649
Real Estate Commission, Oklahoma (Title 605) .....	1650, 1652
Regents for Higher Education, State (Title 610) .....	1661, 1662
University Hospitals Authority (Title 752) .....	1664
University Hospitals Trust (Title 753) .....	1679
Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission (Title 765) ....	1695, 1696, 1697, 1699, 1700, 1701, 1702, 1704, 1706, 1708, 1709, 1712, 1713
<b>Executive Orders (Title 1)</b> .....	1717



# Agency/Action/Subject Index

## AGRICULTURE, Food, and Forestry, Oklahoma Department of (Title 35)

### *Permanent Final Adoptions*

Administrative Operations (Chapter 1) .....	1499
Fees (Chapter 2) .....	1499
Agricultural Products (Chapter 10) .....	1500
Animal Industry (Chapter 15) .....	1501
Water Quality (Chapter 17) .....	1504
Consumer Protection (Chapter 30) .....	1521
Food Safety (Chapter 37) .....	1524
Market Development (Chapter 40) .....	1528
Agriculture Pollutant Discharge Elimination System (Chapter 44) .....	1531
Aquaculture (Chapter 50) .....	1532
Commercial Pet Breeders and Animal Shelters (Chapter 55) .....	1533

## CHIROPRACTIC Examiners, Board of (Title 140)

### *Permanent Final Adoptions*

Special Certificates and Miscellaneous Provisions (Chapter 15) .....	1534
---	------

## FUNERAL Board, Oklahoma (Title 235)

### *Permanent Final Adoptions*

Funeral Services Licensing (Chapter 10) .....	1537
---	------

## ENVIRONMENTAL Quality, Department of (Title 252)

### *Notices of Rulemaking Intent*

Radiation Management (Chapter 410) .....	1479
--	------

## GOVERNOR

### *Executive Orders*

Ordering state agencies, boards, and commissions provide clarity, certainty, and uniformity to administrative actions and rules to counter regression of women's rights (23-20) .....	1717
--	------

## HEALTH, Oklahoma State Department of (Title 310)

### *Permanent Final Adoptions*

Health Care Information (Chapter 9) .....	1541
Vital Statistics (Chapter 105) .....	1543
Medical Micropigmentation (Chapter 234) .....	1543
Hearing Aid Dealers and Fitters [REVOKED] (Chapter 265) .....	1545
<u>Hearing Aid Dealers and Fitters Regulations</u> (Chapter 266) .....	1554
WIC (Chapter 410) .....	1559
Childhood Lead Poisoning Prevention Rules (Chapter 512) .....	1563
Communicable Disease and Injury Reporting (Chapter 515) .....	1566
Direct Services to Individuals (Chapter 525) .....	1568
Vision Screening (Chapter 531) .....	1569
Newborn Screening <del>Program</del> and Resources for Trisomy 13, 18, and 21 (Chapter 550) .....	1570
Emergency Response Systems Stabilization and Improvement Revolving Fund (Chapter 642) .....	1576
Emergency Service District Supplemental Regulations [REVOKED] (Chapter 645) .....	1577
Health Maintenance Organizations [REVOKED] (Chapter 659) .....	1580
Hospice (Chapter 661) .....	1582
Home Care Agencies (Chapter 662) .....	1584
Trauma Care Assistance Revolving Fund (Chapter 669) .....	1586
<u>Alzheimer's Disease, Dementia and Other Forms of Dementia</u> Special Care Disclosure Rules (Chapter 673) .....	1586
Nurse Aide Training and Certification (Chapter 677) ....	1588
Medical Marijuana Regulations [REVOKED] (Chapter 681) .....	1606

## HEALTH Care Authority, Oklahoma (Title 317)

### *Emergency Adoptions*

Medical Providers-Fee for Service (Chapter 30) .....	1483, 1485, 1494, 1495, 1496
Insure Oklahoma (Chapter 45) .....	1498

## HORSE Racing Commission, Oklahoma (Title 325)

### *Permanent Final Adoptions*

Racing Organization (Chapter 10) .....	1608
Licensing (Chapter 15) .....	1609
Entries and Declarations (Chapter 25) .....	1611
General Conduct (Chapter 35) .....	1614
Human Substance Abuse Testing (Chapter 50) .....	1615

## INSURANCE Department (Title 365)

### *Permanent Final Adoptions*

Administrative Operations (Chapter 1) .....	1616
Life, Accident and Health (Chapter 10) .....	1621
Property and Casualty (Chapter 15) .....	1624
Other Licensees (Chapter 25) .....	1628
Health Maintenance Organization (HMO) (Chapter 40) .....	1628

## INVESTIGATION, Oklahoma State Bureau of (Title 375)

### *Permanent Final Adoptions*

Oklahoma Open Records (Chapter 9) .....	1629
---	------

## LIQUEFIED Petroleum Gas Board, Oklahoma (Title 420)

### *Permanent Final Adoptions*

Administrative Rules of Procedure (Chapter 1) .....	1636
Liquefied Petroleum Gas Administration (Chapter 10) .....	1637

## MEDICAL Licensure and Supervision, State Board of (Title 435)

### *Legislative Disapprovals*

Physician Assistants (Chapter 15) .....	1481
---	------

## REAL Estate Appraiser Board (Title 600)

### *Permanent Final Adoptions*

Licensure and Certification Requirements (Chapter 10) .....	1648
Disciplinary Procedures (Chapter 15) .....	1649
Appraisal Management Company Registration (Chapter 30) .....	1649

## REAL Estate Commission, Oklahoma (Title 605)

### *Permanent Final Adoptions*

Administrative Operations (Chapter 1) .....	1650
Requirements, Standards, and Procedures (Chapter 10) .....	1652

## REGENTS for Higher Education, State (Title 610)

### *Permanent Final Adoptions*

Student Financial Aid and Scholarships (Chapter 25) ...	1661, 1662
---	---------------

## UNIVERSITY Hospitals Authority (Title 752)

### *Permanent Final Adoptions*

Acquisitions and Construction (Chapter 11) .....	1664
--	------

## UNIVERSITY Hospitals Trust (Title 753)

### *Permanent Final Adoptions*

Acquisitions and Construction (Chapter 11) .....	1679
--	------

## OKLAHOMA Used Motor Vehicle, Dismantler, and Manufactured Housing Commission (Title 765)

### *Permanent Final Adoptions*

Organization and Method of Operations (Chapter 1) .....	1695
Informal and Formal Procedures (Chapter 2) .....	1696
General Licensing Provisions (Chapter 4) .....	1697
Used Motor Vehicle Dealers (Chapter 10) .....	1697
Used Motor Vehicle Rebuilders (Chapter 11) .....	1699
Salvage Pools and Disposal Sales (Chapter 12) .....	1700
Temporary License Plates (Chapter 13) .....	1701

**Agency/Action/Subject Index – continued**

---

**OKLAHOMA Used Motor Vehicle, Dismantler, and  
Manufactured Housing Commission – continued**

*Permanent Final Adoptions – continued*

Used Motor Vehicle Salespersons (Chapter 15) .....	1701
Advertising (Chapter 16) .....	1702
Wholesale Motor Vehicle Dealers (Chapter 20) .....	1704
Automotive Dismantler and Parts Recyclers (Chapter 25) .....	1704
Manufactured Home Dealers (Chapter 35) .....	1706

**OKLAHOMA Used Motor Vehicle, Dismantler, and  
Manufactured Housing Commission – continued**

*Permanent Final Adoptions – continued*

Manufactured Home Manufacturers (Chapter 36) .....	1708
Manufactured Home Installers (Chapter 37) .....	1709
Manufactured Home Salesperson (Chapter 38) .....	1712
Restricted Manufactured Home Park Dealers (Chapter 39) .....	1713

# Rules Affected Index

[(E) = *Emergency action*]

Rule	Register Page	Rule	Register Page
5:2-1-2. . . . .	[AMENDED] . . . . . 827	35:40-23-7. . . . .	[AMENDED] . . . . . 1531
5:11-7-1. . . . .	[AMENDED] . . . . . 829	35:40-23-8. . . . .	[AMENDED] . . . . . 1531
25:15-1-2. . . . .	[AMENDED] . . . . . 830	35:40-25-1. . . . .	[NEW] (E) . . . . . 7
25:15-1-3. . . . .	[AMENDED] . . . . . 830	35:40-25-2. . . . .	[NEW] (E) . . . . . 7
25:15-1-4. . . . .	[AMENDED] (E) . . . . . 501	35:40-25-3. . . . .	[NEW] (E) . . . . . 8
25:15-1-4. . . . .	[AMENDED] . . . . . 832	35:40-25-4. . . . .	[NEW] (E) . . . . . 8
35:1-10-6. . . . .	[AMENDED] . . . . . 1499	35:40-25-5. . . . .	[NEW] (E) . . . . . 8
35:2-3-5. . . . .	[AMENDED] . . . . . 1500	35:44-1-3. . . . .	[REVOKED] . . . . . 1532
35:2-3-29. . . . .	[AMENDED] . . . . . 1500	35:44-3-3. . . . .	[REVOKED] . . . . . 1532
35:10-1-3. . . . .	[AMENDED] . . . . . 1500	35:50-1-30. . . . .	[AMENDED] . . . . . 1532
35:15-9-7. . . . .	[AMENDED] . . . . . 1501	35:50-1-31. . . . .	[AMENDED] . . . . . 1533
35:15-9-8. . . . .	[AMENDED] . . . . . 1501	35:55-3-1. . . . .	[AMENDED] . . . . . 1533
35:15-9-9. . . . .	[AMENDED] . . . . . 1502	35:55-9-1. . . . .	[NEW] . . . . . 1534
35:15-13-3. . . . .	[AMENDED] . . . . . 1502	40:20-1-3. . . . .	[AMENDED] . . . . . 837
35:15-13-6. . . . .	[AMENDED] . . . . . 1502	40:25-1-2. . . . .	[AMENDED] . . . . . 840
35:15-13-7. . . . .	[AMENDED] . . . . . 1503	40:30-1-3. . . . .	[AMENDED] . . . . . 840
35:15-22-71. . . . .	[AMENDED] . . . . . 1503	40:50-1-1.1. . . . .	[AMENDED] (E) . . . . . 235
35:15-34-13. . . . .	[AMENDED] . . . . . 1503	40:50-1-1.1. . . . .	[AMENDED] . . . . . 842
35:15-44-19. . . . .	[AMENDED] . . . . . 1503	40:50-1-1.2. . . . .	[NEW] (E) . . . . . 236
35:15-44-20. . . . .	[AMENDED] . . . . . 1504	40:50-1-1.2. . . . .	[NEW] . . . . . 843
35:15-47-18. . . . .	[AMENDED] . . . . . 1504	40:50-1-2. . . . .	[AMENDED] (E) . . . . . 237
35:17-5-3. . . . .	[AMENDED] (E) . . . . . 123	40:50-1-2. . . . .	[AMENDED] . . . . . 843
35:17-5-3. . . . .	[AMENDED] . . . . . 1505	40:50-1-3. . . . .	[AMENDED] (E) . . . . . 237
35:17-5-5. . . . .	[AMENDED] (E) . . . . . 124	40:50-1-3. . . . .	[AMENDED] . . . . . 844
35:17-5-5. . . . .	[AMENDED] . . . . . 1505	40:50-1-3.1. . . . .	[AMENDED] (E) . . . . . 238
35:17, App. B. . . . .	[NEW] (E) . . . . . 125	40:50-1-3.1. . . . .	[AMENDED] . . . . . 844
35:17, App. B. . . . .	[NEW] . . . . . 1507	40:50-1-3.2. . . . .	[AMENDED] (E) . . . . . 238
35:30-17-4. . . . .	[AMENDED] . . . . . 1521	40:50-1-3.2. . . . .	[AMENDED] . . . . . 845
35:30-17-10. . . . .	[AMENDED] . . . . . 1522	40:50-1-3.3. . . . .	[NEW] (E) . . . . . 239
35:30-17-22.2. . . . .	[AMENDED] . . . . . 1523	40:50-1-3.3. . . . .	[NEW] . . . . . 845
35:30-17-25. . . . .	[AMENDED] . . . . . 1523	40:50-1-7. . . . .	[AMENDED] . . . . . 845
35:30-17-73. . . . .	[AMENDED] . . . . . 1523	40:50-3-1.1. . . . .	[NEW] (E) . . . . . 239
35:30-45-9. . . . .	[AMENDED] . . . . . 1524	40:50-3-1.1. . . . .	[NEW] . . . . . 845
35:37-1-2. . . . .	[AMENDED] . . . . . 1525	40:50-3-1.2. . . . .	[NEW] (E) . . . . . 239
35:37-3-1. . . . .	[AMENDED] . . . . . 1525	40:50-3-1.2. . . . .	[NEW] . . . . . 846
35:37-3-3. . . . .	[AMENDED] . . . . . 1525	40:50-3-2. . . . .	[NEW] (E) . . . . . 239
35:37-5-1. . . . .	[AMENDED] . . . . . 1525	40:50-3-2. . . . .	[NEW] . . . . . 846
35:37-5-2. . . . .	[AMENDED] . . . . . 1526	40:50-3-3. . . . .	[NEW] (E) . . . . . 240
35:37-13-2. . . . .	[AMENDED] . . . . . 1526	40:50-3-3. . . . .	[NEW] . . . . . 846
35:37-13-7. . . . .	[AMENDED] . . . . . 1527	40:50-3-4. . . . .	[NEW] (E) . . . . . 240
35:37-13-8. . . . .	[NEW] . . . . . 1527	40:50-3-4. . . . .	[NEW] . . . . . 846
35:37-15-2. . . . .	[AMENDED] . . . . . 1527	40:50-3-5. . . . .	[NEW] (E) . . . . . 241
35:37-17-3. . . . .	[AMENDED] . . . . . 1527	40:50-3-5. . . . .	[NEW] . . . . . 847
35:37-19-2. . . . .	[AMENDED] . . . . . 1527	40:50-3-5.1. . . . .	[NEW] (E) . . . . . 241
35:37-19-3. . . . .	[AMENDED] . . . . . 1528	40:50-3-5.1. . . . .	[NEW] . . . . . 848
35:40-17-2. . . . .	[NEW] . . . . . 1529	40:50-3-6. . . . .	[NEW] (E) . . . . . 241
35:40-17-3. . . . .	[AMENDED] . . . . . 1529	40:50-3-6. . . . .	[NEW] . . . . . 848
35:40-17-4. . . . .	[AMENDED] . . . . . 1529	75:40-1-1. . . . .	[NEW] (E) . . . . . 137
35:40-17-6. . . . .	[AMENDED] . . . . . 1529	75:40-1-2. . . . .	[NEW] (E) . . . . . 137
35:40-17-7. . . . .	[NEW] . . . . . 1529	75:40-2-1. . . . .	[NEW] (E) . . . . . 137
35:40-17-8. . . . .	[NEW] . . . . . 1530	75:40-2-2. . . . .	[NEW] (E) . . . . . 138
35:40-17-9. . . . .	[NEW] . . . . . 1530	75:40-2-3. . . . .	[NEW] (E) . . . . . 138
35:40-17-10. . . . .	[NEW] . . . . . 1530	75:40-2-4. . . . .	[NEW] (E) . . . . . 138
35:40-17-11. . . . .	[NEW] . . . . . 1530	75:40-2-5. . . . .	[NEW] (E) . . . . . 138
35:40-21-3. . . . .	[AMENDED] . . . . . 1530	75:40, App. A. . . . .	[NEW] (E) . . . . . 140
35:40-23-2. . . . .	[AMENDED] . . . . . 1530	86:10-1-2. . . . .	[AMENDED] . . . . . 849
35:40-23-3. . . . .	[AMENDED] . . . . . 1530	86:10-7-2. . . . .	[AMENDED] . . . . . 850
35:40-23-4. . . . .	[AMENDED] . . . . . 1531	86:10-11-4. . . . .	[AMENDED] . . . . . 851
35:40-23-4.1. . . . .	[NEW] . . . . . 1531	86:10-11-5. . . . .	[AMENDED] . . . . . 851
35:40-23-5. . . . .	[AMENDED] . . . . . 1531	86:10-17-2. . . . .	[AMENDED] . . . . . 852
35:40-23-6. . . . .	[AMENDED] . . . . . 1531	86:10-17-4.1. . . . .	[AMENDED] . . . . . 852

**Rules Affected Index – *continued***

86:10-17-6.1. . . . . [AMENDED] . . . . .	852	150:80-3-6. . . . . [REVOKED] . . . . .	879
86:10-21-5. . . . . [AMENDED] . . . . .	852	150:80-3-7. . . . . [REVOKED] . . . . .	879
86:10-27-5. . . . . [NEW] . . . . .	853	150:80-3-8. . . . . [REVOKED] . . . . .	880
86:10-29-5. . . . . [AMENDED] . . . . .	853	150:80-3-9. . . . . [REVOKED] . . . . .	880
86:15-1-2. . . . . [AMENDED] . . . . .	853	150:80-3-10. . . . . [REVOKED] . . . . .	880
86:15-1-3. . . . . [AMENDED] . . . . .	854	150:80-3-11. . . . . [REVOKED] . . . . .	880
86:15-5-3. . . . . [AMENDED] . . . . .	854	150:80-3-12. . . . . [REVOKED] . . . . .	880
86:15-5-4. . . . . [AMENDED] . . . . .	855	150:120-1-1. . . . . [REVOKED] . . . . .	881
86:15-9-4. . . . . [AMENDED] . . . . .	856	150:120-1-2. . . . . [REVOKED] . . . . .	882
86:15-13-3. . . . . [AMENDED] . . . . .	856	150:120-1-3. . . . . [REVOKED] . . . . .	882
86:15-13-4. . . . . [AMENDED] . . . . .	856	150:120-3-1. . . . . [REVOKED] . . . . .	882
86:15-15-5. . . . . [AMENDED] . . . . .	858	150:120-3-2. . . . . [REVOKED] . . . . .	882
86:20-1-2. . . . . [AMENDED] . . . . .	859	150:120-3-3. . . . . [REVOKED] . . . . .	882
86:20-3-2. . . . . [AMENDED] . . . . .	860	150:120-3-4. . . . . [REVOKED] . . . . .	882
86:20-13-2. . . . . [AMENDED] . . . . .	861	150:120-3-5. . . . . [REVOKED] . . . . .	882
86:20-19-2. . . . . [AMENDED] . . . . .	861	150:120-3-6. . . . . [REVOKED] . . . . .	882
86:20-27-4. . . . . [NEW] . . . . .	861	150:120-5-1. . . . . [REVOKED] . . . . .	882
86:20-29-5. . . . . [AMENDED] . . . . .	861	150:120-5-2. . . . . [REVOKED] . . . . .	883
90:1-1-1. . . . . [AMENDED] . . . . .	862	150:120-5-3. . . . . [REVOKED] . . . . .	883
90:1-3-1. . . . . [AMENDED] . . . . .	862	150:120-5-4. . . . . [REVOKED] . . . . .	883
90:1-3-5. . . . . [AMENDED] . . . . .	862	150:120-5-5. . . . . [REVOKED] . . . . .	883
90:1-3-7. . . . . [AMENDED] . . . . .	862	150:120-7-1. . . . . [REVOKED] . . . . .	883
90:1-5-1. . . . . [AMENDED] . . . . .	863	150:120-7-2. . . . . [REVOKED] . . . . .	883
90:1-9-2. . . . . [AMENDED] . . . . .	863	150:120-7-3. . . . . [REVOKED] . . . . .	883
90:15-1-1. . . . . [AMENDED] . . . . .	864	150:120-7-4. . . . . [REVOKED] . . . . .	884
90:15-1-3. . . . . [AMENDED] . . . . .	864	150:120-7-5. . . . . [REVOKED] . . . . .	884
90:15-1-5. . . . . [AMENDED] . . . . .	864	150:120-7-6. . . . . [REVOKED] . . . . .	884
90:15-3-1. . . . . [AMENDED] . . . . .	864	150:120-9-1. . . . . [REVOKED] . . . . .	884
90:15-3-2. . . . . [AMENDED] . . . . .	864	150:120-9-2. . . . . [REVOKED] . . . . .	884
90:15-7-1. . . . . [AMENDED] . . . . .	865	150:120-9-3. . . . . [REVOKED] . . . . .	884
90:15-9-1. . . . . [AMENDED] . . . . .	865	150:120-9-4. . . . . [REVOKED] . . . . .	884
90:15-9-2. . . . . [AMENDED] . . . . .	866	150:120-9-5. . . . . [REVOKED] . . . . .	885
90:15-9-3. . . . . [AMENDED] . . . . .	867	150:120-9-6. . . . . [REVOKED] . . . . .	885
90:15-9-4. . . . . [AMENDED] . . . . .	867	150:120-9-7. . . . . [REVOKED] . . . . .	885
90:15-9-5. . . . . [AMENDED] . . . . .	867	150:120-9-8. . . . . [REVOKED] . . . . .	885
90:15-9-7. . . . . [AMENDED] . . . . .	868	150:120-11-1. . . . . [REVOKED] . . . . .	885
90:15-13-1. . . . . [AMENDED] . . . . .	868	150:120-11-10. . . . . [REVOKED] . . . . .	885
90:15-15-1. . . . . [AMENDED] . . . . .	869	150:120-11-11. . . . . [REVOKED] . . . . .	886
135:1-1-1.2. . . . . [REVOKED] . . . . .	869	150:120-11-12. . . . . [REVOKED] . . . . .	886
135:1-1-8. . . . . [REVOKED] . . . . .	869	150:120-11-13. . . . . [REVOKED] . . . . .	886
135:1-1-10. . . . . [REVOKED] . . . . .	869	150:120-11-20. . . . . [REVOKED] . . . . .	886
135:1-3-1. . . . . [REVOKED] . . . . .	870	150:120-11-21. . . . . [REVOKED] . . . . .	886
135:10-23-1. . . . . [REVOKED] . . . . .	870	150:120-11-22. . . . . [REVOKED] . . . . .	886
135:10-23-2. . . . . [REVOKED] . . . . .	870	150:120-11-30. . . . . [REVOKED] . . . . .	886
135:10-23-3. . . . . [REVOKED] . . . . .	870	150:120-11-31. . . . . [REVOKED] . . . . .	886
135:10-24-1. . . . . [REVOKED] . . . . .	871	150:120-11-32. . . . . [REVOKED] . . . . .	886
135:10-24-2. . . . . [REVOKED] . . . . .	871	150:120-11-33. . . . . [REVOKED] . . . . .	886
135:10-24-3. . . . . [REVOKED] . . . . .	871	150:120-11-34. . . . . [REVOKED] . . . . .	886
140:15-7-5. . . . . [AMENDED] . . . . .	1535	150:170-1-1. . . . . [NEW] . . . . .	887
145:15-7-3. . . . . [NEW] (E) . . . . .	9	150:170-1-2. . . . . [NEW] . . . . .	887
145:15-7-3. . . . . [NEW] . . . . .	873	150:170-1-3. . . . . [NEW] . . . . .	887
150:80-1-1. . . . . [REVOKED] . . . . .	875	150:170-1-4. . . . . [NEW] . . . . .	888
150:80-1-2. . . . . [REVOKED] . . . . .	875	150:175-1-1. . . . . [NEW] (E) . . . . .	641
150:80-1-3. . . . . [REVOKED] . . . . .	875	150:175-1-2. . . . . [NEW] (E) . . . . .	641
150:80-1-4. . . . . [REVOKED] . . . . .	875	150:175-1-3. . . . . [NEW] (E) . . . . .	641
150:80-1-5. . . . . [REVOKED] . . . . .	876	150:175-1-4. . . . . [NEW] (E) . . . . .	642
150:80-1-6. . . . . [REVOKED] . . . . .	876	150:175-1-5. . . . . [NEW] (E) . . . . .	642
150:80-1-7. . . . . [REVOKED] . . . . .	877	150:175-1-6. . . . . [NEW] (E) . . . . .	642
150:80-1-8. . . . . [REVOKED] . . . . .	877	175:10-1-3. . . . . [AMENDED] (E) . . . . .	417
150:80-1-9. . . . . [REVOKED] . . . . .	877	175:20-5-7. . . . . [AMENDED] (E) . . . . .	549
150:80-1-10. . . . . [REVOKED] . . . . .	877	210:10-13-1.2. . . . . [NEW] (E) . . . . .	805
150:80-1-11. . . . . [REVOKED] . . . . .	877	210:15-3-54. . . . . [REVOKED] . . . . .	153
150:80-3-1. . . . . [REVOKED] . . . . .	878	210:15-3-55. . . . . [REVOKED] . . . . .	153
150:80-3-2. . . . . [REVOKED] . . . . .	878	210:15-3-56. . . . . [REVOKED] . . . . .	153
150:80-3-3. . . . . [REVOKED] . . . . .	878	210:15-3-57. . . . . [REVOKED] . . . . .	153
150:80-3-4. . . . . [REVOKED] . . . . .	878	210:15-3-58. . . . . [REVOKED] . . . . .	153
150:80-3-5. . . . . [REVOKED] . . . . .	879	210:15-3-59. . . . . [REVOKED] . . . . .	153



210:15-3-60. . . . . [NEW] . . . . .	153	252:616-1-2. . . . . [AMENDED] (E) . . . . .	246
210:15-3-61. . . . . [NEW] . . . . .	153	252:616-9-1. . . . . [AMENDED] (E) . . . . .	247
210:15-3-62. . . . . [NEW] . . . . .	153	252:616-11-1. . . . . [AMENDED] (E) . . . . .	247
210:15-3-63. . . . . [NEW] . . . . .	153	252:621-1-2. . . . . [AMENDED] (E) . . . . .	248
210:15-3-64. . . . . [NEW] . . . . .	153	252:628-1-2. . . . . [AMENDED] (E) . . . . .	250
210:15-3-65. . . . . [NEW] . . . . .	153	252:628-1-3. . . . . [AMENDED] (E) . . . . .	251
210:15-3-138. . . . . [AMENDED] . . . . .	154	252:628-3-2. . . . . [AMENDED] (E) . . . . .	251
210:15-3-139. . . . . [AMENDED] . . . . .	161	252:628-3-6. . . . . [AMENDED] (E) . . . . .	251
210:15-3-140. . . . . [AMENDED] . . . . .	163	252:628-3-7. . . . . [AMENDED] (E) . . . . .	252
210:15-3-141. . . . . [AMENDED] . . . . .	165	252:628-9-4. . . . . [AMENDED] (E) . . . . .	253
210:15-3-142. . . . . [AMENDED] . . . . .	167	252:628-11-1. . . . . [AMENDED] (E) . . . . .	253
210:15-3-143.1. . . . . [AMENDED] . . . . .	169	252:628-11-2. . . . . [AMENDED] (E) . . . . .	254
210:15-3-169. . . . . [AMENDED] . . . . .	170	252:628-11-3. . . . . [AMENDED] (E) . . . . .	255
210:35-3-186. . . . . [AMENDED] (E) . . . . .	141	252:628-11-4. . . . . [AMENDED] (E) . . . . .	255
218:10-5-1. . . . . [AMENDED] . . . . .	888	252:628-11-5. . . . . [AMENDED] (E) . . . . .	255
218:10-5-2. . . . . [REVOKED] . . . . .	891	252:652-3-1. . . . . [AMENDED] (E) . . . . .	257
218:10-5-3. . . . . [AMENDED] . . . . .	892	252:653-3-4. . . . . [AMENDED] (E) . . . . .	258
218:10-5-4. . . . . [AMENDED] . . . . .	894	252:653-5-1. . . . . [AMENDED] (E) . . . . .	258
218:10-7-1. . . . . [AMENDED] . . . . .	895	252:653-9-2. . . . . [AMENDED] (E) . . . . .	258
230:10-3-12. . . . . [REVOKED] . . . . .	896	252:656-11-2. . . . . [AMENDED] (E) . . . . .	259
230:10-3-14. . . . . [REVOKED] . . . . .	896	252:690-1-1. . . . . [AMENDED] (E) . . . . .	261
230:10-7-45. . . . . [AMENDED] . . . . .	897	252:690-1-2. . . . . [AMENDED] (E) . . . . .	261
230:15-3-23. . . . . [AMENDED] . . . . .	898	252:690-1-3. . . . . [AMENDED] (E) . . . . .	263
230:15-3-24. . . . . [AMENDED] . . . . .	900	252:690-1-6. . . . . [AMENDED] (E) . . . . .	265
230:15-3-26. . . . . [AMENDED] . . . . .	900	252:690-3-11. . . . . [AMENDED] (E) . . . . .	265
230:15-5-84. . . . . [AMENDED] . . . . .	898	252:690-3-16. . . . . [AMENDED] (E) . . . . .	265
230:15-11-4. . . . . [AMENDED] . . . . .	901	252:690-3-18. . . . . [AMENDED] (E) . . . . .	266
230:15-11-19. . . . . [AMENDED] . . . . .	901	252:690-3-21. . . . . [AMENDED] (E) . . . . .	266
230:15-11-27. . . . . [AMENDED] . . . . .	902	252:690-3-26. . . . . [AMENDED] (E) . . . . .	266
230:15-11-29. . . . . [AMENDED] . . . . .	902	252:690-3-40. . . . . [AMENDED] (E) . . . . .	266
230:25-13-12. . . . . [AMENDED] . . . . .	903	252:690-3-47. . . . . [AMENDED] (E) . . . . .	266
230:25-21-4. . . . . [AMENDED] . . . . .	904	252:690-3-54. . . . . [AMENDED] (E) . . . . .	266
230:30-1-2. . . . . [AMENDED] . . . . .	905	252:690-3-60. . . . . [AMENDED] (E) . . . . .	266
230:30-5-9. . . . . [AMENDED] . . . . .	905	252:690-3-61. . . . . [AMENDED] (E) . . . . .	266
230:30-5-13. . . . . [AMENDED] . . . . .	906	252:690-3-64. . . . . [AMENDED] (E) . . . . .	266
230:30-7-6. . . . . [AMENDED] . . . . .	906	252:690-3-67. . . . . [AMENDED] (E) . . . . .	267
230:30-7-11.1. . . . . [AMENDED] . . . . .	907	252:690-3-71. . . . . [AMENDED] (E) . . . . .	267
230:30-9-3. . . . . [AMENDED] . . . . .	907	252:690-3-74. . . . . [AMENDED] (E) . . . . .	267
230:30-9-5. . . . . [AMENDED] . . . . .	908	252:690-3-82. . . . . [AMENDED] (E) . . . . .	267
230:30-9-6. . . . . [AMENDED] . . . . .	909	252:690-3-87. . . . . [AMENDED] (E) . . . . .	267
230:30-9-8. . . . . [AMENDED] . . . . .	909	252:690-3-91. . . . . [AMENDED] (E) . . . . .	267
230:30-13-1. . . . . [REVOKED] . . . . .	910	252:690-3-93. . . . . [AMENDED] (E) . . . . .	268
230:30-13-2. . . . . [AMENDED] . . . . .	910	252:690-5-10. . . . . [AMENDED] (E) . . . . .	268
230:35-1-2. . . . . [AMENDED] . . . . .	911	252:690-5-17. . . . . [AMENDED] (E) . . . . .	268
230:35-5-57. . . . . [AMENDED] . . . . .	912	252:690, App. A. . . . . [REVOKED] (E) . . . . .	269
230:35-5-58. . . . . [AMENDED] . . . . .	912	252:690, App. A. . . . . [NEW] (E) . . . . .	269
230:35-5-127. . . . . [AMENDED] . . . . .	912	252:690, App. B. . . . . [REVOKED] (E) . . . . .	298
230:35-9-21. . . . . [AMENDED] . . . . .	913	252:690, App. B. . . . . [NEW] (E) . . . . .	298
230:35-9-22. . . . . [AMENDED] . . . . .	913	252:690, App. C. . . . . [REVOKED] (E) . . . . .	306
230:35-9-23. . . . . [AMENDED] . . . . .	913	252:690, App. C. . . . . [NEW] (E) . . . . .	306
230:35-9-24. . . . . [REVOKED] . . . . .	913	252:690, App. D. . . . . [REVOKED] (E) . . . . .	310
230:35-9-25. . . . . [AMENDED] . . . . .	913	252:690, App. D. . . . . [NEW] (E) . . . . .	310
230:35-9-26. . . . . [AMENDED] . . . . .	914	252:690, App. E. . . . . [REVOKED] (E) . . . . .	314
230:40-5-33. . . . . [NEW] . . . . .	914	252:690, App. E. . . . . [NEW] (E) . . . . .	314
230:40-7-35. . . . . [AMENDED] . . . . .	915	252:690, App. F. . . . . [REVOKED] (E) . . . . .	317
230:40-7-35.1. . . . . [REVOKED] . . . . .	915	252:690, App. F. . . . . [NEW] (E) . . . . .	317
235:10-3-1. . . . . [AMENDED] . . . . .	1537	252:690, App. G. . . . . [REVOKED] (E) . . . . .	320
235:10-3-2. . . . . [AMENDED] . . . . .	1538	252:690, App. G. . . . . [NEW] (E) . . . . .	320
252:470-17-1. . . . . [NEW] (E) . . . . .	352	252:690, App. H. . . . . [REVOKED] (E) . . . . .	322
252:606-1-1. . . . . [AMENDED] (E) . . . . .	242	252:690, App. H. . . . . [NEW] (E) . . . . .	322
252:606-1-2. . . . . [AMENDED] (E) . . . . .	243	252:690, App. I. . . . . [REVOKED] (E) . . . . .	325
252:606-3-6. . . . . [AMENDED] (E) . . . . .	244	252:690, App. I. . . . . [NEW] (E) . . . . .	325
252:606-5-1. . . . . [AMENDED] (E) . . . . .	244	252:730-1-1. . . . . [NEW] (E) . . . . .	327
252:606-5-4. . . . . [AMENDED] (E) . . . . .	244	252:730-1-2. . . . . [NEW] (E) . . . . .	327
252:606-8-2. . . . . [AMENDED] (E) . . . . .	244	252:730-1-3. . . . . [NEW] (E) . . . . .	327
252:611-1-1. . . . . [AMENDED] (E) . . . . .	245	252:730-1-4. . . . . [NEW] (E) . . . . .	327
252:611-1-2. . . . . [AMENDED] (E) . . . . .	245	252:730-1-5. . . . . [NEW] (E) . . . . .	327

## Rules Affected Index – *continued*

252:730-1-6. . . . .	[NEW] (E) . . . . .	327	252:740-9-4. . . . .	[NEW] (E) . . . . .	336
252:730-3-1. . . . .	[NEW] (E) . . . . .	327	252:740-11-1. . . . .	[NEW] (E) . . . . .	336
252:730-3-2. . . . .	[NEW] (E) . . . . .	327	252:740-11-2. . . . .	[NEW] (E) . . . . .	336
252:730-5-1. . . . .	[NEW] (E) . . . . .	327	252:740-11-3. . . . .	[NEW] (E) . . . . .	337
252:730-5-2. . . . .	[NEW] (E) . . . . .	327	252:740-11-4. . . . .	[NEW] (E) . . . . .	337
252:730-5-3. . . . .	[NEW] (E) . . . . .	327	252:740-11-5. . . . .	[NEW] (E) . . . . .	337
252:730-5-4. . . . .	[NEW] (E) . . . . .	327	252:740-13-1. . . . .	[NEW] (E) . . . . .	337
252:730-5-5. . . . .	[NEW] (E) . . . . .	327	252:740-13-2. . . . .	[NEW] (E) . . . . .	337
252:730-5-6. . . . .	[NEW] (E) . . . . .	327	252:740-13-3. . . . .	[NEW] (E) . . . . .	338
252:730-5-7. . . . .	[NEW] (E) . . . . .	327	252:740-13-4. . . . .	[NEW] (E) . . . . .	338
252:730-5-8. . . . .	[NEW] (E) . . . . .	327	252:740-13-5. . . . .	[NEW] (E) . . . . .	339
252:730-5-9. . . . .	[NEW] (E) . . . . .	327	252:740-13-6. . . . .	[NEW] (E) . . . . .	339
252:730-5-10. . . . .	[NEW] (E) . . . . .	327	252:740-13-7. . . . .	[NEW] (E) . . . . .	340
252:730-5-11. . . . .	[NEW] (E) . . . . .	327	252:740-13-8. . . . .	[NEW] (E) . . . . .	340
252:730-5-12. . . . .	[NEW] (E) . . . . .	327	252:740-15-1. . . . .	[NEW] (E) . . . . .	341
252:730-5-13. . . . .	[NEW] (E) . . . . .	327	252:740-15-2. . . . .	[NEW] (E) . . . . .	341
252:730-5-14. . . . .	[RESERVED] (E) . . . . .	327	252:740-15-3. . . . .	[NEW] (E) . . . . .	342
252:730-5-15. . . . .	[RESERVED] (E) . . . . .	327	252:740-15-4. . . . .	[NEW] (E) . . . . .	343
252:730-5-16. . . . .	[NEW] (E) . . . . .	327	252:740-15-5. . . . .	[NEW] (E) . . . . .	344
252:730-5-17. . . . .	[NEW] (E) . . . . .	327	252:740-15-6. . . . .	[NEW] (E) . . . . .	348
252:730-5-18. . . . .	[NEW] (E) . . . . .	327	252:740-15-7. . . . .	[NEW] (E) . . . . .	348
252:730-5-19. . . . .	[NEW] (E) . . . . .	327	252:740-15-8. . . . .	[NEW] (E) . . . . .	349
252:730-5-20. . . . .	[NEW] (E) . . . . .	327	252:740-15-9. . . . .	[NEW] (E) . . . . .	350
252:730-5-21. . . . .	[RESERVED] (E) . . . . .	327	252:740-15-10. . . . .	[NEW] (E) . . . . .	350
252:730-5-22. . . . .	[RESERVED] (E) . . . . .	327	252:740-15-11. . . . .	[NEW] (E) . . . . .	351
252:730-5-23. . . . .	[RESERVED] (E) . . . . .	327	252:740-15-12. . . . .	[NEW] (E) . . . . .	351
252:730-5-24. . . . .	[RESERVED] (E) . . . . .	327	252:740-17-2. . . . .	[NEW] (E) . . . . .	352
252:730-5-25. . . . .	[NEW] (E) . . . . .	327	252:740-17-3. . . . .	[NEW] (E) . . . . .	352
252:730-5-26. . . . .	[NEW] (E) . . . . .	327	252:740, App. A. . . . .	[RESERVED] (E) . . . . .	353
252:730-5-27. . . . .	[RESERVED] (E) . . . . .	327	252:740, App. B. . . . .	[NEW] (E) . . . . .	354
252:730-5-28. . . . .	[RESERVED] (E) . . . . .	327	252:740, App. C. . . . .	[NEW] (E) . . . . .	356
252:730-5-29. . . . .	[NEW] (E) . . . . .	327	260:135-1-1. . . . .	[NEW] (E) . . . . .	359
252:730-7-1. . . . .	[NEW] (E) . . . . .	327	260:135-1-2. . . . .	[NEW] (E) . . . . .	359
252:730-7-2. . . . .	[NEW] (E) . . . . .	327	260:135-1-3. . . . .	[NEW] (E) . . . . .	359
252:730-7-3. . . . .	[NEW] (E) . . . . .	327	260:135-1-4. . . . .	[NEW] (E) . . . . .	359
252:730-7-4. . . . .	[NEW] (E) . . . . .	327	260:135-1-5. . . . .	[NEW] (E) . . . . .	359
252:730-7-5. . . . .	[NEW] (E) . . . . .	327	260:135-1-6. . . . .	[NEW] (E) . . . . .	359
252:730, App. A. . . . .	[NEW] (E) . . . . .	327	260:135-1-7. . . . .	[NEW] (E) . . . . .	359
252:730, App. B. . . . .	[NEW] (E) . . . . .	327	260:135-1-8. . . . .	[NEW] (E) . . . . .	359
252:730, App. C. . . . .	[RESERVED] (E) . . . . .	327	260:135-1-9. . . . .	[NEW] (E) . . . . .	359
252:730, App. D. . . . .	[NEW] (E) . . . . .	327	260:135-1-10. . . . .	[NEW] (E) . . . . .	359
252:730, App. E. . . . .	[NEW] (E) . . . . .	327	260:135-1-11. . . . .	[NEW] (E) . . . . .	359
252:730, App. F. . . . .	[NEW] (E) . . . . .	327	260:135-1-12. . . . .	[NEW] (E) . . . . .	359
252:730, App. G. . . . .	[NEW] (E) . . . . .	327	260:135-1-13. . . . .	[NEW] (E) . . . . .	359
252:730, App. H. . . . .	[NEW] (E) . . . . .	327	260:135-1-14. . . . .	[NEW] (E) . . . . .	359
252:730, App. I. . . . .	[NEW] (E) . . . . .	327	260:135-1-15. . . . .	[NEW] (E) . . . . .	359
252:740-1-1. . . . .	[NEW] (E) . . . . .	330	260:135-1-16. . . . .	[NEW] (E) . . . . .	359
252:740-1-2. . . . .	[NEW] (E) . . . . .	330	260:135-1-17. . . . .	[NEW] (E) . . . . .	359
252:740-1-3. . . . .	[NEW] (E) . . . . .	331	260:135-1-18. . . . .	[NEW] (E) . . . . .	359
252:740-1-4. . . . .	[NEW] (E) . . . . .	332	260:135-3-1. . . . .	[AMENDED] (E) . . . . .	418
252:740-1-5. . . . .	[NEW] (E) . . . . .	332	260:135-3-2. . . . .	[AMENDED] (E) . . . . .	418
252:740-1-6. . . . .	[NEW] (E) . . . . .	332	260:135-3-3. . . . .	[AMENDED] (E) . . . . .	418
252:740-3-1. . . . .	[NEW] (E) . . . . .	333	260:135-3-4. . . . .	[AMENDED] (E) . . . . .	418
252:740-3-2. . . . .	[NEW] (E) . . . . .	333	260:135-3-5. . . . .	[AMENDED] (E) . . . . .	418
252:740-3-3. . . . .	[NEW] (E) . . . . .	333	260:135-3-6. . . . .	[AMENDED] (E) . . . . .	418
252:740-3-4. . . . .	[NEW] (E) . . . . .	333	260:135-3-7. . . . .	[AMENDED] (E) . . . . .	418
252:740-3-5. . . . .	[NEW] (E) . . . . .	333	260:135-3-8. . . . .	[AMENDED] (E) . . . . .	418
252:740-5-1. . . . .	[NEW] (E) . . . . .	333	260:135-3-9. . . . .	[AMENDED] (E) . . . . .	418
252:740-5-2. . . . .	[NEW] (E) . . . . .	334	260:135-3-10. . . . .	[AMENDED] (E) . . . . .	418
252:740-5-3. . . . .	[NEW] (E) . . . . .	334	260:135-3-11. . . . .	[AMENDED] (E) . . . . .	418
252:740-5-4. . . . .	[NEW] (E) . . . . .	334	260:135-3-15. . . . .	[AMENDED] (E) . . . . .	418
252:740-7-1. . . . .	[NEW] (E) . . . . .	334	260:135-3-16. . . . .	[AMENDED] (E) . . . . .	418
252:740-7-2. . . . .	[NEW] (E) . . . . .	335	260:135-3-17. . . . .	[AMENDED] (E) . . . . .	418
252:740-7-3. . . . .	[NEW] (E) . . . . .	335	260:135-3-18. . . . .	[AMENDED] (E) . . . . .	418
252:740-9-1. . . . .	[NEW] (E) . . . . .	335	260:135-3-19. . . . .	[AMENDED] (E) . . . . .	418
252:740-9-2. . . . .	[NEW] (E) . . . . .	335	260:135-3-20. . . . .	[AMENDED] (E) . . . . .	418
252:740-9-3. . . . .	[NEW] (E) . . . . .	335	260:135-3-21. . . . .	[AMENDED] (E) . . . . .	418





260:135-7-142. ....	[AMENDED] (E) .....	418	310:265-3-1. ....	[REVOKED] .....	1547
260:135-7-143. ....	[AMENDED] (E) .....	418	310:265-3-2. ....	[REVOKED] .....	1547
260:135-7-144. ....	[AMENDED] (E) .....	418	310:265-3-3. ....	[REVOKED] .....	1547
260:135-7-148. ....	[AMENDED] (E) .....	418	310:265-5-1. ....	[REVOKED] .....	1548
260:135-7-149. ....	[AMENDED] (E) .....	418	310:265-5-2. ....	[REVOKED] .....	1548
260:135-7-150. ....	[AMENDED] (E) .....	418	310:265-5-3. ....	[REVOKED] .....	1548
260:135-7-151. ....	[AMENDED] (E) .....	418	310:265-5-4. ....	[REVOKED] .....	1548
260:135-7-152. ....	[AMENDED] (E) .....	418	310:265-5-5. ....	[REVOKED] .....	1549
260:135-7-153. ....	[AMENDED] (E) .....	418	310:265-5-6. ....	[REVOKED] .....	1549
260:135-7-155. ....	[AMENDED] (E) .....	418	310:265-5-7. ....	[REVOKED] .....	1549
260:135-7-156. ....	[AMENDED] (E) .....	418	310:265-5-8. ....	[REVOKED] .....	1549
260:135-7-157. ....	[AMENDED] (E) .....	418	310:265-7-1. ....	[REVOKED] .....	1550
260:135-7-158. ....	[AMENDED] (E) .....	418	310:265-7-2. ....	[REVOKED] .....	1551
260:135-7-160. ....	[AMENDED] (E) .....	418	310:265-7-3. ....	[REVOKED] .....	1551
260:135-7-165. ....	[AMENDED] (E) .....	418	310:265, App. A. ....	[REVOKED] .....	1553
260:135-7-166. ....	[AMENDED] (E) .....	418	310:266-1-1. ....	[NEW] .....	1554
260:135-7-167. ....	[AMENDED] (E) .....	418	310:266-1-2. ....	[NEW] .....	1554
260:135-7-175. ....	[AMENDED] (E) .....	418	310:266-3-1. ....	[NEW] .....	1555
260:135-7-178. ....	[AMENDED] (E) .....	418	310:266-3-2. ....	[NEW] .....	1555
260:135-7-179. ....	[AMENDED] (E) .....	418	310:266-5-1. ....	[NEW] .....	1555
260:135-7-183. ....	[AMENDED] (E) .....	418	310:266-5-2. ....	[NEW] .....	1556
260:135-7-184. ....	[AMENDED] (E) .....	418	310:266-5-3. ....	[NEW] .....	1556
260:135-7-185. ....	[AMENDED] (E) .....	418	310:266-5-4. ....	[NEW] .....	1556
260:135-7-187. ....	[AMENDED] (E) .....	418	310:266-5-5. ....	[NEW] .....	1556
260:135-7-188. ....	[AMENDED] (E) .....	418	310:266-5-6. ....	[NEW] .....	1556
260:135-7-189. ....	[AMENDED] (E) .....	418	310:266-5-7. ....	[NEW] .....	1556
260:135-7-191. ....	[AMENDED] (E) .....	418	310:266-7-1. ....	[NEW] .....	1556
260:135-7-194. ....	[AMENDED] (E) .....	418	310:266-9-1. ....	[NEW] .....	1557
260:135-7-195. ....	[AMENDED] (E) .....	418	310:266-9-2. ....	[NEW] .....	1557
260:135-7-197. ....	[AMENDED] (E) .....	418	310:266-11-1. ....	[NEW] .....	1557
260:135-7-198. ....	[AMENDED] (E) .....	418	310:266-11-2. ....	[NEW] .....	1557
260:135-7-199. ....	[AMENDED] (E) .....	418	310:266-13-1. ....	[NEW] .....	1557
260:135-7-200. ....	[AMENDED] (E) .....	418	310:266-13-2. ....	[NEW] .....	1558
260:135-7-204. ....	[AMENDED] (E) .....	418	310:266-13-3. ....	[NEW] .....	1558
260:135-7-206. ....	[AMENDED] (E) .....	418	310:266-13-4. ....	[NEW] .....	1558
260:135-7-207. ....	[AMENDED] (E) .....	418	310:266-15-1. ....	[NEW] .....	1558
260:135-7-208. ....	[AMENDED] (E) .....	418	310:410-3-2. ....	[AMENDED] .....	1559
260:135-7-210. ....	[AMENDED] (E) .....	418	310:410-3-10. ....	[AMENDED] .....	1560
260:135-7-211. ....	[AMENDED] (E) .....	418	310:410-3-12. ....	[AMENDED] .....	1561
260:135-7-212. ....	[AMENDED] (E) .....	418	310:410-3-52. ....	[AMENDED] .....	1562
260:135-7-216. ....	[AMENDED] (E) .....	418	310:512-1-3. ....	[AMENDED] .....	1563
260:135-7-217. ....	[AMENDED] (E) .....	418	310:512-1-4. ....	[AMENDED] .....	1563
260:135-7-218. ....	[AMENDED] (E) .....	418	310:512-3-1. ....	[AMENDED] .....	1565
260:135-7-219. ....	[AMENDED] (E) .....	418	310:512-3-2.1. ....	[AMENDED] .....	1565
260:135-7-220. ....	[AMENDED] (E) .....	418	310:512-3-4.1. ....	[AMENDED] .....	1565
260:135-7-221. ....	[AMENDED] (E) .....	418	310:512-3-5. ....	[AMENDED] .....	1566
260:135-7-222. ....	[AMENDED] (E) .....	418	310:515-1-3. ....	[AMENDED] .....	1567
260:135-7-223. ....	[AMENDED] (E) .....	418	310:515-1-4. ....	[AMENDED] .....	1567
260:135-7-227. ....	[AMENDED] (E) .....	418	310:525-3-4. ....	[AMENDED] .....	1569
260:135-7-228. ....	[AMENDED] (E) .....	418	310:531-5-3. ....	[AMENDED] .....	1569
260:135-7-229. ....	[AMENDED] (E) .....	418	310:531-5-5. ....	[AMENDED] .....	1570
260:135-7-231. ....	[AMENDED] (E) .....	418	310:531-5-6. ....	[AMENDED] .....	1570
260:135-7-232. ....	[AMENDED] (E) .....	418	310:531-5-7. ....	[AMENDED] .....	1570
260:135-7-241. ....	[AMENDED] (E) .....	418	310:550-1-2. ....	[AMENDED] .....	1571
260:135-7-244. ....	[AMENDED] (E) .....	418	310:550-5-2. ....	[AMENDED] .....	1573
260:135-7-254. ....	[NEW] (E) .....	418	310:550-7-1. ....	[AMENDED] .....	1573
310:9-1-2. ....	[AMENDED] .....	1541	310:550-17-1. ....	[AMENDED] .....	1574
310:9-7-1. ....	[REVOKED] .....	1542	310:550-21-1. ....	[AMENDED] .....	1575
310:9-7-2. ....	[REVOKED] .....	1542	310:550-24-1. ....	[NEW] .....	1575
310:9-7-3. ....	[REVOKED] .....	1542	310:550-24-2. ....	[NEW] .....	1575
310:105-5-4. ....	[AMENDED] .....	1543	310:550-24-3. ....	[NEW] .....	1575
310:234-1-2. ....	[AMENDED] .....	1544	310:550-24-4. ....	[NEW] .....	1575
310:234-11-1. ....	[AMENDED] .....	1545	310:642-1-1. ....	[REVOKED] (E) .....	643
310:234-11-3. ....	[AMENDED] .....	1545	310:642-1-2. ....	[REVOKED] (E) .....	643
310:265-1-1. ....	[REVOKED] .....	1546	310:642-1-3. ....	[REVOKED] (E) .....	643
310:265-1-2. ....	[REVOKED] .....	1546	310:642-3-1. ....	[REVOKED] (E) .....	644
310:265-1-3. ....	[REVOKED] .....	1547	310:642-3-2. ....	[REVOKED] (E) .....	645

## Rules Affected Index – *continued*

---

310:642-5-1. .... [REVOKED] (E) .....	645	310:677-3-12. .... [AMENDED] .....	1596
310:642-5-1. .... [AMENDED] .....	1576	310:677-3-13. .... [NEW] .....	1596
310:642-7-1. .... [REVOKED] (E) .....	646	310:677-5-1. .... [REVOKED] .....	1597
310:642-7-2. .... [REVOKED] (E) .....	647	310:677-5-2. .... [AMENDED] .....	1597
310:642-9-1. .... [REVOKED] (E) .....	648	310:677-5-4. .... [AMENDED] .....	1597
310:643-1-1. .... [NEW] (E) .....	648	310:677-5-5. .... [AMENDED] .....	1598
310:643-1-2. .... [NEW] (E) .....	648	310:677-7-1. .... [AMENDED] .....	1598
310:643-3-1. .... [NEW] (E) .....	649	310:677-7-2. .... [REVOKED] .....	1598
310:643-3-2. .... [NEW] (E) .....	649	310:677-7-3. .... [AMENDED] .....	1599
310:643-5-1. .... [NEW] (E) .....	649	310:677-7-4. .... [AMENDED] .....	1599
310:643-5-2. .... [NEW] (E) .....	649	310:677-9-1. .... [AMENDED] .....	1599
310:643-5-3. .... [NEW] (E) .....	649	310:677-9-2. .... [AMENDED] .....	1599
310:643-7-1. .... [NEW] (E) .....	649	310:677-9-4. .... [AMENDED] .....	1599
310:643-7-2. .... [NEW] (E) .....	649	310:677-9-5. .... [AMENDED] .....	1600
310:645-1-1. .... [REVOKED] .....	1578	310:677-11-1. .... [AMENDED] .....	1600
310:645-1-2. .... [REVOKED] .....	1578	310:677-11-2. .... [AMENDED] .....	1600
310:645-3-1. .... [REVOKED] .....	1578	310:677-11-4. .... [AMENDED] .....	1600
310:645-3-2. .... [REVOKED] .....	1578	310:677-11-5. .... [AMENDED] .....	1601
310:645-5-1. .... [REVOKED] .....	1579	310:677-13-1. .... [AMENDED] .....	1601
310:645-5-2. .... [REVOKED] .....	1579	310:677-13-3. .... [AMENDED] .....	1602
310:645-7-1. .... [REVOKED] .....	1579	310:677-13-4. .... [AMENDED] .....	1602
310:645-7-2. .... [REVOKED] .....	1579	310:677-13-5. .... [AMENDED] .....	1604
310:645-7-3. .... [REVOKED] .....	1579	310:677-13-7. .... [AMENDED] .....	1604
310:645-9-1. .... [REVOKED] .....	1580	310:677-13-8. .... [AMENDED] .....	1605
310:645-11-1. .... [REVOKED] .....	1580	310:677-15-1. .... [AMENDED] .....	1605
310:659-1-1. .... [REVOKED] .....	1581	310:677-15-4. .... [AMENDED] .....	1606
310:659-1-2. .... [REVOKED] .....	1581	310:677-15-5. .... [REVOKED] .....	1606
310:659-1-3. .... [REVOKED] .....	1581	310:677-17-1. .... [AMENDED] .....	1606
310:659-1-4. .... [REVOKED] .....	1581	310:677-17-4. .... [AMENDED] .....	1606
310:659-1-5. .... [REVOKED] .....	1581	310:677-17-5. .... [REVOKED] .....	1606
310:659-1-6. .... [REVOKED] .....	1581	310:677-19-1. .... [AMENDED] .....	1606
310:659-1-7. .... [REVOKED] .....	1581	310:677-19-4. .... [AMENDED] .....	1606
310:659-3-1. .... [REVOKED] .....	1581	310:677-19-5. .... [REVOKED] .....	1606
310:659-3-2. .... [REVOKED] .....	1581	310:681-1-1. .... [REVOKED] (E) .....	419
310:659-3-3. .... [REVOKED] .....	1582	310:681-1-1. .... [REVOKED] .....	1606
310:659-3-4. .... [REVOKED] .....	1582	310:681-1-2. .... [AMENDED] (E) .....	17
310:661-1-2. .... [AMENDED] .....	1582	310:681-1-2. .... [REVOKED] (E) .....	419
310:661-2-1. .... [AMENDED] .....	1584	310:681-1-2. .... [REVOKED] .....	1606
310:662-5-3. .... [AMENDED] .....	1585	310:681-1-3. .... [REVOKED] (E) .....	419
310:667-63-1. .... [NEW] (E) .....	650	310:681-1-3. .... [REVOKED] .....	1606
310:667-63-2. .... [NEW] (E) .....	650	310:681-1-4. .... [AMENDED] (E) .....	17
310:667-63-3. .... [NEW] (E) .....	651	310:681-1-4. .... [REVOKED] (E) .....	419
310:667-63-4. .... [NEW] (E) .....	651	310:681-1-4. .... [REVOKED] .....	1606
310:667-63-5. .... [NEW] (E) .....	651	310:681-1-5. .... [REVOKED] (E) .....	419
310:669-1-1. .... [AMENDED] .....	1586	310:681-1-5. .... [REVOKED] .....	1606
310:669-1-3. .... [AMENDED] .....	1586	310:681-1-6. .... [AMENDED] (E) .....	17
310:673-1-1. .... [AMENDED] .....	1587	310:681-1-6. .... [REVOKED] (E) .....	419
310:673-1-2. .... [AMENDED] .....	1587	310:681-1-6. .... [REVOKED] .....	1606
310:673-3-1. .... [AMENDED] .....	1587	310:681-1-7. .... [AMENDED] (E) .....	17
310:673-3-2. .... [AMENDED] .....	1588	310:681-1-7. .... [REVOKED] (E) .....	419
310:673-3-3. .... [AMENDED] .....	1588	310:681-1-7. .... [REVOKED] .....	1606
310:673-3-4. .... [REVOKED] .....	1588	310:681-1-8. .... [REVOKED] (E) .....	419
310:673-3-5. .... [REVOKED] .....	1588	310:681-1-8. .... [REVOKED] .....	1606
310:673-3-6. .... [NEW] .....	1588	310:681-1-9. .... [REVOKED] (E) .....	419
310:673-3-7. .... [NEW] .....	1588	310:681-1-9. .... [REVOKED] .....	1606
310:677-1-2. .... [AMENDED] .....	1589	310:681-1-9.1. .... [AMENDED] (E) .....	17
310:677-1-3. .... [AMENDED] .....	1590	310:681-1-9.1. .... [REVOKED] (E) .....	419
310:677-1-6. .... [AMENDED] .....	1592	310:681-1-9.1. .... [REVOKED] .....	1606
310:677-3-1. .... [REVOKED] .....	1593	310:681-2-1. .... [AMENDED] (E) .....	17
310:677-3-2. .... [AMENDED] .....	1593	310:681-2-1. .... [REVOKED] (E) .....	419
310:677-3-3. .... [AMENDED] .....	1593	310:681-2-1. .... [REVOKED] .....	1606
310:677-3-4. .... [AMENDED] .....	1594	310:681-2-2. .... [REVOKED] (E) .....	419
310:677-3-5. .... [AMENDED] .....	1595	310:681-2-2. .... [REVOKED] .....	1606
310:677-3-6. .... [AMENDED] .....	1595	310:681-2-3. .... [AMENDED] (E) .....	17
310:677-3-7. .... [AMENDED] .....	1595	310:681-2-3. .... [REVOKED] (E) .....	419
310:677-3-9. .... [AMENDED] .....	1595	310:681-2-3. .... [REVOKED] .....	1606
310:677-3-10. .... [AMENDED] .....	1596	310:681-2-3.1. .... [REVOKED] (E) .....	419

310:681-2-3.1. ....	[REVOKED] .....	1606	310:681-5-3. ....	[REVOKED] .....	1606
310:681-2-4. ....	[REVOKED] (E) .....	419	310:681-5-3.1. ....	[AMENDED] (E) .....	17
310:681-2-4. ....	[REVOKED] .....	1606	310:681-5-3.1. ....	[REVOKED] (E) .....	419
310:681-2-5. ....	[AMENDED] (E) .....	17	310:681-5-3.1. ....	[REVOKED] .....	1606
310:681-2-5. ....	[REVOKED] (E) .....	419	310:681-5-3.2. ....	[AMENDED] (E) .....	17
310:681-2-5. ....	[REVOKED] .....	1606	310:681-5-3.2. ....	[REVOKED] (E) .....	419
310:681-2-6. ....	[REVOKED] (E) .....	419	310:681-5-3.2. ....	[REVOKED] .....	1606
310:681-2-6. ....	[REVOKED] .....	1606	310:681-5-4. ....	[AMENDED] (E) .....	17
310:681-2-7. ....	[REVOKED] (E) .....	419	310:681-5-4. ....	[REVOKED] (E) .....	419
310:681-2-7. ....	[REVOKED] .....	1606	310:681-5-4. ....	[REVOKED] .....	1606
310:681-2-8. ....	[AMENDED] (E) .....	17	310:681-5-4.1. ....	[NEW] (E) .....	17
310:681-2-8. ....	[REVOKED] (E) .....	419	310:681-5-4.1. ....	[REVOKED] (E) .....	419
310:681-2-8. ....	[REVOKED] .....	1606	310:681-5-4.1. ....	[REVOKED] .....	1606
310:681-2-9. ....	[REVOKED] (E) .....	419	310:681-5-5. ....	[REVOKED] (E) .....	419
310:681-2-9. ....	[REVOKED] .....	1606	310:681-5-5. ....	[REVOKED] .....	1606
310:681-2-10. ....	[REVOKED] (E) .....	419	310:681-5-6. ....	[AMENDED] (E) .....	17
310:681-2-10. ....	[REVOKED] .....	1606	310:681-5-6. ....	[REVOKED] (E) .....	419
310:681-2-11. ....	[REVOKED] (E) .....	419	310:681-5-6. ....	[REVOKED] .....	1606
310:681-2-11. ....	[REVOKED] .....	1606	310:681-5-6.1. ....	[AMENDED] (E) .....	17
310:681-3-1. ....	[AMENDED] (E) .....	17	310:681-5-6.1. ....	[REVOKED] (E) .....	419
310:681-3-1. ....	[REVOKED] (E) .....	419	310:681-5-6.1. ....	[REVOKED] .....	1606
310:681-3-1. ....	[REVOKED] .....	1606	310:681-5-7. ....	[REVOKED] (E) .....	419
310:681-3-2. ....	[AMENDED] (E) .....	17	310:681-5-7. ....	[REVOKED] .....	1606
310:681-3-2. ....	[REVOKED] (E) .....	419	310:681-5-8. ....	[AMENDED] (E) .....	17
310:681-3-2. ....	[REVOKED] .....	1606	310:681-5-8. ....	[REVOKED] (E) .....	419
310:681-3-3. ....	[AMENDED] (E) .....	17	310:681-5-8. ....	[REVOKED] .....	1606
310:681-3-3. ....	[REVOKED] (E) .....	419	310:681-5-8.1. ....	[AMENDED] (E) .....	17
310:681-3-3. ....	[REVOKED] .....	1606	310:681-5-8.1. ....	[REVOKED] (E) .....	419
310:681-3-4. ....	[AMENDED] (E) .....	17	310:681-5-8.1. ....	[REVOKED] .....	1606
310:681-3-4. ....	[REVOKED] (E) .....	419	310:681-5-9. ....	[REVOKED] (E) .....	419
310:681-3-4. ....	[REVOKED] .....	1606	310:681-5-9. ....	[REVOKED] .....	1606
310:681-3-5. ....	[REVOKED] (E) .....	419	310:681-5-10. ....	[REVOKED] (E) .....	419
310:681-3-5. ....	[REVOKED] .....	1606	310:681-5-10. ....	[REVOKED] .....	1606
310:681-3-6. ....	[AMENDED] (E) .....	17	310:681-5-11. ....	[NEW] (E) .....	17
310:681-3-6. ....	[REVOKED] (E) .....	419	310:681-5-11. ....	[REVOKED] (E) .....	419
310:681-3-6. ....	[REVOKED] .....	1606	310:681-5-11. ....	[REVOKED] .....	1606
310:681-4-1. ....	[REVOKED] (E) .....	419	310:681-5-12. ....	[AMENDED] (E) .....	17
310:681-4-1. ....	[REVOKED] .....	1606	310:681-5-12. ....	[REVOKED] (E) .....	419
310:681-4-1.1. ....	[REVOKED] (E) .....	419	310:681-5-12. ....	[REVOKED] .....	1606
310:681-4-1.1. ....	[REVOKED] .....	1606	310:681-5-13. ....	[REVOKED] (E) .....	419
310:681-4-2. ....	[AMENDED] (E) .....	17	310:681-5-13. ....	[REVOKED] .....	1606
310:681-4-2. ....	[REVOKED] (E) .....	419	310:681-5-14. ....	[NEW] (E) .....	17
310:681-4-2. ....	[REVOKED] .....	1606	310:681-5-14. ....	[REVOKED] (E) .....	419
310:681-4-3. ....	[AMENDED] (E) .....	17	310:681-5-14. ....	[REVOKED] .....	1606
310:681-4-3. ....	[REVOKED] (E) .....	419	310:681-5-17. ....	[AMENDED] (E) .....	17
310:681-4-3. ....	[REVOKED] .....	1606	310:681-5-17. ....	[REVOKED] (E) .....	419
310:681-4-4. ....	[AMENDED] (E) .....	17	310:681-5-17. ....	[REVOKED] .....	1606
310:681-4-4. ....	[REVOKED] (E) .....	419	310:681-5-18. ....	[AMENDED] (E) .....	17
310:681-4-4. ....	[AMENDED] .....	1606	310:681-5-18. ....	[REVOKED] (E) .....	419
310:681-4-5. ....	[AMENDED] (E) .....	17	310:681-5-18. ....	[REVOKED] .....	1606
310:681-4-5. ....	[REVOKED] (E) .....	419	310:681-6-1. ....	[AMENDED] (E) .....	419
310:681-4-5. ....	[AMENDED] .....	1606	310:681-6-1. ....	[AMENDED] .....	1606
310:681-4-6. ....	[REVOKED] (E) .....	419	310:681-6-2. ....	[REVOKED] (E) .....	419
310:681-4-6. ....	[REVOKED] .....	1606	310:681-6-2. ....	[REVOKED] .....	1606
310:681-5-1. ....	[REVOKED] (E) .....	419	310:681-7-1. ....	[AMENDED] (E) .....	17
310:681-5-1. ....	[REVOKED] .....	1606	310:681-7-1. ....	[REVOKED] (E) .....	419
310:681-5-1.1. ....	[AMENDED] (E) .....	17	310:681-7-1. ....	[REVOKED] .....	1606
310:681-5-1.1. ....	[REVOKED] (E) .....	419	310:681-7-2. ....	[REVOKED] (E) .....	419
310:681-5-1.1. ....	[REVOKED] .....	1606	310:681-7-2. ....	[REVOKED] .....	1606
310:681-5-2. ....	[AMENDED] (E) .....	17	310:681-7-3. ....	[REVOKED] (E) .....	419
310:681-5-2. ....	[REVOKED] (E) .....	419	310:681-7-3. ....	[REVOKED] .....	1606
310:681-5-2. ....	[REVOKED] .....	1606	310:681-8-1. ....	[AMENDED] (E) .....	17
310:681-5-2.1. ....	[NEW] (E) .....	17	310:681-8-1. ....	[REVOKED] (E) .....	419
310:681-5-2.1. ....	[REVOKED] (E) .....	419	310:681-8-1. ....	[REVOKED] .....	1606
310:681-5-2.1. ....	[REVOKED] .....	1606	310:681-8-2. ....	[AMENDED] (E) .....	17
310:681-5-3. ....	[AMENDED] (E) .....	17	310:681-8-2. ....	[REVOKED] (E) .....	419
310:681-5-3. ....	[REVOKED] (E) .....	419	310:681-8-2. ....	[REVOKED] .....	1606

## Rules Affected Index – *continued*

310:681-8-3. .... [AMENDED] (E) .....	17	317:2-3-9. .... [AMENDED] (E) .....	724
310:681-8-3. .... [REVOKED] (E) .....	419	317:2-3-10. .... [AMENDED] (E) .....	724
310:681-8-3. .... [REVOKED] .....	1606	317:2-3-11. .... [AMENDED] (E) .....	726
310:681-8-4. .... [AMENDED] (E) .....	17	317:2-3-12. .... [AMENDED] (E) .....	726
310:681-8-4. .... [REVOKED] (E) .....	419	317:2-3-13. .... [AMENDED] (E) .....	727
310:681-8-4. .... [REVOKED] .....	1606	317:2-3-14. .... [AMENDED] (E) .....	728
310:681-8-5. .... [REVOKED] (E) .....	419	317:25-7-5. .... [AMENDED] (E) .....	360
310:681-8-5. .... [REVOKED] .....	1606	317:30-3-5. .... [AMENDED] (E) .....	1483
310:681-9-1. .... [AMENDED] (E) .....	17	317:30-3-27. .... [AMENDED] (E) .....	1485
310:681-9-1. .... [REVOKED] (E) .....	419	317:30-3-27.1. .... [NEW] (E) .....	1487
310:681-9-1. .... [REVOKED] .....	1606	317:30-3-35. .... [AMENDED] (E) .....	361
310:681-9-1.1. .... [REVOKED] (E) .....	419	317:30-3-57. .... [AMENDED] (E) .....	652
310:681-9-1.1. .... [REVOKED] .....	1606	317:30-3-65. .... [AMENDED] (E) .....	656
310:681-9-2. .... [AMENDED] (E) .....	17	317:30-5-95. .... [AMENDED] (E) .....	363
310:681-9-2. .... [REVOKED] (E) .....	419	317:30-5-95.6. .... [AMENDED] (E) .....	374
310:681-9-2. .... [REVOKED] .....	1606	317:30-5-95.16. .... [AMENDED] (E) .....	374
310:681-9-3. .... [AMENDED] (E) .....	17	317:30-5-95.24. .... [AMENDED] (E) .....	364
310:681-9-3. .... [REVOKED] (E) .....	419	317:30-5-95.34. .... [AMENDED] (E) .....	374
310:681-9-3. .... [REVOKED] .....	1606	317:30-5-95.37. .... [AMENDED] (E) .....	377
310:681-9-4. .... [AMENDED] (E) .....	17	317:30-5-95.40. .... [AMENDED] (E) .....	365
310:681-9-4. .... [REVOKED] (E) .....	419	317:30-5-136.2. .... [NEW] (E) .....	1495
310:681-9-4. .... [REVOKED] .....	1606	317:30-5-208. .... [AMENDED] (E) .....	654
310:681-9-5. .... [REVOKED] (E) .....	419	317:30-5-210. .... [AMENDED] (E) .....	365
310:681-9-5. .... [REVOKED] .....	1606	317:30-5-211.20. .... [AMENDED] (E) .....	366
310:681-9-6. .... [AMENDED] (E) .....	17	317:30-5-211.29. .... [NEW] (E) .....	366
310:681-9-6. .... [REVOKED] (E) .....	419	317:30-5-221. .... [AMENDED] (E) .....	655
310:681-9-6. .... [REVOKED] .....	1606	317:30-5-222. .... [AMENDED] (E) .....	655
310:681-9-7. .... [AMENDED] (E) .....	17	317:30-5-232. .... [AMENDED] (E) .....	655
310:681-9-7. .... [REVOKED] (E) .....	419	317:30-5-241.2. .... [AMENDED] (E) .....	1488
310:681-9-7. .... [REVOKED] .....	1606	317:30-5-345. .... [NEW] (E) .....	368
310:681-9-8. .... [REVOKED] (E) .....	419	317:30-5-354. .... [AMENDED] (E) .....	1490
310:681-9-8. .... [REVOKED] .....	1606	317:30-5-355.2. .... [AMENDED] (E) .....	1490
310:681-9-9. .... [REVOKED] (E) .....	419	317:30-5-561. .... [NEW] (E) .....	1496
310:681-9-9. .... [REVOKED] .....	1606	317:30-5-575. .... [AMENDED] (E) .....	1492
310:681-10-1. .... [REVOKED] (E) .....	419	317:30-5-664.3. .... [AMENDED] (E) .....	1492
310:681-10-1. .... [REVOKED] .....	1606	317:30-5-664.10. .... [AMENDED] (E) .....	1492
310:681-10-2. .... [REVOKED] (E) .....	419	317:30-5-706. .... [AMENDED] (E) .....	371
310:681-10-2. .... [REVOKED] .....	1606	317:30-5-707. .... [AMENDED] (E) .....	372
310:681-10-3. .... [REVOKED] (E) .....	419	317:30-5-708. .... [AMENDED] (E) .....	373
310:681-10-3. .... [REVOKED] .....	1606	317:30-5-709. .... [REVOKED] (E) .....	373
310:681-10-4. .... [REVOKED] (E) .....	419	317:30-5-710. .... [REVOKED] (E) .....	373
310:681-10-4. .... [REVOKED] .....	1606	317:30-5-711. .... [REVOKED] (E) .....	373
310:681, App. A. .... [REVOKED] (E) .....	419	317:30-5-1087. .... [AMENDED] (E) .....	1493
310:681, App. A. .... [REVOKED] .....	1606	317:30-5-1098. .... [AMENDED] (E) .....	1493
310:681, App. B. .... [REVOKED] (E) .....	419	317:30-5-1215. .... [NEW] (E) .....	1497
310:681, App. B. .... [REVOKED] .....	1606	317:30-5-1216. .... [NEW] (E) .....	1497
310:681, App. C. .... [REVOKED] (E) .....	17	317:30-5-1217. .... [NEW] (E) .....	1497
310:681, App. C. .... [NEW] (E) .....	17	317:35-5-2. .... [AMENDED] (E) .....	378
310:681, App. C. .... [REVOKED] (E) .....	419	317:35-5-6. .... [AMENDED] (E) .....	657
310:681, App. C. .... [REVOKED] .....	1606	317:35-5-25. .... [AMENDED] (E) .....	659
310:681, App. D. .... [NEW] (E) .....	17	317:35-6-15. .... [AMENDED] (E) .....	728
310:681, App. D. .... [REVOKED] (E) .....	419	317:35-6-60. .... [AMENDED] (E) .....	658
310:681, App. D. .... [REVOKED] .....	1606	317:35-16-1. .... [NEW] (E) .....	730
310:681, App. E. .... [NEW] (E) .....	17	317:35-16-2. .... [NEW] (E) .....	730
310:681, App. E. .... [REVOKED] (E) .....	419	317:35-16-3. .... [NEW] (E) .....	733
310:681, App. E. .... [REVOKED] .....	1606	317:35-16-4. .... [NEW] (E) .....	733
317:2-1-2. .... [AMENDED] (E) .....	717	317:35-16-5. .... [NEW] (E) .....	733
317:2-1-2.6. .... [AMENDED] (E) .....	719	317:35-16-6. .... [NEW] (E) .....	733
317:2-3-1. .... [AMENDED] (E) .....	719	317:35-16-7. .... [NEW] (E) .....	734
317:2-3-2. .... [AMENDED] (E) .....	720	317:35-16-8. .... [NEW] (E) .....	734
317:2-3-3. .... [AMENDED] (E) .....	720	317:35-16-9. .... [NEW] (E) .....	734
317:2-3-4. .... [AMENDED] (E) .....	721	317:35-16-10. .... [NEW] (E) .....	735
317:2-3-5. .... [AMENDED] (E) .....	721	317:35-16-11. .... [NEW] (E) .....	736
317:2-3-5.1. .... [NEW] (E) .....	722	317:35-16-12. .... [NEW] (E) .....	736
317:2-3-6. .... [AMENDED] (E) .....	723	317:45-5-1. .... [AMENDED] (E) .....	1498
317:2-3-7. .... [AMENDED] (E) .....	723	317:55-1-1. .... [AMENDED] (E) .....	737
317:2-3-8. .... [AMENDED] (E) .....	723	317:55-1-2. .... [REVOKED] (E) .....	737



317:55-1-3. . . . . [AMENDED] (E) . . . . .	737	340:2-1-29. . . . . [REVOKED] . . . . .	925
317:55-1-4. . . . . [NEW] (E) . . . . .	746	340:2-1-31. . . . . [REVOKED] . . . . .	926
317:55-1-5. . . . . [NEW] (E) . . . . .	747	340:2-1-32. . . . . [REVOKED] . . . . .	926
317:55-3-1. . . . . [AMENDED] (E) . . . . .	748	340:2-1-34. . . . . [REVOKED] . . . . .	926
317:55-3-2. . . . . [AMENDED] (E) . . . . .	749	340:2-1-59. . . . . [NEW] . . . . .	926
317:55-3-3. . . . . [AMENDED] (E) . . . . .	753	340:2-1-76. . . . . [REVOKED] . . . . .	927
317:55-3-10. . . . . [AMENDED] (E) . . . . .	753	340:2-1-77. . . . . [REVOKED] . . . . .	928
317:55-3-11. . . . . [AMENDED] (E) . . . . .	754	340:2-1-78. . . . . [REVOKED] . . . . .	928
317:55-3-12. . . . . [AMENDED] (E) . . . . .	755	340:2-1-79. . . . . [REVOKED] . . . . .	928
317:55-3-13. . . . . [AMENDED] (E) . . . . .	756	340:2-1-80. . . . . [REVOKED] . . . . .	928
317:55-3-14. . . . . [AMENDED] (E) . . . . .	758	340:2-1-81. . . . . [REVOKED] . . . . .	928
317:55-3-15. . . . . [NEW] (E) . . . . .	758	340:2-1-82. . . . . [REVOKED] . . . . .	928
317:55-3-16. . . . . [NEW] (E) . . . . .	758	340:2-1-83. . . . . [REVOKED] . . . . .	929
317:55-3-20. . . . . [AMENDED] (E) . . . . .	759	340:2-1-85. . . . . [REVOKED] . . . . .	929
317:55-3-21. . . . . [AMENDED] (E) . . . . .	759	340:2-1-87. . . . . [REVOKED] . . . . .	929
317:55-5-1. . . . . [AMENDED] (E) . . . . .	759	340:2-1-88. . . . . [REVOKED] . . . . .	929
317:55-5-2. . . . . [AMENDED] (E) . . . . .	759	340:2-1-89. . . . . [REVOKED] . . . . .	930
317:55-5-3. . . . . [NEW] (E) . . . . .	760	340:2-1-93. . . . . [REVOKED] . . . . .	930
317:55-5-10. . . . . [AMENDED] (E) . . . . .	761	340:2-3-12. . . . . [REVOKED] . . . . .	931
317:55-5-11. . . . . [AMENDED] (E) . . . . .	762	340:2-3-36.1. . . . . [AMENDED] . . . . .	931
317:55-5-12. . . . . [AMENDED] (E) . . . . .	763	340:2-3-39.1. . . . . [AMENDED] . . . . .	936
317:55-5-13. . . . . [AMENDED] (E) . . . . .	764	340:2-11-118. . . . . [AMENDED] . . . . .	939
317:55-5-14. . . . . [AMENDED] (E) . . . . .	764	340:2-11-119. . . . . [AMENDED] . . . . .	940
317:55-5-20. . . . . [AMENDED] (E) . . . . .	764	340:2-11-121. . . . . [AMENDED] (E) . . . . .	691
317:55-5-21. . . . . [AMENDED] (E) . . . . .	764	340:2-28-4.2. . . . . [AMENDED] . . . . .	941
317:55-5-22. . . . . [AMENDED] (E) . . . . .	764	340:5-1-1. . . . . [AMENDED] . . . . .	941
317:55-5-23. . . . . [AMENDED] (E) . . . . .	765	340:5-1-6. . . . . [AMENDED] . . . . .	942
317:55-5-24. . . . . [AMENDED] (E) . . . . .	765	340:5-3-5. . . . . [AMENDED] . . . . .	944
317:55-5-25. . . . . [AMENDED] (E) . . . . .	765	340:5-5-5. . . . . [AMENDED] . . . . .	945
317:55-5-26. . . . . [NEW] (E) . . . . .	766	340:5-7-1. . . . . [AMENDED] . . . . .	945
317:55-5-30. . . . . [AMENDED] (E) . . . . .	766	340:10-2-4. . . . . [AMENDED] . . . . .	946
317:55-5-31. . . . . [AMENDED] (E) . . . . .	766	340:10-4-1. . . . . [AMENDED] . . . . .	952
325:10-1-2. . . . . [AMENDED] . . . . .	1609	340:10-15-1. . . . . [AMENDED] (E) . . . . .	506
325:15-1-2. . . . . [AMENDED] . . . . .	1610	340:10-18-1. . . . . [AMENDED] . . . . .	953
325:15-5-1. . . . . [AMENDED] . . . . .	1611	340:10-20-1. . . . . [AMENDED] . . . . .	953
325:25-1-2. . . . . [AMENDED] . . . . .	1612	340:25-1-1. . . . . [AMENDED] . . . . .	955
325:25-1-18. . . . . [AMENDED] . . . . .	1613	340:25-1-1.1. . . . . [AMENDED] . . . . .	955
325:35-1-2. . . . . [AMENDED] . . . . .	1614	340:25-1-1.2. . . . . [AMENDED] . . . . .	958
325:35-1-9. . . . . [AMENDED] . . . . .	1615	340:25-1-2. . . . . [REVOKED] . . . . .	959
325:50-1-2. . . . . [AMENDED] . . . . .	1615	340:25-5-55. . . . . [AMENDED] . . . . .	959
330:15-1-1. . . . . [AMENDED] . . . . .	917	340:25-5-66. . . . . [REVOKED] . . . . .	959
330:15-7-2. . . . . [AMENDED] . . . . .	917	340:25-5-67. . . . . [AMENDED] . . . . .	960
330:15-9-9. . . . . [AMENDED] . . . . .	917	340:25-5-68. . . . . [REVOKED] . . . . .	961
340:1-11-1. . . . . [AMENDED] . . . . .	918	340:25-5-95. . . . . [REVOKED] . . . . .	961
340:1-11-1.1. . . . . [AMENDED] . . . . .	918	340:25-5-114. . . . . [AMENDED] . . . . .	961
340:1-11-3. . . . . [REVOKED] . . . . .	919	340:25-5-118. . . . . [REVOKED] . . . . .	962
340:1-11-4. . . . . [AMENDED] . . . . .	919	340:25-5-123. . . . . [AMENDED] . . . . .	962
340:1-11-5. . . . . [REVOKED] . . . . .	919	340:25-5-124.3. . . . . [AMENDED] . . . . .	962
340:1-11-6. . . . . [REVOKED] . . . . .	920	340:25-5-169. . . . . [AMENDED] . . . . .	963
340:1-11-7. . . . . [REVOKED] . . . . .	920	340:25-5-170. . . . . [REVOKED] . . . . .	964
340:1-11-12. . . . . [AMENDED] . . . . .	920	340:25-5-178. . . . . [AMENDED] . . . . .	964
340:1-11-20. . . . . [AMENDED] . . . . .	920	340:25-5-190. . . . . [AMENDED] . . . . .	965
340:1-11-21. . . . . [REVOKED] . . . . .	921	340:25-5-200. . . . . [AMENDED] . . . . .	966
340:1-11-22. . . . . [REVOKED] . . . . .	921	340:25-5-200.2. . . . . [REVOKED] . . . . .	967
340:1-11-24. . . . . [REVOKED] . . . . .	921	340:25-5-200.3. . . . . [REVOKED] . . . . .	967
340:1-11-26. . . . . [REVOKED] . . . . .	921	340:25-5-244. . . . . [AMENDED] . . . . .	967
340:1-11-27. . . . . [REVOKED] . . . . .	921	340:25-5-265. . . . . [AMENDED] . . . . .	967
340:1-11-40. . . . . [AMENDED] . . . . .	921	340:25-5-265.1. . . . . [REVOKED] . . . . .	968
340:1-11-41. . . . . [AMENDED] . . . . .	922	340:25-5-305. . . . . [AMENDED] . . . . .	968
340:1-11-43. . . . . [AMENDED] . . . . .	923	340:25-5-328. . . . . [REVOKED] . . . . .	969
340:1-11-44. . . . . [REVOKED] . . . . .	923	340:25-5-336. . . . . [REVOKED] . . . . .	970
340:1-11-50. . . . . [REVOKED] . . . . .	923	340:25-5-338. . . . . [REVOKED] . . . . .	970
340:1-11-54. . . . . [REVOKED] . . . . .	923	340:25-5-339. . . . . [AMENDED] . . . . .	970
340:2-1-1. . . . . [REVOKED] . . . . .	924	340:25-5-340. . . . . [AMENDED] . . . . .	970
340:2-1-2. . . . . [REVOKED] . . . . .	924	340:25-5-340.1. . . . . [REVOKED] . . . . .	971
340:2-1-3. . . . . [REVOKED] . . . . .	924	340:40-3-1. . . . . [AMENDED] . . . . .	972
340:2-1-28. . . . . [REVOKED] . . . . .	925	340:40-7-5. . . . . [AMENDED] (E) . . . . .	508

## Rules Affected Index – *continued*

340:40-9-1. . . . .	[AMENDED]	973	340:100-15-6. . . . .	[REVOKED]	1029
340:40-10-4. . . . .	[AMENDED]	974	340:100-15-7. . . . .	[REVOKED]	1029
340:40-13-2. . . . .	[AMENDED]	975	340:100-15-8. . . . .	[REVOKED]	1030
340:40-13-3. . . . .	[AMENDED]	976	340:100-15-9. . . . .	[REVOKED]	1030
340:40-13-5. . . . .	[AMENDED]	977	340:100-15-10. . . . .	[REVOKED]	1030
340:50-3-2. . . . .	[AMENDED]	980	340:105-10-77. . . . .	[AMENDED]	1031
340:50-5-1. . . . .	[AMENDED]	981	340:105-10-86. . . . .	[AMENDED] (E)	510
340:50-5-45. . . . .	[AMENDED]	982	340:105-10-89. . . . .	[AMENDED]	1031
340:50-5-106. . . . .	[AMENDED] (E)	789	340:105-12-30. . . . .	[AMENDED]	1032
340:50-11-105. . . . .	[AMENDED]	984	340:110-1-1. . . . .	[REVOKED]	1033
340:50-11-106. . . . .	[REVOKED]	985	340:110-1-3. . . . .	[REVOKED]	1033
340:50-11-107. . . . .	[REVOKED]	985	340:110-1-5. . . . .	[REVOKED]	1033
340:50-11-108. . . . .	[REVOKED]	985	340:110-1-6. . . . .	[AMENDED]	1033
340:50-11-109. . . . .	[REVOKED]	985	340:110-1-8.3. . . . .	[AMENDED]	1033
340:50-11-110. . . . .	[REVOKED]	985	340:110-1-8.4. . . . .	[AMENDED]	1033
340:50-15-3. . . . .	[AMENDED]	986	340:110-1-8.5. . . . .	[AMENDED]	1033
340:60-1-3. . . . .	[AMENDED] (E)	609	340:110-1-8.6. . . . .	[AMENDED]	1033
340:60-1-6. . . . .	[AMENDED] (E)	610	340:110-1-8.7. (E)	[AMENDED]	1033
340:65-1-2. . . . .	[AMENDED]	987	340:110-1-8.8. . . . .	[AMENDED]	1033
340:65-1-8. . . . .	[NEW]	989	340:110-1-8.9. . . . .	[AMENDED]	1033
340:75-4-51. . . . .	[NEW]	990	340:110-1-8.10. . . . .	[AMENDED]	1033
340:75-6-31. . . . .	[AMENDED]	991	340:110-1-8.11. . . . .	[NEW]	1033
340:75-6-31.4. . . . .	[AMENDED]	993	340:110-1-9.2. . . . .	[AMENDED]	1033
340:75-7-19. . . . .	[AMENDED]	996	340:110-1-10.1. . . . .	[AMENDED]	1033
340:75-7-301. . . . .	[AMENDED]	996	340:110-1-15. . . . .	[AMENDED]	1033
340:75-7-303. . . . .	[AMENDED]	997	340:110-1-21. . . . .	[AMENDED]	1033
340:75-8-1. . . . .	[AMENDED]	997	340:110-1-40. . . . .	[REVOKED]	1033
340:75-8-4. . . . .	[AMENDED]	998	340:110-1-41. . . . .	[REVOKED]	1033
340:75-8-6. . . . .	[AMENDED]	999	340:110-1-42. . . . .	[REVOKED]	1033
340:75-8-11. . . . .	[AMENDED]	1001	340:110-1-44. . . . .	[REVOKED]	1033
340:75-8-11.1. . . . .	[AMENDED]	1002	340:110-1-45. . . . .	[REVOKED]	1033
340:100-1-1. . . . .	[REVOKED]	1005	340:110-1-47.1. . . . .	[AMENDED]	1033
340:100-1-3. . . . .	[REVOKED]	1005	340:110-1-54. . . . .	[REVOKED]	1033
340:100-3-2. . . . .	[REVOKED]	1006	340:110-3-81. . . . .	[AMENDED]	1033
340:100-3-3. . . . .	[REVOKED]	1006	340:110-3-85. . . . .	[AMENDED]	1033
340:100-3-5.2. . . . .	[AMENDED]	1006	340:110-3-86. . . . .	[AMENDED]	1033
340:100-3-9. . . . .	[REVOKED]	1007	340:110-3-86.1. . . . .	[AMENDED]	1033
340:100-3-27. . . . .	[AMENDED]	1007	340:110-3-87. . . . .	[AMENDED]	1033
340:100-3-27.4. . . . .	[REVOKED]	1011	340:110-3-88. . . . .	[AMENDED]	1033
340:100-3-28. . . . .	[REVOKED]	1011	340:110-3-89.1. . . . .	[AMENDED]	1033
340:100-3-30. . . . .	[REVOKED]	1011	340:110-3-90. . . . .	[AMENDED]	1033
340:100-3-36. . . . .	[REVOKED]	1012	340:110-3-91. . . . .	[AMENDED]	1033
340:100-3-40. . . . .	[AMENDED]	1012	340:110-3-91.1. . . . .	[AMENDED]	1033
340:100-5-22.6. . . . .	[AMENDED]	1014	340:110-3-92. . . . .	[AMENDED]	1033
340:100-5-26.1. . . . .	[AMENDED]	1017	340:110-3-93. . . . .	[AMENDED]	1033
340:100-5-29. . . . .	[AMENDED]	1018	340:110-3-94. . . . .	[AMENDED]	1033
340:100-5-35.1. . . . .	[AMENDED]	1019	340:110-3-97. . . . .	[AMENDED]	1033
340:100-6-10. . . . .	[AMENDED]	1020	340:110-3-97.1. . . . .	[AMENDED]	1033
340:100-6-11. . . . .	[REVOKED]	1021	340:110-3-152. . . . .	[AMENDED]	1033
340:100-6-12. . . . .	[REVOKED]	1021	340:110-3-153.1. . . . .	[AMENDED]	1033
340:100-6-13. . . . .	[AMENDED]	1022	340:110-3-154. . . . .	[AMENDED]	1033
340:100-6-14. . . . .	[REVOKED]	1022	340:110-3-157. . . . .	[AMENDED]	1033
340:100-6-20. . . . .	[REVOKED]	1022	340:110-3-163. . . . .	[AMENDED]	1033
340:100-6-21. . . . .	[REVOKED]	1022	340:110-3-165.1. . . . .	[AMENDED]	1033
340:100-6-30. . . . .	[AMENDED]	1022	340:110-3-277. . . . .	[AMENDED]	1033
340:100-6-41. . . . .	[REVOKED]	1024	340:110-3-278. . . . .	[AMENDED]	1033
340:100-6-44. . . . .	[REVOKED]	1024	340:110-3-279. . . . .	[AMENDED]	1033
340:100-6-85. . . . .	[AMENDED]	1024	340:110-3-280. . . . .	[AMENDED]	1033
340:100-6-86. . . . .	[REVOKED]	1025	340:110-3-281. . . . .	[AMENDED]	1033
340:100-6-88. . . . .	[REVOKED]	1025	340:110-3-281.1. . . . .	[AMENDED]	1033
340:100-6-95. . . . .	[AMENDED]	1025	340:110-3-281.4. . . . .	[AMENDED]	1033
340:100-6-97. . . . .	[REVOKED]	1026	340:110-3-283. . . . .	[AMENDED]	1033
340:100-15-1. . . . .	[AMENDED]	1026	340:110-3-284. . . . .	[AMENDED]	1033
340:100-15-2. . . . .	[REVOKED]	1028	340:110-3-284.2. . . . .	[AMENDED]	1033
340:100-15-3. . . . .	[REVOKED]	1028	340:110-3-286. . . . .	[AMENDED]	1033
340:100-15-4. . . . .	[REVOKED]	1029	340:110-3-287. . . . .	[AMENDED]	1033
340:100-15-5. . . . .	[REVOKED]	1029	340:110-3-288. . . . .	[AMENDED]	1033

340:110-3-289. . . . .	[AMENDED]	1033	365:25-5-32. . . . .	[REVOKED]	1628
340:110-3-292. . . . .	[AMENDED]	1033	365:25-5-38. . . . .	[REVOKED]	1628
340:110-3-293. . . . .	[AMENDED]	1033	365:25-5-50. . . . .	[REVOKED]	1628
340:110-3-297. . . . .	[AMENDED]	1033	365:25-7-10. . . . .	[REVOKED]	1628
340:110-3-298. . . . .	[AMENDED]	1033	365:25-7-11. . . . .	[AMENDED]	1628
340:110-3-299. . . . .	[AMENDED]	1033	365:25-7-21. . . . .	[REVOKED]	1628
340:110-3-300. . . . .	[AMENDED]	1033	365:25-7-23. . . . .	[AMENDED]	1628
340:110-3-301. . . . .	[AMENDED]	1033	365:25-7-40. . . . .	[REVOKED]	1628
340:110-3-302. . . . .	[AMENDED]	1033	365:25-7-45. . . . .	[REVOKED]	1628
340:110-3-303. . . . .	[AMENDED]	1033	365:25-7-65. . . . .	[AMENDED]	1628
340:110-3-304. . . . .	[AMENDED]	1033	365:25-7-66. . . . .	[AMENDED]	1628
340:110-3-305. . . . .	[AMENDED]	1033	365:25-7-67. . . . .	[AMENDED]	1628
340:110-3-400. . . . .	[AMENDED]	1033	365:25-7-68. . . . .	[AMENDED]	1628
340:110-5-6. . . . .	[AMENDED]	1033	365:25-7-70. . . . .	[AMENDED]	1628
340:110-5-8. . . . .	[AMENDED]	1033	365:25-7-72. . . . .	[AMENDED]	1628
340:110-5-12. . . . .	[AMENDED]	1033	365:25-7-73. . . . .	[AMENDED]	1628
340:110-5-57. . . . .	[AMENDED]	1033	365:25-7-74. . . . .	[NEW]	1628
340:110-5-60. . . . .	[AMENDED]	1033	365:25-7-102. . . . .	[AMENDED]	1628
365:1-1-4. . . . .	[AMENDED]	1616	365:25-7-106. . . . .	[AMENDED]	1628
365:1-1-4.1. . . . .	[REVOKED]	1616	365:25-7-125. . . . .	[NEW]	1628
365:1-1-7. . . . .	[NEW]	1617	365:25-7-126. . . . .	[NEW]	1628
365:1-7-1. . . . .	[AMENDED]	1617	365:25-7-127. . . . .	[NEW]	1628
365:1-7-4. . . . .	[AMENDED]	1618	365:25-7-128. . . . .	[NEW]	1628
365:1-9-1. . . . .	[AMENDED]	1618	365:25-7-130. . . . .	[NEW]	1628
365:1-9-5. . . . .	[AMENDED]	1619	365:25-7-131. . . . .	[NEW]	1628
365:1-9-11. . . . .	[AMENDED]	1619	365:25-7-132. . . . .	[NEW]	1628
365:1-9-12. . . . .	[AMENDED]	1619	365:25-7-133. . . . .	[NEW]	1628
365:1-9-13. . . . .	[AMENDED]	1619	365:25-7-134. . . . .	[NEW]	1628
365:1-9-16. . . . .	[AMENDED]	1619	365:25-7-135. . . . .	[NEW]	1628
365:1-9-17. . . . .	[AMENDED]	1620	365:25-7-136. . . . .	[NEW]	1628
365:1-9-17.2. . . . .	[AMENDED]	1620	365:25-7-137. . . . .	[NEW]	1628
365:1-9-18. . . . .	[AMENDED]	1620	365:25-7-138. . . . .	[NEW]	1628
365:1-11-9. . . . .	[AMENDED]	1621	365:25-9-1. . . . .	[REVOKED]	1628
365:1-13-1. . . . .	[AMENDED]	1621	365:25-9-2. . . . .	[AMENDED]	1628
365:10-5-81. . . . .	[AMENDED]	1621	365:25-9-3. . . . .	[AMENDED]	1628
365:10-5-82. . . . .	[AMENDED]	1622	365:25-9-7. . . . .	[REVOKED]	1628
365:10-5-129. . . . .	[AMENDED]	1623	365:25-11-1. . . . .	[REVOKED]	1628
365:10-5-129.2. . . . .	[NEW] (E)	692	365:25-11-4.1. . . . .	[AMENDED]	1628
365:15-1-1. . . . .	[REVOKED]	1625	365:25-11-6. . . . .	[AMENDED]	1628
365:15-1-2. . . . .	[REVOKED]	1625	365:25-11-9. . . . .	[AMENDED]	1628
365:15-1-7. . . . .	[REVOKED]	1625	365:25-15-3. . . . .	[AMENDED]	1628
365:15-1-10. . . . .	[AMENDED]	1625	365:25-15-12. . . . .	[REVOKED]	1628
365:15-3-1. . . . .	[REVOKED]	1625	365:25-15-13. . . . .	[AMENDED]	1628
365:15-3-2. . . . .	[REVOKED]	1625	365:25-15-14. . . . .	[AMENDED]	1628
365:15-3-2.1. . . . .	[REVOKED]	1625	365:25-15-25. . . . .	[NEW]	1628
365:15-3-3. . . . .	[REVOKED]	1626	365:25-17-1. . . . .	[AMENDED]	1628
365:15-3-4. . . . .	[REVOKED]	1626	365:25-17-2. . . . .	[AMENDED]	1628
365:15-3-5. . . . .	[REVOKED]	1626	365:25-17-4. . . . .	[AMENDED]	1628
365:15-3-6. . . . .	[REVOKED]	1626	365:25-17-5. . . . .	[AMENDED]	1628
365:15-3-7. . . . .	[REVOKED]	1626	365:25-17-7. . . . .	[AMENDED]	1628
365:15-3-8. . . . .	[REVOKED]	1627	365:25-17-7.1. . . . .	[NEW]	1628
365:15-3-9. . . . .	[REVOKED]	1627	365:25-17-8. . . . .	[AMENDED]	1628
365:15-7-1. . . . .	[REVOKED]	1627	365:25-17-9. . . . .	[AMENDED]	1628
365:15-7-2. . . . .	[REVOKED]	1628	365:25-19-2. . . . .	[REVOKED]	1628
365:25:29-16. . . . .	[NEW]	1628	365:25-19-8. . . . .	[REVOKED]	1628
365:25-1-1. . . . .	[REVOKED]	1628	365:25-19-9. . . . .	[REVOKED]	1628
365:25-1-2. . . . .	[REVOKED]	1628	365:25-21-6. . . . .	[REVOKED]	1628
365:25-3-1. . . . .	[AMENDED]	1628	365:25-23-1. . . . .	[REVOKED]	1628
365:25-3-12. . . . .	[AMENDED]	1628	365:25-23-3. . . . .	[AMENDED]	1628
365:25-3-14. . . . .	[AMENDED]	1628	365:25-23-4. . . . .	[AMENDED]	1628
365:25-3-15. . . . .	[AMENDED]	1628	365:25-23-6. . . . .	[AMENDED]	1628
365:25-3-21. . . . .	[REVOKED]	1628	365:25-27-3. . . . .	[REVOKED]	1628
365:25-5-2. . . . .	[AMENDED]	1628	365:25-27-8. . . . .	[REVOKED]	1628
365:25-5-4. . . . .	[AMENDED]	1628	365:25-29-1. . . . .	[REVOKED]	1628
365:25-5-5. . . . .	[AMENDED]	1628	365:25-29-2. . . . .	[REVOKED]	1628
365:25-5-6. . . . .	[AMENDED]	1628	365:25-29-3. . . . .	[REVOKED]	1628
365:25-5-9. . . . .	[REVOKED]	1628	365:25-29-4. . . . .	[AMENDED]	1628

**Rules Affected Index – *continued***

365:25-29-6. . . . . [AMENDED] . . . . .	1628	442:10-1-6. . . . . [NEW] . . . . .	1039
365:25-29-7.1. . . . . [AMENDED] . . . . .	1628	442:10-1-7. . . . . [NEW] (E) . . . . .	381
365:25-29-9. . . . . [AMENDED] . . . . .	1628	442:10-1-7. . . . . [NEW] . . . . .	1039
365:25-29-10. . . . . [AMENDED] . . . . .	1628	442:10-1-8. . . . . [NEW] (E) . . . . .	381
365:25-29-11. . . . . [AMENDED] . . . . .	1628	442:10-1-8. . . . . [NEW] . . . . .	1039
365:25-29-12. . . . . [REVOKED] . . . . .	1628	442:10-1-9. . . . . [NEW] (E) . . . . .	381
365:25-29-13. . . . . [AMENDED] . . . . .	1628	442:10-1-9. . . . . [NEW] . . . . .	1039
365:25-29-15. . . . . [AMENDED] . . . . .	1628	442:10-1-9.1. . . . . [NEW] (E) . . . . .	381
365:25-30-3. . . . . [REVOKED] . . . . .	1628	442:10-1-9.1. . . . . [NEW] . . . . .	1039
365:25, App. E. . . . . [REVOKED] . . . . .	1628	442:10-2-1. . . . . [NEW] (E) . . . . .	381
365:25, App. F. . . . . [REVOKED] . . . . .	1628	442:10-2-1. . . . . [NEW] . . . . .	1039
365:25, App. G. . . . . [REVOKED] . . . . .	1628	442:10-2-2. . . . . [NEW] (E) . . . . .	381
365:25, App. H. . . . . [REVOKED] . . . . .	1628	442:10-2-2. . . . . [NEW] . . . . .	1039
365:25, App. U. . . . . [REVOKED] . . . . .	1628	442:10-2-3. . . . . [NEW] (E) . . . . .	381
365:25, App. V. . . . . [REVOKED] . . . . .	1628	442:10-2-3. . . . . [NEW] . . . . .	1039
365:25, App. W. . . . . [REVOKED] . . . . .	1628	442:10-2-3.1. . . . . [NEW] (E) . . . . .	381
365:25, App. Z. . . . . [REVOKED] . . . . .	1628	442:10-2-3.1. . . . . [NEW] . . . . .	1039
365:40-3-17. . . . . [AMENDED] . . . . .	1629	442:10-2-4. . . . . [NEW] (E) . . . . .	381
375:9-1-1. . . . . [AMENDED] . . . . .	1630	442:10-2-4. . . . . [NEW] . . . . .	1039
375:9-1-2. . . . . [AMENDED] . . . . .	1631	442:10-2-5. . . . . [NEW] (E) . . . . .	381
375:9-1-2.1. . . . . [AMENDED] . . . . .	1632	442:10-2-5. . . . . [NEW] . . . . .	1039
375:9-1-3.1. . . . . [AMENDED] . . . . .	1633	442:10-2-6. . . . . [NEW] (E) . . . . .	381
375:9-1-4. . . . . [AMENDED] . . . . .	1634	442:10-2-6. . . . . [NEW] . . . . .	1039
375:9-1-5. . . . . [AMENDED] . . . . .	1635	442:10-2-7. . . . . [NEW] (E) . . . . .	381
375:9-1-6. . . . . [AMENDED] . . . . .	1635	442:10-2-7. . . . . [NEW] . . . . .	1039
375:9-7-1. . . . . [AMENDED] . . . . .	1635	442:10-2-8. . . . . [NEW] (E) . . . . .	381
375:9-7-2. . . . . [AMENDED] . . . . .	1635	442:10-2-8. . . . . [NEW] . . . . .	1039
375:9-7-3. . . . . [AMENDED] . . . . .	1636	442:10-2-9. . . . . [NEW] (E) . . . . .	381
420:1-1-3. . . . . [AMENDED] . . . . .	1636	442:10-2-9. . . . . [NEW] . . . . .	1039
420:10-1-5. . . . . [AMENDED] . . . . .	1637	442:10-2-10. . . . . [NEW] (E) . . . . .	381
420:10-1-6. . . . . [AMENDED] . . . . .	1641	442:10-2-10. . . . . [NEW] . . . . .	1039
420:10-1-14. . . . . [AMENDED] . . . . .	1641	442:10-2-11. . . . . [NEW] (E) . . . . .	381
420:10-1-16. . . . . [AMENDED] . . . . .	1647	442:10-2-11. . . . . [NEW] . . . . .	1039
420:10-1-18. . . . . [AMENDED] . . . . .	1647	442:10-3-1. . . . . [NEW] (E) . . . . .	381
442:1-1-1. . . . . [NEW] (E) . . . . .	380	442:10-3-1. . . . . [NEW] . . . . .	1039
442:1-1-1. . . . . [NEW] . . . . .	1037	442:10-3-2. . . . . [NEW] (E) . . . . .	381
442:1-1-2. . . . . [NEW] (E) . . . . .	380	442:10-3-2. . . . . [NEW] . . . . .	1039
442:1-1-2. . . . . [NEW] . . . . .	1037	442:10-3-3. . . . . [NEW] (E) . . . . .	381
442:1-1-3. . . . . [NEW] (E) . . . . .	380	442:10-3-3. . . . . [NEW] . . . . .	1039
442:1-1-3. . . . . [NEW] . . . . .	1037	442:10-3-4. . . . . [NEW] (E) . . . . .	381
442:1-1-4. . . . . [NEW] (E) . . . . .	380	442:10-3-4. . . . . [NEW] . . . . .	1039
442:1-1-4. . . . . [NEW] . . . . .	1037	442:10-3-5. . . . . [NEW] (E) . . . . .	381
442:1-1-5. . . . . [NEW] (E) . . . . .	380	442:10-3-5. . . . . [NEW] . . . . .	1039
442:1-1-5. . . . . [NEW] . . . . .	1038	442:10-3-6. . . . . [NEW] (E) . . . . .	381
442:1-1-6. . . . . [NEW] (E) . . . . .	381	442:10-3-6. . . . . [NEW] . . . . .	1039
442:1-1-6. . . . . [NEW] . . . . .	1038	442:10-4-1. . . . . [NEW] (E) . . . . .	381
442:1-1-7. . . . . [NEW] (E) . . . . .	381	442:10-4-1. . . . . [NEW] . . . . .	1039
442:1-1-7. . . . . [NEW] . . . . .	1038	442:10-4-1.1. . . . . [NEW] (E) . . . . .	381
442:1-1-8. . . . . [NEW] (E) . . . . .	381	442:10-4-1.1. . . . . [NEW] . . . . .	1039
442:1-1-8. . . . . [NEW] . . . . .	1038	442:10-4-2. . . . . [NEW] (E) . . . . .	381
442:1-1-9. . . . . [NEW] (E) . . . . .	381	442:10-4-2. . . . . [NEW] . . . . .	1039
442:1-1-9. . . . . [NEW] . . . . .	1038	442:10-4-3. . . . . [NEW] (E) . . . . .	381
442:1-1-10. . . . . [NEW] (E) . . . . .	381	442:10-4-3. . . . . [NEW] . . . . .	1039
442:1-1-10. . . . . [NEW] . . . . .	1038	442:10-4-4. . . . . [NEW] (E) . . . . .	381
442:1-1-11. . . . . [NEW] (E) . . . . .	381	442:10-4-4. . . . . [NEW] . . . . .	1039
442:1-1-11. . . . . [NEW] . . . . .	1038	442:10-4-5. . . . . [NEW] (E) . . . . .	381
442:10-1-1. . . . . [NEW] (E) . . . . .	381	442:10-4-5. . . . . [NEW] . . . . .	1039
442:10-1-1. . . . . [NEW] . . . . .	1039	442:10-4-6. . . . . [NEW] (E) . . . . .	381
442:10-1-2. . . . . [NEW] (E) . . . . .	381	442:10-4-6. . . . . [NEW] . . . . .	1039
442:10-1-2. . . . . [NEW] . . . . .	1039	442:10-5-1. . . . . [NEW] (E) . . . . .	381
442:10-1-3. . . . . [NEW] (E) . . . . .	381	442:10-5-1. . . . . [NEW] . . . . .	1039
442:10-1-3. . . . . [NEW] . . . . .	1039	442:10-5-1.1. . . . . [NEW] (E) . . . . .	381
442:10-1-4. . . . . [NEW] (E) . . . . .	381	442:10-5-1.1. . . . . [NEW] . . . . .	815
442:10-1-4. . . . . [NEW] . . . . .	1039	442:10-5-1.1. . . . . [NEW] . . . . .	1039
442:10-1-5. . . . . [NEW] (E) . . . . .	381	442:10-5-2. . . . . [NEW] (E) . . . . .	381
442:10-1-5. . . . . [NEW] . . . . .	1039	442:10-5-2. . . . . [NEW] . . . . .	816
442:10-1-6. . . . . [NEW] (E) . . . . .	381	442:10-5-2. . . . . [NEW] . . . . .	1039

442:10-5-2.1. . . . .	[NEW] (E)	381	442:10-9-3. . . . .	[NEW] (E)	381
442:10-5-2.1. . . . .	[NEW]	1039	442:10-9-3. . . . .	[NEW]	1039
442:10-5-3. . . . .	[NEW] (E)	381	442:10-9-4. . . . .	[NEW] (E)	381
442:10-5-3. . . . .	[NEW] (E)	818	442:10-9-4. . . . .	[NEW]	1039
442:10-5-3. . . . .	[NEW]	1039	442:10-9-5. . . . .	[NEW] (E)	381
442:10-5-3.1. . . . .	[NEW] (E)	381	442:10-9-5. . . . .	[NEW]	1039
442:10-5-3.1. . . . .	[NEW]	1039	442:10-9-6. . . . .	[NEW] (E)	381
442:10-5-3.2. . . . .	[NEW] (E)	381	442:10-9-6. . . . .	[NEW]	1039
442:10-5-3.2. . . . .	[NEW]	1039	442:10-9-7. . . . .	[NEW] (E)	381
442:10-5-3.3. . . . .	[NEW] (E)	819	442:10-9-7. . . . .	[NEW]	1039
442:10-5-4. . . . .	[NEW] (E)	381	442:10-9-8. . . . .	[NEW] (E)	381
442:10-5-4. . . . .	[NEW]	1039	442:10-9-8. . . . .	[NEW]	1039
442:10-5-4.1. . . . .	[NEW] (E)	381	442:10-9-9. . . . .	[NEW] (E)	381
442:10-5-4.1. . . . .	[NEW]	1039	442:10-9-9. . . . .	[NEW]	1039
442:10-5-5. . . . .	[NEW] (E)	381	442:10-10-1. . . . .	[NEW] (E)	381
442:10-5-5. . . . .	[NEW]	1039	442:10-10-1. . . . .	[NEW]	1039
442:10-5-6. . . . .	[NEW] (E)	381	442:10-10-2. . . . .	[NEW] (E)	381
442:10-5-6. . . . .	[NEW]	1039	442:10-10-2. . . . .	[NEW]	1039
442:10-5-6.1. . . . .	[NEW] (E)	381	442:10-10-3. . . . .	[NEW] (E)	381
442:10-5-6.1. . . . .	[NEW]	1039	442:10-10-3. . . . .	[NEW]	1039
442:10-5-7. . . . .	[NEW] (E)	381	442:10-10-4. . . . .	[NEW] (E)	381
442:10-5-7. . . . .	[NEW]	1039	442:10-10-4. . . . .	[NEW]	1039
442:10-5-8. . . . .	[NEW] (E)	381	442:10, App. A. . . . .	[NEW]	1039
442:10-5-8. . . . .	[NEW]	1039	442:10, App. A. . . . .	[NEW] (E)	381
442:10-5-9. . . . .	[NEW] (E)	381	442:10, App. B. . . . .	[NEW]	1039
442:10-5-9. . . . .	[NEW]	1039	442:10, App. B. . . . .	[NEW] (E)	381
442:10-5-10. . . . .	[NEW] (E)	381	442:10, App. C. . . . .	[NEW]	1039
442:10-5-10. . . . .	[NEW]	1039	442:10, App. C. . . . .	[NEW] (E)	381
442:10-5-11. . . . .	[NEW] (E)	381	442:10, App. D. . . . .	[NEW]	1039
442:10-5-11. . . . .	[NEW]	1039	442:10, App. D. . . . .	[NEW] (E)	381
442:10-5-12. . . . .	[NEW] (E)	381	442:10, App. E. . . . .	[NEW]	1039
442:10-5-12. . . . .	[NEW]	1039	442:10, App. E. . . . .	[NEW] (E)	381
442:10-5-13. . . . .	[NEW] (E)	381	442:10, App. F. . . . .	[NEW]	1039
442:10-5-13. . . . .	[NEW]	1039	450:1-1-1.1. . . . .	[AMENDED]	1042
442:10-5-14. . . . .	[NEW] (E)	381	450:1-9-5.6. . . . .	[AMENDED]	1045
442:10-5-14. . . . .	[NEW]	1039	450:15-1-2. . . . .	[AMENDED]	1047
442:10-5-15. . . . .	[NEW] (E)	381	450:15-3-6. . . . .	[AMENDED]	1050
442:10-5-15. . . . .	[NEW]	1039	450:15-3-14. . . . .	[AMENDED]	1051
442:10-5-16. . . . .	[NEW] (E)	381	450:17-1-2. . . . .	[AMENDED]	1052
442:10-5-16. . . . .	[NEW] (E)	820	450:17-1-6. . . . .	[AMENDED]	1058
442:10-5-16. . . . .	[NEW]	1039	450:17-5-170. . . . .	[AMENDED]	1058
442:10-6-1. . . . .	[NEW] (E)	381	450:17-5-177. . . . .	[AMENDED]	1058
442:10-6-1. . . . .	[NEW]	1039	450:17-5-183. . . . .	[AMENDED]	1059
442:10-6-2. . . . .	[NEW] (E)	381	450:17-5-184. . . . .	[AMENDED]	1059
442:10-6-2. . . . .	[NEW]	1039	450:17-5-189.3. . . . .	[NEW]	1060
442:10-7-1. . . . .	[NEW] (E)	381	450:18-7-81. . . . .	[AMENDED]	1060
442:10-7-1. . . . .	[NEW]	1039	450:21-1-2. . . . .	[AMENDED]	1061
442:10-7-2. . . . .	[NEW] (E)	381	450:21-1-3. . . . .	[AMENDED]	1062
442:10-7-2. . . . .	[NEW]	1039	450:21-1-7.4. . . . .	[AMENDED]	1064
442:10-7-3. . . . .	[NEW] (E)	381	450:21-1-7.6. . . . .	[AMENDED]	1065
442:10-7-3. . . . .	[NEW]	1039	450:21-1-7.7. . . . .	[AMENDED]	1065
442:10-8-1. . . . .	[NEW] (E)	381	450:21-4-2. . . . .	[AMENDED]	1065
442:10-8-1. . . . .	[NEW]	1039	450:21-4-2.1. . . . .	[NEW]	1067
442:10-8-2. . . . .	[NEW] (E)	381	450:21-4-7. . . . .	[AMENDED]	1067
442:10-8-2. . . . .	[NEW]	1039	450:21-7-3. . . . .	[AMENDED]	1068
442:10-8-3. . . . .	[NEW] (E)	381	450:21-7-4. . . . .	[AMENDED]	1070
442:10-8-3. . . . .	[NEW]	1039	450:21-7-8. . . . .	[AMENDED]	1070
442:10-8-4. . . . .	[NEW] (E)	381	450:21-7-9. . . . .	[AMENDED]	1072
442:10-8-4. . . . .	[NEW]	1039	450:23-1-2. . . . .	[AMENDED]	1073
442:10-8-5. . . . .	[NEW] (E)	381	450:23-3-23. . . . .	[AMENDED]	1074
442:10-8-5. . . . .	[NEW]	1039	450:23-3-25. . . . .	[NEW]	1075
442:10-9-1. . . . .	[NEW] (E)	381	450:23-5-1. . . . .	[REVOKED]	1075
442:10-9-1. . . . .	[NEW]	1039	450:23-5-2. . . . .	[REVOKED]	1075
442:10-9-1.1. . . . .	[NEW] (E)	381	450:23-5-7.1. . . . .	[REVOKED]	1075
442:10-9-1.1. . . . .	[NEW]	1039	450:23-5-8. . . . .	[AMENDED]	1075
442:10-9-2. . . . .	[NEW] (E)	381	450:24-3-5. . . . .	[NEW]	1076
442:10-9-2. . . . .	[NEW]	1039	450:24-3-64. . . . .	[AMENDED]	1076

## Rules Affected Index – *continued*

450:24-3-65. . . . .	[REVOKED]	1077	450:70-6-12. . . . .	[AMENDED]	1100
450:24-3-81. . . . .	[AMENDED]	1077	450:70-6-15. . . . .	[AMENDED]	1100
450:24-3-82. . . . .	[REVOKED]	1077	450:70-6-15.1. . . . .	[AMENDED]	1100
450:24-3-101. . . . .	[AMENDED]	1077	450:70-6-15.2. . . . .	[AMENDED]	1101
450:24-3-102. . . . .	[REVOKED]	1077	450:70-6-15.3. . . . .	[REVOKED]	1101
450:24-3-121. . . . .	[AMENDED]	1078	450:70-6-15.4. . . . .	[AMENDED]	1101
450:24-3-122. . . . .	[AMENDED]	1078	450:70-6-16. . . . .	[AMENDED]	1101
450:24-7-1. . . . .	[REVOKED]	1078	450:70-6-17. . . . .	[REVOKED]	1102
450:24-7-4. . . . .	[REVOKED]	1079	450:70-6-17.1. . . . .	[REVOKED]	1102
450:24-7-7. . . . .	[AMENDED]	1079	450:70-6-17.2. . . . .	[AMENDED]	1103
450:70-1-2. . . . .	[AMENDED]	1080	450:70-6-17.3. . . . .	[AMENDED]	1103
450:70-3-3.1. . . . .	[AMENDED]	1084	450:70-6-17.4. . . . .	[AMENDED]	1103
450:70-3-5. . . . .	[AMENDED]	1084	450:70-6-17.5. . . . .	[AMENDED]	1103
450:70-3-5.1. . . . .	[AMENDED]	1085	450:70-6-17.6. . . . .	[AMENDED]	1104
450:70-3-5.2. . . . .	[AMENDED]	1085	450:70-6-17.7. . . . .	[AMENDED]	1104
450:70-3-5.3. . . . .	[AMENDED]	1085	450:70-6-17.8. . . . .	[AMENDED]	1104
450:70-3-5.4. . . . .	[AMENDED]	1085	450:70-6-18. . . . .	[AMENDED]	1105
450:70-3-5.5. . . . .	[AMENDED]	1086	485:10-5-4.1. . . . .	[AMENDED] (E)	693
450:70-3-5.6. . . . .	[AMENDED]	1086	485:10-5-12. . . . .	[AMENDED]	1106
450:70-3-5.7. . . . .	[AMENDED]	1086	485:10-7-2. . . . .	[AMENDED]	1106
450:70-3-5.8. . . . .	[AMENDED]	1086	485:10-11-2. . . . .	[AMENDED]	1109
450:70-3-5.9. . . . .	[AMENDED]	1086	485:10-11-4. . . . .	[AMENDED] (E)	383
450:70-3-5.10. . . . .	[AMENDED]	1086	485:10-11-4. . . . .	[AMENDED]	1111
450:70-3-5.12. . . . .	[AMENDED]	1087	485:10-18-2. . . . .	[AMENDED]	1113
450:70-3-5.13. . . . .	[AMENDED]	1087	490:1-1-2. . . . .	[AMENDED]	1114
450:70-3-5.14. . . . .	[AMENDED]	1087	490:1-3-1. . . . .	[AMENDED]	1116
450:70-3-5.15. . . . .	[REVOKED]	1087	490:1-7-2. . . . .	[AMENDED]	1116
450:70-3-5.16. . . . .	[AMENDED]	1087	490:1-9-4. . . . .	[AMENDED]	1117
450:70-3-5.17. . . . .	[AMENDED]	1088	490:10-1-2.1. . . . .	[AMENDED]	1119
450:70-3-6. . . . .	[AMENDED]	1088	490:10-1-3. . . . .	[AMENDED]	1120
450:70-3-7. . . . .	[AMENDED]	1088	490:10-1-3.1. . . . .	[AMENDED]	1120
450:70-3-8. . . . .	[AMENDED]	1089	490:10-1-3.3. . . . .	[AMENDED]	1121
450:70-3-9. . . . .	[AMENDED]	1089	490:10-1-3.5. . . . .	[AMENDED]	1122
450:70-3-10. . . . .	[AMENDED]	1089	490:10-1-4. . . . .	[AMENDED]	1122
450:70-4-2. . . . .	[REVOKED]	1090	490:10-1-4.1. . . . .	[NEW]	1123
450:70-4-3. . . . .	[REVOKED]	1090	490:10-3-1. . . . .	[AMENDED]	1124
450:70-4-4. . . . .	[AMENDED]	1090	490:10-3-5. . . . .	[AMENDED]	1124
450:70-4-4.1. . . . .	[AMENDED]	1090	490:10-5-3. . . . .	[AMENDED]	1126
450:70-4-4.2. . . . .	[AMENDED]	1091	490:10-7-3. . . . .	[AMENDED]	1127
450:70-4-4.3. . . . .	[AMENDED]	1091	490:15-1-3. . . . .	[AMENDED]	1128
450:70-4-4.4. . . . .	[AMENDED]	1091	490:15-3-1. . . . .	[AMENDED]	1128
450:70-4-5. . . . .	[AMENDED]	1091	535:1-11-1. . . . .	[AMENDED]	1129
450:70-4-5.1. . . . .	[AMENDED]	1092	535:10-3-4. . . . .	[AMENDED]	1130
450:70-4-5.2. . . . .	[REVOKED]	1092	535:10-7-10. . . . .	[AMENDED]	1130
450:70-4-5.4. . . . .	[AMENDED]	1092	535:10-11-3. . . . .	[AMENDED]	1131
450:70-4-6. . . . .	[AMENDED]	1093	535:10-11-5. . . . .	[REVOKED]	1131
450:70-4-7. . . . .	[AMENDED]	1093	535:15-3-4. . . . .	[AMENDED]	1132
450:70-4-7.2. . . . .	[AMENDED]	1093	535:15-3-12. . . . .	[AMENDED]	1132
450:70-4-7.3. . . . .	[AMENDED]	1093	535:15-3-16. . . . .	[AMENDED]	1133
450:70-4-7.4. . . . .	[AMENDED]	1094	535:15-5-9. . . . .	[AMENDED]	1134
450:70-4-8. . . . .	[AMENDED]	1094	535:15-5-9.1. . . . .	[NEW]	1134
450:70-4-8.1. . . . .	[REVOKED]	1095	535:15-6-6. . . . .	[AMENDED]	1135
450:70-4-8.2. . . . .	[AMENDED]	1095	535:15-6-6.1. . . . .	[NEW]	1135
450:70-4-8.3. . . . .	[AMENDED]	1095	535:15-6-7. . . . .	[AMENDED]	1136
450:70-4-8.4. . . . .	[NEW]	1096	535:15-10-8.2. . . . .	[AMENDED]	1137
450:70-4-8.5. . . . .	[NEW]	1096	535:15-10-13. . . . .	[AMENDED]	1137
450:70-5-3. . . . .	[AMENDED]	1096	535:15-10-15. . . . .	[REVOKED]	1138
450:70-6-1. . . . .	[AMENDED]	1096	535:15-10-55. . . . .	[AMENDED]	1138
450:70-6-5. . . . .	[AMENDED]	1097	535:15-10-64.1. . . . .	[AMENDED]	1139
450:70-6-5.1. . . . .	[AMENDED]	1097	535:15-10-66. . . . .	[REVOKED]	1139
450:70-6-5.2. . . . .	[AMENDED]	1097	535:15-13-4. . . . .	[AMENDED]	1140
450:70-6-6. . . . .	[AMENDED]	1097	535:15-13-6.1. . . . .	[NEW]	1140
450:70-6-7. . . . .	[AMENDED]	1098	535:15-13-15. . . . .	[NEW]	1141
450:70-6-8. . . . .	[AMENDED]	1098	535:15-17-5. . . . .	[AMENDED]	1141
450:70-6-9. . . . .	[AMENDED]	1098	535:15-17-11. . . . .	[NEW]	1142
450:70-6-10. . . . .	[AMENDED]	1099	535:20-9-3. . . . .	[AMENDED]	1143
450:70-6-10.1. . . . .	[NEW]	1099	535:20-9-4. . . . .	[AMENDED]	1146

535:20-10-1. . . . . [NEW] (E) . . . . .	615	595:10-17-33. . . . . [NEW] (E) . . . . .	39
535:20-10-1. . . . . [NEW] . . . . .	1149	595:10-17-37. . . . . [NEW] (E) . . . . .	39
535:20-10-2. . . . . [NEW] (E) . . . . .	615	595:10-17-38. . . . . [NEW] (E) . . . . .	39
535:20-10-2. . . . . [NEW] . . . . .	1149	595:10-17-39. . . . . [NEW] (E) . . . . .	39
535:20-10-3. . . . . [NEW] (E) . . . . .	615	595:10-17-40. . . . . [NEW] (E) . . . . .	39
535:20-10-3. . . . . [NEW] . . . . .	1149	595:10-17-41. . . . . [NEW] (E) . . . . .	39
535:20-10-4. . . . . [NEW] (E) . . . . .	618	595:10-17-42. . . . . [NEW] (E) . . . . .	39
535:20-10-4. . . . . [NEW] . . . . .	1152	595:10-17-43. . . . . [NEW] (E) . . . . .	39
535:20-10-5. . . . . [NEW] (E) . . . . .	618	595:10-17-44. . . . . [NEW] (E) . . . . .	39
535:20-10-5. . . . . [NEW] . . . . .	1152	595:10-17-45. . . . . [NEW] (E) . . . . .	39
540:55-1-1. . . . . [NEW] (E) . . . . .	821	595:10-17-46. . . . . [NEW] (E) . . . . .	39
540:55-1-2. . . . . [NEW] (E) . . . . .	822	595:10-17-47. . . . . [NEW] (E) . . . . .	39
540:55-3-1. . . . . [NEW] (E) . . . . .	822	595:10-17-48. . . . . [NEW] (E) . . . . .	39
540:55-3-2. . . . . [NEW] (E) . . . . .	822	595:10-17-52. . . . . [NEW] (E) . . . . .	39
540:55-3-3. . . . . [NEW] (E) . . . . .	822	595:10-17-53. . . . . [NEW] (E) . . . . .	39
540:55-3-4. . . . . [NEW] (E) . . . . .	822	595:10-17-57. . . . . [NEW] (E) . . . . .	39
540:55-3-5. . . . . [NEW] (E) . . . . .	823	595:10-17-61. . . . . [NEW] (E) . . . . .	39
540:55-3-6. . . . . [NEW] (E) . . . . .	823	595:10-17-62. . . . . [NEW] (E) . . . . .	39
540:55-3-7. . . . . [NEW] (E) . . . . .	823	595:10-17-63. . . . . [NEW] (E) . . . . .	39
540:55-3-8. . . . . [NEW] (E) . . . . .	824	595:10-19-1. . . . . [NEW] (E) . . . . .	39
540:55-3-9. . . . . [NEW] (E) . . . . .	824	595:10-19-2. . . . . [NEW] (E) . . . . .	39
540:55-5-1. . . . . [NEW] (E) . . . . .	825	595:10-19-3. . . . . [NEW] (E) . . . . .	39
540:55-5-2. . . . . [NEW] (E) . . . . .	825	595:10-19-4. . . . . [NEW] (E) . . . . .	39
595:1-1-3. . . . . [AMENDED] (E) . . . . .	29	595:10-19-5. . . . . [NEW] (E) . . . . .	39
595:1-1-3. . . . . [AMENDED] . . . . .	1153	595:10-19-6. . . . . [NEW] (E) . . . . .	39
595:1-3-3. . . . . [AMENDED] (E) . . . . .	31	595:10-19-7. . . . . [NEW] (E) . . . . .	39
595:1-3-3. . . . . [AMENDED] . . . . .	1155	595:10-21-1. . . . . [NEW] (E) . . . . .	39
595:1-3-7. . . . . [AMENDED] (E) . . . . .	32	595:10-21-2. . . . . [NEW] (E) . . . . .	39
595:1-3-7. . . . . [AMENDED] . . . . .	1156	595:10-21-3. . . . . [NEW] (E) . . . . .	39
595:1-3-13. . . . . [REVOKED] (E) . . . . .	32	595:10-21-4. . . . . [NEW] (E) . . . . .	39
595:1-3-13. . . . . [REVOKED] . . . . .	1156	595:10-21-5. . . . . [NEW] (E) . . . . .	39
595:1-3-19. . . . . [REVOKED] (E) . . . . .	32	595:10-21-6. . . . . [NEW] (E) . . . . .	39
595:1-3-19. . . . . [REVOKED] . . . . .	1156	595:10-21-7. . . . . [NEW] (E) . . . . .	39
595:1-3-20. . . . . [REVOKED] (E) . . . . .	33	595:10-21-8. . . . . [NEW] (E) . . . . .	39
595:1-3-20. . . . . [AMENDED] . . . . .	1157	595:10-21-9. . . . . [NEW] (E) . . . . .	39
595:1-9-2. . . . . [AMENDED] (E) . . . . .	33	595:10-21-10. . . . . [NEW] (E) . . . . .	39
595:1-9-2. . . . . [AMENDED] . . . . .	1157	595:10-21-11. . . . . [NEW] (E) . . . . .	39
595:1-9-3. . . . . [AMENDED] (E) . . . . .	33	595:10-21-12. . . . . [NEW] (E) . . . . .	39
595:1-9-3. . . . . [AMENDED] . . . . .	1157	595:10-21-13. . . . . [NEW] (E) . . . . .	39
595:1-9-3.1. . . . . [AMENDED] (E) . . . . .	35	595:10-21-14. . . . . [NEW] (E) . . . . .	39
595:1-9-3.1. . . . . [REVOKED] . . . . .	1159	595:10-21-15. . . . . [NEW] (E) . . . . .	39
595:1-9-4. . . . . [AMENDED] (E) . . . . .	36	595:10-21-16. . . . . [NEW] (E) . . . . .	39
595:1-9-4. . . . . [AMENDED] . . . . .	1161	595:10-21-17. . . . . [NEW] (E) . . . . .	39
595:1-9-5. . . . . [AMENDED] (E) . . . . .	37	595:10-21-21. . . . . [NEW] (E) . . . . .	39
595:1-9-5. . . . . [AMENDED] . . . . .	1161	595:10-21-22. . . . . [NEW] (E) . . . . .	39
595:1-9-6. . . . . [REVOKED] (E) . . . . .	38	595:10-21-24. . . . . [NEW] (E) . . . . .	39
595:1-9-6. . . . . [REVOKED] . . . . .	1162	595:10-21-25. . . . . [NEW] (E) . . . . .	39
595:1-9-6.1. . . . . [NEW] (E) . . . . .	39	595:10-21-26. . . . . [NEW] (E) . . . . .	39
595:1-9-7. . . . . [NEW] . . . . .	1163	595:10-21-27. . . . . [NEW] (E) . . . . .	39
595:1-9-8. . . . . [NEW] . . . . .	1163	595:10-21-28. . . . . [NEW] (E) . . . . .	39
595:1-9-9. . . . . [NEW] . . . . .	1163	595:10-23-1. . . . . [NEW] (E) . . . . .	39
595:1-9-10. . . . . [NEW] . . . . .	1163	595:10-23-2. . . . . [NEW] (E) . . . . .	39
595:10-17-1. . . . . [NEW] (E) . . . . .	39	595:10-23-3. . . . . [NEW] (E) . . . . .	39
595:10-17-5. . . . . [NEW] (E) . . . . .	39	595:10-23-4. . . . . [NEW] (E) . . . . .	39
595:10-17-6. . . . . [NEW] (E) . . . . .	39	595:10-23-5. . . . . [NEW] (E) . . . . .	39
595:10-17-7. . . . . [NEW] (E) . . . . .	39	595:10-23-6. . . . . [NEW] (E) . . . . .	39
595:10-17-8. . . . . [NEW] (E) . . . . .	39	595:10-23-7. . . . . [NEW] (E) . . . . .	39
595:10-17-9. . . . . [NEW] (E) . . . . .	39	595:10-23-8. . . . . [NEW] (E) . . . . .	39
595:10-17-15. . . . . [NEW] (E) . . . . .	39	595:10-23-9. . . . . [NEW] (E) . . . . .	39
595:10-17-16. . . . . [NEW] (E) . . . . .	39	595:10-23-10. . . . . [NEW] (E) . . . . .	39
595:10-17-17. . . . . [NEW] (E) . . . . .	39	595:10-23-11. . . . . [NEW] (E) . . . . .	39
595:10-17-21. . . . . [NEW] (E) . . . . .	39	595:10-23-12. . . . . [NEW] (E) . . . . .	39
595:10-17-22. . . . . [NEW] (E) . . . . .	39	595:10-23-13. . . . . [NEW] (E) . . . . .	39
595:10-17-26. . . . . [NEW] (E) . . . . .	39	595:10-23-14. . . . . [NEW] (E) . . . . .	39
595:10-17-27. . . . . [NEW] (E) . . . . .	39	595:10-23-15. . . . . [NEW] (E) . . . . .	39
595:10-17-28. . . . . [NEW] (E) . . . . .	39	595:10-25-1. . . . . [NEW] (E) . . . . .	39
595:10-17-29. . . . . [NEW] (E) . . . . .	39	595:10-25-2. . . . . [NEW] (E) . . . . .	39

**Rules Affected Index – *continued***

595:10-25-3. .... [NEW] (E) .....	39	595:11-17-13. .... [NEW] (E) .....	58
595:10-25-4. .... [NEW] (E) .....	39	595:11-17-14. .... [NEW] (E) .....	59
595:10-25-5. .... [NEW] (E) .....	39	595:11-17-15. .... [NEW] (E) .....	59
595:10-25-6. .... [NEW] (E) .....	39	595:11-17-16. .... [NEW] (E) .....	61
595:10-25-7. .... [NEW] (E) .....	39	595:11-17-17. .... [NEW] (E) .....	61
595:10-25-8. .... [NEW] (E) .....	39	595:11-17-18. .... [NEW] (E) .....	61
595:10-25-9. .... [NEW] (E) .....	39	595:11-19-1. .... [NEW] (E) .....	61
595:10-25-10. .... [NEW] (E) .....	39	595:11-19-2. .... [NEW] (E) .....	61
595:10-25-11. .... [NEW] (E) .....	39	595:11-19-3. .... [NEW] (E) .....	62
595:10-25-12. .... [NEW] (E) .....	39	595:11-19-4. .... [NEW] (E) .....	63
595:10-25-13. .... [NEW] (E) .....	39	595:11-19-5. .... [NEW] (E) .....	64
595:10-25-14. .... [NEW] (E) .....	39	595:11-19-6. .... [NEW] (E) .....	64
595:10-25-15. .... [NEW] (E) .....	39	595:11-19-7. .... [NEW] (E) .....	64
595:10-27-1. .... [NEW] (E) .....	39	595:11-19-8. .... [NEW] (E) .....	64
595:10-27-2. .... [NEW] (E) .....	39	595:11-19-9. .... [NEW] (E) .....	64
595:10-27-3. .... [NEW] (E) .....	39	595:11-19-10. .... [NEW] (E) .....	65
595:10-27-4. .... [NEW] (E) .....	39	595:11-19-11. .... [NEW] (E) .....	65
595:10-27-5. .... [NEW] (E) .....	39	595:11-19-12. .... [NEW] (E) .....	66
595:10-27-6. .... [NEW] (E) .....	39	595:11-19-13. .... [NEW] (E) .....	66
595:10-27-7. .... [NEW] (E) .....	39	595:11-19-14. .... [NEW] (E) .....	67
595:10-27-8. .... [NEW] (E) .....	39	595:11-19-15. .... [NEW] (E) .....	67
595:10-27-9. .... [NEW] (E) .....	39	595:11-19-16. .... [NEW] (E) .....	68
595:10-29-1. .... [NEW] (E) .....	39	595:11-21-1. .... [NEW] (E) .....	68
595:10-29-2. .... [NEW] (E) .....	39	595:11-21-2. .... [NEW] (E) .....	69
595:10-29-3. .... [NEW] (E) .....	39	595:11-21-3. .... [NEW] (E) .....	69
595:10-29-4. .... [NEW] (E) .....	39	595:11-21-4. .... [NEW] (E) .....	69
595:10-29-5. .... [NEW] (E) .....	39	595:11-21-5. .... [NEW] (E) .....	69
595:10-29-6. .... [NEW] (E) .....	39	595:11-21-6. .... [NEW] (E) .....	69
595:10-29-7. .... [NEW] (E) .....	39	595:11-21-7. .... [NEW] (E) .....	70
595:10-29-8. .... [NEW] (E) .....	39	595:11-21-8. .... [NEW] (E) .....	70
595:10-29-9. .... [NEW] (E) .....	39	595:11-21-9. .... [NEW] (E) .....	70
595:10-29-10. .... [NEW] (E) .....	39	595:11-21-10. .... [NEW] (E) .....	70
595:11-13-1. .... [NEW] (E) .....	40	595:25-3-1. .... [AMENDED] .....	1172
595:11-13-5. .... [NEW] (E) .....	40	595:25-3-2. .... [AMENDED] .....	1174
595:11-13-6. .... [NEW] (E) .....	40	595:25-3-3. .... [AMENDED] .....	1175
595:11-13-7. .... [NEW] (E) .....	41	595:25-3-4. .... [AMENDED] .....	1175
595:11-13-8. .... [NEW] (E) .....	42	595:25-5-1. .... [AMENDED] .....	1175
595:11-13-9. .... [NEW] (E) .....	42	595:25-5-2. .... [AMENDED] .....	1176
595:11-13-10. .... [NEW] (E) .....	42	595:25-5-3. .... [AMENDED] .....	1178
595:11-13-11. .... [NEW] (E) .....	43	595:25-5-7. .... [AMENDED] .....	1180
595:11-13-12. .... [NEW] (E) .....	44	595:25-11-2. .... [AMENDED] (E) .....	71
595:11-13-16. .... [NEW] (E) .....	44	595:25-11-2. .... [AMENDED] .....	1181
595:11-13-20. .... [NEW] (E) .....	44	595:25-11-3. .... [AMENDED] .....	1181
595:11-13-24. .... [NEW] (E) .....	45	595:30-1-1. .... [REVOKED] .....	1182
595:11-13-28. .... [NEW] (E) .....	46	595:30-1-2. .... [REVOKED] .....	1183
595:11-13-29. .... [NEW] (E) .....	46	595:30-3-1. .... [REVOKED] .....	1183
595:11-15-1. .... [NEW] (E) .....	46	595:30-3-2. .... [REVOKED] .....	1183
595:11-15-2. .... [NEW] (E) .....	46	595:30-3-3. .... [REVOKED] .....	1184
595:11-15-3. .... [NEW] (E) .....	46	595:30-3-4. .... [REVOKED] .....	1185
595:11-15-4. .... [NEW] (E) .....	47	595:30-3-5. .... [REVOKED] .....	1186
595:11-15-5. .... [NEW] (E) .....	47	595:30-3-7. .... [REVOKED] .....	1186
595:11-15-6. .... [NEW] (E) .....	48	595:30-3-13. .... [REVOKED] .....	1186
595:11-15-7. .... [NEW] (E) .....	49	595:30-3-16. .... [REVOKED] .....	1187
595:11-15-8. .... [NEW] (E) .....	50	595:30-3-17. .... [REVOKED] .....	1187
595:11-15-9. .... [NEW] (E) .....	51	595:30-3-17.1. .... [REVOKED] .....	1189
595:11-17-1. .... [NEW] (E) .....	52	595:30-3-18. .... [REVOKED] .....	1190
595:11-17-2. .... [NEW] (E) .....	52	595:30-3-19. .... [REVOKED] .....	1191
595:11-17-3. .... [NEW] (E) .....	52	595:30-3-20. .... [REVOKED] .....	1191
595:11-17-4. .... [NEW] (E) .....	53	595:30-3-21. .... [REVOKED] .....	1191
595:11-17-5. .... [NEW] (E) .....	54	595:30-3-22. .... [REVOKED] .....	1192
595:11-17-6. .... [NEW] (E) .....	56	595:30-3-25. .... [REVOKED] .....	1192
595:11-17-7. .... [NEW] (E) .....	56	595:30-3-26. .... [REVOKED] .....	1192
595:11-17-8. .... [NEW] (E) .....	57	595:30-5-1. .... [REVOKED] .....	1192
595:11-17-9. .... [NEW] (E) .....	57	595:30-5-2. .... [REVOKED] .....	1192
595:11-17-10. .... [NEW] (E) .....	57	595:30-5-3. .... [REVOKED] .....	1193
595:11-17-11. .... [NEW] (E) .....	57	595:30-5-4. .... [REVOKED] .....	1193
595:11-17-12. .... [NEW] (E) .....	57	595:30-5-5. .... [REVOKED] .....	1194



595:30-5-6. . . . . [REVOKED] . . . . .	1194	610:25-39-2. . . . . [NEW] (E) . . . . .	144
595:30-5-7. . . . . [REVOKED] . . . . .	1194	610:25-39-2. . . . . [NEW] . . . . .	1663
595:30-5-8. . . . . [REVOKED] . . . . .	1194	610:25-39-3. . . . . [NEW] (E) . . . . .	144
595:30-9-1. . . . . [REVOKED] . . . . .	1194	610:25-39-3. . . . . [NEW] . . . . .	1663
595:40-7-1. . . . . [REVOKED] (E) . . . . .	71	610:25-41-1. . . . . [NEW] (E) . . . . .	145
595:40-7-1. . . . . [REVOKED] . . . . .	1195	610:25-41-1. . . . . [NEW] . . . . .	1200
595:40-7-2. . . . . [REVOKED] (E) . . . . .	71	610:25-41-2. . . . . [NEW] (E) . . . . .	145
595:40-7-2. . . . . [AMENDED] . . . . .	1195	610:25-41-2. . . . . [NEW] . . . . .	1200
595:40-7-3. . . . . [REVOKED] (E) . . . . .	72	610:25-41-3. . . . . [NEW] (E) . . . . .	146
595:40-7-3. . . . . [REVOKED] . . . . .	1196	610:25-41-3. . . . . [NEW] . . . . .	1201
595:40-7-4. . . . . [REVOKED] (E) . . . . .	72	610:25-41-4. . . . . [NEW] (E) . . . . .	146
595:40-7-4. . . . . [REVOKED] . . . . .	1196	610:25-41-4. . . . . [NEW] . . . . .	1201
595:40-7-5. . . . . [REVOKED] (E) . . . . .	73	610:25-41-5. . . . . [NEW] (E) . . . . .	146
595:40-7-5. . . . . [REVOKED] . . . . .	1197	610:25-41-5. . . . . [NEW] . . . . .	1201
595:40-7-6. . . . . [REVOKED] (E) . . . . .	73	610:25-41-6. . . . . [NEW] (E) . . . . .	146
595:40-7-6. . . . . [REVOKED] . . . . .	1197	610:25-41-6. . . . . [NEW] . . . . .	1201
595:40-9-1. . . . . [NEW] (E) . . . . .	74	610:25-41-7. . . . . [NEW] (E) . . . . .	147
595:40-9-2. . . . . [NEW] (E) . . . . .	74	610:25-41-7. . . . . [NEW] . . . . .	1201
595:40-9-3. . . . . [NEW] (E) . . . . .	74	610:25-41-8. . . . . [NEW] (E) . . . . .	147
595:40-9-4. . . . . [NEW] (E) . . . . .	76	610:25-41-8. . . . . [NEW] . . . . .	1202
595:40-9-5. . . . . [NEW] (E) . . . . .	77	610:25-41-9. . . . . [NEW] (E) . . . . .	148
595:40-9-6. . . . . [NEW] (E) . . . . .	77	610:25-41-9. . . . . [NEW] . . . . .	1203
595:40-9-7. . . . . [NEW] (E) . . . . .	77	610:25-41-10. . . . . [NEW] (E) . . . . .	148
595:40-9-8. . . . . [NEW] (E) . . . . .	77	610:25-41-10. . . . . [NEW] . . . . .	1203
595:40-9-9. . . . . [NEW] (E) . . . . .	78	610:25-41-11. . . . . [NEW] (E) . . . . .	148
595:40-9-10. . . . . [NEW] (E) . . . . .	78	610:25-41-11. . . . . [NEW] . . . . .	1203
595:40-9-11. . . . . [NEW] (E) . . . . .	78	612:10-1-2. . . . . [AMENDED] . . . . .	1204
595:40-9-12. . . . . [NEW] (E) . . . . .	79	612:10-1-7. . . . . [AMENDED] . . . . .	1209
595:40-9-13. . . . . [NEW] (E) . . . . .	79	612:10-3-2. . . . . [AMENDED] . . . . .	1211
595:40-9-14. . . . . [NEW] (E) . . . . .	81	612:10-3-3. . . . . [AMENDED] . . . . .	1212
595:40-9-15. . . . . [NEW] (E) . . . . .	81	612:10-7-1. . . . . [AMENDED] . . . . .	1213
595:40-9-16. . . . . [NEW] (E) . . . . .	81	612:10-7-3. . . . . [AMENDED] . . . . .	1215
595:50-11-1. . . . . [NEW] (E) . . . . .	82	612:10-7-24.1. . . . . [AMENDED] . . . . .	1215
595:50-11-2. . . . . [NEW] (E) . . . . .	82	612:10-7-45. . . . . [AMENDED] . . . . .	1218
595:50-11-3. . . . . [NEW] (E) . . . . .	82	612:10-7-58. . . . . [AMENDED] . . . . .	1218
595:50-11-4. . . . . [NEW] (E) . . . . .	83	612:10-7-62. . . . . [AMENDED] . . . . .	1219
595:50-11-5. . . . . [NEW] (E) . . . . .	83	612:10-7-63. . . . . [AMENDED] . . . . .	1220
595:65-1-2. . . . . [AMENDED] (E) . . . . .	83	612:10-7-142. . . . . [AMENDED] . . . . .	1220
595:65-1-2. . . . . [AMENDED] . . . . .	1198	612:10-7-185. . . . . [AMENDED] . . . . .	1221
595:65-1-4. . . . . [AMENDED] . . . . .	1198	612:10-7-185.1. . . . . [NEW] . . . . .	1221
600:10-1-6. . . . . [AMENDED] . . . . .	1648	612:10-7-220. . . . . [AMENDED] . . . . .	1222
600:10-1-12. . . . . [AMENDED] . . . . .	1649	612:10-7-221. . . . . [AMENDED] . . . . .	1223
600:15-1-15. . . . . [AMENDED] . . . . .	1649	612:10-13-16. . . . . [AMENDED] . . . . .	1223
600:30-1-5. . . . . [AMENDED] . . . . .	1650	612:10-13-18. . . . . [AMENDED] . . . . .	1224
600:30-1-8. . . . . [AMENDED] . . . . .	1650	612:10-13-20. . . . . [AMENDED] . . . . .	1224
605:1-1-4. . . . . [AMENDED] . . . . .	1651	612:10-13-22. . . . . [AMENDED] . . . . .	1225
605:10-3-4. . . . . [AMENDED] . . . . .	1652	612:25-2-5. . . . . [AMENDED] . . . . .	1226
605:10-3-5. . . . . [AMENDED] . . . . .	1652	612:25-4-14. . . . . [AMENDED] . . . . .	1228
605:10-3-7. . . . . [AMENDED] . . . . .	1653	660:11-5-2. . . . . [AMENDED] . . . . .	1230
605:10-7-2. . . . . [AMENDED] . . . . .	1654	660:11-5-15. . . . . [REVOKED] . . . . .	1232
605:10-7-8.3. . . . . [AMENDED] . . . . .	1657	660:11-5-16. . . . . [AMENDED] . . . . .	1232
605:10-7-8.4. . . . . [AMENDED] . . . . .	1657	660:11-5-42. . . . . [AMENDED] . . . . .	1233
605:10-7-11. . . . . [AMENDED] . . . . .	1658	660:11-7-13. . . . . [AMENDED] . . . . .	1238
605:10-9-3. . . . . [AMENDED] . . . . .	1658	660:11-7-41. . . . . [AMENDED] . . . . .	1238
605:10-9-3.2. . . . . [AMENDED] . . . . .	1658	660:11-7-42. . . . . [AMENDED] . . . . .	1243
605:10-9-5. . . . . [AMENDED] . . . . .	1658	660:11-7-44. . . . . [AMENDED] . . . . .	1247
605:10-11-2. . . . . [AMENDED] . . . . .	1659	660:11-7-47. . . . . [AMENDED] . . . . .	1247
605:10-17-4. . . . . [AMENDED] . . . . .	1659	710:1-5-22. . . . . [AMENDED] . . . . .	1249
605:10-17-6. . . . . [AMENDED] . . . . .	1660	710:1-5-28. . . . . [AMENDED] . . . . .	1249
610:25-9-1. . . . . [REVOKED] . . . . .	1199	710:1-5-34. . . . . [AMENDED] . . . . .	1249
610:25-9-2. . . . . [REVOKED] . . . . .	1199	710:1-5-45. . . . . [AMENDED] . . . . .	1249
610:25-9-3. . . . . [REVOKED] . . . . .	1199	710:1-5-47. . . . . [AMENDED] . . . . .	1249
610:25-9-4. . . . . [REVOKED] . . . . .	1200	710:1-5-74. . . . . [AMENDED] . . . . .	1250
610:25-9-7. . . . . [REVOKED] . . . . .	1200	710:10-1-3. . . . . [AMENDED] . . . . .	1250
610:25-23-2. . . . . [AMENDED] . . . . .	1661	710:10-2-2. . . . . [AMENDED] . . . . .	1252
610:25-39-1. . . . . [NEW] (E) . . . . .	144	710:10-7-14. . . . . [AMENDED] . . . . .	1252
610:25-39-1. . . . . [NEW] . . . . .	1663	710:10-9-1. . . . . [AMENDED] . . . . .	1252

**Rules Affected Index – *continued***

710:10-9-2. .... [AMENDED] .....	1253	710:65-13-372. .... [NEW] .....	1289
710:10-9-3. .... [AMENDED] .....	1254	710:65-19-142. .... [AMENDED] .....	1289
710:10-9-5. .... [AMENDED] .....	1254	710:65-19-294. .... [REVOKED] .....	1290
710:10-9-6. .... [REVOKED] .....	1254	710:90-1-13. .... [AMENDED] .....	1291
710:10-9-9. .... [AMENDED] .....	1254	710:95-5-3. .... [AMENDED] .....	1292
710:10-9-12. .... [AMENDED] .....	1255	710:95-5-19. .... [AMENDED] .....	1292
710:10-9-14. .... [AMENDED] .....	1255	710:95-21-3. .... [AMENDED] .....	1292
710:10-9-18. .... [REVOKED] .....	1256	715:1-1-13. .... [AMENDED] .....	1293
710:10-9-19. .... [AMENDED] .....	1256	715:10-1-5. .... [AMENDED] (E) .....	10
710:10-10-28. .... [AMENDED] .....	1257	715:10-1-5. .... [AMENDED] .....	1294
710:10-12-10. .... [AMENDED] .....	1257	715:10-5-33. .... [NEW] .....	1294
710:10-13-11. .... [AMENDED] .....	1257	715:10-5-34. .... [AMENDED] .....	1294
710:20-5-8. .... [AMENDED] .....	1258	715:10-9-3. .... [AMENDED] .....	1295
710:30-1-2. .... [AMENDED] .....	1259	715:10-9-8. .... [AMENDED] .....	1295
710:30-1-3. .... [AMENDED] .....	1259	715:10-11-4. .... [AMENDED] .....	1295
710:30-1-6. .... [AMENDED] .....	1260	715:10-13-2. .... [AMENDED] .....	1295
710:30-1-10. .... [AMENDED] .....	1260	715:10-13-3. .... [AMENDED] .....	1295
710:45-5-1. .... [AMENDED] .....	1261	715:10-15-8. .... [AMENDED] .....	1297
710:45-9-80. .... [AMENDED] .....	1261	715:10-15-11. .... [AMENDED] .....	1297
710:45-9-81. .... [AMENDED] .....	1261	715:10-15-12. .... [AMENDED] .....	1297
710:45-9-81.1. .... [NEW] .....	1262	715:10-15-15. .... [AMENDED] .....	1297
710:45-9-82. .... [AMENDED] .....	1262	715:10-15-22. .... [AMENDED] .....	1298
710:45-9-83. .... [AMENDED] .....	1262	715:10-17-5. .... [AMENDED] .....	1298
710:45-9-84. .... [AMENDED] .....	1263	715:10-17-7. .... [AMENDED] .....	1298
710:45-9-110. .... [NEW] .....	1263	715:10-17-9. .... [AMENDED] .....	1299
710:45-9-111. .... [NEW] .....	1263	715:10-17-13. .... [AMENDED] .....	1299
710:45-9-112. .... [NEW] .....	1263	715:10-17-14. .... [AMENDED] .....	1300
710:45-9-113. .... [NEW] .....	1263	715:10-17-15. .... [AMENDED] (E) .....	10
710:45-9-114. .... [NEW] .....	1264	715:10-17-15. .... [AMENDED] .....	1300
710:45-9-120. .... [NEW] .....	1264	752:11-1-2. .... [AMENDED] .....	1664
710:45-9-121. .... [NEW] .....	1264	752:11-1-3. .... [AMENDED] .....	1666
710:45-9-122. .... [NEW] .....	1264	752:11-1-4. .... [AMENDED] .....	1667
710:45-9-123. .... [NEW] .....	1264	752:11-1-5. .... [AMENDED] .....	1667
710:45-13-1. .... [AMENDED] .....	1264	752:11-1-6. .... [NEW] .....	1667
710:45-15-1. .... [AMENDED] .....	1265	752:11-1-7. .... [NEW] .....	1667
710:45-15-6. .... [AMENDED] .....	1265	752:11-3-1. .... [AMENDED] .....	1667
710:50-13-3. .... [AMENDED] .....	1266	752:11-3-2. .... [AMENDED] .....	1668
710:50-15-49. .... [AMENDED] .....	1266	752:11-3-3. .... [AMENDED] .....	1668
710:50-15-63. .... [AMENDED] .....	1268	752:11-3-4. .... [AMENDED] .....	1669
710:50-15-69.1. .... [NEW] (E) .....	149	752:11-3-8. .... [AMENDED] .....	1669
710:50-15-69.1. .... [NEW] .....	1268	752:11-3-9. .... [AMENDED] .....	1669
710:50-15-81. .... [AMENDED] .....	1268	752:11-3-10. .... [AMENDED] .....	1670
710:50-15-95. .... [REVOKED] .....	1269	752:11-3-11. .... [AMENDED] .....	1670
710:50-15-97. .... [REVOKED] .....	1270	752:11-3-12. .... [AMENDED] .....	1670
710:50-15-98. .... [REVOKED] .....	1270	752:11-3-15. .... [NEW] .....	1670
710:50-15-99. .... [REVOKED] .....	1271	752:11-5-2. .... [AMENDED] .....	1671
710:50-15-104. .... [REVOKED] .....	1271	752:11-5-3. .... [AMENDED] .....	1671
710:50-15-112. .... [REVOKED] .....	1272	752:11-7-1. .... [AMENDED] .....	1671
710:50-15-118. .... [NEW] .....	1273	752:11-7-2. .... [AMENDED] .....	1672
710:50-17-51. .... [AMENDED] (E) .....	149	752:11-7-3. .... [AMENDED] .....	1672
710:50-17-51. .... [AMENDED] .....	1273	752:11-7-4. .... [AMENDED] .....	1672
710:50-19-5. .... [NEW] (E) .....	152	752:11-7-5. .... [AMENDED] .....	1672
710:50-19-5. .... [NEW] .....	1276	752:11-7-7. .... [AMENDED] .....	1672
710:50-21-1. .... [AMENDED] (E) .....	152	752:11-7-9. .... [AMENDED] .....	1673
710:50-21-1. .... [AMENDED] .....	1276	752:11-7-13. .... [AMENDED] .....	1673
710:55-8-1. .... [NEW] .....	1277	752:11-7-18. .... [NEW] .....	1674
710:55-8-2. .... [NEW] .....	1277	752:11-9-1. .... [AMENDED] .....	1674
710:55-8-3. .... [NEW] .....	1278	752:11-9-3. .... [AMENDED] .....	1674
710:55-8-4. .... [NEW] .....	1278	752:11-9-4. .... [AMENDED] .....	1674
710:55-8-5. .... [NEW] .....	1278	752:11-9-6. .... [AMENDED] .....	1675
710:55-8-6. .... [NEW] .....	1278	752:11-9-9. .... [NEW] .....	1675
710:65-13-30. .... [AMENDED] .....	1279	752:11-11-1. .... [AMENDED] .....	1676
710:65-13-52. .... [REVOKED] .....	1280	752:11-11-2. .... [AMENDED] .....	1676
710:65-13-170. .... [AMENDED] .....	1282	752:11-11-3. .... [AMENDED] .....	1676
710:65-13-173. .... [AMENDED] .....	1283	752:11-11-4. .... [AMENDED] .....	1677
710:65-13-275. .... [AMENDED] .....	1287	752:11-11-6. .... [AMENDED] .....	1677
710:65-13-371. .... [NEW] .....	1288	752:11-13-5. .... [AMENDED] .....	1677

752:11-15-1. . . . . [NEW] . . . . .	1678	765:16-1-2. . . . . [AMENDED] . . . . .	1703
752:11-15-2. . . . . [NEW] . . . . .	1678	765:16-3-6. . . . . [AMENDED] . . . . .	1704
752:11-15-3. . . . . [NEW] . . . . .	1679	765:16-5-1. . . . . [AMENDED] (E) . . . . .	388
753:11-1-2. . . . . [AMENDED] . . . . .	1680	765:16-5-1. . . . . [AMENDED] . . . . .	1704
753:11-1-3. . . . . [AMENDED] . . . . .	1682	765:16-5-2. . . . . [AMENDED] (E) . . . . .	388
753:11-1-4. . . . . [AMENDED] . . . . .	1682	765:16-5-2. . . . . [AMENDED] . . . . .	1704
753:11-1-5. . . . . [AMENDED] . . . . .	1683	765:20-3-3. . . . . [NEW] . . . . .	1704
753:11-1-6. . . . . [NEW] . . . . .	1683	765:25-1-4. . . . . [AMENDED] (E) . . . . .	389
753:11-1-7. . . . . [NEW] . . . . .	1683	765:25-1-4. . . . . [AMENDED] . . . . .	1705
753:11-3-1. . . . . [AMENDED] . . . . .	1683	765:25-1-5. . . . . [AMENDED] . . . . .	1705
753:11-3-2. . . . . [AMENDED] . . . . .	1684	765:25-3-2. . . . . [AMENDED] (E) . . . . .	389
753:11-3-3. . . . . [AMENDED] . . . . .	1684	765:25-3-2. . . . . [AMENDED] . . . . .	1705
753:11-3-4. . . . . [AMENDED] . . . . .	1684	765:35-3-1. . . . . [AMENDED] . . . . .	1706
753:11-3-8. . . . . [AMENDED] . . . . .	1685	765:35-3-2. . . . . [AMENDED] . . . . .	1706
753:11-3-9. . . . . [AMENDED] . . . . .	1685	765:35-3-3. . . . . [AMENDED] . . . . .	1706
753:11-3-10. . . . . [AMENDED] . . . . .	1685	765:35-3-5. . . . . [AMENDED] . . . . .	1707
753:11-3-11. . . . . [AMENDED] . . . . .	1686	765:35-5-1. . . . . [AMENDED] . . . . .	1707
753:11-3-12. . . . . [AMENDED] . . . . .	1686	765:35-5-2. . . . . [AMENDED] . . . . .	1707
753:11-3-15. . . . . [NEW] . . . . .	1686	765:36-3-7. . . . . [AMENDED] . . . . .	1708
753:11-5-2. . . . . [AMENDED] . . . . .	1686	765:36-5-2. . . . . [AMENDED] . . . . .	1708
753:11-5-3. . . . . [AMENDED] . . . . .	1686	765:36-6-1. . . . . [AMENDED] (E) . . . . .	390
753:11-7-1. . . . . [AMENDED] . . . . .	1687	765:36-6-1. . . . . [AMENDED] . . . . .	1709
753:11-7-2. . . . . [AMENDED] . . . . .	1687	765:36-7-2. . . . . [AMENDED] . . . . .	1709
753:11-7-3. . . . . [AMENDED] . . . . .	1688	765:37-3-4. . . . . [AMENDED] . . . . .	1710
753:11-7-4. . . . . [AMENDED] . . . . .	1688	765:37-3-5. . . . . [AMENDED] . . . . .	1710
753:11-7-5. . . . . [AMENDED] . . . . .	1688	765:37-5-2. . . . . [AMENDED] . . . . .	1710
753:11-7-7. . . . . [AMENDED] . . . . .	1688	765:37-5-5. . . . . [AMENDED] . . . . .	1710
753:11-7-9. . . . . [AMENDED] . . . . .	1689	765:37-5-6. . . . . [AMENDED] (E) . . . . .	391
753:11-7-13. . . . . [AMENDED] . . . . .	1689	765:37-5-6. . . . . [AMENDED] . . . . .	1710
753:11-7-18. . . . . [NEW] . . . . .	1689	765:37-7-1. . . . . [AMENDED] (E) . . . . .	391
753:11-9-1. . . . . [AMENDED] . . . . .	1689	765:37-7-1. . . . . [AMENDED] . . . . .	1711
753:11-9-3. . . . . [AMENDED] . . . . .	1689	765:37-9-3. . . . . [AMENDED] . . . . .	1711
753:11-9-4. . . . . [AMENDED] . . . . .	1690	765:38-1-4. . . . . [AMENDED] . . . . .	1712
753:11-9-6. . . . . [AMENDED] . . . . .	1690	765:38-1-5. . . . . [AMENDED] . . . . .	1712
753:11-9-9. . . . . [NEW] . . . . .	1691	765:38-5-1. . . . . [AMENDED] . . . . .	1712
753:11-11-1. . . . . [AMENDED] . . . . .	1691	765:39-1-1. . . . . [NEW] . . . . .	1713
753:11-11-2. . . . . [AMENDED] . . . . .	1691	765:39-1-2. . . . . [NEW] . . . . .	1713
753:11-11-3. . . . . [AMENDED] . . . . .	1692	765:39-3-1. . . . . [NEW] . . . . .	1714
753:11-11-4. . . . . [AMENDED] . . . . .	1692	765:39-3-2. . . . . [NEW] . . . . .	1714
753:11-11-6. . . . . [AMENDED] . . . . .	1693	765:39-3-3. . . . . [NEW] . . . . .	1714
753:11-13-5. . . . . [AMENDED] . . . . .	1693	765:39-3-4. . . . . [NEW] . . . . .	1714
753:11-15-1. . . . . [NEW] . . . . .	1693	765:39-3-5. . . . . [NEW] . . . . .	1714
753:11-15-2. . . . . [NEW] . . . . .	1694	765:39-3-6. . . . . [NEW] . . . . .	1715
753:11-15-3. . . . . [NEW] . . . . .	1694	765:39-3-7. . . . . [NEW] . . . . .	1715
765:1-1-2. . . . . [AMENDED] (E) . . . . .	385	765:39-5-1. . . . . [NEW] . . . . .	1715
765:1-1-2. . . . . [AMENDED] . . . . .	1695	765:39-5-2. . . . . [NEW] . . . . .	1715
765:1-1-6. . . . . [AMENDED] (E) . . . . .	386	765:39-5-3. . . . . [NEW] . . . . .	1716
765:1-1-6. . . . . [AMENDED] . . . . .	1695	765:39-7-1. . . . . [NEW] . . . . .	1716
765:2-3-1. . . . . [AMENDED] (E) . . . . .	386	765:39-7-2. . . . . [NEW] . . . . .	1716
765:2-3-1. . . . . [AMENDED] . . . . .	1696	780:10-5-8. . . . . [NEW] (E) . . . . .	767
765:2-3-6. . . . . [AMENDED] . . . . .	1696	785:1-3-1. . . . . [AMENDED] . . . . .	1301
765:2-3-13. . . . . [AMENDED] . . . . .	1697	785:1-3-2. . . . . [AMENDED] . . . . .	1301
765:4-1-4. . . . . [AMENDED] . . . . .	1697	785:1-3-3. . . . . [AMENDED] . . . . .	1301
765:10-1-6. . . . . [AMENDED] . . . . .	1698	785:1-5-3. . . . . [AMENDED] . . . . .	1301
765:10-1-6.1. . . . . [AMENDED] . . . . .	1698	785:1-5-4. . . . . [AMENDED] . . . . .	1302
765:10-3-1. . . . . [AMENDED] . . . . .	1698	785:1-9-1. . . . . [AMENDED] . . . . .	1302
765:11-1-2. . . . . [AMENDED] (E) . . . . .	387	785:4-3-7. . . . . [NEW] . . . . .	1303
765:11-1-2. . . . . [AMENDED] . . . . .	1700	785:4-5-1. . . . . [AMENDED] . . . . .	1303
765:11-3-3. . . . . [AMENDED] . . . . .	1700	785:4-5-7. . . . . [AMENDED] . . . . .	1303
765:12-6-1. . . . . [NEW] . . . . .	1701	785:35-1-4. . . . . [AMENDED] . . . . .	1304
765:13-1-1. . . . . [AMENDED] (E) . . . . .	387	785:35-1-6. . . . . [AMENDED] . . . . .	1305
765:13-1-1. . . . . [AMENDED] . . . . .	1701	785:35-5-3. . . . . [AMENDED] . . . . .	1306
765:15-1-5. . . . . [AMENDED] . . . . .	1702	785:45-1-1. . . . . [REVOKED] . . . . .	1308
765:15-1-6. . . . . [AMENDED] . . . . .	1702	785:45-1-2. . . . . [REVOKED] . . . . .	1309
765:16-1-1. . . . . [AMENDED] (E) . . . . .	388	785:45-1-3. . . . . [REVOKED] . . . . .	1312
765:16-1-1. . . . . [AMENDED] . . . . .	1703	785:45-1-4. . . . . [REVOKED] . . . . .	1312
765:16-1-2. . . . . [AMENDED] (E) . . . . .	388	785:45-1-5. . . . . [REVOKED] . . . . .	1312

**Rules Affected Index – *continued***

785:45-1-6. ....	[REVOKED]	1313	785:46-11-5. ....	[REVOKED]	1444
785:45-3-1. ....	[REVOKED]	1313	785:46-11-6. ....	[REVOKED]	1444
785:45-3-2. ....	[REVOKED]	1313	785:46-13-1. ....	[REVOKED]	1444
785:45-5-1. ....	[REVOKED]	1313	785:46-13-2. ....	[REVOKED]	1445
785:45-5-2. ....	[REVOKED]	1313	785:46-13-3. ....	[REVOKED]	1445
785:45-5-3. ....	[REVOKED]	1314	785:46-13-4. ....	[REVOKED]	1445
785:45-5-4. ....	[REVOKED]	1314	785:46-13-5. ....	[REVOKED]	1446
785:45-5-5. ....	[REVOKED]	1315	785:46-13-6. ....	[REVOKED]	1447
785:45-5-6. ....	[REVOKED]	1315	785:46-13-7. ....	[REVOKED]	1447
785:45-5-7. ....	[REVOKED]	1315	785:46-13-8. ....	[REVOKED]	1447
785:45-5-9. ....	[REVOKED]	1315	785:46-19-1. ....	[REVOKED]	1449
785:45-5-10. ....	[REVOKED]	1315	785:46-19-2. ....	[REVOKED]	1449
785:45-5-11. ....	[REVOKED]	1316	785:46-19-3. ....	[REVOKED]	1449
785:45-5-12. ....	[REVOKED]	1316	785:46, App. B. ....	[REVOKED]	1450
785:45-5-13. ....	[REVOKED]	1319	785:46, App. C. ....	[REVOKED]	1452
785:45-5-16. ....	[REVOKED]	1320	785:50-15-1. ....	[NEW] (E)	84
785:45-5-17. ....	[REVOKED]	1320	785:50-15-1. ....	[NEW]	1455
785:45-5-18. ....	[REVOKED]	1320	785:50-15-2. ....	[NEW] (E)	84
785:45-5-19. ....	[REVOKED]	1320	785:50-15-2. ....	[NEW]	1456
785:45-5-20. ....	[REVOKED]	1321	785:50-15-3. ....	[NEW] (E)	84
785:45-5-25. ....	[REVOKED]	1321	785:50-15-3. ....	[NEW]	1456
785:45-5-26. ....	[REVOKED]	1323	785:50-15-4. ....	[NEW] (E)	86
785:45-5-29. ....	[REVOKED]	1324	785:50-15-4. ....	[NEW]	1457
785:45-7-1. ....	[REVOKED]	1325	785:50-15-5. ....	[NEW] (E)	86
785:45-7-2. ....	[REVOKED]	1325	785:50-15-5. ....	[NEW]	1457
785:45-7-3. ....	[REVOKED]	1325	785:50-15-6. ....	[NEW] (E)	88
785:45-7-4. ....	[REVOKED]	1326	785:50-15-6. ....	[NEW]	1459
785:45-7-5. ....	[REVOKED]	1327	785:50-17-1. ....	[NEW] (E)	89
785:45, App. A. ....	[REVOKED]	1328	785:50-17-1. ....	[NEW]	1461
785:45, App. B. ....	[REVOKED]	1387	785:50-17-2. ....	[NEW] (E)	90
785:45, App. D. ....	[REVOKED]	1393	785:50-17-2. ....	[NEW]	1461
785:45, App. E. ....	[REVOKED]	1396	785:50-17-3. ....	[NEW] (E)	90
785:45, App. F. ....	[REVOKED]	1411	785:50-17-3. ....	[NEW]	1461
785:45, App. G. ....	[REVOKED]	1417	785:50-17-4. ....	[NEW] (E)	91
785:45, App. H. ....	[REVOKED]	1426	785:50-17-4. ....	[NEW]	1462
785:45, App. I. ....	[REVOKED]	1437	785:50-17-5. ....	[NEW] (E)	91
785:45, App. A.1. ....	[REVOKED]	1330	785:50-17-5. ....	[NEW]	1463
785:45, App. A.2. ....	[REVOKED]	1341	785:50-17-6. ....	[NEW] (E)	91
785:45, App. A.3. ....	[REVOKED]	1346	785:50-17-6. ....	[NEW]	1463
785:45, App. A.4. ....	[REVOKED]	1361	785:50-17-7. ....	[NEW] (E)	92
785:45, App. A.5. ....	[REVOKED]	1368	785:50-17-7. ....	[NEW]	1463
785:45, App. A.6. ....	[REVOKED]	1377	785:50-17-8. ....	[NEW] (E)	92
785:45, App. A.7. ....	[REVOKED]	1384	785:50-17-8. ....	[NEW]	1463
785:46-1-1. ....	[REVOKED]	1438	785:50-19-1. ....	[NEW] (E)	94
785:46-1-3. ....	[AMENDED]	1439	785:50-19-1. ....	[NEW]	1465
785:46-1-4. ....	[REVOKED]	1439	785:50-19-2. ....	[NEW] (E)	94
785:46-1-6. ....	[REVOKED]	1439	785:50-19-2. ....	[NEW]	1465
785:46-3-1. ....	[REVOKED]	1440	785:50-19-3. ....	[NEW] (E)	94
785:46-3-2. ....	[REVOKED]	1440	785:50-19-3. ....	[NEW]	1465
785:46-3-3. ....	[REVOKED]	1440	785:50-19-4. ....	[NEW] (E)	95
785:46-3-5. ....	[REVOKED]	1441	785:50-19-4. ....	[NEW]	1466
785:46-3-6. ....	[REVOKED]	1441	785:50-19-5. ....	[NEW] (E)	96
785:46-5-1. ....	[REVOKED]	1441	785:50-19-5. ....	[NEW]	1466
785:46-5-2. ....	[REVOKED]	1441	785:50-19-6. ....	[NEW] (E)	96
785:46-5-3. ....	[REVOKED]	1441	785:50-19-6. ....	[NEW]	1467
785:46-5-8. ....	[REVOKED]	1441	800:25-7-3. ....	[AMENDED] (E)	20
785:46-7-1. ....	[REVOKED]	1442	800:25-7-53. ....	[AMENDED] (E)	21
785:46-7-2. ....	[REVOKED]	1442	800:25-7-54. ....	[AMENDED] (E)	21
785:46-7-3. ....	[REVOKED]	1442	800:25-24-3. ....	[AMENDED] (E)	511
785:46-9-1. ....	[REVOKED]	1442	810:1-1-6. ....	[AMENDED]	1468
785:46-9-2. ....	[REVOKED]	1442	810:10-1-3. ....	[AMENDED]	1469
785:46-9-3. ....	[REVOKED]	1443	810:10-1-12. ....	[AMENDED]	1471
785:46-9-5. ....	[REVOKED]	1443	810:10-5-46. ....	[AMENDED]	1472
785:46-11-1. ....	[REVOKED]	1443	810:10-5-95. ....	[AMENDED]	1472
785:46-11-2. ....	[REVOKED]	1444	810:15-13-1. ....	[AMENDED]	1474
785:46-11-3. ....	[REVOKED]	1444	810:15-13-2. ....	[AMENDED]	1474

# Agency/Title Index

[Assigned as of 8-15-23]

Agency	Title	Agency	Title
Oklahoma <b>ABSTRACTORS</b> Board	5	Office of <b>DISABILITY</b> Concerns ( <i>Formerly: Office of</i>	
Oklahoma <b>ACCOUNTANCY</b> Board	10	<b>HANDICAPPED</b> Concerns) - <i>See</i> Title 305	
State <b>ACCREDITING</b> Agency	15	Board of Regents of <b>EASTERN</b> Oklahoma State College ( <i>exempted</i>	
<b>AD</b> Valorem Task Force ( <i>abolished 7-1-93</i> )	20	<i>11-1-98</i> )	205
Oklahoma <b>AERONAUTICS</b> Commission	25	<b>EDGE</b> Fund Policy Board	208
Board of Regents for the Oklahoma <b>AGRICULTURAL</b> and Mechanical		State Department of <b>EDUCATION</b>	210
Colleges ( <i>exempted 11-1-98</i> )	30	<b>EDUCATION</b> Oversight Board ( <i>merged under Office of Educational</i>	
Oklahoma Department of <b>AGRICULTURE</b> , Food, and Forestry	35	<i>Quality and Accountability 7-1-14 - See Title 218</i> )	215
Oklahoma Board of Licensed <b>ALCOHOL</b> and Drug Counselors	38	Office of <b>EDUCATIONAL</b> Quality and Accountability	218
Board of Tests for <b>ALCOHOL</b> and Drug Influence	40	Oklahoma <b>EDUCATIONAL</b> Television Authority	220
<b>ALCOHOLIC</b> Beverage Laws Enforcement Commission	45	[RESERVED]	225
<b>ANATOMICAL</b> Board of the State of Oklahoma	50	State <b>ELECTION</b> Board	230
Board of Governors of the Licensed <b>ARCHITECTS</b> , Landscape		Oklahoma <b>FUNERAL</b> Board ( <i>Formerly: Oklahoma State Board of</i>	
Architects and Registered Commercial Interior Designers of		<b>EMBALMERS</b> and Funeral Directors)	235
Oklahoma ( <i>Formerly: Board of Governors of the Licensed</i>		Oklahoma Department of <b>EMERGENCY</b> Management	
<b>ARCHITECTS</b> and Landscape Architects of Oklahoma; and		( <i>Formerly: Department of CIVIL Emergency Management</i> ) -	
Board of Governors of the Licensed <b>ARCHITECTS</b> , Landscape		<i>See</i> Title 145	
Architects and Registered Interior Designers of Oklahoma	55	Oklahoma <b>EMPLOYMENT</b> Security Commission	240
<b>ARCHIVES</b> and Records Commission	60	Oklahoma <b>ENERGY</b> Resources Board	243
Board of Trustees for the <b>ARDMORE</b> Higher		State Board of Licensure for Professional <b>ENGINEERS</b> and Land	
Education Program ( <i>exempted 11-1-98</i> )	65	Surveyors ( <i>Formerly: State Board of Registration for Professional</i>	
Oklahoma <b>ARTS</b> Council	70	<b>ENGINEERS</b> and Land Surveyors)	245
Oklahoma State <b>ATHLETIC</b> Commission ( <i>Formerly: Oklahoma</i>		Board of Trustees for the <b>ENID</b> Higher	
Professional <b>BOXING</b> Commission) - <i>See</i> Title 92		Education Program ( <i>exempted 11-1-98</i> )	250
<b>ATTORNEY</b> General	75	Department of <b>ENVIRONMENTAL</b> Quality	252
State <b>AUDITOR</b> and Inspector	80	State Board of <b>EQUALIZATION</b>	255
State <b>BANKING</b> Department	85	<b>ETHICS</b> Commission ( <i>Title revoked</i> )	257
Oklahoma State Employees <b>BENEFITS</b> Council ( <i>consolidated under</i>		<b>ETHICS</b> Commission	258
Office of Management and Enterprise Services 8-26-11 - <i>See</i> Title		Office of <b>MANAGEMENT</b> and Enterprise Services ( <i>Formerly: Office</i>	
260)	86	of State <b>FINANCE</b> )	260
Oklahoma State Employees <b>BENEFITS</b> Council	87	State <b>FIRE</b> Marshal Commission	265
Council of <b>BOND</b> Oversight	90	Oklahoma Council on <b>FIREFIGHTER</b> Training	268
Oklahoma State <b>ATHLETIC</b> Commission ( <i>Formerly: Oklahoma</i>		Oklahoma <b>FIREFIGHTERS</b> Pension and Retirement System	270
Professional <b>BOXING</b> Commission)	92	[RESERVED]	275
<b>BROADBAND</b> Governing Board	93	<b>FORENSIC</b> Review Board	277
State <b>BURIAL</b> Board ( <i>abolished 7-1-92</i> )	95	State Board of Registration for <b>FORESTERS</b>	280
[RESERVED]	100	<b>FOSTER</b> Care Review Advisory Board	285
Oklahoma <b>CAPITAL</b> Investment Board	105	Oklahoma <b>FUNERAL</b> Board ( <i>Formerly: Oklahoma State Board of</i>	
Oklahoma <b>CAPITOL</b> Improvement Authority	110	Embalmers and Funeral Directors) - <i>See</i> Title 235	
State <b>CAPITOL</b> Preservation Commission	115	Oklahoma <b>FUTURES</b>	290
<b>CAPITOL-MEDICAL</b> Center Improvement and Zoning		<b>GOVERNOR</b> ( <i>See also</i> Title 1, Executive Orders)	295
Commission	120	<b>GRAND</b> River Dam Authority	300
Oklahoma Department of <b>CAREER</b> and Technology Education		Group Self-Insurance Association <b>GUARANTY</b> Fund Board	302
( <i>Formerly: Oklahoma Department of VOCATIONAL and</i>		Individual Self-Insured <b>GUARANTY</b> Fund Board	303
Technical Education) - <i>See</i> Title 780		<b>STATE</b> Use Committee ( <i>Formerly: Committee on Purchases of Products</i>	
Board of Regents of <b>CARL</b> Albert State College ( <i>exempted</i>		and Services of the Severely <b>HANDICAPPED</b> ; <i>consolidated</i>	
<i>11-1-98</i> )	125	<i>under</i> Office of Management and Enterprise Services 8-26-11 - <i>See</i>	
Department of <b>CENTRAL</b> Services ( <i>Formerly: Office of PUBLIC</i>		<i>Title 260</i> )	304
Affairs) - <i>See</i> Title 580		Office of <b>DISABILITY</b> Concerns ( <i>Formerly: Office of</i>	
<b>CEREBRAL</b> Palsy Commission	130	<b>HANDICAPPED</b> Concerns)	305
Commission on <b>CHILDREN</b> and Youth	135	Oklahoma State Department of <b>HEALTH</b>	310
Board of <b>CHIROPRACTIC</b> Examiners	140	Oklahoma Basic <b>HEALTH</b> Benefits Board ( <i>abolished 11-1-97</i> )	315
Oklahoma Department of <b>EMERGENCY</b> Management		Oklahoma <b>HEALTH</b> Care Authority	317
( <i>Formerly: Department of CIVIL Emergency Management</i> )	145	<b>HIGHWAY</b> Construction Materials Technician Certification	
Oklahoma Department of <b>COMMERCE</b>	150	Board	318
<b>COMMUNITY</b> Hospitals Authority	152	Oklahoma <b>HISTORICAL</b> Society	320
<b>COMPSOURCE</b> Oklahoma ( <i>Formerly: State INSURANCE</i>		Oklahoma <b>HORSE</b> Racing Commission	325
Fund) - <i>See</i> Title 370		Oklahoma <b>HOUSING</b> Finance Agency	330
Oklahoma <b>CONSERVATION</b> Commission	155	Oklahoma <b>HUMAN</b> Rights Commission	335
<b>CONSTRUCTION</b> Industries Board	158	Department of <b>HUMAN</b> Services	340
Department of <b>CONSUMER</b> Credit	160	Committee for <b>INCENTIVE</b> Awards for State Employees	345
<b>CORPORATION</b> Commission	165	Oklahoma <b>INDIAN</b> Affairs Commission	350
Department of <b>CORRECTIONS</b>	170	Oklahoma <b>INDIGENT</b> Defense System	352
State Board of <b>COSMETOLOGY</b> and Barbering	175	Oklahoma <b>INDUSTRIAL</b> Finance Authority	355
Oklahoma State <b>CREDIT</b> Union Board	180	<b>INJURY</b> Review Board	357
<b>CRIME</b> Victims Compensation Board	185	Oklahoma State and Education Employees Group <b>INSURANCE</b> Board	
Joint <b>CRIMINAL</b> Justice System Task Force Committee	190	( <i>consolidated under</i> Office of Management and Enterprise Services	
Board of <b>DENTISTRY</b>	195	8-26-11 - <i>See</i> Title 260)	360
Oklahoma <b>DEVELOPMENT</b> Finance Authority	200	<b>INSURANCE</b> Department	365

## Agency/Title Index – *continued*

Agency	Title	Agency	Title
<b>COMPSOURCE</b> Oklahoma (Formerly: State <b>INSURANCE</b> Fund) . . . . .	370	<b>PUBLIC</b> Employees Relations Board . . . . .	585
Oklahoma State Bureau of <b>INVESTIGATION</b> . . . . .	375	Oklahoma <b>PUBLIC</b> Employees Retirement System . . . . .	590
Council on <b>JUDICIAL</b> Complaints . . . . .	376	Department of <b>PUBLIC</b> Safety . . . . .	595
Office of <b>JUVENILE</b> Affairs . . . . .	377	<b>REAL</b> Estate Appraiser Board . . . . .	600
Department of <b>LABOR</b> . . . . .	380	Oklahoma <b>REAL</b> Estate Commission . . . . .	605
Department of the Commissioners of the <b>LAND</b> Office . . . . .	385	Board of Regents of <b>REDLANDS</b> Community College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	607
Council on <b>LAW</b> Enforcement Education and Training . . . . .	390	State <b>REGENTS</b> for Higher Education . . . . .	610
Oklahoma <b>LAW</b> Enforcement Retirement System . . . . .	395	State Department of <b>REHABILITATION</b> Services . . . . .	612
Board on <b>LEGISLATIVE</b> Compensation . . . . .	400	Board of Regents of <b>ROGERS</b> State College ( <i>exempted 11-1-98</i> ) . . . . .	615
Oklahoma Department of <b>LIBRARIES</b> . . . . .	405	Board of Regents of <b>ROSE</b> State College ( <i>exempted 11-1-98</i> ) . . . . .	620
<b>LIEUTENANT</b> Governor . . . . .	410	Oklahoma <b>SAVINGS</b> and Loan Board ( <i>abolished 7-1-93</i> ) . . . . .	625
Oklahoma <b>LINKED</b> Deposit Review Board . . . . .	415	<b>SCENIC</b> Rivers Commission . . . . .	630
Oklahoma <b>LIQUEFIED</b> Petroleum Gas Board . . . . .	420	Oklahoma Commission on <b>SCHOOL</b> and County Funds Management . . . . .	635
Oklahoma <b>LIQUEFIED</b> Petroleum Gas Research, Marketing and Safety Commission . . . . .	422	Advisory Task Force on the Sale of <b>SCHOOL</b> Lands ( <i>functions</i> <i>concluded 2-92</i> ) . . . . .	640
<b>LITERACY</b> Initiatives Commission . . . . .	425	The Oklahoma School of <b>SCIENCE</b> and Mathematics . . . . .	645
<b>LONG-RANGE</b> Capital Planning Commission . . . . .	428	Oklahoma Center for the Advancement of <b>SCIENCE</b> and Technology . . . . .	650
Oklahoma State Board of Examiners for <b>LONG-TERM</b> Care Administrators (Formerly: Oklahoma State Board of Examiners for <b>NURSING</b> Home Administrators) - See Title 490		<b>SECRETARY</b> of State . . . . .	655
<b>LOTTERY</b> Commission, Oklahoma . . . . .	429	Department of <b>SECURITIES</b> . . . . .	660
Board of Trustees for the <b>MCCURTAIN</b> County Higher Education Program ( <i>exempted 11-1-98</i> ) . . . . .	430	Board of Regents of <b>SEMINOLE</b> State College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	665
Office of <b>MANAGEMENT</b> and Enterprise Services (Formerly: Office of State <b>FINANCE</b> ) - See Title 260		<b>SHEEP</b> and Wool Commission . . . . .	670
Commission on <b>MARGINALLY</b> Producing Oil and Gas Wells . . . . .	432	State Board of Licensed <b>SOCIAL</b> Workers . . . . .	675
State Board of <b>MEDICAL</b> Licensure and Supervision . . . . .	435	<b>SOUTHERN</b> Growth Policies Board . . . . .	680
<b>MEDICAL</b> Technology and Research Authority of Oklahoma . . . . .	440	Oklahoma <b>SOYBEAN</b> Commission ( <i>abolished 7-1-97</i> ) . . . . .	685
Oklahoma <b>MEDICAL</b> Marijuana Authority . . . . .	442	Board of Examiners for <b>SPEECH-LANGUAGE</b> Pathology and Audiology (Formerly: Board of Examiners for <b>SPEECH</b> Pathology and Audiology) . . . . .	690
Board of <b>MEDICOLEGAL</b> Investigations . . . . .	445	<b>STATE</b> Employee Charitable Contributions, Oversight Committee for (Formerly: <b>STATE</b> Agency Review Committee) . . . . .	695
Department of <b>MENTAL</b> Health and Substance Abuse Services . . . . .	450	<b>STATE</b> Use Committee (Formerly: Committee on Purchases of Products and Services of the Severely <b>HANDICAPPED</b> ) - See Title 304	
<b>MERIT</b> Protection Commission . . . . .	455	Oklahoma <b>STUDENT</b> Loan Authority . . . . .	700
<b>MILITARY</b> Planning Commission, Oklahoma Strategic . . . . .	457	<b>TASK</b> Force 2000 . . . . .	705
Department of <b>MINES</b> . . . . .	460	Oklahoma <b>TAX</b> Commission . . . . .	710
Oklahoma <b>MOTOR</b> Vehicle Commission . . . . .	465	Oklahoma Commission for <b>TEACHER</b> Preparation ( <i>merged under</i> <i>Office of Educational Quality and Accountability 7-1-14 - See Title</i> <i>218</i> ) . . . . .	712
Board of Regents of <b>MURRAY</b> State College ( <i>exempted 11-1-98</i> ) . . . . .	470	<b>TEACHERS'</b> Retirement System . . . . .	715
Oklahoma State Bureau of <b>NARCOTICS</b> and Dangerous Drugs Control . . . . .	475	State <b>TEXTBOOK</b> Committee . . . . .	720
Board of Regents of <b>NORTHERN</b> Oklahoma College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	480	<b>TOBACCO</b> Settlement Endowment Trust Fund . . . . .	723
Oklahoma Board of <b>NURSING</b> . . . . .	485	Oklahoma <b>TOURISM</b> and Recreation Department . . . . .	725
Oklahoma State Board of Examiners for <b>LONG-TERM</b> Care Administrators (Formerly: Oklahoma State Board of Examiners for <b>NURSING</b> Home Administrators) . . . . .	490	Department of <b>TRANSPORTATION</b> . . . . .	730
Board of Regents of <b>OKLAHOMA</b> City Community College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	495	Oklahoma <b>TRANSPORTATION</b> Authority ( <i>Name changed to</i> <i>Oklahoma TURNPIKE Authority 11-1-05</i> ) - See Title 731	
Board of Regents of <b>OKLAHOMA</b> Colleges ( <i>exempted 11-1-98</i> ) . . . . .	500	Oklahoma <b>TURNPIKE</b> Authority (Formerly: Oklahoma <b>TRANSPORTATION</b> Authority AND Oklahoma <b>TURNPIKE</b> Authority) - See also Title 745 . . . . .	731
Board of Examiners in <b>OPTOMETRY</b> . . . . .	505	State <b>TREASURER</b> . . . . .	735
State Board of <b>OSTEOPATHIC</b> Examiners . . . . .	510	Board of Regents of <b>TULSA</b> Community College ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	740
<b>PARDON</b> and Parole Board . . . . .	515	Oklahoma <b>TURNPIKE</b> Authority ( <i>Name changed to Oklahoma</i> <b>TRANSPORTATION</b> Authority <i>11-1-99 - no rules enacted in this</i> <i>Title - See Title 731</i> ) . . . . .	745
Oklahoma <b>PEANUT</b> Commission . . . . .	520	Oklahoma <b>UNIFORM</b> Building Code Commission . . . . .	748
Oklahoma State <b>PENSION</b> Commission . . . . .	525	Board of Trustees for the <b>UNIVERSITY</b> Center at Tulsa ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	750
State Board of Examiners of <b>PERFUSIONISTS</b> . . . . .	527	<b>UNIVERSITY</b> Hospitals Authority . . . . .	752
Office of <b>PERSONNEL</b> Management ( <i>consolidated under Office</i> <i>of Management and Enterprise Services 8-26-11 - See Title</i> <i>260</i> ) . . . . .	530	<b>UNIVERSITY</b> Hospitals Trust . . . . .	753
Board of Commercial <b>PET</b> Breeders ( <i>abolished 7-1-12 - See Title</i> <i>35</i> ) . . . . .	532	Board of Regents of the <b>UNIVERSITY</b> of Oklahoma ( <i>exempted</i> <i>11-1-98</i> ) . . . . .	755
Oklahoma State Board of <b>PHARMACY</b> . . . . .	535	Board of Regents of the <b>UNIVERSITY</b> of Science and Arts of Oklahoma ( <i>exempted 11-1-98</i> ) . . . . .	760
Health Care <b>WORKFORCE</b> Training Commission . . . . .	540	Oklahoma <b>USED</b> Motor Vehicle, Dismantler, and Manufactured Housing Commission . . . . .	765
Board of <b>PODIATRIC</b> Medical Examiners . . . . .	545	Oklahoma Department of <b>VETERANS</b> Affairs . . . . .	770
Oklahoma <b>POLICE</b> Pension and Retirement System . . . . .	550	Board of <b>VETERINARY</b> Medical Examiners . . . . .	775
State Department of <b>POLLUTION</b> Control ( <i>abolished 1-1-93</i> ) . . . . .	555	Statewide <b>VIRTUAL</b> Charter School Board . . . . .	777
<b>POLYGRAPH</b> Examiners Board . . . . .	560		
Oklahoma Board of <b>PRIVATE</b> Vocational Schools . . . . .	565		
State Board for <b>PROPERTY</b> and Casualty Rates ( <i>abolished 7-1-06; see also Title 365</i> ) . . . . .	570		
State Board of Examiners of <b>PSYCHOLOGISTS</b> . . . . .	575		
Department of <b>CENTRAL</b> Services (Formerly: Office of <b>PUBLIC</b> Affairs; <i>consolidated under Office of Management and Enterprise</i> <i>Services 8-26-11 - See Title 260</i> ) . . . . .	580		

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





# Notices of Rulemaking Intent

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

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

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

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

*[OAR Docket #23-712]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

### **PROPOSED RULES:**

Subchapter 1. General Provisions

252:410-1-7 [AMENDED]

Subchapter 10. Radioactive Materials Program

Part 1. General Provisions

252:410-10-1 [AMENDED]

### **SUMMARY:**

The proposed rulemaking consists of two main elements. The first element is to amend Chapter 410, Subchapter 1, General Provisions, [See OAC 252:410-1-7(a) and (b)] to change the date for incorporation of federal regulations by reference to January 1, 2023 for 10 C.F.R., and July 1, 2023 for 40 C.F.R.. The second element of this rulemaking is to exclude the phrase "certificate holder" and "applicant for a certificate of compliance" from OAC 252:410-10-1(b)(10) to clearly indicate that these terms apply to the NRC as the NRC has sole authority for issuing a Certificate of Compliance.

The gist of this rulemaking is to maintain compatibility with federal regulations and meet the requirements of 59 O.S. § 4100.8.

### **AUTHORITY:**

Environmental Quality Board; 27A O.S. §§ 2-2-101, and 2-2-104.

Radiation Management Advisory Council; 27A O.S. § 2-2-201.

Radiation Management Act; 27A O.S. §§ 2-9-104, and 2-9-105.

### **COMMENT PERIOD:**

Written comments on the proposed rules may be submitted to the contact person from August 15, 2023 through September 20, 2023.

### **PUBLIC HEARINGS:**

Before the Radiation Management Advisory Council on Thursday, September 21, 2023 at 10:00 a.m. at the Department of Environmental Quality offices, first floor, 707 N. Robinson, Oklahoma City, OK 73101. If the Council

recommends adoption, the proposed rules will be considered by the Environmental Quality Board at the regularly scheduled meeting to be held in February 2024 at the Department of Environmental Quality offices, first floor, 707 N. Robinson, Oklahoma City, OK 73101.

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

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

### **PROPOSED RULES:**

Copies of the proposed rules may be obtained from the contact person, may be viewed on the DEQ website at [www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/](http://www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/), or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73102.

### **RULE IMPACT STATEMENT:**

The Rule Impact Statement for the proposed rules will be on file at the Department of Environmental Quality and may be requested from the contact person, or viewed on the DEQ website at [www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/](http://www.deq.ok.gov/land-protection-division/land-protection-division-proposed-rules/).

### **CONTACT PERSON:**

Keisha Cornelius, Environmental Programs Manager, Land Protection Division, Radiation Management Section, may be reached by phone at (405) 702-5100 or fax at (405) 702-5101. Please email written comments to [keisha.cornelius@deq.ok.gov](mailto:keisha.cornelius@deq.ok.gov) Mail should be addressed to Department of Environmental Quality, Radiation Management Section, P.O. Box 1677, Oklahoma City, OK 73101-1677.

### **ADDITIONAL INFORMATION:**

Persons with disabilities who desire to attend the public hearing and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-5100 or by using TDD relay number 1-800-522-8506.

*[OAR Docket #23-712; filed 7-24-23]*



# 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.

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

*[OAR Docket #23-704]*

### **RULEMAKING ACTION:**

Legislative disapproval of PERMANENT rules

### **PROPOSED RULES:**

Subchapter 1. General Provisions

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

Subchapter 3. Licensure of Physician Assistants

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

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

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

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

Subchapter 5. Regulation of Practice

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

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

Subchapter 11. Prescriptive and Dispensing Authority

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

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

### **LEGISLATIVE DISAPPROVAL:**

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

*[OAR Docket #23-704; filed 7-19-23]*

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# Emergency Adoptions

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

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

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

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

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

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

[OAR Docket #23-706]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 3. General Provider Policies  
Part 1. General Scope and Administration  
317:30-3-5 [AMENDED]  
(Reference APA WF # 23-09)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

### ADOPTION:

June 28, 2023

### EFFECTIVE:

Immediately upon Governor's approval or July 1, 2023, whichever is later.

### APPROVED BY GOVERNOR:

July 6, 2023

### EXPIRATION:

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its current General Providers Policies. These emergency revisions are necessary to avoid violation of federal regulation at 42 USC 300gg-13 which requires states to cover preventive services for expansion adults without any cost sharing. These emergency revisions are also necessary to protect the public health, safety, and/or welfare as they will exempt vaccine administration from cost sharing for all members eligible to incur a copay.

### GIST/ANALYSIS:

The emergency approval of these rule revisions would allow the OHCA to exempt from cost sharing/co-payments preventive services provided to expansion adults and vaccine administration provided to all SoonerCare members eligible to incur a copay.

### CONTACT PERSON:

Kasie McCarty, Director of Policy, 405-522-7048,  
kasie.mccarty@okhca.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING EMERGENCY RULES ARE  
CONSIDERED PROMULGATED UPON APPROVAL**

**BY THE GOVERNOR AS SET FORTH IN 75 O.S.,  
SECTION 235(F), AND EFFECTIVE UPON APPROVAL  
BY THE GOVERNOR OR JULY 1, 2023, WHICHEVER  
IS LATER:**

## SUBCHAPTER 3. GENERAL PROVIDER POLICIES

### PART 1. GENERAL SCOPE AND ADMINISTRATION

#### **317:30-3-5. Assignment and cost sharing**

(a) **Definitions.** The following words and terms, when used in subsection (c) of this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Fee-for-service (FFS) contract"** means the provider agreement specified in Oklahoma Administrative Code (OAC) 317:30-3-2. This contract is ~~the~~ contract between the Oklahoma Health Care Authority (OHCA) and medical providers which provides for a fee with a specified service involved.

(2) **"Outside of the scope of the services"** means all medical benefits outside the set of services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare program.

(3) **"Within the scope of services"** means the set of covered services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare program

(b) **Assignment in FFS.** Oklahoma's Medicaid State Plan provides that participation in the medical program is limited to providers who accept, as payment in full, the amounts paid by OHCA plus any deductible, coinsurance, or co-payment required by the State Plan to be paid by the member and make no additional charges to the member or others.

(1) OHCA presumes acceptance of assignment upon receipt of an assigned claim. This assignment, once made, cannot be rescinded, in whole or in part by one party, without the consent of the other party.

## Emergency Adoptions

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- (2) Once an assigned claim has been filed, the member must not be billed, and the member is not responsible for any balance except the amount indicated by OHCA. The only amount a member may be responsible for is a co-payment, or the member may be responsible for services not covered under the medical programs. In any event, the member should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Provider Services.
- (3) When potential assignment violations are detected, the OHCA will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the OHCA is required to suspend further payment to the provider.
- (c) **Assignment in SoonerCare.** Any provider who holds a FFS contract and also executes a contract with a provider in the SoonerCare Choice program must adhere to the rules of this subsection regarding assignment.
- (1) If the service provided to the member is outside of the scope of the services outlined in the SoonerCare contract, then the provider may bill or seek collection from the member.
- (2) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) of this subsection, the OHCA shall be the final authority for this decision.
- (3) Violation of this provision shall be grounds for a contract termination in the FFS and SoonerCare programs.
- (d) **Cost sharing/co-payment.** Section 1902(a)(14) of the Social Security Act permits states to require certain members to share some of the costs of SoonerCare by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. OHCA requires a co-payment of some SoonerCare members for certain medical services provided through the FFS program. A co-payment is a charge which must be paid by the member to the service provider when the service is covered by SoonerCare. Section 1916(e) of the Act requires that a provider participating in the SoonerCare program may not deny care or services to an eligible individual based on such individual's inability to pay the co-payment. A person's assertion of their inability to pay the co-payment establishes this inability. This rule does not change the fact that a member is liable for these charges, and it does not preclude the provider from attempting to collect the co-payment.
- (1) Co-payment is not required of the following members:
- (A) Individuals under age twenty-one (21). Each member's date of birth is available on the REVS system or through a commercial swipe card system.
- (B) Members in nursing facilities (NF) and intermediate care facilities for individuals with intellectual disabilities (ICF/IID).
- (C) Home and Community-Based Services (HCBS) waiver members except for prescription drugs.
- (D) American Indian and Alaska Native members, per Section 5006 of the American Recovery and Reinvestment Act of 2009 and as established in the federally-approved Oklahoma Medicaid State Plan.
- (E) Individuals who are categorically eligible for SoonerCare through the Breast and Cervical Cancer Treatment program.
- (F) Individuals receiving hospice care, as defined in section 1905(o) of the Social Security Act.
- (2) Co-payment is not required for the following services:
- (A) Family planning services. This includes all contraceptives and services rendered.
- (B) Emergency services provided in a hospital, clinic, office, or other facility.
- (C) Services furnished to pregnant women.
- (D) Smoking and tobacco cessation counseling and products.
- (E) Blood glucose testing supplies and insulin syringes.
- (F) Medication-assisted treatment (MAT) drugs.
- (G) Vaccine administration.
- (H) Preventive services for expansion adults.
- (3) Co-payments are required in an amount not to exceed the federal allowable for the following:
- (A) Inpatient hospital stays.
- (B) Outpatient hospital visits.
- (C) Ambulatory surgery visits including free-standing ambulatory surgery centers.
- (D) Encounters with the following rendering providers:
- (i) Physicians;
- (ii) Advanced practice registered nurses;
- (iii) Physician assistants;
- (iv) Optometrists;
- (v) Home health agencies;
- (vi) Certified registered nurse anesthetists;
- (vii) Anesthesiologist assistants;
- (viii) Durable medical equipment providers; and
- (ix) Outpatient behavioral health providers.
- (E) Prescription drugs.
- (F) Crossover claims. Dually eligible Medicare/SoonerCare members must make a co-payment in an amount that does not exceed the federal allowable per visit/encounter for all Part B covered services. This does not include dually eligible HCBS waiver members.
- (4) Medicaid premiums and cost sharing incurred by all individuals in the Medicaid household may not exceed an aggregate limit of five percent (5%) of the family's income applied on a monthly basis, as specified by the agency.
- (5) Providers will be required to refund any co-payment amounts the provider collected from the member

in error and/or above the family's aggregate cost sharing maximum.

[OAR Docket #23-706; filed 7-24-23]

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

[OAR Docket #23-707]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-27 [AMENDED]
317:30-3-27.1 [NEW]
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-241.2 [AMENDED]
Part 35. Rural Health Clinics
317:30-5-354 [AMENDED]
317:30-5-355.2 [AMENDED]
Part 64. Clinic Services
317:30-5-575 [AMENDED]
Part 75. Federally Qualified Health Centers
317:30-5-664.3 [AMENDED]
317:30-5-664.10 [AMENDED]
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)
317:30-5-1087 [AMENDED]
317:30-5-1098 [AMENDED]
(Reference APA WF # 23-14)

AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; and 63 O.S. Sections 5003 - 5016

ADOPTION:

June 28, 2023

EFFECTIVE:

Immediately upon Governor's approval or July 1, 2023, whichever is later.

APPROVED BY GOVERNOR:

July 6, 2023

EXPIRATION:

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its current General Providers policy. These emergency revisions are necessary to protect the public health, safety, and/or welfare by allowing for audio-only telecommunications health service delivery for medically necessary covered primary care and other approved health services.

GIST/ANALYSIS:

These emergency revisions are necessary so that certain services designated by the Oklahoma Health Care Authority may continue to be delivered via audio-only telecommunications after the expiration of the COVID-19 public health emergency. Audio-only telecommunications delivery means healthcare services delivered using audio-only technology, permitting real-time communication between a patient and the provider, for the purpose of diagnosis, consultation, or treatment. This is beneficial to certain patients who are unable to find transportation to the provider's office, or who are unable to access audio-visual telehealth services, or where there are access to care issues (e.g. rural or underserved issues).

CONTACT PERSON:

Kasie McCarty, Director of Policy, 405-522-7048, kasie.mccarty@okhca.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2023, WHICHEVER IS LATER:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-27. Telehealth

(a) Definitions. The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.

(1) "Remote patient monitoring" means the use of digital technologies to collect medical and other forms of health data (e.g., vital signs, weight, blood pressure, blood sugar) from individuals in one (1) location and electronically transmit that information securely to health care providers in a different location for assessment and recommendations.

(2) "School-based services" means medically necessary health-related and rehabilitative services that are provided by a qualified school provider to a student under the age of twenty-one (21), pursuant to an Individualized Education Program (IEP), in accordance with the Individuals with Disabilities Education Act. See Oklahoma Administrative Code (OAC) 317:30-5-1020.

(3) "Store and forward technologies" means the transmission of a patient's medical information from an originating site to the health care provider at the distant site; provided, photographs visualized by a telecommunications system shall be specific to the patient's medical condition and adequate for furnishing or confirming a diagnosis or treatment plan. Store and forward technologies shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission.

(4) "Telehealth" means the practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information by means of a two-way, real-time interactive communication, not to exclude store and forward technologies, between a patient and a health care provider with access to and reviewing the patient's relevant clinical information prior to the telemedicine visit. Telehealth shall not include consultations provided by

## Emergency Adoptions

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telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, nonsecure video conference, or facsimile transmission. For audio-only health service delivery, see OAC 317:30-3-27.1.

(5) **"Telehealth medical service"** means, for the purpose of the notification requirements of OAC 317:30-3-27(d)(2), telehealth services that expressly do not include physical therapy, occupational therapy, and/or speech and hearing services.

(b) **Applicability and scope.** The purpose of this Section is to implement telehealth policy that improves access to ~~health care~~ healthcare services, while complying with all applicable state and federal laws and regulations. Telehealth services are not an expansion of SoonerCare-covered services, but an option for the delivery of certain covered services. However, if there are technological difficulties in performing an objective, thorough medical assessment, or problems in the member's understanding of telehealth, hands-on-assessment and/or in-person care must be provided for the member. Any service delivered using telehealth technology must be appropriate for telehealth delivery and be of the same quality and otherwise on par with the same service delivered in person. A telehealth encounter must maintain the confidentiality and security of protected health information in accordance with applicable state and federal law, including, but not limited to, 42 Code of Federal Regulations (CFR) Part 2, 45 CFR Parts 160 and 164, and 43A Oklahoma Statutes (O.S.) § 1-109. For purposes of SoonerCare reimbursement, telehealth is the use of interactive audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment that occurs in real-time and when the member is actively participating during the transmission.

(c) **Requirements.** The following requirements apply to all services rendered via telehealth.

(1) Interactive audio and video telecommunications must be used, permitting encrypted, real-time communication between the physician or practitioner and the SoonerCare member. The telecommunication service must be secure and adequate to protect the confidentiality and integrity of the telehealth information transmitted. As a condition of payment the member must actively participate in the telehealth visit.

(2) The telehealth equipment and transmission speed and image must be technically sufficient to support the service billed. If a peripheral diagnostic scope is required to assess the member, it must provide adequate resolution or audio quality for decision making. Staff involved in the telehealth visit need to be trained in the use of the telehealth equipment and competent in its operation.

(3) The medical or behavioral health related service must be provided at an appropriate site for the delivery of telehealth services. An appropriate telehealth site is one that has the proper security measures in place; the appropriate administrative, physical, and technical safeguards should be in place that ensures the confidentiality, integrity, and security of electronic protected health information. The location of the room for the encounter at

both ends should ensure comfort, privacy, and confidentiality. Both visual and audio privacy are important, and the placement and selection of the rooms should consider this. Appropriate telehealth equipment and networks must be used considering factors such as appropriate screen size, resolution, and security. Providers and/or members may provide or receive telehealth services outside of Oklahoma when medically necessary; however, prior authorization may be required, per OAC 317:30-3-89 through 317:30-3-91.

(4) The provider must be contracted with SoonerCare and appropriately licensed or certified, in good standing. Services that are provided must be within the scope of the practitioner's license or certification. If the provider is outside of Oklahoma, the provider must comply with all laws and regulations of the provider's location, including health care and telehealth requirements.

(5) If the member is a minor, the provider must obtain the prior written consent of the member's parent or legal guardian to provide services via telehealth, that includes, at a minimum, the name of the provider; the provider's permanent business office address and telephone number; an explanation of the services to be provided, including the type, frequency, and duration of services. Written consent must be obtained annually, or whenever there is a change in the information in the written consent form, as set forth above. The parent or legal guardian need not attend the telehealth session unless attendance is therapeutically appropriate. The requirements of subsection OAC 317:30-3-27(c)(5), however, do not apply to telehealth services provided in a primary or secondary school setting.

(6) If the member is a minor, the telehealth provider shall notify the parent or legal guardian that a telehealth service was performed on the minor through electronic communication whether a text message or email.

(7) The member retains the right to withdraw at any time.

(8) All telehealth activities must comply with Oklahoma Health Care Authority (OHCA) policy, and all other applicable State and Federal laws and regulations, including, but not limited to, 59 O.S. § 478.1.

(9) The member has access to all transmitted medical information, with the exception of live interactive video as there is often no stored data in such encounters.

(10) There will be no dissemination of any member images or information to other entities without written consent from the member or member's parent or legal guardian, if the member is a minor.

(11) A telehealth service is subject to the same SoonerCare program restrictions, limitations, and coverage which exist for the service when not provided through telehealth; provided, however, that only certain telehealth codes are reimbursable by SoonerCare. For a list of the SoonerCare-reimbursable telehealth codes, refer to the OHCA's Behavioral Health Telehealth Services and Medical Telehealth Services, available on OHCA's website, [www.okhca.org](http://www.okhca.org).



(12) Where there are established service limitations, the use of telehealth to deliver those services will count towards meeting those noted limitations. Service limitations may be set forth by Medicaid and/or other ~~third party~~ third-party payers.

(d) **Additional requirements specific to telehealth services in a school setting.** In order for OHCA to reimburse medically necessary telehealth services provided to SoonerCare members in a primary or secondary school setting, all of the requirements in (c) above must be met, with the exception of (c)(5), as well as all of the requirements shown below, as applicable.

(1) **Consent requirements.** Advance parent or legal guardian consent for telehealth services must be obtained for minors, in accordance with 25 O.S. §§ 2004 through 2005. Additional consent requirements shall apply to school-based services provided pursuant to an IEP, per OAC 317:30-5-1020.

(2) **Notification requirements.** For telehealth medical services provided in a primary or secondary school setting, the telehealth practitioner must provide a summary of the service, including, but not limited to, information regarding the exam findings, prescribed or administered medications, and patient instructions, to:

(A) The SoonerCare member, if he or she is an adult, or the member's parent or legal guardian, if the member is a minor; or

(B) The SoonerCare member's primary care provider, if requested by the member or the member's parent or legal guardian.

(3) **Requirements specific to physical therapy, occupational therapy, and/or speech and hearing services.** Even though physical therapy, occupational therapy, and/or speech and hearing services are not subject to the notification requirements of OAC 317:30-3-27(d)(2), said services must still comply with all other State and Federal Medicaid requirements, in order to be reimbursable by Medicaid. Accordingly, for those physical therapy, occupational therapy, and/or speech and hearing services that are provided in a primary or secondary school setting, but that are not school-based services (i.e., not provided pursuant to an IEP), providers must adhere to all state and federal requirements relating to prior authorization and prescription or referral, including, but not limited to, 42 C.F.R. § 440.110, OAC 317:30-5-291, 317:30-5-296, and 317:30-5-676.

(e) **Reimbursement.**

(1) Health care services delivered by telehealth such as Remote Patient Monitoring, Store and Forward, or any other telehealth technology, must be compensable by OHCA in order to be reimbursed.

(2) Services provided by telehealth must be billed with the appropriate modifier.

(3) If the technical component of an X-ray, ultrasound or electrocardiogram is performed during a telehealth transmission, the technical component can be billed by the provider that provided that service. The professional

component of the procedure and the appropriate visit code should be billed by the provider that rendered that service.

(4) The cost of telehealth equipment and transmission is not reimbursable by SoonerCare.

(5) For reimbursement of audio-only health service delivery, see OAC 317:30-3-27.1.

(f) **Documentation.**

(1) Documentation must be maintained by the rendering provider to substantiate the services rendered.

(2) Documentation must indicate the services were rendered via telehealth, and the location of the services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via telehealth. Examples include but are not limited to:

(A) Chart notes;

(B) Start and stop times;

(C) Service provider's credentials; and

(D) Provider's signature.

(g) **Final authority.** The OHCA has discretion and the final authority to approve or deny any telehealth services based on agency and/or SoonerCare members' needs.

**317:30-3-27.1. Audio-only health service delivery**

(a) **Definition.** "Audio-only health service delivery" means the delivery of healthcare services through the use of audio-only telecommunications, permitting real-time communication between a patient and the provider, for the purpose of diagnosis, consultation, and/or treatment. Audio-only health service delivery does not include the use of facsimile, email, or health care services that are customarily delivered by audio-only telecommunications and not billed as separate services by the provider, such as the sharing of laboratory results. This definition includes health services delivered via audio-only when audio-visual is unavailable or when a member chooses audio-only.

(b) **Purpose.** Health services delivered via audio-only telecommunications are intended to improve access to health-care services, while complying with all applicable state and federal laws and regulations. Audio-only telecommunications is an option for the delivery of certain covered services and is not an expansion of SoonerCare-covered services.

(c) **Applicability and scope.** The applicability and scope of this section of policy is outlined below:

(1) Health service delivery via audio-only telecommunications is applicable to medically necessary covered primary care and other approved health services. Refer to the Oklahoma Health Care Authority (OHCA) website, [www.okhca.org](http://www.okhca.org), for a complete list of the SoonerCare-reimbursable audio-only health services codes.

(2) If there are technological difficulties in performing medical assessment through audio-only telecommunications, then hands-on-assessment and/or in-person care must be provided for the member. Any service delivered using audio-only telecommunications must be appropriate for audio-only delivery and be of the same quality and otherwise on par with the same service delivered in person.

(3) Confidentiality and security of protected health information in accordance with applicable state and federal

## Emergency Adoptions

law, including, but not limited to, 42 Code of Federal Regulations (CFR) Part 2, 45 CFR Parts 160 and 164, and 43A Oklahoma Statutes (O.S.) § 1-109, must be maintained in the delivery of health services by audio-only telecommunications.

(4) For purposes of SoonerCare reimbursement, audio-only health service delivery is the use of interactive audio technology for the purpose of diagnosis, consultation, and/or treatment that occurs in real-time and when the member is actively participating during the transmission.

(d) **Requirements.** The following requirements apply to all services rendered via audio-only health service delivery:

(1) Interactive audio telecommunications must be used, permitting real-time communication between the physician or practitioner and the SoonerCare member. As a condition of payment, the member must actively participate in the audio-only telecommunications health service visit.

(2) The audio telecommunications technology used to deliver the services must meet the standards required by state and federal laws governing the privacy and security of protected health information (PHI).

(3) The provider must be contracted with SoonerCare and appropriately licensed and/or certified, and in good standing. Services that are provided must be within the scope of the practitioner's license and/or certification.

(4) Either the provider or the member must be located at the freestanding clinic that is providing services pursuant to 42 CFR § 440.90 and Oklahoma Administrative Code (OAC) 317:30-5-575.

(5) If the member is a minor, the provider must obtain the prior written consent of the member's parent or legal guardian to provide services via audio-only telecommunications, that includes, at a minimum, the name of the provider; the provider's permanent business office address and telephone number; and an explanation of the services to be provided, including the type, frequency, and duration of services. Written consent must be obtained annually, or whenever there is a change in the information in the written consent form, as set forth above. The parent or legal guardian need not attend the audio-only telecommunications session unless attendance is therapeutically appropriate.

(6) The member retains the right to withdraw at any time.

(7) All audio-only health service delivery activities must comply with Oklahoma Health Care Authority (OHCA) policy, and all other applicable State and Federal laws and regulations.

(8) A health service delivered via audio-only telecommunications is subject to the same SoonerCare program restrictions, limitations, and coverage which exist for the service when not delivered via audio-only telecommunications.

(9) A health service delivered by audio-only telecommunications must be designated for reimbursement by SoonerCare.

(10) Where there are established service limitations, the use of audio-only telecommunications to deliver those services will count towards meeting those noted limitations. Service limitations may be set forth by Medicaid and/or other third-party payers.

(d) **Reimbursement.**

(1) Health care services delivered via audio-only telecommunications must be compensable by OHCA in order to be reimbursed.

(2) Services delivered via audio-only telecommunications must be billed with the appropriate modifier.

(3) Health care services delivered via audio-only telecommunications are reimbursed pursuant to the fee-for-service fee schedule approved under the Oklahoma Medicaid State Plan.

(4) An RHC and an FQHC shall be reimbursed for services delivered via audio-only telecommunications at the fee-for-service rate per the fee-for-service fee schedule.

(5) An I/T/U shall be reimbursed for services delivered via audio-only telecommunications at the Office of Management and Budget (OMB) all-inclusive rate.

(6) The cost of audio-only telecommunication equipment and other service related costs are not reimbursable by SoonerCare.

(e) **Documentation.**

(1) Documentation must be maintained by the rendering provider to substantiate the services rendered.

(2) Documentation must indicate the services were rendered via audio-only telecommunications, and the location of the services.

(3) All other SoonerCare documentation guidelines apply to the services rendered via audio-only telecommunications. Examples include but are not limited to:

(A) Chart notes;

(B) Start and stop times;

(C) Service provider's credentials; and

(D) Provider's signature.

(f) **Final authority.** The OHCA has discretion and final authority to approve or deny any services delivered via audio-only telecommunications based on agency and/or SoonerCare members' needs.

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

#### 317:30-5-241.2. Psychotherapy

(a) **Individual psychotherapy.**

(1) **Definition.** Psychotherapy is a ~~face to face~~—treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse, or change maladaptive patterns of

behavior, and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. The therapy must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities.

(2) **Interactive complexity.** Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the qualified practitioner. Sessions typically involve members who have other individuals legally responsible for their care (i.e., minors or adults with guardians); members who request others to be involved in their care during the session (i.e., adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e., child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one (1) of the following communication factors is present:

(A) The need to manage maladaptive communication (i.e., related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.

(B) Caregiver emotions/behavior that interfere with implementation of the service plan.

(C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e., abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.

(D) Use of play equipment, physical devices, interpreter, or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.

(3) **Qualified practitioners.** Psychotherapy must be provided by an LBHP Licensed Behavioral Health Practitioner (LBHP) or licensure candidate in a setting that protects and assures confidentiality.

(4) **Documentation requirements.** Providers must comply with documentation requirements in OAC Oklahoma Administrative Code (OAC) 317:30-5-248.

(5) **Limitations.** A maximum of four (4) units per day per member is compensable. A cumulative maximum of eight (8) units of individual psychotherapy and family psychotherapy per week per member is compensable.

Except for psychotherapy involving interactive complexity as described in this Section, only the member and the qualified practitioner should be present during the session. Individual psychotherapy is not reimbursable for a child younger than the age of thirty-six (36) months. Limitations exclude outpatient behavioral health services provided in a foster care setting.

(b) **Group psychotherapy.**

(1) **Definition.** Group psychotherapy is a method of treating behavioral disorders using the face-to-face psychotherapeutic interaction between the qualified practitioner and two (2) or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual member's current service plan. This service does not include social or daily living skills development as described under behavioral health rehabilitation services.

(2) **Group sizes.** Group psychotherapy is limited to a total of eight (8) adult [eighteen (18) and over] individuals except when the individuals are residents of an ICF/IID Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) where the maximum group size is six (6). For all children under the age of eighteen (18), the total group size is limited to six (6).

(3) **Multi-family and conjoint family therapy.** Sessions are limited to a maximum of eight (8) families/units. Billing is allowed once per family unit, though units may be divided amongst family members.

(4) **Qualified practitioners.** Group psychotherapy must be provided by an LBHP or licensure candidate. Group psychotherapy must take place in a confidential setting limited to the qualified practitioner, an assistant or co-therapist, if desired, and the group psychotherapy participants.

(5) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.

(6) **Limitations.** A maximum of six (6) units per day per member is compensable, not to exceed twelve (12) units per week. Group psychotherapy is not reimbursable for a child younger than the age of thirty-six (36) months. Limitations exclude outpatient behavioral health services provided in a foster care setting.

(c) **Family psychotherapy.**

(1) **Definition.** Family psychotherapy is a face-to-face psychotherapeutic interaction between a qualified practitioner and the member's family, guardian, and/or support system. It is typically inclusive of the identified member but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the evidence-based practice "Family Psychoeducation". For children under the age of thirty-six (36) months, family

## Emergency Adoptions

psychotherapy is focused on the infant/young child and parent (or primary caregiver) interactions and the relationship needs of the infant/young child.

(2) **Qualified practitioners.** Family psychotherapy must be provided by an LBHP or licensure candidate.

(3) **Documentation requirements.** Providers must comply with documentation requirements in OAC 317:30-5-248.

(4) **Limitations.** A maximum of four (4) units per day per member/family unit is compensable. A cumulative maximum of eight (8) units of individual psychotherapy and family psychotherapy per week per member is compensable. Family psychotherapy for a child younger than thirty-six (36) months must be medically necessary and meet established child [zero (0) through thirty-six (36) months of age] criteria as set forth in the Prior Authorization Manual. Limitations exclude outpatient behavioral health services provided in a foster care setting.

### PART 35. RURAL HEALTH CLINICS

#### 317:30-5-354. Definitions

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

"**APRN**" means advanced practice registered nurse.

"**C.F.R.**" means the U.S. Code of Federal Regulations.

"**CLIA**" means the Clinical Laboratory Improvement Amendments.

"**CMS**" means the Centers for Medicare and Medicaid Services.

"**CNM**" means certified nurse midwife.

"**Core services**" means outpatient services that may be covered when furnished to a patient at the rural health clinic (RHC) or other location, including the patient's place of residence.

"**CP**" means clinical psychologist.

"**CPT**" means current procedural terminology.

"**CSW**" means clinical social worker.

"**EPSDT**" means the Early and Periodic Screening, Diagnostic and Treatment program for members under twenty-one (21).

"**FFS**" means the current OHCA's fee-for-service reimbursement rate.

"**HCPCS**" means Healthcare Common Procedure Coding System.

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

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

"**Other ambulatory services**" means other outpatient health services covered under the Oklahoma Medicaid State Plan other than core services.

"**PA**" means physician assistant.

"**Physician**" means:

(A) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the function is performed or who is a licensed physician employed by the Public Health Service;

(B) Within limitations as to the specific services furnished, a doctor of dentistry or dental, a doctor of optometry, or a doctor of podiatry.

"**Physicians' services**" means professional services that are performed by a physician at the RHC (or are performed away from the Center, excluding inpatient hospital services) whose agreement with the RHC provides that he or she will be paid by the RHC for such services.

"**PPS**" means prospective payment system all-inclusive per visit rate method specified in the Oklahoma Medicaid State Plan.

"**RHC**" means rural health clinic.

"**Visit**" means a face-to-face encounter between a clinic patient and a physician, ~~PA, APRN, CNM, CP or CSW~~ PA Physician Assistant (PA), APRN Advanced Practice Registered Nurse (APRN), CNM Certified Nurse Midwife (CMN), CP Clinical Psychologist (CP), or CSW Clinical Social Worker whose services are reimbursed under the RHC PPS payment method. Encounters with more than one (1) health care professional and multiple encounters with the same health care professional that take place on the same day and at a single location constitute a single visit, except when the patient, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment. Services delivered via audio-only telecommunications and reimbursed pursuant to the fee-for-service (FFS) fee schedule do not constitute a visit and/or an encounter.

#### 317:30-5-355.2. Covered services

The ~~RHC~~ Rural Health Center benefit package, as described in 42 C.F.R. § 440.20, consists of RHC services and other ambulatory services.

(1) **RHC services.** RHC services are covered when medically necessary and furnished at the clinic or other outpatient setting, including the member's place of residence, delivered via telehealth, or via audio-only telecommunications pursuant to Oklahoma Administrative Code (OAC) 317:30-3-27 and OAC 317:30-3-27.1.

(A) **Core services.** RHC "core" services include, but are not limited to:

(i) Services furnished by a physician, ~~PA~~ Physician Assistant (PA), APRN Advanced Practice Registered Nurse (APRN), CNM Certified Nurse Midwife (CMN), CP Clinical Psychologist (CP), or CSW Clinical Social Worker.

(ii) Services and supplies incident to services provided by a physician, PA, APRN, CNM, CP, or CSW are covered in accordance with 42 C.F.R. §§ 405.2413 and 405.2415, if the service or supply is:

(I) Furnished in accordance with State law;

(II) A type commonly furnished in physicians' offices;

(III) A type commonly rendered either without charge or included in the RHC's bill;

(IV) Furnished as an incidental, although integral, part of a physician's professional services, PA, APRN, CNM, CP or CSW; or

- (V) Furnished under the direct supervision of a contracted physician PA, APRN, or CNM; and
  - (VI) Drugs and biologicals which cannot be self-administered or are specifically covered by Medicare law, are included within the scope of RHC services. Drugs and biologicals commonly used in life saving procedures, such as analgesics, anesthetics (local), antibiotics, anticonvulsants, antidotes and emetics, serums and toxoids are not billed separately.
- (iii) Visiting nurse services to the homebound are covered if:
- (I) The RHC is located in an area in which the Secretary of Health and Human Services has determined there is a shortage of home health agencies;
  - (II) The services are rendered to members who are homebound;
  - (III) The member is furnished nursing care on a part-time or intermittent basis by a registered nurse, licensed practical nurse, or licensed vocational nurse who is employed by or receives compensation for the services from the RHC; and
  - (IV) The services are furnished under a written plan of treatment as required by 42 C.F.R § 405.2416.
- (iv) Certain virtual communication services.
- (B) **Preventive services.** In addition to the professional services of a physician, and services provided by an APRN, PA, and CNM which would be covered as RHC services under Medicare, certain primary preventive services are covered under the SoonerCare RHC benefit. The services must be furnished by or under the direct supervision of an RHC practitioner who is a clinic employee:
- (i) Prenatal and postpartum care;
  - (ii) Screening examination under the EPSDT program for members under twenty-one (21);
  - (iii) Family planning services; and
  - (iv) Medically necessary screening mammography and follow-up mammograms.
- (C) **Off-site services.** RHC services provided off-site of the clinic are covered if the RHC has a compensation arrangement with the RHC practitioner. SoonerCare reimbursement is made to the RHC and the RHC practitioner receives his or her compensation from the RHC. The RHC must have a written contract with the physician and other RHC "core" practitioners that specifically identify how the RHC services provided off-site are to be billed to SoonerCare. It is expected that services provided in off-site settings are, in most cases, temporary and intermittent, i.e., when the member cannot come to the clinic due to health reasons.

(2) **Other ambulatory services.** Other ambulatory services that may be provided by an RHC include non-primary care services covered by the Oklahoma Medicaid State Plan but are not included in the RHC's core services. These services are separately billable and may be provided by the RHC if the RHC meets the same standards as other contracted providers of those services.

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

- (i) Dental services for members under the age of twenty-one (21) provided by other than a licensed dentist;
- (ii) Optometric services provided by other than a licensed optometrist;
- (iii) Laboratory tests performed in the RHC lab, including the lab tests required for RHC certification;
  - (I) Chemical examinations of urine by stick or tablet method or both (including urine ketones);
  - (II) Hemoglobin or hematocrit;
  - (III) Blood glucose;
  - (IV) Examination of stool specimens for occult blood;
  - (V) Pregnancy tests; and
  - (VI) Primary culturing for transmittal to a certified laboratory.
- (iv) Technical component of diagnostic tests such as x-rays and EKGs (interpretation of the test provided by the RHC physician is included in the encounter rate);
- (v) Durable medical equipment;
- (vi) Transportation by ambulance;
- (vii) Prescribed drugs;
- (viii) Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;
- (ix) Specialized laboratory services furnished away from the clinic;
- (x) Inpatient services;
- (xi) Outpatient hospital services; and
- (xii) Applied behavior analysis (ABA); and
- (xiii) Diabetes self-management education and support (DSMES) services.

(B) Services listed in (2)(A) of this Section, furnished on-site, require a separate provider agreement(s) with the OHCA. Service item (2)(A)(iii) does not require a separate contract when furnished on-site, however, certain conditions of participation apply. (Refer to OAC 317:30-5-361 for conditions.)

**PART 64. CLINIC SERVICES**

## Emergency Adoptions

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### 317:30-5-575. General information

(a) **Clinic services.** Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. The term includes the following services furnished to outpatients:

(1) Services furnished at the clinic by or under the direction of a physician or a dentist.

(2) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(3) Telehealth and audio-only health service delivery requires either the provider or the member to be located at the freestanding clinic that is providing services pursuant to 42 Code of Federal Regulations (CFR) § 440.90. Refer to section Oklahoma Administrative Code (OAC) 317:30-3-27 for telehealth policy and OAC 317:30-3-27.1 for audio-only telecommunication policy.

(b) **Prior authorization.** OHCA requires prior authorization for certain procedures to validate the medical need for the service.

(c) **Medical necessity.** Medical necessity requirements are listed at OAC 317:30-3-1(f).

- (2) Diagnostic;
- (3) Dental, medical and behavioral health screenings;
- (4) Vision;
- (5) Physical therapy;
- (6) Occupational therapy;
- (7) Podiatry;
- (8) Behavioral health;
- (9) Speech;
- (10) Hearing;
- (11) Medically necessary FQHC encounters with a registered nurse or licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members (refer to OAC 317:30-5-661.3); and
- (12) Any other medically necessary health services (i.e. optometry and podiatry) are also reimbursable as permitted within the FQHCs scope of services when medically reasonable and necessary for the diagnosis or treatment of illness or injury, and must meet all applicable coverage requirements.

(e) Services and supplies incident to the services of a physician, PA, APRN, CNM, CP and CSW are reimbursable within the encounter, as described in 42 C.F.R § 405.2413 and OAC 317:30-5-661.1.

(f) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

## PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

### 317:30-5-664.3. ~~FQHC~~Federally Qualified Health Center (FQHC) encounters

(a) FQHC encounters that are billed to the ~~OHCA~~Oklahoma Health Care Authority (OHCA) must meet the definition in this Section and are limited to services covered by OHCA. Only encounters provided by an authorized health care professional listed in the approved FQHC State Plan pages within the scope of their licensure trigger a ~~PPS~~Prospective Payment System (PPS) encounter rate.

(b) An encounter is defined as a face-to-face contact between a health care professional and a member for the provision of defined services through a FQHC within a twenty-four (24) hour period ending at midnight, as documented in the member's medical record. Services delivered via audio-only telecommunications do not constitute an encounter.

(c) An FQHC may bill for one (1) medically necessary encounter per twenty-four (24) hour period when the appropriate modifier is applied. Medical review will be required for additional visits for children. For information about multiple encounters, refer to ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-664.4. Payment is limited to four (4) visits per member per month for adults. This limit may be exceeded if the SoonerCare Choice member has elected the FQHC as his/her/their Patient Centered Medical Home/Primary Care Provider.

(d) Services considered reimbursable encounters (including any related medical supplies provided during the course of the encounter) include:

- (1) Medical;

### 317:30-5-664.10. Health Center reimbursement

(a) In accordance with Section 702 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000, reimbursement is provided for core services and other health services at a Health Center facility-specific Prospective Payment System (PPS) rate per visit (encounter) determined according to the methodology described in ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-5-664.12.

(b) As claims/encounters are filed, reimbursement for SoonerCare Choice members is made for all medically necessary covered primary care and other approved health services at the PPS rate, except for services delivered via audio-only telecommunications which are reimbursed at the fee-for-service (FFS) rate pursuant to the FFS fee schedule.

(c) Primary and preventive behavioral health services rendered by health care professionals authorized in the ~~FQHC~~Federally Qualified Health Center (FQHC) approved state plan pages will be reimbursed at the PPS encounter rate, except for services delivered via audio-only telecommunications which are reimbursed at the FFS rate pursuant to the FFS fee schedule.

(d) Vision services provided by Optometrists within the scope of their licensure for non-dual eligible members and allowed under the Medicaid State Plan are reimbursed pursuant to the SoonerCare ~~fee-for-service~~FFS fee schedule.

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

**317:30-5-1087. Terms and definitions**

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

- (1) **"American Indian/Alaska Native (AI/AN)"** means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card.
- (2) **"Audio-only health service delivery"** means the delivery of healthcare services through the use of audio-only telecommunications, permitting real-time communication between a patient and the provider, for the purpose of diagnosis, consultation, or treatment, and does not include the use of facsimile or email nor the delivery of health care services that are customarily delivered by audio-only telecommunications and customarily not billed as separate services by the provider, such as the sharing of laboratory results. This definition includes health services delivered via audio-only when audio-visual is unavailable or when a member chooses audio-only.
- (23) **"Behavioral Health services"** means professional medical services for the treatment of a mental health and/or substance use disorder.
- (34) **"CFR"** means the Code of Federal Regulations.
- (45) **"CMS"** means the Centers for Medicare and Medicaid Services.
- (56) **"Encounter"** means a ~~face-to-face~~ contact between a health care professional and an IHS eligible SoonerCare member for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a ~~24-hour~~twenty-four (24) hour period ending at midnight, as documented in the patient's record.
- (67) **"Licensed Behavioral Health Professional (LBHP)"** means a licensed psychologist, licensed clinical social worker (LCSW), licensed marital and family therapist (LMFT), licensed professional counselor (LPC), licensed behavioral practitioner (LBP) or licensed alcohol and drug counselor (LADC).
- (78) **"OHCA"** means the Oklahoma Health Care Authority.
- (82) **"OMB rate"** means the Medicaid reimbursement rate negotiated between CMS and IHS. Inpatient and outpatient Medicaid reimbursement rates for I/T/Us are published annually in the Federal Register or Federal Register Notices. The outpatient rate is also known as the I/T/U encounter rate. The encounter rate is available only to I/T/U facilities that appear on the IHS maintained listing of IHS-operated and Indian health care facilities operating under a 638 agreement. It is the sole responsibility of the facility to petition IHS for placement on this list.
- (910) **"Physician"** means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery or who is a licensed physician employed by the Federal Government in an IHS facility or who provides services in a 638 Tribal Facility.
- (4011) **"State Administering Agency (SAA)"** is the Oklahoma Health Care Authority.

- (12) **"Telehealth"** means the practice of health care delivery, diagnosis, consultation, evaluation and treatment, transfer of medical data or exchange of medical education information by means of a two-way, real-time interactive communication, not to exclude store and forward technologies, between a patient and a healthcare provider with access to and reviewing the patient's relevant clinical information prior to the telemedicine visit. Telehealth shall not include consultations provided by telephone audio-only communication, electronic mail, text message, instant messaging conversation, website questionnaire, non-secure video conference, or facsimile transmission.
- (413) **"638 Tribal Facility"** is a facility that is operated by a tribe or tribal organization and funded by Title I or Title III of the Indian Self Determination and Education Assistance Act (Public Law 93-638).

**317:30-5-1098. ~~I/T/U~~Indian Health Services, Tribal Programs, and Urban Indian clinics (I/T/Us) outpatient encounters**

- (a) I/T/U outpatient encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by the OHCA. These services include health services included in the State Plan under Title XIX or Title XXI of the Social Security Act.
  - (1) An I/T/U encounter means a ~~face to face, or a telehealth contact, or an audio-only telecommunications contact~~ between a health care professional and an ~~IHS~~IHS Indian Health Services (IHS) eligible SoonerCare member for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a ~~24-hour~~twenty-four (24) hour period ending at midnight, as documented in the patient's record.
  - (2) An I/T/U outpatient encounter means outpatient services that may be covered when furnished to a patient by a contracted SoonerCare provider employed by the I/T/U facility and rendered at the I/T/U facility or other location, including the patient's place of residence.
- (b) The following services may be considered reimbursable encounters subject to the limitations of the Oklahoma State Plan and include any related medical supplies provided during the course of the encounter:
  - (1) Medical;
  - (2) Diagnostic;
  - (3) Behavioral Health services [refer to OAC 317:30-5-1094];
  - (4) Dental, Medical and Mental Health Screenings;
  - (5) Vision;
  - (6) Physical Therapy;
  - (7) Occupational Therapy;
  - (8) Podiatry;
  - (9) Speech;
  - (10) Hearing;
  - (11) Visiting Nurse Service [refer to OAC 317:30-5-1093];
  - (12) Smoking and Tobacco Use Cessation Counseling;

## Emergency Adoptions

(13) Other Title XIX or XXI services as allowed under OHCA's SoonerCare State Plan and OHCA Administrative Rules;

(14) Drugs or medication treatments provided during a clinic visit are part of the encounter rate. For example, a member has come into the clinic with high blood pressure and is treated at the clinic with a hypertensive drug or drug sample. Drug samples are included in the encounter rate. Prescription drugs are reimbursed pursuant to OAC 317:30-5-78(b)(4)(B).

(15) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members; and

(16) I/T/U Multiple Outpatient Encounters.

(A) OHCA will cover one medically necessary outpatient medical encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit with a different diagnosis. Then, a second encounter is allowed.

(B) OHCA will cover one dental encounter per member per day regardless of how many procedures are done or how many providers are seen unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(C) OHCA will cover one behavioral health professional outpatient encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(D) Each service must have distinctly different diagnoses in order to meet the criteria for multiple I/T/U outpatient encounters.

(c) More than one outpatient visit with a medical professional within a ~~24 hour~~ twenty-four (24) hour period for distinctly different diagnoses may be reported as two encounters. This does not imply that if a member is seen at a single office visit with multiple problems that multiple encounters can be billed. For example, a member comes to the clinic in the morning for an immunization, and in the afternoon, the member falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a member who comes to the I/T/U facility for a diabetic wellness screening and is then referred to a podiatrist within the clinic for diabetes-related follow-up on the same date of service would not be considered a distinctly different diagnosis and can only be billed as a single encounter.

(d) The following services may be considered as separate or multiple encounters when two or more services are provided on the same date of service with distinctly different diagnoses:

- (1) Medical Services;
- (2) Dental Services;
- (3) Mental Health and addiction services with similar diagnoses can only be billed as one encounter. In addition, if the member is also seen for a medical office visit with a

mental health or addiction diagnosis, then it is considered a single encounter;

(4) Physical or occupational therapy (PT/OT). If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter;

(5) Administration of immunizations. If no other medical office visit occurs on the same date of services; and

(6) Tobacco cessation limited to state plan services. If no other medical or addiction encounter occurs on the same date of service.

(e) I/T/U outpatient encounters for IHS eligible SoonerCare members whether medical, dental, or behavioral health, are not subject to prior authorization. Other State Plan covered services that the I/T/U facility chooses to provide but which are not part of the I/T/U encounter are subject to all applicable SoonerCare regulations which govern the provision and coverage for that service.

[OAR Docket #23-707; filed 7-24-23]

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

[OAR Docket #23-708]

#### RULEMAKING ACTION:

EMERGENCY adoption

#### RULES:

Subchapter 5. Individual Providers and Specialties

Part 9. Long-term Care Facilities

317:30-5-136.2 [NEW]

(Reference APA WF # 23-12)

#### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Oklahoma Senate Bill 1074; and Oklahoma Senate Bill 1040

#### ADOPTION:

June 28, 2023

#### EFFECTIVE:

Immediately upon Governor's approval

#### APPROVED BY GOVERNOR:

July 6, 2023

#### EXPIRATION:

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its long-term care policy. These emergency revisions are necessary to protect the public health, safety, and/or welfare and to avoid violation of state law implemented in Enrolled Senate Bills No. 1074 and 1040 of the 2<sup>nd</sup> Session of the 58<sup>th</sup> Oklahoma Legislature.

#### GIST/ANALYSIS:

The emergency rules are to comply with Oklahoma Senate Bill 1074 which authorizes the Oklahoma Health Care Authority (OHCA) to implement an enhanced payment for intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) that provide vocational services or day program services or both. The purpose of the enhanced payment is to offset costs incurred by the ICFs/IID in providing vocational services or day program services or both.



CONTACT PERSON:  
Kasie McCarty, Director of Policy, 405-522-7048,  
kasie.mccarty@okhca.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING EMERGENCY RULES ARE  
CONSIDERED PROMULGATED UPON APPROVAL  
BY THE GOVERNOR AS SET FORTH IN 75 O.S.,  
SECTION 253(F), AND EFFECTIVE UPON APPROVAL  
BY THE GOVERNOR OR JULY 1, 2023, WHICHEVER  
IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS  
AND SPECIALTIES

PART 9. LONG-TERM CARE FACILITIES

317:30-5-136.2. Intermediate Care Facilities for  
Individuals with Intellectual Disabilities  
(ICFs/IID) Enhanced Payment Program

(a) Overview. This program provides enhanced payment for private ICFs/IID that provide vocational services or day program services or both. The purpose of the enhanced payment is to offset the costs incurred by ICFs/IID in the provision of vocational services or day program services or both. Residents who qualify for the enhanced program cannot receive the same services or reimbursement under another program.

(b) Definitions. The following words and terms, when used in this Section, will have the following meaning, unless the context clearly indicates otherwise:

(1) "Day program services" means a life enrichment program that is conducted in a dedicated service location. The organized scheduled programming will vary but must meet the specific program qualifications for participation. Day services programs provide diverse opportunities for residents to participate in the broader community based on the resident's specific care plan.

(2) "Direct costs" means the costs for activities or items associated with day services and/or vocational services programs. These items include salaries and wages of activities staff, day services and vocational staff, and job coaches.

(3) "Other costs" means overhead costs attributable to the provision of day and vocational services. For example, rent, utilities, etc., not already paid for by Medicaid.

(4) "Quality Review Committee" means a committee responsible for the oversight of monitoring and analyzing the accessibility and appropriateness of services being delivered.

(5) "Vocational services" means the provision of paid employment in a structured vocational training program for residents outside of the resident's home. The type of work will vary but each provider must meet the specific program qualifications for participation. Vocational service programs provide pre-vocational services training,

that prepare the residents for employment in a structured educational program. These programs will utilize either a certified job coach or a designated staff, to assist a resident eighteen (18) years and older, in achieving gainful employment. Other achievements may include, sheltered employment, ongoing employment support, job skills training and/or workshop experience in the community.

(c) Care criteria. Facilities will comply with the following care criteria to receive the enhanced payment:

(1) Vocational services. Facilities will provide twenty (20) hours of vocational services to at least forty percent (40%) of their residents each week. Residents must participate at least nine (9) out of twelve (12) weeks.

(2) Day services. Facilities will provide twenty (20) hours of day services to at least sixty percent (60%) of the facility's residents who do not participate in the facility's vocational program. Residents must participate at least nine (9) out of twelve (12) weeks.

(d) Performance Review. Performance reviews will be completed quarterly to ensure the integrity and accountability of the vocational and/or day treatment services provided. Facilities shall provide documentation as requested and directed by the Oklahoma Health Care Authority (OHCA) within fifteen (15) business days of request. Program payments will be withheld from facilities that fail to meet performance review standards.

(e) Appeals. Facilities can file an appeal related to their performance review with the Quality Review Committee and in accordance with the grievance procedures found at Oklahoma Administrative Code (OAC) 317:2-1-2 and 317:2-1-17.

(f) Reimbursement methodology and payment. Reimbursement and payment for the ICF/IID Enhanced Payment Program are provided in accordance with the Oklahoma Medicaid State Plan.

(g) Cost audit. Each facility will be audited annually as part of the annual cost report reviews to ensure only allowable costs prescribed by Medicare/Medicaid cost reporting principles are reported. As part of the annual audit, OHCA will ensure that there are no duplicative costs attributable to base rate and the enhanced payments. Payments will be recouped from facilities that report unallowable costs. Additional audits can be conducted anytime at the discretion of the OHCA.

[OAR Docket #23-708; filed 7-24-23]

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

[OAR Docket #23-709]

RULEMAKING ACTION:  
EMERGENCY adoption

RULES:  
Subchapter 5. Individual Providers and Specialties  
Part 62. Private Duty Nursing  
317:30-5-561 [NEW]  
(Reference APA WF # 23-11)

# Emergency Adoptions

## **AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

## **ADOPTION:**

June 28, 2023

## **EFFECTIVE:**

Immediately upon Governor's approval or July 1, 2023, whichever is later.

## **APPROVED BY GOVERNOR:**

July 6, 2023

## **EXPIRATION:**

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature.

## **SUPERSEDED EMERGENCY ACTIONS:**

N/A

## **INCORPORATIONS BY REFERENCE:**

N/A

## **FINDING OF EMERGENCY:**

The Agency requests emergency approval of rule revisions to its current General Providers policies. These emergency revisions are necessary to protect the public health, safety, and/or welfare by ensuring continued access to a critical service, private duty nursing, through more competitive reimbursement rates.

## **GIST/ANALYSIS:**

The proposed revisions add clarification regarding the reimbursement for Private Duty Nursing (PDN) services, including when overtime payment is appropriate. Revisions state that overtime is available for nursing staff who are providing services to members with tracheostomies or who are medically dependent on a ventilator for life support at least six (6) hours per day.

## **CONTACT PERSON:**

Kasie McCarty, Director of Policy, 405-522-7048, kasie.mccarty@okhca.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2023, WHICHEVER IS LATER:**

## **SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

### **PART 62. PRIVATE DUTY NURSING**

#### **317:30-5-561. Private duty nursing (PDN) payment rates**

**(a) All PDN services, including overtime, are reimbursed per the methodology described in the Oklahoma Medicaid State Plan.**

**(b) Overtime payment for PDN services is only available for nursing staff who are providing services to members with tracheostomies or who are medically dependent on a ventilator for life support at least six (6) hours per day. This excludes members who are on non-invasive C-PAP or Bi-PAP devices only.**

**(c) In accordance with the Department of Fair Labor Standards Act, a worker must receive overtime pay for every hour**

that is worked over forty (40) hours in a workweek. A workweek is defined as any set seven (7) day period.

*[OAR Docket #23-709; filed 7-24-23]*

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

*[OAR Docket #23-710]*

## **RULEMAKING ACTION:**

EMERGENCY adoption

## **RULES:**

Subchapter 5. Individual Providers and Specialties

Part 114. Doula Services[NEW]

317:30-5-1215 [NEW]

317:30-5-1216 [NEW]

317:30-5-1217 [NEW]

**(Reference APA WF # 23-10)**

## **AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

## **ADOPTION:**

June 28, 2023

## **EFFECTIVE:**

Immediately upon Governor's approval or July 1, 2023, whichever is later.

## **APPROVED BY GOVERNOR:**

July 6, 2023

## **EXPIRATION:**

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature

## **SUPERSEDED EMERGENCY ACTIONS:**

N/A

## **INCORPORATIONS BY REFERENCE:**

N/A

## **FINDING OF EMERGENCY:**

The Agency requests emergency approval of rule revisions to its current General Providers Policies. The approval of the emergency rule will protect the public health, safety, or welfare by allowing pregnant and postpartum Medicaid members to receive services provided by doulas.

## **GIST/ANALYSIS:**

The proposed additions will implement doula services as a covered benefit to SoonerCare members. The policy additions define what a doula is and the specific services/requirements including but not limited to, certification requirements from one of the Agency-recognized organizations, a referral from a licensed medical provider (physician, physician's assistant (PA), obstetrician, certified nurse midwife), and be at least 18 years of age. Furthermore, policy will outline that members will have eight doula visits, including one for labor and delivery care. Finally, additions will state that reimbursement for doula services is outlined in the Oklahoma Medicaid State Plan.

## **CONTACT PERSON:**

Kasie McCarty, Director of Policy, 405-522-7048, kasie.mccarty@okhca.org

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2023, WHICHEVER IS LATER:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 114. DOULA SERVICES**

**317:30-5-1215. General**

- (a) A doula or birth worker is a trained professional who provides emotional, physical, and informational support services during the prenatal, labor and delivery, and postpartum periods. Doulas are non-clinical and do not provide medical care. Services should not replace the services of other licensed and trained medical professionals including, but not limited to, physicians, physicians assistants, advanced practice registered nurses, and certified nurse midwives.
- (b) All Title XIX, CHIP, expansion adult, and Soon-to-be-Sooners (STBS) members who are pregnant or within the postpartum period are eligible for doula services.
- (c) Doula services are available for twelve (12) months postpartum, depending on the members continued SoonerCare eligibility.

**317:30-5-1216. Eligible providers**

- (a) **Provider requirements.** At minimum, providers must:
  - (1) Be eighteen (18) years of age;
  - (2) Obtain and maintain a National Provider Identifier (NPI); and
  - (3) Use the taxonomy number required by the State.
- (b) **Certifications.** Providers must possess one of the following certifications:
  - (1) Birth doula;
  - (2) Postpartum doula;
  - (3) Full-spectrum doula;
  - (4) Community-based doula.
- (b) **Certifying organization.** Providers must be certified by one of the State's recognized certifying organizations found at [www.oklahoma.gov/ohca/](http://www.oklahoma.gov/ohca/).

**317:30-5-1217. General coverage**

- (a) **Covered benefits.** The following benefits are covered:
  - (1) **Prenatal/postpartum visits.** There is a total of eight (8) prenatal/postpartum visits allowed for the member. The doula must work with the member to determine how best to utilize the benefit to meet the needs of the member.
  - (2) **Labor and delivery.** There is one (1) labor and delivery visit allowed, regardless of the duration.
- (b) **Visit requirements.** Each covered visit is subject to the following requirements:
  - (1) The minimum visit length is sixty (60) minutes.
  - (2) Visits must be face-to-face.
    - (A) Prenatal and postpartum visits may be conducted via telehealth.
    - (B) Labor and delivery services may not be conducted via telehealth.

(c) **Service locations.** Service location requirements for each covered visit are as follows:

- (1) **Prenatal and postpartum.** Doulas must coordinate directly with the member and their family to determine the most appropriate service location for prenatal and postpartum visits. Service locations may include the following:
  - (A) Member's place of residence;
  - (B) Doula's office;
  - (C) Physician's office;
  - (D) Hospital; or
  - (E) In the community.

(2) **Labor and delivery services.** There is no coverage for home birth(s).

(d) **Referral requirements.** Doula services must be recommended by a physician or other licensed practitioner of the healing arts who is operating within the scope of their practice under State law.

(1) The following providers may recommend doula services:

- (A) Obstetricians;
- (B) Certified Nurse Midwives;
- (C) Physicians;
- (D) Physician Assistants; or
- (E) Certified Nurse Practitioners.

(2) The SoonerCare Referral Form must be completed and submitted, noting the recommendation for doula services.

(e) **Prior authorization (PA) requirements.** A prior authorization (PA) is not required to access the standard doula benefit package. A PA may be submitted, for members with extenuating medical circumstances, if there is need for additional visits beyond the eight (8) prenatal/postpartum visits.

(f) **Medical records requirements.** The medical record must include, but is not limited to, the following:

- (1) Date of service;
- (2) Person(s) to whom services were rendered;
- (3) Start and stop time for the service(s);
- (4) Specific services performed by the doula on behalf of the member;
- (5) Member/family response to the service;
- (6) Any new needs identified during the service; and
- (7) Original signature of the doula, including the credentials of the doula.

(g) **Auditing review.** All doula services are subject to post-payment reviews and audits by the OHCA.

(h) **Reimbursement.** All doula services, that are outlined in Part 114 of this Chapter, are reimbursed per the methodology established in the Oklahoma Medicaid State Plan. There are no allotted incentive payments.

[OAR Docket #23-710; filed 7-24-23]

# Emergency Adoptions

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #23-711]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Insure Oklahoma Qualified Benefit Plans

317:45-5-1 [AMENDED]

(Reference APA WF # 23-02)

### AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board

### ADOPTION:

June 28, 2023

### EFFECTIVE:

Immediately upon Governor's approval or July 1, 2023, whichever is later.

### APPROVED BY GOVERNOR:

July 6, 2023

### EXPIRATION:

Effective through September 14, 2024, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency requests emergency approval of rule revisions to its current Insure Oklahoma policies. The emergency revisions protect the public health, safety, and welfare to comply with Oklahoma Senate Bill 1323, which added language to Title 56 Oklahoma Statutes (O.S.) § 1010.1, which added self-funded/self-insured plans to the Insure Oklahoma Program.

### GIST/ANALYSIS:

The policy additions include the criteria as outlined in the legislation that must be met for self-funded plans to be qualified for the Insure Oklahoma Program.

### CONTACT PERSON:

Kasie McCarty, Director of Policy, 405-522-7048, kasie.mccarty@okhca.org.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR JULY 1, 2023, WHICHEVER IS LATER:**

### SUBCHAPTER 5. INSURE OKLAHOMA QUALIFIED BENEFIT PLANS

#### 317:45-5-1. Qualified Benefit Plan requirements

(a) Participating qualified benefit plans must offer, at a minimum, benefits that include:

- (1) ~~hospital~~Hospital services;
- (2) ~~physician~~Physician services;
- (3) ~~clinical~~Clinical laboratory and radiology;
- (4) ~~pharmacy~~Pharmacy;
- (5) ~~office~~ visits;
- (6) ~~well~~Well baby/well child exams;

(7) ~~age~~Age appropriate immunizations as required by law; and

(8) ~~emergency~~Emergency services as required by law.

(b) The benefit plan, if required, must be approved by the Oklahoma Insurance Department for participation in the Oklahoma market. All benefit plans must share in the cost of covered services and pharmacy products in addition to any negotiated discounts with network providers, pharmacies, or pharmaceutical manufacturers. If the benefit plan requires co-payments or deductibles, the co-payments or deductibles cannot exceed the limits described in this subsection.

(1) An annual in-network out-of-pocket maximum cannot exceed \$3,000 per individual, excluding separate pharmacy deductibles.

(2) Office visits cannot require a co-payment exceeding \$50 per visit.

(3) Annual in-network pharmacy deductibles cannot exceed \$500 per individual.

(c) Qualified benefit plans will provide an EOB, an expense summary, or required documentation for paid and/or denied claims subject to member co-insurance or member deductible calculations. The required documentation must contain, at a minimum, the:

(1) ~~provider's~~Provider's name;

(2) ~~patient's~~Patient's name;

(3) ~~date(s)~~Date(s) of service;

(4) ~~code(s)~~Code(s) and/or description(s) indicating the service(s) rendered, the amount(s) paid or the denied status of the claim(s);

(5) ~~reason~~Reason code(s) and description(s) for any denied service(s);

(6) ~~amount~~Amount due and/or paid from the patient or responsible party; and

(7) ~~provider~~Provider network status (in-network or out-of-network provider).

(d) A qualified benefit plan that is participating in the Insure Oklahoma (IO) program as of November 1, 2022 may become a self-funded or self-insured benefit plan if the following conditions are met:

(1) The qualified benefit plan has continuously participated in the premium assistance program without interruption up to the date it becomes a self-funded or self-insured health care plan;

(2) The self-funded or self-insured benefit plan continues to be recognized as a benefit plan by the Oklahoma Insurance Department;

(3) The self-funded or self-insured benefit plan continues to cover all essential health benefits listed in (a) of this section in addition to all other health benefits that are required under applicable federal laws; and

(4) The self-funded or self-insured benefit plan must have a monthly premium assessed and a rate schedule in order to be an approved business with the IO program.

[OAR Docket #23-711; filed 7-24-23]

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

[OAR Docket #23-552]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 10. Requirements for Department Programs

35:1-10-6. Date of federal regulations incorporated [AMENDED]

### AUTHORITY:

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

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

November 1, 2022

### COMMENT PERIOD:

December 2, 2022, and ending January 4, 2023

### PUBLIC HEARING:

January 4, 2023

### ADOPTION:

January 26, 2023

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

February 2, 2023

### LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

### FINAL ADOPTION:

May 31, 2023

### EFFECTIVE:

September 11, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

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

### CONTACT PERSON:

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.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 10. REQUIREMENTS FOR DEPARTMENT PROGRAMS

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

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

[OAR Docket #23-552; filed 6-15-23]

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 2. FEES

[OAR Docket #23-553]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Fee Schedules

35:2-3-5. Fees for meat inspection overtime [AMENDED]

35:2-3-29. General animal industry supply fees [AMENDED]

### AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2) and (20); and 2 O.S. § 14-81 et seq.

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

November 1, 2022

### COMMENT PERIOD:

December 2, 2022, and ending January 4, 2023

### PUBLIC HEARING:

January 4, 2023

### ADOPTION:

January 26, 2023

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

February 2, 2023

### LEGISLATIVE APPROVAL:

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September 11, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rules amendments are necessary to increase and provide for certain fees to cover the Department's costs of labor and supplies.

### CONTACT PERSON:

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

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

# Permanent Final Adoptions

**SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2023:**

## SUBCHAPTER 3. FEE SCHEDULES

### **35:2-3-5. Fees for meat inspection overtime**

The fee for meat inspection overtime work in an official establishment under the Oklahoma Meat Inspection Act (2 O.S. § 6-181) is ~~\$30.00~~ \$34.00 per hour.

### **35:2-3-29. General animal industry supply fees**

(a) Certificates of Veterinary Inspection (Health Certificates) ~~-\$35.00~~ \$75.00 per pad of 25 with ~~\$6~~ \$8.00 shipping for up to first 10 pads and an additional ~~\$6~~ shipping for each additional 10 pads.

(b) Poultry tester supplies:

- (1) Large or small wing bands - \$12.00 per 100.
- (2) Small wing band plier - \$11.00 each.
- (3) Leg bands - \$8.50 per 100.
- (4) Leg band pliers - \$25.00 each.
- (5) Pullorum Test Plate - \$8.00 each.
- (6) 1,000 tests Pullorum Typhoid Antigen - \$150.00 per 1,000 doses or \$35.00 per 200 doses.
- (7) ~~Shipping fee per order - \$6.00.~~
- (8) ~~Cash On Delivery (C.O.D.) shipping fee per order - actual cost.~~
- (9) Large wing band plier - \$25.00 each.
- (10) Bleeder loop - \$12.00 each.
- (9) Shipping fee for poultry tester supplies - actual cost of shipping.

(c) Contagious Equine Metritis Quarantine Monitoring:

- (1) ~~Stallions - \$500 each.~~
- (2) ~~Mares - \$500~~ \$750.00 for the first mare, \$200 and \$375.00 for each additional mare in the same quarantine.

(d) Shipping fee for Radio Frequency Identification Device (RFID) tags ~~-\$10.00 per 1,000 tags~~ shall be the actual cost of shipping.

(e) Ear tag applicators - standard retail price.

*[OAR Docket #23-553; filed 6-15-23]*

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

*[OAR Docket #23-554]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions

35:10-1-3. Handbook and publication editions [AMENDED]

### **AUTHORITY:**

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

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

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n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

The proposed rule amendments update handbook and publication references.

### **CONTACT PERSON:**

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

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

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

- (1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (~~2022~~ 2023 Edition).
- (2) Handbook 130 "Uniform Laws and Regulations" (~~2022~~ 2023 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
- (3) Handbook 133 "Checking the Net Contents of Packaged Goods" (~~2020~~ 2023 Edition).
- (4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (2019 Edition).
- (5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (~~1996~~ 2021 Edition).
- (6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2010 Edition).
- (7) Publication 14 (2021 Edition).
- (8) Publication 12 (1991 Edition).

(9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

[OAR Docket #23-554; filed 6-15-23]

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

[OAR Docket #23-555]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 9. Livestock Special Sales
  - Part 3. Livestock Special Sales
    - 35:15-9-7. Application [AMENDED]
    - 35:15-9-8. Written records [AMENDED]
    - 35:15-9-9. Submission of record sales [AMENDED]
- Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets
  - 35:15-13-3. General requirements for a livestock auction market [AMENDED]
  - 35:15-13-6. Movement of livestock through livestock auction markets [AMENDED]
  - 35:15-13-7. Specific approval of livestock auction markets [AMENDED]
- Subchapter 22. Swine Pseudorabies and Brucellosis
  - Part 7. Requirements for Swine Exhibitions
    - 35:15-22-71. Exhibition requirements [AMENDED]
- Subchapter 34. Feral Swine
  - 35:15-34-13. License fees [AMENDED]
- Subchapter 44. Farmed Cervidae
  - 35:15-44-19. Entry and export requirements [AMENDED]
  - 35:15-44-20. Animal identification requirements [AMENDED]
- Subchapter 47. Chronic Wasting Disease (CWD) in Cervids
  - Part 7. Interstate Movement Requirements
    - 35:15-47-18. Minimum CWD requirements for interstate movement of cervids [AMENDED]

**AUTHORITY:**

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

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**INCORPORATIONS BY REFERENCE:**

**Incorporated Standards:**

9 CFR Part 81 (2021 Revision) unless otherwise specified.

**Incorporating Rules:**

35:15-47-18

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel,

2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5803.

**GIST/ANALYSIS:**

The proposed rule amendments modify certain application requirements to include email address; modify contents of certain records kept for livestock special sales; modify requirements for submission of records for special sales; modify general requirements for livestock auction markets; clarify requirements for movement of livestock through livestock auction markets; require certain sales to be made pursuant to livestock auction market license; modify testing requirements for certain swine; modify license fees for certain facilities; modify import and identification requirements of certain cervidae; and delete obsolete language.

**CONTACT PERSON:**

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.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 9. LIVESTOCK SPECIAL SALES**

**PART 3. LIVESTOCK SPECIAL SALES**

**35:15-9-7. Application**

(a) Any person shall obtain a permit prior to conducting a livestock special sale from the Department.

(b) Each application for a Livestock Special Sale permit shall include:

- (1) Name and address of person requesting permit;
- (2) Location of sale premises;
- (3) Date and time of sale; and
- (4) Signature, ~~complete~~ email address, and telephone number of person requesting the permit.

**35:15-9-8. Written records**

Each permit holder shall keep written records for not less than five (5) years after the special sale that are necessary and adequate to determine the sources and disposition of livestock sold at the sale, ~~and. Retained records shall at a minimum include, but not be limited to,~~ the following:

- (1) Accounts of sales;
- (2) Accounts of purchases;
- (3) Bills and invoices to purchasers;
- (4) Documents certifying the health status of animals presented by consignors;
- (5) Records identifying each consignor and purchaser at the sale, including the name, mailing address, and telephone number of the consignor and purchaser, ~~or, if a minor, the representative of the purchaser;~~ and
- (6) All other written correspondence pertaining to livestock advertised or sold in the sale.

# Permanent Final Adoptions

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## 35:15-9-9. Submission of record sales

(a) The permit holder ~~shall~~may submit to the Board ~~within fifteen (15) days after the special sale~~ a record identifying each animal consigned ~~on or before the fifteenth day of the month after the special sale.~~ The record shall include the name, mailing address, and telephone number of the consignor ~~or representative,~~ and the name, mailing address, and telephone number of the purchaser ~~or, if a minor, the representative of the purchaser.~~

(b) A permit holder who submits records pursuant to the provisions of subsection (a) of this section shall not be required to comply with the provisions of paragraph 5 of OAC 35:15-9-8.

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

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

(a) Any person owning, operating, conducting, or maintaining a livestock auction market shall be required to employ a livestock auction market veterinarian for auctions selling cattle, horses, swine, or other species as determined by the state veterinarian.

(b) The buyer's invoice shall include the buyer's name and address and a description of the livestock as to ~~breedage,~~ color, and sex.

(c) The seller's invoice shall include the seller's name and address and a description of the livestock as to ~~breedage,~~ color, and sex.

(d) The livestock auction market veterinarian or sale company shall not be responsible for results of any tests that are conducted properly or for any reactor animals or responder animals found in the market.

(e) Refusal or failure to comply with Department rules shall be just cause for the revocation or suspension of the livestock auction market license.

(f) No person owning, operating, conducting, or maintaining a livestock auction market shall allow any of the following animals to leave the livestock auction market unless it is individually identified by an official identification with an exception for weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person:

- (1) All beef cattle eighteen (18) months of age or older, except terminal fed steers and heifers, going directly to a feedlot or slaughter which will not be reintroduced into the breeding herd;
- (2) All dairy cattle;
- (3) All "M" branded cattle including any commingled cattle, and
- (4) All roping, exhibition, event, and rodeo cattle.

(g) Weak cattle or cattle that pose a greater than normal risk of being injured or injuring a person may be sold with a back tag and slaughter only tag to be transported directly to slaughter.

(h) The owner or operator of the livestock auction market shall keep records of each animal consigned or delivered to

the livestock auction market for a period of five (5) years for disease traceback purposes, including but not limited to, the following:

- (1) "Drive-in" or any other documents identifying the backtag, owner's name and address, and license tag of mode of transportation;
- (2) Any records kept pursuant to the Livestock Auction Market Act;
- (3) Records of any official identification applied to the animal or already existing with the animal;
- (4) Any records available regarding the purchaser of the animals; and
- (5) Records of official identification that are sufficiently legible and accurate to facilitate successful tracebacks.

(i) Each livestock auction market shall sign and have on record with the Department the most current livestock market contract for each of the species sold at the market. Markets shall sell only species approved to be handled, sold, or exchanged pursuant to their livestock auction market license.

(j) The livestock auction market shall make the above records available to Department personnel when requested on non-sale days. In an emergency, records may be requested and shall be made available to Department personnel regardless of sale schedule.

### 35:15-13-6. Movement of livestock through livestock auction markets

(a) All certificates of veterinary inspection, permits, and other documents, including out-of-state documents accompanying livestock into Oklahoma livestock auction markets, that are incomplete or have been altered in any way are void and shall not be accepted. ~~This includes documents~~ shall include documents that are incomplete as to official identification ~~number numbers and description descriptions of animal it represents the animals they represent.~~ In order to ~~To~~ be accurate and acceptable, the prefix of each official identification number shall be recorded.

(b) All livestock shipped or exported from the State of Oklahoma shall meet the state of destination importation requirements.

(c) Dairy cattle or Mexican cattle to be tuberculosis tested after change of ownership that are not held at the livestock auction for testing shall be consigned to the purchaser's accredited veterinarian of choice accompanied by a VS 1-27 form to verify the arrival of the animal for testing.

(d) Restricted cattle shall be tagged with a slaughter only tag except in instances where the cattle have been tested for the disease of concern.

(e) Cattle tagged with a Slaughter Only Tag shall not be diverted from slaughter channels and shall be transported to an approved livestock facility within seven (7) days of sale.

(f) It shall be a violation of the Oklahoma Administrative Code to remove a Slaughter Only Tag from an animal.

(g) It shall be a violation of the Oklahoma Administrative Code to present feral swine to a livestock auction market or to sell feral swine at livestock auction markets.



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

- (a) No livestock auction market shall be specifically approved until proper application is made and a determination is made by the State Veterinarian that Department regulations and standards are met.
- (b) All animals received at the livestock auction market shall be considered in interstate commerce and be handled in accordance with interstate regulations.
- (c) All cattle, bison, horses, swine or other species, as determined by the State Veterinarian, shall be visually inspected by the livestock auction market veterinarian prior to sale for diseased conditions such as cattle scab, sheep scab, Actinomyces (lump jaw), Carcinomas (cancer eye), Infectious Rhinitis (bull nose) or any other infectious, contagious, or communicable disease.
- (d) Any animal determined to be diseased by the livestock auction market veterinarian shall be sold direct to slaughter or quarantined for treatment pursuant to the judgment of the livestock auction market veterinarian.
- (e) Each market shall furnish and maintain in good repair sufficient equipment suitable for restraining animals for careful inspection, testing, tagging, branding, and other treatments and procedures ordinarily required in providing livestock sanitary service at markets. The equipment shall be covered or housed so that necessary work can take place during inclement weather.
- (f) The appointment and termination of the livestock auction market veterinarian by the livestock auction market is subject to approval of both state and federal officials.
- (g) Failure or neglect to perform any of the functions in this section shall be cause for withdrawal of the approval.
- (h) Each livestock auction market shall sign and have on record with the Board the most current livestock market contract for each of the species sold at the market. Markets shall sell only species approved to be handled, sold, or exchanged pursuant to their livestock auction market license.

**SUBCHAPTER 22. SWINE PSEUDORABIES AND BRUCELLOSIS**

**PART 7. REQUIREMENTS FOR SWINE EXHIBITIONS**

**35:15-22-71. Exhibition requirements**

- (a) Each person who presents swine for a swine exhibition, special sale, or show shall provide verification of one of the following:
  - (1) A federal premises identification number; or
  - (2) A state location identification number.
- (b) Swine shall be individually identified at the time of testing with both ear notches and an 840 button-type electronic official identification ear tag. Untested exhibition swine originating from a V/Q herd shall be similarly identified prior to exhibition.

- (c) All swine shall meet one of the following testing requirements:

- (1) Oklahoma origin swine shall have a negative brucellosis and pseudorabies test after ~~June~~ May 15 each year for summer and fall exhibitions and after ~~December~~ November 10 each year for winter and spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to pseudorabies or brucellosis. The swine shall also be accompanied by a copy of the official test chart or a certificate of veterinary inspection listing the test results, laboratory name, laboratory accession number, and individual identification.
- (2) Swine originating from outside of Oklahoma shall meet the requirements of OAC 35:15-22-33(a) - (c).
- (3) Each swine shall originate from a V/Q herd and only be exhibited by an immediate family member of the V/Q herd owner. The V/Q herd number, most recent quarterly test date, and official identification of all swine being exhibited shall be listed on the certificate of veterinary inspection.

**SUBCHAPTER 34. FERAL SWINE**

**35:15-34-13. License fees**

- (a) Sporting facilities ~~that are not licensed as a commercial hunting area by the Oklahoma Department of Wildlife Conservation:~~
  - (1) Application fee - \$325.
  - (2) Renewal fee -
    - (A) \$200; or
    - (B) \$25, if licensed by the Oklahoma Department of Wildlife Conservation (ODWC).
- (b) Handling facility:
  - (1) Application fee - ~~\$200~~ \$225.
  - (2) Renewal fee - \$100
    - (A) \$125, if received on or before June 1; or
    - (B) \$250, if received after June 1.
- (c) Transporter: Application and renewal fee - \$25.
- (d) Captive feral swine hunter - \$25.

**SUBCHAPTER 44. FARMED CERVIDAE**

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

- (a) Import of cervidae shall be accompanied by a Certificate of Veterinary Inspection and a Cervidae Import Permit approved or provided by the Department.
  - (1) ~~The import permit~~ A Cervidae Import Permit shall be valid for thirty (30) days from approval.
  - (2) ~~Cervidae Import Permit applications shall be submitted to the Department no less than three (3) working days prior to the scheduled shipment.~~
- (b) Cervidae susceptible to chronic wasting disease shall only be imported to a premises with a current license.

# Permanent Final Adoptions

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

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

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

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

(g) For the purposes of this section, all cervidae that have not been tested and found to be resistant to chronic wasting disease through natural exposure in research projects shall be considered to be cervidae susceptible to chronic wasting disease.

## 35:15-44-20. Animal identification requirements

(a) All cervids twelve (12) months or older shall be individually identified by at least one form of identification approved by the Department. There shall be no duplicate tags containing the same number and color within a breeding herd. Non-breeding huntingmale harvest animals that are natural additions and do not participate in any disease monitoring programs shall be exempt from this identification requirement.

(b) All cervids of any age shall be individually identified by at least one form of identification approved by the Department prior to movement from the original herd premises unless being moved directly to a licensed commercial hunting-area harvest facility.

(c) The removal of an official identification device is prohibited except at the time of slaughter, at any other location upon death of the animal, or as otherwise approved by the State Veterinarian.

(d) An unofficial identification device may be removed prior to release of an animal in a harvest facility.

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

### PART 7. INTERSTATE MOVEMENT REQUIREMENTS

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

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

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

[OAR Docket #23-555; filed 6-15-23]

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 17. WATER QUALITY

[OAR Docket #23-556]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Registered Poultry Feeding Operations  
35:17-5-3. Registration, Nutrient Management Plan (NMP) required [AMENDED]

35:17-5-5. Nutrient Management Plan [AMENDED]

Appendix B. Nutrient Management Plan Requirements [NEW]

### AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2A-1 et seq., 2 O.S. § 10-2 et seq., 2 O.S. § 20-1 et seq., and 2 O.S. § 20-40 et seq.

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

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#### Superseded rules:

Subchapter 5. Registered Poultry Feeding Operations

35:17-5-3. Registration, Nutrient Management Plan (NMP) required [AMENDED]

35:17-5-5. Nutrient Management Plan [AMENDED]

Appendix B. Nutrient Management Plan Requirements [NEW]

### Gubernatorial approval:

October 20, 2022

### Register publication:

40 Ok Reg 123

### Docket number:

22-758

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments require registered poultry feeding operations to complete and implement nutrient management plans within one year of application to the Department and provide for extension; modify requirements for review and update of nutrient management plans; conform language; and provide an appendix with additional nutrient management requirements when using poultry litter and other nutrient resources.

### CONTACT PERSON:

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.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 5. REGISTERED POULTRY FEEDING OPERATIONS**

**35:17-5-3. Registration, Nutrient Management Plan (NMP) required**

(a) **Registration.**

- (1) It shall be unlawful for any person to construct or operate a new poultry feeding operation without first registering with the State Board of Agriculture.
- (2) Every poultry feeding operation shall be required to reregister annually by January 1 to operate.
- (3) Any poultry feeding operation that has a valid license pursuant to the Oklahoma Concentrated Animal Feeding Operations Act shall not be required to register pursuant to the Oklahoma Registered Poultry Feeding Operations Act.
- (4) The owner or operator of a poultry feeding operation not classified as a poultry feeding operation may register if the owner elects to come under the provisions of the Oklahoma Registered Poultry Feeding Operations Act and the rules of the State Board of Agriculture.

(b) **Nutrient Management Plan.**

- (1) Every poultry feeding operation shall obtain or apply for an approved NMP addressing both nitrogen and phosphorus.
- (2) All new operators of poultry feeding operations shall obtain or apply for a NMP prior to construction of the facility. The NMP shall be completed and implemented within one year of application.
- (3) The NMP shall be prepared by USDA NRCS or an entity approved by the Oklahoma Department of Agriculture, Food, and Forestry.
- (4) Plans shall be reviewed and updated at least every six (6) years from the date the NMP was obtained. Plans ~~may shall~~ also be reviewed and updated in the following circumstances:
  - (A) ~~When a change in the Oklahoma Department of Agriculture, Food, and Forestry changes the waste utilization standards occurs and upon notification by the Oklahoma Department of Agriculture, Food, and Forestry; and or~~
  - (B) ~~Upon recommendation notification of the Oklahoma Department of Agriculture, Food, and Forestry.~~
- (5) ~~Plans~~ The NMP shall be updated prior to the expansion of a facility.
- (6) Implementation of the NMP shall occur within ninety (90) days of receipt of the NMP unless otherwise determined by the Oklahoma Department of Agriculture, Food, and Forestry. In no event shall the poultry feeding operation land apply poultry waste in excess of the ~~current USDA NRCS 590 Standard, unless the Oklahoma Department of Agriculture, Food, and Forestry approves other standards contained in Appendix A.~~

**35:17-5-5. Nutrient Management Plan**

- (a) The NMP shall comply with all requirements contained in Appendix B and shall contain, at a minimum, the following:

- (1) A description of poultry waste handling procedures and availability of equipment and type of equipment to be used.
- (2) The calculations and assumptions used for determining land application rates.
- (3) All nutrient analysis data, including soil and poultry waste testing.
- (4) Legal description of lands to be used by an operation for land application.
- (5) Soils map with description and type or series.
- (6) Land application rates of poultry waste shall be based on the available nitrogen and phosphorus content of the poultry waste and soil test results.
- (7) The procedures documented in the NMP shall ensure that the handling and utilization of poultry waste complies with the following requirements:
  - (A) Adequate poultry waste storage shall be provided. Poultry waste shall not be stored without adequate protection from rainfall and runoff. All new poultry feeding operations shall make provisions for storage of poultry waste prior to operating. Exceptions to storage requirements for poultry waste in emergency situations shall be granted on a case by case basis. Exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. However, in all situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.
  - (B) Poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen or snow covered except in conformance with the NMP.
  - (C) Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the NMP. Runoff of poultry waste from the application site is prohibited.
  - (D) All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented in the NMP.
  - (E) Edge of field, grassed strips shall separate water courses from runoff which may be carrying eroded soil and poultry waste.
  - (F) Poultry waste application shall be prohibited on land subject to excessive erosion.
  - (G) Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions.
  - (H) Poultry waste shall only be applied ~~only~~ by a certified poultry waste applicator.
- (b) The NMP shall also include a method for the disposal of carcasses. The NMP shall include provisions for disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher

## Permanent Final Adoptions

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than normal mortality rates. Accepted methods of carcass disposal include:

- (1) Rendering
  - (A) Disposal of all carcasses shall occur within a reasonable period of time as approved by the State Department of Agriculture.
  - (B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.
- (2) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and specific measures and practices are identified which will be utilized to protect the ground and surface waters of the State.
  - (3) Composting by methods as approved in the NMP.
  - (4) Incineration shall only be used as a method of carcass disposal if the poultry feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division, if required.
  - (c) Storage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State.
  - (d) The operator shall notify the State Department of Agriculture within twenty-four (24) hours of a discharge.

**APPENDIX B. NUTRIENT MANAGEMENT PLAN REQUIREMENTS [NEW]**

**DEFINITION**

Managing the amount, source, placement, form, and timing of the application of poultry litter and nutrients and soil amendments for optimum plant growth and protecting the environment.

**PURPOSES**

- To budget and supply nutrients for plant production.
- To properly utilize manure or organic by-products as a beneficial plant nutrient source.
- To minimize agricultural nonpoint source pollution of surface and ground water resources.
- To maintain or improve the physical, chemical, and biological condition of soil.

**CRITERIA**

**General Criteria Applicable to All Purposes**

A nutrient budget for nitrogen (N), phosphorus (P), and potassium (K) shall be developed that considers all potential sources of nutrients (Exhibit 1, Tables 1 and 2).

Realistic yield goals shall be established using guidance outlined in Oklahoma State University Extension (OSU) Fact Sheet F-2225, OSU Soil Test Interpretations (<https://extension.okstate.edu/fact-sheets/osu-soil-test-interpretations.html>). A realistic yield goal is generally the average of three highest yields over the last five years. Rates of nutrient application established by OSU shall be the basis for nutrient recommendations. For new crops or varieties, industry yield recommendations may be used until documented yield information is available.

Plans for nutrient management shall specify the form, source, amount, timing, and method of application for each field to achieve realistic production goals and minimize the loss of nutrients to erosion, runoff, volatilization, and leaching.

Using effluent water for irrigating crops and grasses can increase salt concentrations in the soil creating a negative impact on plant growth. OSU Factsheet PSS-2245 (<https://extension.okstate.edu/fact-sheets/using-lagoon-effluent-as-fertilizer.html>) contains guidance for irrigating with effluent water.

**SOIL AND TISSUE SAMPLING LABORATORY ANALYSIS (TESTING)**

Nutrient planning shall be based on current soil test results developed in accordance with OSU guidance.

Soil samples shall be taken at least as often as the Registered Poultry Feeding Operations Act requires. Non-cultivated fields should be sampled during the dormant season. Fields used for cultivation should be sampled after harvest or before planting. Do not sample immediately after lime, fertilizer, or manure applications. Soil sampling shall occur prior to the first land application of the calendar year.

The OSU County Extension Service Office is available to assist with the soil testing process. Additional information concerning soil sampling can be found in the OSU Extension Fact Sheet F-2207, How to Get a Good Soil Sample (<https://extension.okstate.edu/fact-sheets/how-to-get-a-good-soil-sample.html>).

## Permanent Final Adoptions

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If a soil test laboratory other than OSU is used, the lab shall use the same phosphorus and potassium extractant (Mehlich-3) as used by the OSU lab and nutrient recommendations will be the same as those used by OSU. The soil testing laboratory shall be a member of the North American Proficiency Testing Program or Agricultural Laboratory Proficiency Program.

Soil testing shall include analysis for any nutrients for which specific information is needed to develop the nutrient management plan (e.g., pH, N, P, and K). Additional information concerning soil testing can be found in the [OSU Extension Fact Sheet F-2225, OSU Soil Test Interpretations and Fact Sheet F-2901, Procedures Used by OSU Soil, Water, and Forage Analytical Laboratory](#).

### **ADDITIONAL CRITERIA TO BUDGET AND SUPPLY NUTRIENTS FOR PLANT PRODUCTION**

Plant nutrient removal rates can be found in Table 3. Nutrient removal rates for crops or forage combinations not listed in Table 3 may be calculated using the USDA Crop Nutrient Tool (<https://plantsorig.sc.egov.usda.gov/npk/main>).

Do not apply nutrients in the following situations:

- Animal manure shall not be land applied within 500 feet of the corner of an occupied residence not owned or operated by the feeding operation.
- Animal manure shall not be land applied within 300 feet of an existing public or private drinking water well.
- To areas within 100 feet of a perennial stream, pond, well, or sinkhole, unless an established buffer strip is present. The width of the buffer strip shall be used as a setback distance for application purposes. The buffer strip shall meet the requirements for design and maintenance established in the appropriate United States Department of Agriculture Natural Resources Conservation Service (NRCS) or OSU buffer standard and specification.
- To areas within 50 feet of an intermittent stream unless an established buffer strip is present. The width of the buffer strip shall be used as a setback distance for application purposes. The buffer strip must meet the requirements for design and maintenance established in the appropriate NRCS or OSU buffer standard and specification.
- To fields with > 15% slope.
- To soils less than 10 inches in depth to parent material.
- On soils that are frequently flooded.
- On soils that are frozen, snow covered, or water saturated (including periods of heavy rain when water ponding has occurred on the soil surface).
- On soils where the rock fragments in the surface layer are 3 to 10 inches in diameter and exceed 50% by volume.
- On soils where the rock fragments in the soil surface layer are > 10 inches in diameter and exceed 25% by volume.
- On soils where the rock fragments are > 10 inches in diameter which covers > 3% of the soil surface and the slope is > 8%. (Soil map unit name will include the description of Extremely Stony, Extremely Bouldery, Extremely Rubbly, or Very Rubbly)
- On areas eroding at levels greater than the soil loss tolerance, "T", from wind or water erosion or active gullies unless following a conservation plan that will reduce erosion below "T". Use current NRCS soil loss prediction methods.
- On soils that are occasionally flooded. Manure may be applied between June 20 and September 20 on soils classified as occasionally flooded. Manure may also be applied to soils classified as occasionally flooded between February 1 and April 20 if the area is established to cool season grasses four inches in height at the

time of application. In no case will manure be applied when the soil is water saturated or when ponding has occurred on the soil surface after periods of heavy rain.

### **Organic Nutrient Application Rates**

Timing and method of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, cropping system limitations, weather and climatic conditions, availability of nutrients in manure, and field accessibility. Nutrients materials will be applied uniformly to the area. The application rate for liquid manure shall not create runoff and shall minimize ponding.

The application rate shall be based on the most limiting application based on Nitrogen (N) and Phosphorus (P). The following shall also be used when applying manure or organic by-products:

- **N Application** – The amount of N applied from manure shall not exceed the annual crop requirement for N. In some situations, additional N from inorganic/commercial sources may be required to supplement the organic sources. Manure may be applied to a legume crop at a rate equal to the estimated N removal in the harvested plant biomass.
- **P Application** – The maximum planned rates of P application shall be determined using a P assessment.

### **Field Risk Assessment**

When applications of manure or other organic by-products are planned, a field-specific assessment of the potential for P and N transport from the site shall be completed as detailed below. (Tables 4 and 5)

### **Additional Criteria to Minimize Agricultural Non-Point Source Pollution of Surface and Ground Water Resources**

Nutrient application rates are limited for certain water bodies in watersheds identified by the Oklahoma Department of Environmental Quality (ODEQ) as Nutrient Limited Watersheds and Nutrient Vulnerable Groundwaters in the Oklahoma Administrative Code (OAC) 252:30 of the Oklahoma Water Quality Standards. (Tables 5 and 6)

### **PLANS AND SPECIFICATIONS**

Plans and specifications shall be in keeping with Appendix A and shall describe the requirements for implementing a practice to achieve its intended purpose, using nutrients to achieve production goals and to prevent or minimize water quality impairment.

The following components shall be included in the nutrient management plan as applicable:

- Aerial photograph or map and a soil map of the site,
- Plant production sequence or crop rotation,
- Results of soil, plant, water, manure, and/or organic by-product sample analyses,
- Realistic yield goals for the crops in the rotation based on OSU guidance,
- Recommended nutrient rates, timing, form, and method of application and incorporation,
- Guidance for implementation, operation, maintenance, recordkeeping, and
- Completed nutrient budget for N, P, and K for the rotation or crop sequence.

If increases in soil phosphorus levels are expected, plans shall document:

- The soil phosphorus levels at which it may be desirable to convert to phosphorus based implementation,
- The relationship between soil phosphorus levels and potential for phosphorus transport from the field,
- The potential for soil phosphorus drawdown from the production and harvesting of crops, and
- The management activities or techniques used to reduce the potential for phosphorus loss.

## **Permanent Final Adoptions**

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When applicable, plans shall include other practices or management activities as determined by specific regulation, program requirements, or producer goals.



TABLE 1: Nitrogen Requirements

The nitrogen requirement is calculated by subtracting the soil test nitrogen value from the nitrogen required for a selected crop and yield goal.

Established Bermudagrass		Cool Season Grasses (Fescue, Orchard)		Established Old World Bluestem		Established Weeping Lovegrass	
N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac
50	1	60	1	35	1	35	1
100	2	120	2	70	2	70	2
150	3	180	3	110	3	110	3
200	4	240	4	150	4	160	4
260	5	300	5	200	5	220	5
320	6						
400	7						

Virgin Native Hay Meadow		Small Grains for Grazing		Canola		Forage Sorghum or Corn Silage		
N Required lbs/ac	Yield Goal lbs/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal lbs/ac	N Required lbs/ac	Yield Goal	
							Silage tons/ac	Hay tons/ac
0	1.0	30	0.5	50	1000	45	5	2.5
50	1.5	60	1.0	75	1500	90	10	5.0
100	1.6	90	1.5	100	2000	135	15	7.5
		120	2.0	125	2500	185	20	10.0
		150	2.5	150	3000	240	25	12.5
		180	3.0	175	3500	300	30	15.0

N Required lbs/ac	Wheat	Barley	Oat	Corn		Grain Sorghum		Cotton	
	Yield Goal bu/ac			N Required lbs/ac	Yield Goal lbs/ac	N Required lbs/ac	Yield Goal bu/ac	N Required lbs/ac	Yield Goal bales/ac
30	15	20	25	40	40	30	2000	30	0.50
40	20	25	35	50	50	40	2500	45	0.75
60	30	35	55	60	60	50	3000	60	1.00
80	40	50	70	85	85	70	4000	75	1.25
100	50	60	90	110	100	85	4500	90	1.50
125	60	75	105	130	120	100	5000	105	1.75
155	70	90	125	190	160	160	7000	120	2.00
185	80	100	140	215	180	195	8000	135	2.25
240	100	125	175	240	200	230	9000	150	2.50
				300	250			165	3.00

# Permanent Final Adoptions

				360	300				180	3.50
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Alfalfa	Peanuts	Soybeans	Mungbeans, Cowpeas, Guar
10 to 20 lbs/ac for establishment. None needed for maintenance	10 to 20 lbs/ac with P and K	10 to 20 lbs/ac with P and K	10 to 20 lbs/ac with P and K

### Nitrogen Requirements

#### *Nitrogen Recommendations for Establishing Grass*

Soil Test N <sup>1/</sup>	Native Grass / Bluestem Establishments	All Other Grass Establishments
	N Required lbs/ac	
0	0	40
1	0	39
2	0	38
3	0	37
4	0	36
5	0	35
6	0	34
7	0	33
8	0	32
9	0	31
10	0	30
11	0	29
12	0	28
13	0	27
14	0	26
15	0	25
16	0	24
17	0	23
18	0	22
19	0	21
20	0	20
21+	0	0

<sup>1/</sup> Nitrogen soil test values are only valid if test is within the last 60 days; therefore, assume nitrogen soil test of zero (0) when old tests are used.

Note: For recommendations on maintenance of grass stands for long-term deferment programs (e.g., CRP) follow the guidance in Tables 1, 2, 3 of this Appendix A.

TABLE 2: Phosphorus Requirements

P Soil Test Index	Established Bermudagrass		Established Cool Season Grasses		Established Old World Bluestem		Established Weeping Lovegrass	
	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency
0	75	50	80	30	60	50	60	50
10	60	65	60	50	40	70	50	70
20	40	80	40	70	30	85	40	85
40	20	95	20	95	20	95	20	95
65+	0	100	0	100	0	100	0	100

P Soil Test Index	Virgin Native Hay Meadows		Small Grains for Grazing		Legumes in Pasture		Canola	
	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency
0	40	50	80	25	75	50	80	25
10	20	80	60	45	60	65	60	45
20	0	95	40	80	40	80	40	80
40	0	100	20	90	20	95	20	90
65+	0	100	0	100	0	100	0	100

P Soil Test Index	Small Grains		Grain Sorghum		Corn		Cotton	
	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency
0	80	25	60	40	80	30	75	55
10	60	45	50	60	60	60	60	70
20	40	80	40	80	40	80	45	85
40	20	90	20	95	20	95	30	95
65+	0	100	0	100	0	100	0	100

P Soil Test Index	Alfalfa		Peanuts		Soybeans		Mungbean, Cowpeas, Guar	
	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency
0	200	20	80	40	70	40	70	40
10	150	50	60	60	50	60	50	60
20	100	70	40	80	30	80	30	80
40	60	90	20	95	20	95	20	95

# Permanent Final Adoptions

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65+	0	100	0	100	0	100	0	100
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**Phosphorus Requirements**

Phosphorus Recommendations for Establishing Grass

P Soil Test Index	Bermudagrass Establishments	Fescue and Cool Season Grass Establishments	Bluestem and Lovegrass Establishments	Native Grass Establishments
	P <sub>2</sub> O <sub>5</sub> lbs/ac			
0	40	40	40	40
1	40	40	40	38
2	40	40	40	36
3	40	40	40	34
4	40	40	40	32
5	40	40	40	30
6	40	40	40	28
7	40	40	40	26
8	40	40	40	24
9	40	40	40	22
10	40	40	40	20
11-20	40	40	30	0
21-40	30	30	20	0
41-48	20	20	0	0
49+	0	0	0	0

Note: For recommendations on maintenance of grass stands for long-term deferment programs (e.g., CRP) follow the guidance in Tables 1, 2, 3 of this Appendix A.

P Soil Test Index	Forage Sorghum or Corn Silage	
	P <sub>2</sub> O <sub>5</sub> lbs/ac	Percent Sufficiency
0	100	30
10	75	60
20	45	80
40	25	95
65+	0	100

TABLE 3: Crop Nutrient Removal \*

% of Dry Material Harvested						
Forage as Hay Crop			% Moisture (default)	%N	%P	%K
Bermuda			9.05	1.37	0.19	1.55
Tall Fescue			12.50	1.71	0.30	1.96
Native Hay			9.50	1.52	0.22	1.45
Alfalfa			9.65	2.79	0.26	2.12
Ryegrass			12.74	1.49	0.20	1.42
Wheatgrass			10.85	1.34	0.07	
Clovers			11.99	2.63	0.27	2.35
Eastern Gamagrass			10.85	1.51	0.10	3.06
% of Dry Material Harvested						
Crop	Unit	Weight/Unit	% Moisture (default)	%N	%P	%K
Barley	grain	48 lbs/bu	11.72	2.11	0.42	0.54
	straw	72 lbs/bu	11.25	0.69	0.10	1.79
Corn	grain	56 lbs/bu	13.52	1.64	0.31	0.34
	stove	56 lbs/bu	13.30	0.98	0.10	1.50
Oats	grain	32 lbs/bu	10.67	2.09	0.38	0.46
	straw	64 lbs/bu	9.68	0.71	0.09	2.39
Rye	grain	56 lbs/bu	11.88	2.14	0.38	0.52
	straw	84 lbs/bu	9.07	0.50	0.09	0.97
Sorghum	grain	56 lbs/bu	11.18	1.87	0.33	0.39
	stove	56 lbs/bu	8.13	0.67	0.13	0.73
Soybeans	beans	97 lbs/bu	10.12	6.57	0.67	1.54
	straw	75 lbs/bu	11.07	0.83	0.06	0.57
Wheat	grain	60 lbs/bu	11.68	2.30	0.43	0.49
	straw	92.48 lbs/bu	9.22	0.64	0.06	1.17
Cotton	lint & seed	500 lbs/bale	7.80	3.30	0.41	0.49
	burs & stalks	3 lbs/lb of lint	7.70	0.99		

\* These crop nutrient removal figures come from the NRCS Agricultural Waste Management Field Handbook, Chapter 6, Role of Plants in Waste Management (Table 6-6). The handbook lists additional crops not listed above. These numbers represent average figures taken from multiple sources and are nutrients removed in the harvested portion of the crop. These figures can be used as guidance for waste management planning purposes. Actual waste application will be based on soil test.

Example calculation to estimate nutrients removed

Bermuda: Yield 3 tons/ac forage = 6000 lbs/ac hay  
 (6000 lbs- (6000 lbs X 0.0905 (% moisture))) X 0.0019 (%P/lb) = 10.37 lbs/ac phosphorus in hay  
 (6000 lbs – (6000 lbs X 0.0905 (% moisture))) X 0.0137 (%N/lb) = 75.01 lbs/ac nitrogen in hay  
 (6000 lbs – (6000 lbs X 0.0905 (% moisture))) X 0.0155 (%K/lb) = 84.57.0 lbs/ac potassium in hay

Wheat: Yield 40 bu/ac = 60 lbs/bu x 40 bu = 2400 lbs of grain  
 40 bu/ac x 92.48 lbs/bu straw = 3,699.2 lbs/ac straw produced  
 1 ton/ac straw baled and removed from field = 1 ton/ac x 2000 lbs = 2000 lbs of straw/ac Grain:

$$(2400 \text{ lbs/ac} - (2400 \text{ lbs/ac} \times 0.1168 (\% \text{ moisture}))) \times 0.0230 (\% \text{N/lb}) = 48.75 \text{ lbs/ac Nitrogen in}$$

**grain**

$$(2400 \text{ lbs/ac} - (2400 \text{ lbs/ac} \times 0.1168 (\% \text{ moisture}))) \times 0.0043 (\% \text{P/lb}) = 9.11 \text{ lbs/ac Phosphorus in}$$

**grain**

$$(2400 \text{ lbs/ac} - (2400 \text{ lbs/ac} \times 0.1168 (\% \text{ moisture}))) \times 0.0049 (\% \text{K/lb}) = 10.39 \text{ lbs/ac Potassium in}$$

**grain**

$$\text{Straw: } (2000 \text{ lbs/ac} - (2000 \text{ lbs/ac} \times 0.0922 (\% \text{ moisture}))) \times 0.0064 (\% \text{N lb}) = 11.62 \text{ lbs/ac Nitrogen in}$$

**straw**

$$(2000 \text{ lbs/ac} - (2000 \text{ lbs/ac} \times 0.0922 (\% \text{ moisture}))) \times 0.0006 (\% \text{P lb}) = 1.09 \text{ lbs/ac Phosphorus in}$$

**straw**

$$(2000 \text{ lbs/ac} - (2000 \text{ lbs/ac} \times 0.0922 (\% \text{ moisture}))) \times 0.0057 (\% \text{K/lb}) = 10.35 \text{ lbs/ac Potassium in}$$

**straw**

**Total Nutrient Removed = 60.37 lbs/ac N removed, 10.2 lbs/ac P removed, 20.74 lbs/ac K removed**

# Permanent Final Adoptions

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**Table 4: Annual Manure Application Rates for Non-Nutrient Limited Watersheds and Non-Nutrient Vulnerable Groundwaters**

Rating	Soil Test P Index	0 – 8% Slope	8 to 15% Slope	0 to 15% Slope
		Soil > 20" Deep	Soil > 20" Deep	Soil 10" to 20" Deep
*Low	0 – 65	Full Rate	Full Rate Split Application	Half Rate
*Moderate	66 – 250	Full Rate	Half Rate	Half Rate
*High	251 – 400	Half Rate	Half Rate	Half Rate
*Very High	> 400	Plant Removal <sup>1</sup>	Plant Removal <sup>1</sup>	Plant Removal <sup>1</sup>
*Severe	*	No Application	No Application	No Application

Rating	Soil Test P Index	Rocks >10" in diameter which cover >3% of the soils surface and <8% slope
*Low	0 – 65	Half Rate
*Moderate	66 – 250	Half Rate
*High	251 – 400	Half Rate
*Very High	> 400	Plant Removal <sup>1</sup>
*Severe	*	No Application

<sup>1</sup> Note – It may not be feasible to calibrate equipment and make manure applications at the Plant Removal rate.



**Table 5: Annual Manure Application Rates for Nutrient Limited Watersheds**

Rating	Soil Test P Index	0 – 8% Slope	8 to 15% Slope	0 to 15% Slope
		Soil > 20" Deep	Soil > 20" Deep	Soil 10" to 20" Deep
*Low	0 – 65	Full Rate	Full Rate Split Application	Half Rate
*Moderate	66 – 120	Full Rate	Half Rate	Half Rate
*High	121 – 300	Half Rate	Half Rate	Half Rate
*Severe	> 300	No Application	No Application	No Application

Rating	Soil Test P Index	Rocks >10" in diameter which cover >3% of the soils surface and <8% slope
*Low	0 – 65	Half Rate
*Moderate	66 – 120	Half Rate
*High	121 – 300	Half Rate
*Severe	> 300	No Application

\* See **Severe Rating - No Application** listed below. Check for specific site characteristics which may deem the field inadequate for manure application from the list below.

Annual manure application rates are listed below.

**Manure Application Rates**

**Full Rate – Not to exceed the Nitrogen requirement of the crop and the following P<sub>2</sub>O<sub>5</sub> rates:**

1. 200 lbs P<sub>2</sub>O<sub>5</sub> per acre when surface applied.
2. 300 lbs P<sub>2</sub>O<sub>5</sub> per acre when application is by sprinkler irrigation and managed to prevent runoff from the field.
3. 400 lbs P<sub>2</sub>O<sub>5</sub> per acre if injected or incorporated below the soil surface.

**Half Rate – Not to exceed the Nitrogen requirement of the crop and the following P<sub>2</sub>O<sub>5</sub> rates:**

1. 100 lbs P<sub>2</sub>O<sub>5</sub> per acre when surface applied.
2. 150 lbs P<sub>2</sub>O<sub>5</sub> per acre when application is by sprinkler irrigation and managed to prevent runoff from the field.
3. 200 lbs P<sub>2</sub>O<sub>5</sub> per acre if injected or incorporated below the soil surface.

**Split Application –**

1. Nitrogen- Not to exceed the Nitrogen requirement of the crop, applied during the growing season
2. Phosphorus- Application will be no more than ½ the allowed P<sub>2</sub>O<sub>5</sub> rate per application at least 30 days apart.

**Severe Rating - No Manure Application.**

**Table 6: Mitigation for Nutrient Vulnerable Groundwaters**

Leaching Index (LI)	Groundwater Vulnerability Rating	Mitigating Activities	RATING
0 - 5	High	One (1) activity	<b>LOW</b>
	Very High	One (1) activity	
5 - 10	High	Two (2) activities	<b>MODERATE</b>
	Very High	Two (2) activities	
10+	High	Three (3) activities	<b>HIGH</b>
	Very High	Four (4) activities	

**MITIGATING ACTIVITIES:**

- Delay nitrogen application until plants are actively growing (4" minimum height)
- Apply split applications of 50% of the total nitrogen needs
- Seasonal nitrogen requirements for actively growing plants shall be split to provide no more than 40 lbs of actual nitrogen every 4 – 6 weeks. Warm season plants – apply ≤ 40 lbs/acre Nitrogen during early spring (green up), after first cutting or grazing (late May – early June), or late summer. Cool season plants- apply ≤40 lbs/ac in the fall at planting. Add the remaining recommended amount in early spring (Feb – March).
- Nitrogen will not be applied during expected heavy rainfall months (April, May, and June) on warm season plants.
- Lower realistic yield expectation by 25%
- Use enhanced efficiency fertilizer products (sulfur coated urea products, polymer coated fertilizers, uncoated slow release fertilizers).
- Utilize nitrogen release strip and GreenSeeker sensors to make mid-season nitrogen applications
- Use precision agricultural technologies to precisely apply variable rates of nitrogen fertilizer.
- Utilize annual soil testing.
- Banding nitrogen applications.
- Use legume crops and cover crops to provide nitrogen through biological fixation and nutrient recycling.

*[OAR Docket #23-556; filed 6-15-23]*

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

[OAR Docket #23-557]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 17. Combined Pesticide
- Part 3. Certification, Conduct of Examinations, and Recertification
- 35:30-17-4. Examination of applicants for certification [AMENDED]
- Part 5. Prerequisites for Licensing
- 35:30-17-10. Application insurance requirements [AMENDED]
- Part 10. Minimum Standards for Pesticides
- 35:30-17-22.2. Pesticide enforcement [AMENDED]
- Part 11. Standards for Application of Pesticide
- 35:30-17-25. Pesticide application by certified applicators, noncertified applicators, service technicians, and private applicators [AMENDED]
- Part 17. Minimum Standards for Termite Work for Preconstruction (Pretreats) and New Construction
- 35:30-17-73. Concrete Slabs [AMENDED]
- Subchapter 45. Scrap Metal Dealers
- 35:30-45-9. Purchases, sales, and records [AMENDED]

**AUTHORITY:**

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

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

November 1, 2022

**COMMENT PERIOD:**

December 2, 2022, and ending January 4, 2023

**PUBLIC HEARING:**

January 4, 2023

**ADOPTION:**

January 26, 2023

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

February 2, 2023

**LEGISLATIVE APPROVAL:**

Approved May 31, 2023 by SJR 22

**FINAL ADOPTION:**

May 31, 2023

**EFFECTIVE:**

September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 U.S.C. 136 et seq., 40 CFR 171.103, 171.105, and 171.201.

**Incorporating rules:**

- 35:30-17-4
- 35:30-17-22.2
- 35:30-17-25

**Availability:**

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

**GIST/ANALYSIS:**

The proposed rule amendments require examinations for certain applicants to comply with certain federal standards; provide for approval of liability self-insurance policy in certain circumstances; expand certain authority for enforcement of certain federal provisions; provide certain requirements for noncertified applicators; modify standards for pretreatment of concrete slabs; and update language to conform with statutory changes.

**CONTACT PERSON:**

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.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 17. COMBINED PESTICIDE**

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

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

- (a) The written examination for certification of commercial and noncommercial applicators shall include two (2) phases. Phase I shall consist of general knowledge common to all licensed categories and shall be successfully completed before examination is attempted in any license category. Phase II shall consist of specific knowledge for each licensed category. An applicant may test in as many different licensed categories as desired. An applicant shall successfully complete a Phase II examination within twelve (12) months of passing the Phase I examination. Failure to meet the twelve (12) month deadline shall require an applicant to re-take the Phase I examination.
- (b) The written examination for certification of commercial and noncommercial applicators shall comply with the competency standards provided in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Section 171.103 and shall be computer based and conducted at a site determined by the board.
- (c) A practical examination shall also be required for commercial and noncommercial applicators in the following categories: Structural Pest, General Pest, Fumigation, and Food Processing. An individual shall successfully complete the practical examination within twelve (12) months of passing the Phase II written examination in the above categories. Failure to meet the twelve (12) month deadline shall require an individual to re-take the Phase II written examination.
- (d) The practical examination shall be conducted at the training facility at Oklahoma State University and includes the successful completion of an approved training program which demonstrates a thorough knowledge in the handling of pesticides, labels and labeling requirements, storage, transportation, mixing, application, disposal, insect biology and safety. The facility at Oklahoma State University meets the following conditions for treatment in the Structural Pest Category: crawl space, voids, and a concrete floor, garage floor, or patio slab.
- (e) A service technician shall be certified upon successful completion of a written service technicians examination. An individual shall not act, do business, or advertise as a service technician unless a service technician identification has been issued by the Board. A service technicians' identification shall be issued in the name of the licensed entity. The licensee shall return the service technician identification to the Board upon termination of the employee. A service technician identification shall be valid for five (5) years unless suspended, canceled,

## Permanent Final Adoptions

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revoked, or the service technician is no longer employed by the licensed entity. Recertification may be required at any time by the Board. The Department may issue a service technician identification upon completion of the following:

- (1) A determination is made by the Department that the applicant has successfully completed the written examination;
  - (2) The licensed entity provides a completed service technician identification application form at the time of testing; and
  - (3) All appropriate fees are paid at the time of testing.
- (f) The written examination for service technician shall be computer based and conducted at a site determined by the board.
- (g) Private applicators shall complete a certification form and an education program or written examination as required by the Board. Private applicators in the Fumigation category shall be required to complete the certification form and a closed book written exam and successfully complete the Fumigation practical at the training facility at Oklahoma State University within twelve (12) months of passing the Fumigation written exam.
- (h) The written examination for private applicators shall comply with the competency standards provided in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Section 171.105 and shall be computer based and conducted at a site determined by the board.
- (i) An individual shall not act, do business, or advertise as a certified applicator unless all qualifications and standards required by the Board have been met. A certificate in any category shall be valid for five (5) years unless suspended, canceled, or revoked. Recertification may be required by the Board; but shall not exceed one recertification in a five (5) year period.
- (j) Successful completion of any written examination shall be a score of 70% or greater.
- (k) The Department may require that an individual seeking a certified applicator or service technician certification demonstrate the capability to read and write with sufficient proficiency to comprehend the content and instructions of a pesticide label.

### PART 5. PREREQUISITES FOR LICENSING

#### **35:30-17-10. Application insurance requirements**

- (a) The Board shall not issue an applicator's license until the applicant or agent has furnished evidence of financial responsibility. A liability insurance policy or certification shall protect persons who may suffer legal damages as a result of the pesticide operations of the applicant. The policy need not apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.
- (b) With the exception of aerial pesticide applicators, pesticide applicators obtaining liability insurance pursuant to this section shall file a certificate of insurance with the Department, verifying insurance in an amount of not less than \$50,000 bodily injury, \$100,000 bodily injury per occurrence,

and \$50,000 property damage. The provisions of this section with regard to "per occurrence" are specifically intended to be interpreted per occurrence, rather than per claimant. The insurance obtained pursuant to this section shall insure against liability for damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the application of any pesticide. A current certificate of insurance ~~must~~shall be filed with each initial and subsequent renewal registration.

(c) Aerial pesticide applicators obtaining liability insurance pursuant to this section shall file a certificate of insurance with the Department, verifying insurance in an amount of not less than \$100,000 bodily injury, \$300,000 bodily injury per occurrence, and \$100,000 property damage. The provisions of this section with regard to "per occurrence" are specifically intended to be interpreted per occurrence, rather than per claimant. The insurance obtained pursuant to this section shall insure against liability for damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the application of any pesticide. A current certificate of insurance must be filed with each initial and subsequent renewal registration.

(d) Liability insurance shall be maintained at all times during the licensed period. The Board shall be notified by the insurer fifteen (15) days prior to any applicant's request for a reduction or cancellation of the liability insurance. The total and the aggregate of the insurer for all claims shall be limited to the face amount of the liability insurance policy. The Board may accept a liability insurance policy with a deductible clause in an amount not exceeding \$5,000 for all applicators. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the Board unless the applicant has furnished the Board with additional liability insurance which satisfies the amount of the deductible.

(e) The Department may approve a liability self-insurance policy with a deductible clause that exceeds the requirements of subsection (d) of this section if the applicant has:

- (1) Been continuously engaged in business for not less than three (3) years immediately preceding the application;
- (2) At least one hundred (100) employees (all states included); and
- (3) At least One Million Dollars (\$1,000,000.00) in net assets.

(f) An applicant may request a waiver of some or all of the requirements of subsection (e) subject to a security deposit or other insurance requirements as determined by the Department.

(g) If the furnished liability insurance becomes unsatisfactory, the applicant shall upon notice immediately provide new liability insurance. Upon failure to do so, the Board shall cancel the license and give notice. It shall be unlawful to engage in the business of applying pesticides until the insurance is brought into compliance and the license is reinstated by the Board.

(~~h~~) Application of a pesticide specifically excluded on the insurance policy shall be considered working without a license.

**PART 10. MINIMUM STANDARDS FOR PESTICIDES**

**35:30-17-22.2. Pesticide enforcement**

The Board is authorized to enter any premise during normal business hours for the purpose of:

- (1) Determining whether pesticides or devices comply with the provisions of the law.
- (2) Procuring samples of pesticides and devices.
- (3) Examining and obtaining copies of records and documents relative to the shipment, manufacture, application of, or sale of pesticides or devices.
- (4) Monitoring and evaluating the application and effects of application of any pesticide registered as a Special Local Need 24(c), Experimental Use Permit, or Emergency Exemption Section 18 of the Federal Pesticide Law (FIFRA).

(5) Enforcing the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq.

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

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

- (a) A certified applicator shall be on site to use any pesticide when required by the label or labeling.
- (b) A certified applicator shall be on site to supervise any pesticide application by a non-service technician.
- (c) A service technician shall be on site to make the actual application of any pesticide unless a certified applicator is present at the job site.
- (d) A certified applicator may be a service technician in other categories for a licensed company without completing the service technician's examination.
- (e) Certified applicators, noncertified applicators, service technicians, and private applicators shall be a minimum of eighteen (18) years of age to purchase restricted use pesticides and to make pesticide applications.
- (f) **"Noncertified applicator"** means a person who has not met the exam qualifications of a certified applicator.
- (g) **"Nonservice technician"** means a person who has not met the exam qualifications of a service technician.
- (h) A noncertified applicator shall receive approved safety training from a certified applicator or qualified trainer prior to application of a restricted use pesticide as outlined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 40 CFR Section 171.201.

(1) Employers of noncertified applicators shall keep the following records for a minimum of two (2) years:

(A) The printed name and signature of the noncertified applicator;

(B) The name of the person who provided the approved training;

(C) The date the training was completed; and

(D) The title or description of the training.

(2) The provisions of this subsection shall not apply to a noncertified applicator making an application of restricted use pesticide on a family farm.

(3) For the purposes of this section a "noncertified applicator" shall mean an applicator who is not a certified applicator, service technician, or private applicator.

**PART 17. MINIMUM STANDARDS FOR TERMITE WORK FOR PRECONSTRUCTION (PRETREATS) AND NEW CONSTRUCTION**

**35:30-17-73. Concrete Slabs**

(a) All pretreatment pesticide applications shall follow the pesticide label instructions including the application rates and methods. Treatments using less than label recommended concentrations at higher volume or higher concentrations at reduced volume applications are prohibited for pre-construction treatments. A written contract shall be provided that conforms with all requirements for contracts issued in the Structural Pest Category. In addition, the contract shall include the total square footage treated, the total linear feet treated, and any additional information required.

(b) Pretreatment of main slab areas (including attached garages) is as follows:

- (1) Termiticide shall be applied at the rate specified on the label and in accordance with label instructions to the entire area to be covered by concrete, for the establishment of horizontal and/or vertical barriers.
- (2) Horizontal barriers shall be established.
- (3) Vertical barriers shall be established by trenching or trenching and rodding through the bottom of the trench and at the rate prescribed by the label. When trenching cannot be performed due to elements of construction (i.e. coarse aggregate fill, rebar, etc.) the treatment may be accomplished by rodding the chemical at a rate specified on the label and shall be stated in the contract.
- (4) Treatment shall not be made when the soil or fill is excessively wet or when rain is imminent.
- (5) Precautions shall be taken to prevent disturbance of the treated areas by human or animal contact or prolonged exposure to the weather.
- (6) Immediately after completion of treatment to the main slab area, each termite pretreatment shall be stenciled or a sticker or tag permanently affixed to one of the stubouts in an area which will be readily accessible. The stencil, sticker, or tag shall identify the company, date of treatment, and termiticide used.

(c) Pretreatment of adjacent slabs, i.e., porches, patios, entrance pads, walkways, driveways, etc., shall be as follows:

- (1) Termiticide shall be applied at the rate specified on the label and in accordance with label instructions for application, to the adjacent slabs which abut the main structure.
- (2) Treatment and precautions shall meet the requirements in (b)(2) and (b)(3) of this Section.

# Permanent Final Adoptions

- (d) Pretreatment of outside foundations shall be as follows:
- (1) Treatment shall be applied to the soil by trenching or trenching and rodding into the bottom of the trench around the entire outside foundation of the structure after the final grade has been established. This treatment shall be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first.
  - (2) Where trenching is not possible due to rocks, concrete, gutters, etc., the treatment may be accomplished by rodding the chemical at a rate specified on the label and shall be stated in the contract.
  - (3) Where outside foundations (stem walls) have 12" or more of exposed concrete extending above the outside final grade, the outside foundation treatment may be omitted.
- (e) Pretreatment of crawl space construction shall be made in the same manner as described in the minimum standards for existing structures (SEE PART 15 of this Chapter).
- (f) Any pretreatment that does not meet all of the minimum standards for pretreatments under concrete slab or crawl space is considered "Partial Pretreats" and is not acceptable. If a portion of a structure is not treated through no fault of the applicator, it will be stated in the pretreat documentation and the contract signed by the contractor (home builder), and include specific reasoning why the area was not treated.
- (g) Pesticide applicators conducting pretreatment applications shall issue Form NPCA-99b to the builder as an attachment to the contract.
- (h) Before a concrete slab is poured, each new construction baiting system site shall be identified by a sticker or tag permanently affixed to one of the stubouts in an area which is readily accessible. The sticker or tag shall include the company name and the name of the baiting system that will be installed.
- (i) All new construction pesticide applications shall be made within three (3) months after completion of construction with baiting systems approved by the Department which meet minimum specification requirements for the treatment. All new construction treatments shall follow pesticide label instructions, including application rates and methods, and the Minimum Standards Parts 9 and 18.

## SUBCHAPTER 45. SCRAP METAL DEALERS

### 35:30-45-9. Purchases, sales, and records

- (a) A scrap metal dealer shall conduct business and maintain records of all business transactions in a manner consistent with the provisions of the Oklahoma Scrap Metal Dealers Act.
- (b) ~~A scrap metal dealer purchasing a vehicle from any person shall be required to record the make, model, license tag number and vehicle identification number of the purchased vehicle. A person selling a vehicle to a scrap metal dealer shall be required to present to the dealer the title of the vehicle or a certificate of ownership form, as approved by the Oklahoma Tax Commission and available at the Oklahoma Tax Commission or through a motor license agent, in addition to signing a~~

~~declaration of ownership as required by Section 11-92 of Title 2 of the Oklahoma Statutes. The provisions of this subsection shall not apply to sales, purchases or other transfer of vehicles between scrap metal dealers and licensed automotive dismantlers and parts recyclers.~~

~~(e) Scrap Metal Dealers using an online recording method for all record keeping shall use Leads Online, www.leadsonline.com as the internet-based reporting method.~~

[OAR Docket #23-557; filed 6-15-23]

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

[OAR Docket #23-558]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Eggs

35:37-1-2. Methods of grading [AMENDED]

Subchapter 3. Meat Inspection

Part 1. General Provisions

35:37-3-1. Incorporation by reference of federal meat inspection regulations [AMENDED]

35:37-3-3. Deleted regulations [AMENDED]

Subchapter 5. Poultry Products Inspection

Part 1. General Provisions

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

35:37-5-2. Deleted regulations and exemptions [AMENDED]

Subchapter 13. Milk and Milk Products

35:37-13-2. Incorporations by reference [AMENDED]

35:37-13-7. Inspection and permit fees [AMENDED]

35:37-13-8. Incidental sales [NEW]

Subchapter 15. Organic Products

35:37-15-2. The Adoption of NOP Standards [AMENDED]

Subchapter 17. Produce safety

35:37-17-3. Incorporation by reference of federal produce safety regulations [AMENDED]

Subchapter 19. Homemade Food

35:37-19-2. Definitions [AMENDED]

35:37-19-3. Sale and delivery requirements [AMENDED]

### AUTHORITY:

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

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

November 1, 2022

### COMMENT PERIOD:

December 2, 2022, and ending January 4, 2023

### PUBLIC HEARING:

January 4, 2023

### ADOPTION:

January 26, 2023

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

February 2, 2023

### LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

### FINAL ADOPTION:

May 31, 2023

### EFFECTIVE:

September 11, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

7 CFR Parts 56 and 205 (2021 Version), 9 CFR Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 (2021 Version), 21 CFR Part 112 (2021 Revision), unless otherwise specified, Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program on the National Conference on Interstate Milk Shipments (Procedures), 2019 Revision, Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers (MMSR), 2019 Revision, and Evaluation of Milk Laboratories (EML), 2019 Revision.

**Incorporating rules:**

- 35:37-1-2
- 35:37-3-1
- 35:37-3-3
- 35:37-5-1
- 35:37-5-2
- 35:37-13-2
- 35:37-15-2
- 35:37-17-3

**Availability:**

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

**GIST/ANALYSIS:**

The proposed rule amendments update citations to the Code of Federal Regulations and other procedures, regulations, and references; update language; provide a new permit fee for certain dairy farms and provide exception; provide new rules for incidental sales of raw milk; add definitions; and modify sale and delivery requirements for homemade food products.

**CONTACT PERSON:**

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

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

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

**SUBCHAPTER 3. MEAT INSPECTION**

**PART 1. GENERAL PROVISIONS**

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

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2021 Revision~~), Parts 301 to 391; 416; 417; 418; 424; 430; 441; 442 and 500 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of

the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry form, certificate or seal shall be substituted.

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

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

**SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION**

**PART 1. GENERAL PROVISION**

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

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

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

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

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

## Permanent Final Adoptions

(5) "Poultry byproduct" means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

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

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

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

(1) ~~The producers slaughter no more than two thousand and five hundred (2,500) two hundred and fifty (250) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;~~

(2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

(3) The poultry and poultry products do not move in commerce. Producers are prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments and are prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the producer;

(4) The producers submit a certificate of registration to the Department;

(5) The poultry is healthy, slaughtered, and processed under sanitary standards, practices, and procedures that result in the preparation of poultry products that are sound, clean, and fit for human food, and each carcass, part, or poultry product bears a label that lists ~~the customer's name,~~ the producer's name, and address and the following statement, "This poultry product has not been inspected and passed";

(6) ~~The poultry is sold directly to the household consumer, restaurant, hotel, or boardinghouse, for use in their establishment or in the preparation of meals for sales directly to consumers and transported by either the household consumer or the producer without third-party intervention or intervening transfer or storage, and is maintained in a safe and unadulterated condition during transportation; and~~

(7) ~~The producers shall meet the sanitation requirements provided in 9 CFR 416.1-5 and allow the Department to inspect sanitation at least two (2) times each year; and~~ The producers allow an authorized agent of the Department access to their facilities and an opportunity to examine records at all reasonable times, upon notice.

~~(8) The producers shall maintain records of poultry sales and allow the Department to examine records at all reasonable times, upon notice.~~

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

(1) The producers slaughter no more than two thousand five hundred (2500) turkeys or their equivalent with a ratio of four (4) birds of other species, excluding ratites, to one (1) turkey during a calendar year;

(2) The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms;

(3) The poultry is sold by the producer, or other person for distribution by the producer, solely within the producer's jurisdiction, directly to household consumers, restaurants, hotels, and boardinghouses for use in their own dining rooms or in the preparation of meals for sales directly to consumers;

(4) The producers submit a certificate of registration to the Department;

(5) The poultry is healthy, slaughtered, and processed under sanitary standards, practices, and procedures that result in the preparation of products that are sound, clean and fit for human food, and each carcass, part or poultry product bears a label that lists the producer's name and address and the following statement, "This poultry product has not been inspected and passed" and the products are not otherwise misbranded;

(6) The producers meet the sanitation requirements as provided in 9 CFR 416.1-5 and allow the Department to inspect sanitation at least two (2) times each year;

(7) The producers allow an authorized agent of the Department access to their facilities and an opportunity to examine records at all reasonable times, upon notice; and

(8) The producers do not engage, within the same calendar year, in the business of buying or selling any poultry or poultry products or engage in any other poultry exemptions, or operate an inspected poultry establishment, unless approved by the Department.

## SUBCHAPTER 13. MILK AND MILK PRODUCTS

### 35:37-13-2. Incorporations by reference

(a) **Adopted references.**

(1) PMO. "Grade A Pasteurized Milk Ordinance with Administrative Procedures - 2019 Recommendations," including Appendices A through T thereto, hereinafter referred to as the "PMO," as published in the Grade A Pasteurized Milk Ordinance, 2019 Revisions, by the Department of Health and Human Services, Public Health Service/Food and Drug Administration, Washington, D.C. is hereby incorporated by reference.

(2) Code of Federal Regulations. Where mention is made to any section or sections of the Code of Federal Regulations in the PMO, that section or sections shall be incorporated by reference. The State Board of Agriculture



declares that, by incorporating the PMO by reference, it does not intend to create any inconsistency with the Oklahoma Milk and Milk Products Act, in the event there may be any inconsistency.

(3) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program on the National Conference on Interstate Milk Shipments (Procedures), 2019 Revision.

(4) Methods of Making Sanitation Ratings of Milk Shippers and the Certifications/Listings of Single-Service Containers and/or Closures for Milk and/or Milk Products Manufacturers (MMSR), 2019 Revision.

(5) Evaluation of Milk Laboratories (EML), 2019 Revision.

**(b) Exceptions.**

(1) Section 16, "Penalty" is not incorporated by reference.

(2) Section 17, "Repeal and Date of Effect" is not incorporated by reference.

(3) Section 5, "Certified Industry Inspection" is not incorporated by reference.

(4) Appendices E, "Examples of 3-out-of-5 Compliance Enforcement Procedures" is not incorporated by reference.

**35:37-13-7. Inspection and permit fees**

(a) The Department shall conduct inspections of milk tankers associated with milk transportation company permits pursuant to 2 O.S. § 7-408(B):

~~(b) The Department and shall charge a fee of \$75.00 per milk tanker inspected.~~

(b) The Department shall charge a \$100.00 minimum permit fee for dairy farms along with milk and milk products processing facilities. If a dairy farm or milk and milk products processing facility exceeds \$100.00 in production or processing fees, the permit fee shall be waived.

**35:37-13-8. Incidental sales**

(a) Incidental sales of raw milk shall be limited to monthly sales of two hundred (200) gallons of bovine raw milk and one hundred (100) gallons of raw milk from all other species of hooved animals.

(b) For the purposes of this section, "incidental sales" shall mean sales that are negligible in relation to the overall sales of the facility.

(c) Except for incidental sales of raw milk from goats, incidental sales of raw milk shall not be advertised to the public in any manner.

**SUBCHAPTER 15. ORGANIC PRODUCTS**

**35:37-15-2. The Adoption of NOP Standards**

The Department adopts or incorporates by reference the following parts of the official rules and regulations of the NOP,

7 CFR Part 205 (~~2021 Revision~~), except for OAC 35:37-15-1, or as the Department designates otherwise in specific cases:

(1) Subpart A - Definitions, except for those designated otherwise by this subchapter;

(2) Subpart B - Applicability;

(3) Subpart C - Organic Production and Handling Requirements;

(4) Subpart D - Labels, Labeling, and Market Information;

(5) Subpart E - Certification;

(6) Subpart F - General Requirements for Accreditation; and

(7) Subpart G - Administrative.

(A) Sections 205.600 through 205.607.

(B) Sections 205.660 through 205.663.

(C) Sections 205.670 through 205.672.

(D) Sections 205.680 through 205.681.

**SUBCHAPTER 17. PRODUCE SAFETY**

**35:37-17-3. Incorporation by reference of federal produce safety regulations**

The Department incorporates by reference Title 21 of the Code of Federal Regulations, Part 112 (~~2021 Revision~~) regarding standards for the growing, harvesting, packing, and holding of produce for human consumption.

**SUBCHAPTER 19. HOMEMADE FOOD**

**35:37-19-2. Definitions**

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

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food service establishment or food processing plant, and does not offer the food for resale;

"Delivered" means transferred to the customer, either immediately upon sale or at a time thereafter;

"Home food establishment" means a business on the premises of a home, apartment, or other dwelling in which a producer resides and in which homemade food products are created for sale or resale if the business has gross annual sales of prepared food of less than Seventy-five Thousand Dollars (\$75,000.00). A home food establishment shall be limited to one business per premises, but gross annual sales of the business shall include all sales of prepared food produced by the business at any location;

"Homemade food product" means food, including a beverage, which is produced and, if packaged, packaged at a residence; provided, however, homemade food product shall not mean alcoholic beverages, unpasteurized milk, cannabis or marijuana products and shall not contain seafood, including, but not limited to, all fish, shellfish, and fishery products, meat, meat by-products, or meat food products as defined by

# Permanent Final Adoptions

Section 301.2 of Title 9 of the Code of Federal Regulations or poultry, poultry products, or poultry food products as defined for purposes of the federal Poultry Products Inspection Act;

**"Non-time-or-temperature-controlled-for-safety"**

means food that does not require time or temperature control for safety to limit the rapid and progressive growth of infectious or toxigenic microorganisms, including foods that have a pH level of four and six-tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less;

**"Produce"** means to prepare a food product by cooking, baking, drying, mixing, cutting, canning, fermenting, preserving, dehydrating, growing, raising, or other process;

**"Producer"** means the person who produces a homemade food product in a home food establishment; and

**"Time-or-temperature-controlled-for-safety"** means a food that requires time or temperature control for safety to limit infectious or toxigenic microorganisms and is in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; provided, however, time or temperature controlled for safety shall not include foods that have a pH level of four and six-tenths (4.6) or below or a water activity (aw) value of eighty-five one-hundredths (0.85) or less.

### 35:37-19-3. Sale and delivery requirements

(a) Non-time-or-temperature-controlled-for-safety homemade food products shall be sold:

(1) By the producer directly to the consumer, either in person or by remote means, including, but not limited to, the internet or telephone; or

(2) By a producer's designated agent or a third-party vendor, including, but not limited to, a retail or grocery store, farm, farm stand, farmers market, membership-based buying club, craft fair, or flea market, to the consumer; provided, the third-party vendor shall display a placard where homemade food products are displayed for sale with the following disclosure: "This product was produced in a private residence that is exempt from government licensing and inspection. This product may contain allergens."

(b) Non-time-or-temperature-controlled-for-safety homemade food products shall be delivered:

(1) By the producer or producer's designated agent directly to the consumer or a third-party vendor; or

(2) By a third-party vendor or a third-party carrier, such as a parcel delivery service, to the consumer or a third-party vendor.

(c) Time-or-temperature-controlled-for-safety homemade food products shall be sold by the producer directly to the consumer, either in person or by remote means, including, but not limited to, the internet or telephone.

(d) Time-or-temperature-controlled-for-safety homemade food products shall be delivered by the producer directly to the consumer.

(e) Before a producer begins to produce and sell time-or-temperature-controlled-for-safety homemade food products and thereafter, the producer shall satisfactorily complete and maintain food safety training from a list of providers, including

the ServSafe Food Handler Training, approved by the Oklahoma Department of Agriculture, Food, and Forestry. Food safety training shall be available online and shall not exceed eight (8) hours in length.

(f) Homemade food products that are packaged and distributed in interstate commerce shall be sold in accordance with federal law.

(g) The production date of a homemade food product shall be displayed where the product is sold directly to the consumer. If the product is prepared for delivery by a third-party, the production date shall be located on the food package or on a card included with the food package.

[OAR Docket #23-558; filed 6-15-23]

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 40. MARKET DEVELOPMENT

[OAR Docket #23-559]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 17. Agritourism

35:40-17-2. Definitions [NEW]

35:40-17-3. Eligibility and registration [AMENDED]

35:40-17-4. Additional requirements for hunting facilities [AMENDED]

35:40-17-6. Additional requirements for winery and brewery facilities [AMENDED]

35:40-17-7. Additional requirements for petting farm facilities [NEW]

35:40-17-8. Additional requirements for pumpkin picking facilities [NEW]

35:40-17-9. Additional requirements for maze facilities [NEW]

35:40-17-10. Additional requirements for Christmas tree facilities [NEW]

35:40-17-11. Additional requirements for bison facilities [NEW]

Subchapter 21. Oklahoma Healthy Food Financing Program

35:40-21-3. Applicant eligibility [AMENDED]

Subchapter 23. Made in Oklahoma

35:40-23-2. Definitions [AMENDED]

35:40-23-3. Applicant eligibility [AMENDED]

35:40-23-4. Product eligibility [AMENDED]

35:40-23-4.1. Service eligibility [NEW]

35:40-23-5. Application [AMENDED]

35:40-23-6. Logo [AMENDED]

35:40-23-7. Renewal and revocation [AMENDED]

35:40-23-8. Product endorsement [AMENDED]

### AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 5-3.1 et seq., and 2 O.S. §5-14 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 rule amendments add definitions; modify eligibility requirements of the Agritourism Program; modify eligibility requirements of the Oklahoma Healthy Food Financing Program; modify eligibility and application requirements of the Made in Oklahoma Program; and conform language.

**CONTACT PERSON:**

Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.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 17. AGRITOURISM**

**35:40-17-2. Definitions**

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

"Agritourism" means the organization and operation of agricultural activities carried out on a farm or ranch that allow members of the public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including, but not limited to, farming, ranching, horseback riding, horse-drawn carriage rides, livestock and poultry shows, petting farms, rodeos, historic, cultural, harvest-your-own activities, or natural activities and attractions.

"Agritourism designated area" means a specific location or facility within a farm, ranch, brewery, or winery where an agritourism activity takes place and shall not include any area adjacent to or nearby the specific location or facility, even if the area is owned or operated by the agritourism professional.

"Agritourism professional" means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation and whose agritourism activity is registered with the Oklahoma Department of Agriculture, Food, and Forestry.

**35:40-17-3. Eligibility and registration**

(a) Agritourism activities designated areas that are eligible for registration with the Department shall allow members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities that include farming, ranching, historic, cultural, harvest-your-own, or natural activities and attractions.

(b) An activity agritourism designated area may be an eligible agritourism activity for registration regardless of whether the participant is required to pay to participate in the activity.

(c) An agritourism activity designated area shall be evaluated by the Department prior to registration.

(d) When evaluating an agritourism activity designated area and determining whether registration may be permitted, the Department may consider a variety of factors, including but not limited to:

(1) Whether the agritourism professional or facility hosting the agritourism activity designated area complies with federal, state, and local regulations for health, safety, sanitation, and zoning.

(2) Whether the agritourism professional or facility hosting the agritourism activity designated area carries liability insurance.

(3) Whether the agritourism professional or facility hosting the agritourism activity designated area has complied with the requirements of the Oklahoma Tax Commission.

(e) Each facility hosting an eligible agritourism activity designated area shall be open to the public seasonally and specify and post regular business hours and adhere to the same.

(f) Each facility hosting an eligible agritourism activity designated area shall be maintained and in good repair.

(g) The Department may refuse to register or revoke the registration of an agritourism activity designated area for failure to meet the standards requirements of the Agritourism Program.

(h) If the Department finds that a proposed agritourism activity designated area is not eligible for registration, the Department may provide the agritourism professional or agritourism designated area with a written explanation of its denial and what improvements, if any, would permit registration as an agritourism activity designated area.

**35:40-17-4. Additional requirements for hunting facilities**

In addition to the other eligibility requirements of this subchapter, hunting facilities shall include lodging and at least one meal per day provided or furnished on site to be registered as an agritourism activity:

(1) Lodging; and

(2) A guide service or information on self-guided hunts that includes property details, owner expectations, safety guidelines, and eligible harvests.

**35:40-17-6. Additional requirements for winery and brewery facilities**

In addition to the other eligibility requirements of this subchapter, wineries and breweries shall comply with Alcoholic Beverage Laws Enforcement Commission registration requirements, liquor license requirements, and have a tasting room or taproom for visitors to be registered as an agritourism activity designated area. Breweries shall produce products for consumption at the site of the agritourism designated area.

**35:40-17-7. Additional requirements for petting farm facilities**

In addition to the other eligibility requirements of this subchapter, petting farm facilities shall:

(1) Include livestock, as defined by USDA, or animals traditionally used for agricultural purposes as more than

## Permanent Final Adoptions

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fifty (50) percent of the animals provided for petting activities;

(2) Provide or post educational information about each animal at the facility; and

(3) Take the following steps to prevent disease transmission to visitors:

(A) Ensure proper care and management of animals.

(B) Provide access to hand-washing stations.

(C) Design transition areas between animal and non-animal areas.

(E) Prohibit food and drink in animal areas, and

(F) Provide educational material or signage to the public about disease prevention procedures.

### **35:40-17-8. Additional requirements for pumpkin picking facilities**

In addition to the other eligibility requirements of this subchapter, pumpkin picking facilities shall:

(1) Provide or post educational information about pumpkins at the facility; and

(2) Be located on an agritourism professional's privately owned or operated farm or property.

### **35:40-17-9. Additional requirements for maze facilities**

In addition to the other eligibility requirements of this subchapter, maze facilities shall:

(1) Be constructed with traditional agricultural materials;

(2) Provide or post educational information about the agricultural materials used to construct the facility; and

(3) Be located on an agritourism professional's privately owned or operated farm or property.

### **35:40-17-10. Additional requirements for Christmas tree facilities**

In addition to the other eligibility requirements of this subchapter, Christmas tree facilities shall:

(1) Grow Christmas trees on site for consumer harvest; and

(2) Be located on an agritourism professional's privately owned or operated farm or property.

### **35:40-17-11. Additional requirements for bison facilities**

In addition to the other eligibility requirements of this subchapter, bison facilities shall

provide or post educational information about bison at the facility.

## **SUBCHAPTER 21. OKLAHOMA HEALTHY FOOD FINANCING PROGRAM**

### **35:40-21-3. Applicant eligibility**

(a) Applicants eligible for financing shall include, but are not limited to, sole proprietorships, partnerships, limited liability companies, corporations, cooperatives, nonprofit organizations, nonprofit community development entities, universities, and government entities. All applicants shall be residents of or entities formed within the State of Oklahoma.

(b) Eligibility may be given to those applicants who:

(1) Demonstrate the capacity to successfully implement the project;

(2) Demonstrate the project is expected to be economically self-sustaining;

(3) Demonstrate the ability to repay the debt; and

(4) Agree, for a minimum of five (5) years, to comply with the following conditions:

(A) To accept the benefits of the United States Department of Agriculture's Supplemental Nutrition Assistance Program (SNAP) or other federal or state nutrition assistance programs;

(B) To apply for the United States Department of Agriculture's Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) or other federal or state nutrition assistance programs, and to accept the benefits, if approved;

(C) To allocate at least thirty percent (30%) of food retail space for the sale of perishable foods, which shall include fresh dairy, produce, meats, poultry, and fish;

(D) To comply with all data collection and reporting requirements established by the Board; and

(E) To promote the hiring of local residents.

## **SUBCHAPTER 23. MADE IN OKLAHOMA**

### **35:40-23-2. 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 person who is requesting membership into the Made in Oklahoma program.

**"Department"** means the Oklahoma Department of Agriculture, Food, and Forestry, or its designee.

**"Product"** means a product processed or manufactured to add value.

**"Service"** means a useful task that contributes to the public welfare.

### **35:40-23-3. Applicant eligibility**

(a) Applicants eligible for membership into the Made in Oklahoma program shall grow, process, or manufacture a product or provide a service within the state of Oklahoma.

(b) Eligibility may be given to those applicants who are in compliance with other state and federal agencies.

**35:40-23-4. Product eligibility**

- (a) Products eligible for approval by the Department to use the Made in Oklahoma logo shall:
(1) Be processed or manufactured in an Oklahoma facility;
(2) Meet or exceed all federal and State of Oklahoma standards and regulations;
(3) Include language and imagery appropriate for all consumers; and
(4) Include an Oklahoma address on each label.
(b) Products produced, sold, or resold pursuant to the provisions of Section 5-4.1 et seq. of Title 2 of the Oklahoma Statutes shall not be eligible for approval to use the Made in Oklahoma logo.

**35:40-23-4.1. Service eligibility**

- Services eligible for approval by the Department to use the Made in Oklahoma logo shall:
(1) Be provided in Oklahoma;
(2) Meet or exceed all federal and State of Oklahoma standards and regulations;
(3) Be appropriate for all consumers; and
(4) Include an Oklahoma address on all information provided to the consumer.

**35:40-23-5. Application**

- (a) Applications for membership into the Made in Oklahoma program shall be submitted to the Department.
(b) Each applicant shall submit a description of products, packaging, and proposed marketing materials or services. In addition, a label and sample of the product or description and video demonstrating the service shall be provided.
(c) Each applicant shall submit a copy of any required licenses, health certifications or records of inspection by state or federal agencies from the previous year for the facilities and raw materials utilized in the applicant's products or services.

**35:40-23-6. Logo**

The Made in Oklahoma program logo shall be used only by a member of the Made in Oklahoma program. It shall be used only for promotion of eligible products and services as determined by the Department.

**35:40-23-7. Renewal and revocation**

- (a) Made in Oklahoma program memberships shall be renewable on an annual basis. Applications for membership renewal shall be due on a date determined by the Department.
(b) Any person, firm, partnership, corporation, LLC, or other association who violates any provision of this section, gives false information in the application process, misrepresents certifications in the application process, or uses the Made in Oklahoma Program logo on an ineligible product or service shall be subject to immediate suspension or revocation of membership in the program and use of the Made in Oklahoma logo.

- (c) Prior suspension or revocation of a Made in Oklahoma program membership may be cause for denial of a renewal application by the Department.

**35:40-23-8. Product endorsement**

The Department does not endorse and makes no warranty regarding any product or service determined eligible to use the Made in Oklahoma program logo.

[OAR Docket #23-559; filed 6-15-23]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY
CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #23-560]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Agriculture Environmental Permitting and AGPDES
Part 1. General Provisions
35:44-1-3. Date of federal regulations incorporated [REVOKED]
Subchapter 3. Permit Conditions and Requirements
35:44-3-3. Date of federal regulations incorporated [REVOKED]

AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); 2 O.S. § 2-18.2; 2 O.S. § 2A-1 et seq.; 2 O.S. § 2A-21 et seq.; 27A O.S. § 1-3-101(D).

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR (2022 Revision) unless otherwise specified.

Incorporating rules:

- 35:44-1-3
35:44-3-3

Availability:

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

GIST/ANALYSIS:

The proposed rule amendments revoke obsolete language.

CONTACT PERSON:

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

# Permanent Final Adoptions

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. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES

### PART 1. GENERAL PROVISIONS

**35:44-1-3. Date of federal regulations incorporated [REVOKED]**

~~When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (2021 Revision).~~

### SUBCHAPTER 3. PERMIT CONDITIONS AND REQUIREMENTS

**35:44-3-3. Date of federal regulations incorporated [REVOKED]**

~~When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (2021 Revision).~~

*[OAR Docket #23-560; filed 6-15-23]*

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 50. AQUACULTURE

*[OAR Docket #23-561]*

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. Private Commercial Production

Part 3. Licensing, Reporting, and Records

35:50-1-30. Initial licensing requirements [AMENDED]

35:50-1-31. Renewal licensing requirements [AMENDED]

#### AUTHORITY:

Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2) and (20); 2 O.S. § 6-311 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 rule amendments increase fees for certain licenses and decals to reflect the increased cost of labor and supplies required to manage the Aquaculture program and modify certain licensing requirements.

#### CONTACT PERSON:

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

### PART 3. LICENSING, REPORTING, AND RECORDS

**35:50-1-30. Initial licensing requirements**

Every aquaculture operation shall obtain a license and aquaculture hauling unit decals from the Department.

(1) A duplicate license may be issued at the cost of ~~ff-teen~~ ~~ten~~ dollars (~~\$15.00~~\$10.00) each.

(2) Licenses are non-transferable.

(3) A license may be revoked pursuant to Title 2, Section 6-316 F1-4.

(4) No license shall be issued prior to an initial inspection by the Department.

(5) Each hauling unit used for the transportation of live aquatic species shall be affixed with each of the following:

(A) No less than two (2) hauler decals.

(i) Each decal shall be replaced every eight (8) years and shall be available from the Department.

(ii) Each decal shall cost ~~five~~ ~~eight~~ dollars (~~\$5.00~~\$8.00).

(B) No less than two (2) date decals indicating the appropriate year.

(i) The date decals shall each be applied to a separate hauler decal.

(ii) Each date decal shall cost ~~two~~ ~~five~~ dollars ~~and fifty cents~~ (~~\$2.50~~\$5.00) and shall be available from the Department.

(6) Prior to issuance of a license, an applicant shall provide the following to the Department:

(A) A license fee of ~~twenty-five~~ ~~ten~~ dollars (~~\$25.00~~\$10.00).

(B) Proof of identification including the applicant's age or date of birth and current residency information.  
 (C) A list of all persons with control or decision-making authority at the aquaculture operation, including but not limited to owners, operators, and managers.

(D) If applicable, copies of any permits directly related to the aquaculture operation issued by the Oklahoma Department of Environmental Quality (including a copy of any BMP submitted to the Oklahoma Department of Environmental Quality), the Oklahoma Water Resources Board, ~~and~~ the Army Corps of Engineers, the Oklahoma State Department of Health, and the Oklahoma Department of Wildlife Conservation.

(E) A map or aerial photograph showing the aquaculture operation including the facilities and property lines, and specifies the legal description of the property or Global Positioning System (GPS) coordinates.

(F) A catastrophic aquatic species die-off disposal plan that requires immediate notification to the Department and is approved by the Department for emergency purposes.

**35:50-1-31. Renewal licensing requirements**

Each aquaculture operation shall renew the license and aquaculture vehicle decals by January 15<sup>th</sup> of each year.

(1) The renewal application shall include the following:

(A) A renewal fee of ~~twenty-five~~ ten dollars (~~\$25.00~~\$10.00). Any renewal fee received after the annual renewal deadline of January 15<sup>th</sup> shall be assessed a late fee of ~~twenty-five~~ ten dollars (~~\$25.00~~\$10.00).

(B) A copy of any modifications, changes, updates, or renewals to the items listed in (6)(B) through (F) of Rule 35:50-1-30.

(C) An annual report.

(2) Each hauling unit used for the transportation of live aquatic species shall be affixed with each of the following:

(A) No less than two (2) hauler decals.

(i) Each decal shall be replaced every eight (8) years and shall be available from the Department.

(ii) Each decal shall cost ~~five~~ eight dollars (~~\$5.00~~\$8.00).

(B) No less than two (2) date decals indicating the appropriate year.

(i) The date decals shall each be applied to a separate hauler decal.

(ii) Each date decal shall cost ~~two~~ five dollars and ~~fifty cents~~ (~~\$2.50~~\$5.00) and shall be available from the Department.

[OAR Docket #23-561; filed 6-15-23]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
 CHAPTER 55. COMMERCIAL PET BREEDERS AND ANIMAL SHELTERS**

[OAR Docket #23-562]

**RULEMAKING ACTION:**  
 PERMANENT final adoption

**RULES:**  
 Subchapter 3. Standards of Care  
 35:55-3-1. Incorporation by reference [AMENDED]  
 Subchapter 9. Seizure and Impoundment [NEW]  
 35:55-9-1. Seizure and impoundment [NEW]

**AUTHORITY:**  
 Okla. Const., Art. 6, § 31; State Board of Agriculture; 2 O.S. § 2-4(A)(2); and 4 O.S. § 30.1 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
 November 1, 2022

**COMMENT PERIOD:**  
 December 2, 2022, and ending January 4, 2023

**PUBLIC HEARING:**  
 January 4, 2023

**ADOPTION:**  
 January 26, 2023

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**  
 February 2, 2023

**LEGISLATIVE APPROVAL:**  
 Approved May 31, 2023 by SJR 22

**FINAL ADOPTION:**  
 May 31, 2023

**EFFECTIVE:**  
 September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**  
 n/a

**INCORPORATIONS BY REFERENCE:**  
**Incorporated standards:**  
 9 CFR (2022 Revision) unless otherwise specified.

**Incorporating rules:**  
 35:55-3-1

**Availability:**  
 8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152-8804, phone: (405) 522-5997.

**GIST/ANALYSIS:**  
 The proposed rule amendments delete obsolete language and provide procedure for seizure and impoundment of certain animals.

**CONTACT PERSON:**  
 Kambi Maddy, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: kambi.maddy@ag.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 3. STANDARDS OF CARE**

**35:55-3-1. Incorporation by reference**

(a) The following provisions of Title 9 of the Code of Federal Regulations and the requirements contained therein

# Permanent Final Adoptions

pertaining to Animal Welfare, Part 3 (Standards) are, unless otherwise specified, adopted and incorporated by reference in their entirety:

- (1) 3.1 (housing facilities, general)
- (2) 3.2 (indoor housing facilities)
- (3) 3.3 (sheltered housing facilities)
- (4) 3.4 (outdoor housing facilities)
- (5) 3.5 (mobile or traveling housing facilities)
- (6) 3.6 (primary enclosures), except for 3.6 (c)(1)(ii) and (c)(2)
- (7) 3.7 (compatible grouping)
- (8) 3.8 (exercise for dogs)
- (9) 3.9 (feeding)
- (10) 3.11 (cleaning, sanitization, housekeeping, and pest control)
- (11) 3.12 (employees)
- (12) 3.13 (consignments to carriers and intermediate handlers)
- (13) 3.14 (primary enclosures used to transport live dogs and cats)
- (14) 3.15 (primary conveyances [motor vehicle, rail, air, and marine])
- (15) 3.16 (food and water requirements)
- (16) 3.17 (care in transit)
- (17) 3.18 (terminal facilities)
- (18) 3.19 (handling)

(b) When reference is made to a federal entity, it shall mean the state counterpart.

~~(c) When reference is made to 9 C.F.R. it means, unless otherwise specified, the volume of 9 C.F.R. as published on July 1 (2021).~~

## **SUBCHAPTER 9. SEIZURE AND IMPOUNDMENT**

### **35:55-9-1. Seizure and impoundment**

(a) The Department may seize and impound any animal in the possession, custody, or care of any person who violates the Commercial Pet Breeders and Animal Shelter Licensing Act if there is reason to believe that the health, safety, or welfare of the animal is endangered or the animal is believed to be in imminent danger pursuant to paragraph G of Section 30.13 of Title 4 of the Oklahoma Statutes.

(b) When the Department believes there is reason to seize and impound an animal under the Commercial Pet Breeders and Animal Shelter Licensing Act, the Department may obtain a court order through the district court in the county where the animal is located, take custody of the animal, and impound the animal in a safe and appropriate location, which may include shelter in place.

(1) The Department shall have seven (7) days from the date of seizure of the animal to petition the district court in the county where the animal was seized for a hearing regarding the health, safety and welfare of the animal and the costs of seizure and impound. The pet breeder or animal shelter shall be given notice of the hearing.

(2) The court may assess the costs of seizure and impound of an animal against the pet breeder or animal shelter who was in possession, custody, or care of the animal. Reasonable costs may include, but are not limited to, transportation, medical care, boarding of the animal during its impoundment, euthanasia if determined necessary by a licensed veterinarian of this state, and any cost associated with adoption of the animal.

(c) If the court finds the Department did not have a reasonable belief that the health, safety, or welfare of an animal was endangered or was in imminent danger, the court may order immediate return of the animal to the pet breeder or animal shelter and the Department may be ordered to bear the costs of seizure and impound and return of the animal.

(d) Nothing in this section shall prevent the euthanasia of a seized animal or the provision of any therapy or procedure to a seized animal as determined necessary by a licensed veterinarian of this state.

*[OAR Docket #23-562; filed 6-15-23]*

## **TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS**

*[OAR Docket #23-508]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 7. Public Welfare  
140:15-7-5 [AMENDED]

### **AUTHORITY:**

Oklahoma Board of Chiropractic Examiners; 59 O.S. 2008 Board of Chiropractic Examiners

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

January 19, 2023

### **COMMENT PERIOD:**

February 15, 2023 through March 17, 2023

### **PUBLIC HEARING:**

March 23, 2023

### **ADOPTION:**

March 23, 2023

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

March 28, 2023

### **LEGISLATIVE APPROVAL:**

Approved May 31, 2023 by SJR 22

### **FINAL ADOPTION:**

May 31, 2023

### **EFFECTIVE:**

September 11, 2023

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

The rule is necessary to allow for guidance pertaining to medical records in how to handle retention and release of those medical records to patients or authorized individuals designated by the patient to receive medical records, in the event a licensee is incapacitated or is deceased.

### **CONTACT PERSON:**

Beth Kidd, Executive Director, 421 NW 13th Street, Suite 180, Oklahoma City, Oklahoma 73103, 405-522-3400.



**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 7. PUBLIC WELFARE**

**140:15-7-5. Code of Ethics**

There is hereby created the "Oklahoma Chiropractic Code of Ethics". This Code of Ethics is based upon the fundamental principle that the ultimate end and objective of the chiropractic physician's professional services and effort should be: "The greatest good for the patient."

(1) Chiropractic physicians shall attend to their patients as often as they consider necessary to ensure the well-being of their patients, but should avoid unnecessary treatments;

(2) Having once undertaken to serve a patient, chiropractic physicians shall not neglect the patient. Chiropractic physicians shall not terminate their professional services to patients without taking reasonable steps to protect such patients, including due notice to them allowing sufficient time for obtaining professional services of others, delivering to their patients all papers and documents in compliance with paragraph 3 of this subsection;

(3) Chiropractic physicians shall comply within twenty-one (21) calendar days of a patient's authorization certification to provide records, or copies of such records, to those persons whom the patient designates as authorized to inspect or receive all or part of such records. A reasonable charge may be made for the cost of copying records. Unpaid charges incurred by the patient are not grounds for refusal to release records.

(A) After receipt of complaint, all records shall be available for inspection and copying by investigators of the Board during normal business hours.

(B) A patient record shall be maintained for every patient under the care of the chiropractic physician and such records shall be kept confidential. Only authorized personnel shall have access to the records.

(C) Records generally shall not be removed from the control of the chiropractic physician except upon court order or as authorized by law. Board staff shall be authorized to obtain copies or review any records to assure compliance with these rules or other parts of the Act.

(D) Chiropractic physicians shall furnish the Board, its investigators or representatives, information lawfully requested by the Board and shall cooperate with a lawful investigation conducted by the Board.

(4) A chiropractic physician shall establish a plan for custodianship of patient records in the event they are incapacitated, become deceased, are or will become unable to maintain patient records.

(A) In the event a chiropractic physician dies or becomes incapacitated and unable to practice, and there is a chiropractic physician associated with the practice, the deceased, incapacitated or unavailable chiropractic physician's personal representative, guardian, administrator, conservator, next of kin, or other legal representative shall notify the Board in writing of the management arrangement for the custody and transfer of patient files and records. This individual shall ensure the security of, and access to, patient files and records, by the physician's patient files to the Board in writing within 180 days. Transfer of patient files and records must occur within one year of the death of the chiropractic physician.

(B) A chiropractic physician who is an independent contractor or who has an ownership interest in a chiropractic practice shall provide notice as described below when leaving, selling, or retiring from the chiropractic office where the chiropractic physician has provided chiropractic services.

(1) Notification shall be sent to all patients who received services from the chiropractic physician during the two years immediately preceding the chiropractic physician's last date for seeing patients. This notification shall be sent no later than thirty (30) days prior to the last date the chiropractic physician expects to see patients.

(2) The notice shall include the following:

(i) A statement that the chiropractic physician will no longer be providing chiropractic services at the practice;

(ii) The date on which the chiropractic will cease to provide services; and

(iii) The notice shall be sent in one of the following ways:

(I) A letter sent through the US Postal Service to the last known address of the patient with the date of the mailing of the letter documented; or

(II) A secure electronic message to the last known email address of the patient.

(D) In the event a chiropractic physician is unable to provide a thirty (30) day notice as required by paragraph(C)(1) of this rule because of an illness, unforeseen emergency, incarceration, or other unanticipated incident, the chiropractic physician shall provide such notice within thirty (30) days after it is determined that the physician will not be returning to practice.

(E) Paragraph C of this rule does not apply to the chiropractic physician who is departing as an employee of another Oklahoma licensed chiropractic physician. It is the employer's responsibility to maintain continuity of care, or to comply with the provisions of paragraph C if, patient care will be terminated as a result of the employee leaving the employment or retiring.

(54) Subject to paragraph 3 of this subsection, chiropractic physicians should preserve and protect the patient's confidences and records, except as the patient directs or

## Permanent Final Adoptions

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consents, or if the law requires otherwise. They should not discuss a patient's history, symptoms, diagnosis, or treatment with a lawyer until they have received the consent of the patient or the patient's personal representative. They should avoid exploiting the trust and dependency of their patients;

(65) Chiropractic physicians shall maintain the highest standards of professional and personal conduct. Chiropractic physicians shall refrain from all illegal or morally reprehensible conduct;

(76) Chiropractic physicians shall assure that the patient possesses enough information to enable an intelligent choice in regard to proposed chiropractic treatment. The patient shall make his or her own determination on such treatment;

(87) Chiropractic physicians shall observe the appropriate laws, decisions and rules of state and federal governmental agencies of the United States and the State of Oklahoma and cooperate with the pertinent activities.

(98) Chiropractic physicians may advertise but shall exercise utmost care that such advertising is relevant to the selection of a chiropractic physician, is accurate, truthful, not misleading, false or deceptive, and is scrupulously correct in representing the chiropractic physician's professional status and area of special competence. Communications to the public shall not appeal primarily to an individual's anxiety or create unjustified expectations of results. Chiropractic physicians shall conform to all applicable state laws, rules and judicial decisions in connection with professional advertising;

(109) Chiropractic physicians may testify either as experts or when their patients are involved in court cases, workers' compensation proceedings or in other similar proceedings in personal injury or related cases.

(1140) The chiropractic profession shall address itself to improvements in licensing procedures consistent with the development of the profession and of relevant advances in science;

(1244) Chiropractic physicians who are public officers part time or full time, shall not engage in activities which are, or may be perceived to be, in conflict with their official duties;

(1342) Chiropractic physicians shall not commit fraud, misrepresentation, or deception which includes, but is not limited to:

- (A) Practicing or attempting to practice chiropractic under false or assumed name;
- (B) Aiding, assisting, or advising another in the unlicensed practice of chiropractic;
- (C) Fraud or deceit in obtaining or renewing a license to practice chiropractic;
- (D) Making false or misleading statements or withholding relevant information regarding the qualifications of any individual in order to attempt to obtain a license or engage in the practice of chiropractic;
- (E) Failing to report past, present, or pending disciplinary action by another licensing board or the

current status of the final administrative disposition of a matter. A licensee is required to report any compromise or settlement of disciplinary action, whether voluntary or involuntary, which results in encumbrance of licensure;

(F) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those which are signed by the licensee in his/her capacity as a licensed chiropractic physician;

(G) Submitting to any patient, insurer or third-party payor a claim for a service or treatment which was not actually provided to a patient.

(H) Failing to report to the Board a conviction of, or pleading guilty or nolo contendere to, fraud in filing Medicare or Medicaid claims or in filing claims with any third party payor. A copy of the record of the plea or conviction certified by the clerk of the court entering the plea or conviction, shall be conclusive evidence of the plea or conviction.

(1413) Chiropractic physicians shall not abuse the physician's position of trust by coercion, manipulation or fraudulent representation in the doctor-patient relationship which includes, but is not limited to:

(A) Engaging in sexual misconduct which consists of sexual behavior that occurs during the doctor-patient relationship. Chiropractic physicians shall terminate the doctor-patient relationship before dating or having a sexual relationship with a patient. Such termination shall be done in writing and signed by both the patient and the chiropractic physician and placed in the patient's record. This paragraph shall not apply to chiropractic physicians treating their spouses.

(B) Engaging in sexual impropriety which consists of behavior, verbal or physical, that is suggestive, seductive, harassing, intimidating or demeaning to a patient.

(C) Engaging in sexual violation which consists of physical contact, whether or not initiated by the patient, that is sexual or may be reasonably interpreted as such.

(1514) Chiropractic physicians shall not violate any lawful order of the Board previously entered in a disciplinary hearing or fail to comply with a lawfully issued subpoena of the Board.

(1615) Chiropractic physicians shall not make statements which in any way reflect against a fellow licensee including statements which imply superiority over another licensee.

[OAR Docket #23-508; filed 6-12-23]

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**TITLE 235. OKLAHOMA FUNERAL BOARD  
CHAPTER 10. FUNERAL SERVICES  
LICENSING**

[OAR Docket #23-538]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Qualification and Requirements for Licensure

235:10-3-1 [AMENDED]

235:10-3-2 [AMENDED]

**AUTHORITY:**

Oklahoma Funeral Board; 59 O.S., §§ 396.2a, Title 59 O.S. § 396.17, 75 O.S. § 302(A)(1), 75 O.S. § 307

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

November 23, 2022

**COMMENT PERIOD:**

December 26, 2022, through February 16, 2023

**PUBLIC HEARING:**

February 16, 2023

**ADOPTION:**

March 9, 2023

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

March 27, 2023

**LEGISLATIVE APPROVAL:**

Approved May 31, 2023 by HJR22

**FINAL ADOPTION:**

May 31, 2023

**EFFECTIVE:**

September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The adopted rules realign with Board Statute that reduces the trivial additional education required for licensure and changes the mileage restriction for a funeral director in-charge of multiple establishments. 59 O.S., §§ 396.2a

**CONTACT PERSON:**

TYLER STILES, EXECUTIVE DIRECTOR, OKLAHOMA FUNERAL BOARD, 3700 N. CLASSEN BLVD, SUITE 175, Oklahoma City, OK 73118, 405-522-1790, tyler.stiles@funeral.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 3. QUALIFICATION AND REQUIREMENTS FOR LICENSURE**

**235:10-3-1. Qualifications for licensing individuals**

To be licensed in Oklahoma as a funeral director, embalmer, or both, an individual must meet the following minimum requirements:

- (1) The individual must be twenty (20) years of age.
- (2) The individual must be of good moral character.
- (3) The Board may refuse to issue a license to an individual convicted of any felony, or a misdemeanor related to funeral service licensing act, the prepaid funeral benefits act, funeral services, or pertaining to the custody, care,

or disposal of dead human remains, unfair trade practices, or fraud.

(4) The individual must be a citizen of the United States, or a permanent resident of the United States.

~~(5) The individual shall have completed the following educational requirements:~~

~~(A) The individual is a graduate of a program of mortuary science accredited by the American Board of Funeral Service Education.~~

~~(B) The individual shall have completed a total of sixty (60) college semester hours of credit at an accredited institution of higher education.~~

~~(i) Such institution must be accredited by a regional accrediting agency and recognized by the U.S. Department of Education as a valid and legal accrediting agency.~~

~~(ii) When the institution so accredited extends credit in quarter hours, each quarter hour shall equal 2/3rds of one semester hour.~~

~~(iii) Courses applied to completing the accredited mortuary science program in excess of the minimum requirements for an accredited program by the American Board of Funeral Service Education may be applied to the (60) total semester hours of college, provided such credits are earned at a regionally accredited institution.~~

~~(6) Individuals who have earned a bachelor degree in funeral service from a regionally accredited institution and American Board of Funeral Service Education accredited mortuary program shall be deemed to have met the educational requirements set for in sections (A) and (B).~~

(5) The individual shall have completed a program of mortuary science accredited by the American Board of Funeral Service Education.

~~(7) The individual shall have successfully passed the National Board Examination of the International Conference of Funeral Service Examining Boards with an average grade of seventy five percent (75%) or better on the Arts section for applicants for a funeral director license, and applicants for an embalmers license shall have earned an average of seventy five percent (75%) or better on the Science section.~~

~~(8) The individual shall have successfully passed the Oklahoma Law examination with a grade of seventy five percent (75%) or better. The Oklahoma Law examination shall cover the Oklahoma Funeral Services Licensing Act and the Prepaid Funeral Benefits Act, and the Rules of the Board. The Oklahoma law written examination shall not be administered until the applicant has completed all educational requirements and other examination requirements with proof of such completion on file in the Board office. Rejection of an application to take the written examination for failure to complete educational requirements, or failure to file proper proof of completion of educational requirements is not appealable to the Board.~~

~~(9) The applicant must have paid any and all fees due and payable prior to licensing.~~

## Permanent Final Adoptions

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(409) The individual must have served and completed an embalmer and/or funeral director apprenticeship(s) in the State of Oklahoma or has completed an apprenticeship the Board determines to be substantially equivalent to that required by Oklahoma.

(410) Once all requirements set forth above have been met, the individual may apply for a license as a funeral director, embalmer, or both.

### 235:10-3-2. Requirements for licensing funeral service establishments

To be licensed by the Board a funeral service establishment or a commercial embalming establishment must meet the following minimum requirements:

(1) **Ownership.** The establishment shall be operated by a sole owner, a partnership, a limited liability partnership, a limited partnership, a limited liability company, or a subsidiary of a corporation, a partnership, a limited liability partnership, a limited partnership, or a limited liability company, or by a corporation chartered in the State of Oklahoma.

(2) **Fixed place.** The establishment shall have a fixed place of business with a specific street address or physical location and shall conform to local zoning ordinances as evidenced by an occupancy permit issued by the proper local governmental entity authorizing the occupancy of a funeral service establishment at that location. Only one establishment license shall be issued to a specific address. If the establishment will contain a preparation room which does not discharge into a municipal sanitary sewer it must also secure permission from the appropriate county and/or state agency for any such discharge from the embalming room prior to being eligible to receive a funeral establishment or commercial embalming establishment license from this Board. Any establishment which has been issued an establishment license under a rule of the Board having different requirements than this sub-section for a fixed place will be permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed, except as provided under sub-section (15).

(3) **Inspected.** The establishment shall be inspected by a representative of the Board prior to being initially licensed and periodically as determined by the Board.

(4) **Statutes and Rules.** Each establishment shall have available a current copy of the Oklahoma Statutes and Rules related to the practice of funeral directing and embalming available for public inspection.

(5) **Preparation room.**

(A) **The establishment shall have a preparation room.** Such preparation room shall meet the following minimum requirements:

(i) **Construction.** The walls, floor, and ceiling must be constructed, and of such materials and finished in a way that they may be cleaned and disinfected. The room must be of sufficient size and dimension to accommodate an embalming table, a sink that drains freely with hot and cold running

water connections, an instrument table, cabinet, and shelves. The embalming table must have a rust proof metal, porcelain, or fiberglass top, with edges raised at least 3/4 inches around the entire table and drain opening at the lower end.

(ii) **Ventilation.** The preparation room shall be heated and air-conditioned. The preparation room must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour. All fumes must be ventilated to the outside atmosphere. The construction must be such that odors from the preparation room cannot enter the rest of the establishment.

(iii) **No public use.** The room shall not have a passageway available for public use.

(iv) **Equipment.** The room shall contain sufficient supplies and equipment for normal operation. Nothing in this subsection shall require embalming chemicals to be stored in the preparation room. The room shall have no excess equipment stored, other than equipment necessary for preparing dead human remains, and performing necessary restorative art work. There shall be storage shelves, drawers, or cabinets for all supplies, instruments, and equipment. The room and equipment shall be maintained in a clean and sanitary condition.

(v) **Openings covered.** All outside openings shall be covered with screens.

(vi) **Interior view.** Measures must be taken to prevent a view of the interior of the room through any open door or window.

(vii) **Body Intake Log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the name, signature, and license number of the embalmer(s) and apprentice(s). If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

(B) **Exceptions.** A funeral establishment operated in conjunction with another licensed funeral establishment, with same ownership, shall be exempt from maintaining a preparation room provided it is located within 60 miles of the main establishment and can be practically served by the main establishment.

(6) **Selection room.** The establishment shall have a selection room. Such room shall be devoted solely to the purpose of providing a means for the public to make a reasonable selection of funeral service merchandise.

Such room shall be of adequate size and furnishings. Such selection room shall meet the following minimum requirements:

- (A) **Casket and outer burial container price lists.** The funeral provider must offer a printed or typewritten price list to people who inquire in person about the offering or prices of funeral merchandise including caskets, alternative containers and outer burial containers. The price list must be offered upon the beginning of discussion of, but in any event before showing the funeral merchandise. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner.
- (B) **Caskets.** Each funeral establishment shall maintain an inventory of not less than five adult caskets at the location, or five quarter panel or end cut display units provided by a commercial casket manufacturer. Any establishment which has been issued an establishment license under a rule of the Board having different requirements than this sub-section for the number of caskets in inventory will be permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed, except as provided under sub-section (15).
- (C) **Equipment.** The selection room shall have no excess equipment stored, other than equipment necessary for the proper display of funeral service merchandise.
- (D) **Condition.** The room shall be maintained in a clean, neat, and orderly fashion at all times.
- (7) **Other rooms.** The establishment shall have adequate areas for public viewing of dead human remains and necessary offices for conducting the business affairs of the establishment. The establishment may have other rooms, offices, and other facilities, including restrooms for the staff and public lounge areas. All other rooms and facilities shall be maintained in a clean, neat, and orderly fashion at all times.
- (8) **Vehicles.** The establishment shall have the necessary automotive vehicles to provide adequate service to the public. This shall not prohibit the establishment from arranging to lease, borrow, or otherwise arrange for extra vehicles when needed.
- (9) **Licensed funeral director and embalmer.**
  - (A) Each funeral service establishment shall have at least one full-time dual licensed funeral director and embalmer employed to be designated as the Funeral Director-in Charge of the operation of the establishment and who has been approved by the Board as the Funeral Director in Charge. The establishment must also have a sufficient number of other licensed individuals to adequately serve the public.
  - (B) If an individual owner, partners, or corporation officers are not licensed funeral directors, then the owner, partners, or the corporation must employ a full-time dual licensed funeral director and embalmer

to serve as Funeral Director-in- Charge of the establishment.

- (C) No licensed funeral director may serve as the Funeral Director-in-Charge of more than one (1) funeral service establishment without the express written authorization of the Board. With the written order of the Board a licensed funeral director, upon good cause shown that such is in the public interest, may serve as a Funeral Director-in-Charge of more than one (1) funeral service establishment but in no event may any such licensed funeral director be the Funeral Director-in-Charge of more than three (3) such funeral service establishments. All of the establishments must be under the same ownership, and no establishment included in the application can be more than a ~~6090~~ miles radius from the most centrally located establishment contained in the application.
- (D) The funeral director-in-charge shall reside and maintain a permanent residence within ~~6090~~ miles of the funeral establishment, commercial embalming establishment, or crematory.
- (E) The Funeral Director-in-charge of an establishment(s) serves that position and retains the responsibility of Funeral Director-in-charge until he or she notifies the Board in writing of such termination or resignation from that position. The letter notifying the Board must be within (10) ten days of separation of employment.
- (10) **Funeral Director In Charge.** The Funeral Director in charge shall be listed on the original establishment application and any subsequent establishment renewal applications, and on the body intake log.
- (11) **Transferability.** No establishment license is transferable from one person to another, or from one location to another. In case of the sale, lease, or relocation to a new location, or a change of name of the establishment, the establishment license may remain in force by mutual consent of the buyer and seller for a period of (30) thirty days or until the next regularly scheduled Board meeting, and at such time the license shall expire. The Funeral Director-in Charge must notify the Board office in writing and within ten days of change of ownership, change of Funeral Director-in-Charge, change of address, or change of name. The purchaser, lessee, or owner must notify the Board office to request an inspection, and issuance of a new license. Upon purchase, lease or change of address, change of name, change of Funeral Director in-Charge a new establishment license application must be submitted with fee. If exigent circumstances warrant additional time to facilitate a Funeral-Director-In-Charge change, upon good cause shown and with written agreement by a licensed funeral director and Embalmer to assume responsibility in the interim, the Board may grant no more than 2 requests of 90 days for an establishment to employ the new Funeral-Director-in-Charge. The licensed funeral director assuming responsibility in the interim shall be exempt from the requirements in 235:10-3-2 (9).

## Permanent Final Adoptions

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(12) **Requirement to practice.** The issuance of a funeral service establishment license to an individual not licensed as a funeral director does not entitle the individual to practice funeral directing.

(13) **License lapse.** All establishment licenses lapse on the thirty-first of December for the year issued.

(14) **Inspection.** Every funeral service establishment, commercial embalming establishment, or crematory, shall be at all times subject to inspection by the Board. Inspections are to be reasonable in regard to time and manner.

(15) **Grandfather.** Any establishment which has been issued an establishment license under a rule of the Board having different requirements, then such Establishment is permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed. The Establishment license of such grandfathered establishment is not transferable. At such time as a change of ownership, purchase, lease, or change of address of such grandfathered funeral establishment is made then such establishment must meet the current requirements of this subchapter.

(16) **Application.** Any person or entity who desires to operate a funeral service establishment, commercial embalming establishment, or crematory must submit an application for an original license, renewal of a license, or change in funeral director on forms provided by the Board.

(A) Each application for an original license shall include, at a minimum, the following:

(i) The current and previous name, if any, for a funeral service establishment, commercial embalming establishment, or crematory;

(ii) The address of the physical location and telephone number of the funeral service establishment, commercial embalming establishment, or crematory;

(iii) The name and license number of the proposed Funeral Director in Charge and affidavit of proposed Funeral Director in Charge;

(iv) The name of the current owner and, if applicable, all previous owners for the past sixty (60) months of the funeral establishment, commercial embalming establishment, or crematory;

(v) Whether the funeral service establishment, commercial embalming establishment, or crematory is a sole proprietorship, corporation, partnership, a limited liability partnership, limited partnership, a limited liability company, or a subsidiary of a corporation, a partnership, limited liability partnership, limited partnership, a limited liability company, or other business entity;

(vi) The name and address of each person owning five (5) percent or more of the funeral service establishment, commercial embalming establishment, or crematory, or corporation common stock, or of the equity capital or membership interest of a limited liability company, a partnership, a limited liability partnership, a limited partnership, or sole proprietorship;

(vii) If a corporation, partnership, limited liability partnership, limited partnership, or limited liability company;

(I) The state and date of incorporation or formation;

(II) The name and address of the registered agent or agent appointed to receive service of process;

(III) The name, address, and title of each officer, director, general partner, or member and

(IV) A copy of the certificate of incorporation, articles of organization, or certificate or agreement of formation, and any other document filed with the Oklahoma Secretary of State, which allows the entity to do business in Oklahoma.

(viii) Whether the applicant, or any individual required to be disclosed under this section, has ever been convicted of, or entered a plea of guilty or no contest, to a felony, or to a misdemeanor related to funeral services, including the:

(I) Felony or misdemeanor charged;

(II) Date of conviction or plea;

(III) Court having jurisdiction over the felony or misdemeanor;

(IV) Probation officer's name, address, and telephone number, if applicable.

(ix) Whether the applicant, or any individual required to be disclosed under this section, has received any adverse ruling from any court of competent jurisdiction or any administrative tribunal involving honesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to funeral services, including the case number and the court or administrative body in which it was filed.

(x) Whether the applicant, or any individual required to be disclosed under this section, has ever had an application for a license, registration, certificate, or endorsement denied or rejected by any state licensing authority, including the:

(I) Reason for the suspension or revocation;

(II) Date of the denial or rejection; and

(III) Name and address of the state licensing authority that denied or rejected the application.

(xi) Whether the applicant, or any individual required to be disclosed under this section, has ever had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority, including the:

(I) Reason for the suspension or revocation;

(II) Date of the suspension or revocation; and

(III) Name and address of the state licensing authority that suspended or revoked the license.

(xii) Whether the applicant, or any individual required to be disclosed under this section, has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority.

(B) Renewal applications shall include any changes in the above information from the original application or the previous renewal application.

(17) **Renewal license.** Once issued, all original funeral service establishments, commercial embalming establishments, and crematories shall lapse on December 31 of the year of issue. Thereafter, except as provided in 235:10-3-2(11) said establishment may make application for renewal of the existing original license. The renewal application shall contain information as deemed appropriate by the Board.

(18) **Grounds for refusal.** The board may refuse to issue an original license or renew a license:

(A) For any felony conviction, or a misdemeanor conviction related to funeral service, by any individual required to be disclosed under this sub-section, may be grounds to deny the application.

(B) For any answer in the affirmative to 235:10-3-2 (16)(A)(viii, ix, x, xi, xii), by any individual required to be disclosed in this sub-section.

(C) If the Board finds the application contains false or misleading information.

(D) If the Application is incomplete or improperly completed.

(E) Failure to pay the license application fee.

(F) Failure to comply with all other rules as prescribed in Section 235.

(G) For any individual required to be disclosed under this section who is implicated in a complaint that has been found to have probable cause. The application may be tabled pending the resolution of the complaint.

*[OAR Docket #23-538; filed 6-15-23]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 9. HEALTH CARE  
INFORMATION**

*[OAR Docket #23-513]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

310:9-1-2 [AMENDED]

Subchapter 7. Health Care Information Advisory Committee  
[REVOKED]

310:9-7-1 [REVOKED]

310:9-7-2 [REVOKED]

310:9-7-3 [REVOKED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104, § 1-119, SB 1398

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

October 17, 2022

**COMMENT PERIOD:**

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September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The purpose of the rule change is to align with SB 1398, which became effective November 1, 2022. This SB deleted requirements relating to the Health Care Information Advisory Committee and updated rule making authority to the Commissioner of Health instead of the State Board of Health. The proposed rule revokes references to the Health Information Advisory Committee and replaces reference to the Board of Health with the Commissioner of Health.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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**

**310:9-1-2. 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 chief executive officer for a facility.~~

"Ambulatory care data" means data elements required by the Department regarding persons treated by hospitals, free-standing ambulatory surgery centers, or other health care providers, for less than 24 hours.

"Ambulatory surgery center" means a hospital-based or free-standing center providing surgery with patient stays of less than 24 hours, licensed under 63 O.S. Section 2657 et seq.

~~"Board" means Oklahoma State Board of Health.~~

~~"Commissioner" means the Commissioner of the Oklahoma State Department of Health.~~

~~"Committee" means the Health Care Information Advisory Committee.~~

"Custom Data Set" means a subset of the Public Use Data File developed by the Department on special request.

## Permanent Final Adoptions

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**"Custom report"** means a compilation or study developed by the Department on special request.

**"Data element"** means the specific information collected and recorded for the purpose of health care and health care service delivery. Data elements include information to identify the individual, the health care provider, the data supplier, the services provided, charges for service, payor source, medical diagnosis, medical treatment and other data as requested.

**"Data file"** means an electronic file containing data elements.

**"Data submission manual"** means a manual developed by the Department containing data elements required to be submitted by information providers.

**"Data use agreement"** means a document that must be submitted in order to obtain the public use data file or any anonymous patient- level data. The document assures the Department that the user will not attempt to identify or contact any person included in the data set.

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

**"Direct Patient Identifiers"** Data elements that directly identify a patient (e.g. name, SSN, etc).

**"Division"** means the Health Care Information Division of the Oklahoma State Department of Health.

**"Facility"** means hospital or ambulatory surgery center.

**"Health care information system"** means the system for receipt, collection, analysis, evaluation, processing, utilization and dissemination of health care data established and maintained by the Health Care Information Division pursuant to the Oklahoma Health Care Information System Act.

**"Health care provider"** means hospitals, nursing facilities, ambulatory surgery centers, and any other health care provider licensed or certified by the Department or any other state agency; doctors as defined in Section 725.2 of Title 59 of the Oklahoma Statutes; or physical therapists, physician assistants, pharmacists, nurses and home health care providers licensed pursuant to the laws of this state.

~~**"Health data"** means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer.~~

**"Hospital"** means a hospital licensed under 63 O.S. Section 1-704.

**"Hospital discharge data"** means data elements required by the Department regarding persons admitted to and discharged from a hospital.

**"Identifying information"** means information that could uniquely identify an individual.

**"Information provider"** means all health care providers and the third-party payor or public-supported provider as defined in Section 1-116 of Title 63 of the Oklahoma Statutes.

~~**"Oklahoma Cooperative Annual Hospital Survey"** means a voluntary annual survey of all Oklahoma hospitals regarding service and financial information.~~

**"Public use data file"** means an electronic file for public use containing data elements from the hospital discharge or

ambulatory surgery data file that do not directly or indirectly identify an individual or physician.

**"Standard information provider report"** means a compilation of data submitted by an information provider that is generated by the Division for the information provider.

**"Standard report"** means a compilation or study developed to display information on selected topics, published periodically.

~~**"Third-party data processor"** means any entity that provides data processing services.~~

**"Third-party payor"** means any entity, other than a purchaser, which is responsible for payment either to the purchaser or the health care provider for health care services rendered by the health care provider.

### SUBCHAPTER 7. HEALTH CARE INFORMATION ADVISORY COMMITTEE [REVOKED]

#### 310:9-7-1. Committee appointment [REVOKED]

~~The Commissioner shall appoint a Health Care Information Advisory Committee to advise and assist the Department.~~

#### 310:9-7-2. Membership [REVOKED]

~~The membership of the Committee shall include, but not be limited to, the presidents, or their designees, of the Oklahoma State Chamber of Commerce, the Oklahoma Hospital Association, the Oklahoma State Medical Association, the Oklahoma Osteopathic Association, the Oklahoma AFL-CIO, a statewide health care consumer coalition, the Oklahoma Health Care Association, the Association of Oklahoma Life Insurance Companies, the Oklahoma Health Care Association, the Oklahoma Pharmaceutical Association, the Oklahoma Dental Association, the Joint Chiropractic Association of Oklahoma, the Oklahoma Optometric Association, the Oklahoma Physical Therapy Association, the Oklahoma Podiatric Medical Association, the Oklahoma Psychological Association, the Oklahoma Nurses Association, Community Health Care Centers, Inc., and the Oklahoma Association of Home Care.~~

#### 310:9-7-3. Duties [REVOKED]

~~The Committee shall:~~

~~(1) Advise and assist the Health Care Information Division with determinations related to data elements to be collected, reporting requirements, and the release and dissemination of information to the public.~~

~~(2) Assist in the development of implementation methods and in the interpretation and evaluation of the data received pursuant to the Oklahoma Health Care Information System Act.~~

[OAR Docket #23-513; filed 6-12-23]



**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 105. VITAL STATISTICS**

[OAR Docket #23-514]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Death Registration  
310:105-5-4 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104, § 1-304

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

October 20, 2020

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September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule would provide amendment authority of the medical portion of a death certificate for those who are authorized by statute to complete and sign the medical certification.

The purpose of the rule change is to align and comply with HB 2009 which became effective November 1, 2021 and with SB1322 which became effective and November 1, 2022. HB2009 authorized attending Advanced Practice Registered Nurses to complete and sign death certificates. SB1322 authorized attending Physician Assistants for the same. The proposed amendment adds these two groups as authorized to amend the medical portion of any death certificate they certified.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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 5. DEATH REGISTRATION**

**310:105-5-4. Amendments of death registrations**

(a) **Causes of death.** The cause of death or any other medical portion of the death certificate may be amended only upon the application of the medical examiner or the ~~attending~~ certifying physician, advanced practice registered nurse or physician assistant as authorized by Title 63 O. S. § 1-317.

(b) **Minor corrections.** Minor corrections to a death certificate shall be made only upon the application of the funeral home which must attest that the corrections are being made based on mistake made by the funeral home.

(c) **Other corrections.** Any applicant that desires to make a change, alteration or amendment not provided for in paragraphs (a) through (b) of this section may file a petition with the Administrative Hearing Clerk pursuant to OAC 310:2 and seek a final decision by an Administrative Law Judge granting the relief requested. The applicant shall bear the burden of proof, by clear and convincing evidence that the proposed change, alteration or amendment sought by the Applicant corrects an error or misstatement of fact as to any information supplied to the State Registrar by the funeral home.

[OAR Docket #23-514; filed 6-12-23]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 234. MEDICAL  
MICROPIGMENTATION**

[OAR Docket #23-515]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions  
310:234-1-2 [AMENDED]  
Subchapter 11. Enforcement  
310:234-11-1 [AMENDED]  
310:234-11-3 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104, § 1-1450 et seq.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND  
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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These changes are related to the provisions provided in HB 3002, which modify the requirements related to denial of a license. It removes consideration of misdemeanors and requires felonies to be substantially related to the practice of medical micropigmentation and pose a reasonable threat to public safety. These rule changes add definitions from the HB 3022 and also modify the administrative penalty sections to match these requirements.

# Permanent Final Adoptions

## CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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

### 310:234-1-2. Definitions

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

**"Autoclave bag"** means a bag for holding instruments or other items, which are to be put into an autoclave for sterilization.

**"Certification"** means written approval by the Department for a person to perform medical micropigmentation.

**"Committee"** means the Consumer Protection Licensing Advisory Council.

**"Contaminated waste"** means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood and other potentially infectious materials, as defined in the "Bloodborne Pathogens." [29 CFR § 1910.1030]

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

**"Equipment"** means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with medical micropigmentation procedures.

**"Handsink"** means a lavatory equipped with hot and cold running water under pressure used solely for washing hands, arms or other portions of the body.

**"Hot water"** means water that attains and maintains a temperature of 100 °F.

**"Instruments used for medical micropigmentation"** means handpieces, needles, needle bars and other instruments that may contact a client's body or body fluids during medical micropigmentation.

**"Licensing board"** means *the Oklahoma State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners and/or the Board of Dentistry.* [63 O.S. Section 1-1451(1)]

**"Medical micropigmentation"** means *a medical procedure in which any color or pigment is applied with a needle or electronic machine:*

(A) *To produce a permanent mark visible through the skin;*

(B) *Above the jawline and anterior to the ear and frontal hairline including but not limited to application of eyeliner, eye shadow, lips, eyebrows, cheeks, and scars; and/or*

(C) *For regimentation of areas involving reconstructive surgery or trauma.* [63 O.S. Section 1-1451(2)]

**"Physician"** means a person licensed to practice:

(A) *Allopathic medicine and surgery by the Oklahoma State Board of Medical Licensure and Supervision pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act.*

(B) *Osteopathic medicine by the State Board of Osteopathic Examiners pursuant to the Oklahoma Osteopathic Medicine Act, or*

(C) *Dentistry by the Board of Dentistry pursuant to the State Dental Act.* [63 O.S. Section 1-1451(3)].

**"Poses a reasonable threat"** means *the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.* [63 O.S. Section 1-1451(E)(2)]

**"Procedure surface"** means any part of equipment designed to contact the client's unclothed body during a medical micropigmentation procedure.

**"Sanitize"** means a process of reducing the number of microorganisms on cleaned surfaces and equipment to a safe level and has been approved by the Department.

**"Sharps"** means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

**"Sharps container"** means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol.

**"Single use"** means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, and protective gloves.

**"Skills area evaluation"** means an evaluation given at the end of instruction for a particular skills area that consists of two parts: technique and theory. Mastery of technique shall be demonstrated by performing the skills on the job sheet(s) for that skills area in the presence of an approved evaluator (supervising physician or instructor) with 100% accuracy. A candidate demonstrates mastery of micropigmentation theory by scoring 85% or greater on a written test over the material in that skills area.

**"Sterilization"** means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

**"Substantially relates"** means *the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation.* [63 O.S. 1451(E)(1)]

"**Ultrasonic**" means ultrasonic sound, which is pertaining to acoustic frequencies above the range audible to the human ear, or, above approximately 20,000 cycles per second. There are several types of ultrasonic devices.

"**Written certification examination**" means the state examination taken upon satisfactory completion of all skills area evaluations. An applicant demonstrates written competency by scoring 70% or greater on the written certification examination.

**SUBCHAPTER 11. ENFORCEMENT**

**310:234-11-1. General requirements**

*The State Commissioner of Health shall not issue a certificate or renew a certificate to perform medical micropigmentation to a person who has:*

- (1) *Been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor involving moral turpitude in any federal, state, territory or District of Columbia court crime that substantially relates to the practice of medical micropigmentation and poses a reasonable threat to public safety;*
- (2) *Been determined to have engaged in unprofessional conduct as defined by the rules promulgated by the State Board of Health;*
- (3) *Made a materially false or fraudulent statement in an application or other document relating to certification pursuant to the provisions of the Oklahoma Medical Micropigmentation Regulation Act; or*
- (4) *Had a health-related license, certificate, or permit suspended, revoked or not renewed or had any other disciplinary action taken, or had an application for a health-related license, certificate, or permit refused by a federal, state, territory, or District of Columbia regulatory authority for intentionally falsifying information. [63 O.S. Section 1-1454(B)]*

**310:234-11-3. Administrative penalties**

- (a) The Department may assess administrative penalties as follows:
  - (1) Failure to obtain appropriate certification (i.e. performing Micropigmentation without a certificate), \$5,000.00 per violation;
  - (2) Failure to observe procedures to prevent the transmission of a bloodborne pathogen, \$500.00 per violation;
  - (3) Failure to maintain instruments used in medical micropigmentation in a sterile condition, \$500.00 per violation;
  - (4) Failure to install and maintain appropriate facilities for handwashing, \$500.00 per violation;
  - (5) Failure to maintain client records or monthly spore destruction test records, \$500.00 per violation; or
  - (6) Demonstrating unprofessional conduct, which includes but is not limited to:
    - (A) Advertising to the public in any manner without the necessary certificate;

- (B) Habitual intemperance or the habitual use of ~~habit forming~~ habit-forming drugs;
- (C) ~~Conviction of a felony or of any offense involving moral turpitude;~~
- ~~(D)~~ All advertising of business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;
- ~~(E)~~ Conviction or confession of a crime involving violation of:
  - (i) The laws of this state, or
  - (ii) ~~State Board of Health rules~~ The Oklahoma Medical Micropigmentation Regulation Act or this Chapter;
- ~~(F)~~ Failure to maintain an office record for each patient which accurately reflects the treatment of the patient;
- ~~(G)~~ Fraud or misrepresentation in applying for or procuring a micropigmentation certificate;
- ~~(H)~~ Cheating on or attempting to subvert the medical micropigmentation certification examination(s);
- ~~(I)~~ Conduct likely to deceive, defraud, or harm the public;
- ~~(J)~~ Practice or other behavior that demonstrates an incapacity or incompetence to practice medical micropigmentation; or
- ~~(K)~~ Has been finally adjudicated and found guilty or entered a plea of guilty or nolo contendere to a felony crime as described Section 310:234-11-1(1) of this Chapter in a criminal prosecution, for any offense reasonably related to the qualifications, functions or duties of a micropigmentationologist for any offense involving moral turpitude, whether or not sentence is imposed, and regardless of the pendency of an appeal, penalty of \$500.00 for each violation above in section 310:234-11-3(6).
- (b) Penalties shall double for repeat offenses.
- (c) Continued non-compliance shall result in administrative action to revoke the certification or to order the person to cease violating the law.
- (d) Each day an offense occurs shall be considered a separate of offense.

[OAR Docket #23-515; filed 6-12-23]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 265. HEARING AID DEALERS  
AND FITTERS [REVOKED]**

[OAR Docket #23-516]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions [REVOKED]
  - 310:265-1-1 [REVOKED]
  - 310:265-1-2 [REVOKED]
  - 310:265-1-3 [REVOKED]
  - Subchapter 3. Examinations [REVOKED]

# Permanent Final Adoptions

310:265-3-1 [REVOKED]  
310:265-3-2 [REVOKED]  
310:265-3-3 [REVOKED]  
Subchapter 5. License Requirements [REVOKED]  
310:265-5-1 [REVOKED]  
310:265-5-2 [REVOKED]  
310:265-5-3 [REVOKED]  
310:265-5-4 [REVOKED]  
310:265-5-5 [REVOKED]  
310:265-5-6 [REVOKED]  
310:265-5-7 [REVOKED]  
310:265-5-8 [REVOKED]  
Subchapter 7. Regulatory Enforcement [REVOKED]  
310:265-7-1 [REVOKED]  
310:265-7-2 [REVOKED]  
310:265-7-3 [REVOKED]  
APPENDIX A. Statements Required by OAC 310:265-5-4(E) [REVOKED]

## AUTHORITY:

Commissioner of Health; Title 63 O.S. §§ 1-104, 1-1750 *et seq.*

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

December 12, 2022

## COMMENT PERIOD:

January 17, 2023 through February 17, 2023

## PUBLIC HEARING:

February 17, 2023

## ADOPTION:

March 13, 2023

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 13, 2023

## LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

## FINAL ADOPTION:

May 31, 2023

## EFFECTIVE:

September 11, 2023

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The chapter is being revoked. The Department is adopting a new chapter for the regulation of hearing aid dealers and fitters.

## 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. GENERAL PROVISIONS [REVOKED]

### 310:265-1-1. Purpose [REVOKED]

The rules in this Chapter implement the Hearing Aid Dealers and Fitters Act, 63 O.S., Section 1-1750 *et seq.*

### 310:265-1-2. Definitions [REVOKED]

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

**"Act"** means those statutes relating to Hearing Aid Dealers and Fitters codified at 63 O.S., Sections 1-1750 to 1-1754, as amended.

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

**"Commissioner"** means the State Commissioner of Health or his/her authorized representative.

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

**"Direct on-site supervision"** means a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids.

**"Established procedures and instrumentation in fitting of hearing aids"** means a minimum requirement all hearing tests shall include both air conduction and bone conduction threshold measurements except in the case of a re-test when there is less than a fifteen (15) dB loss between the current air conduction threshold and the previous air conduction threshold and the previous tests showed the loss to be sensorineural.

**"Hearing aid"** means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, but excluding earmolds, batteries, and cords; provided that this definition shall not include lenses or spectacle frame fronts for eyeglass type hearing aids; except in the case of spectacle frame fronts which include electrical wiring as part of the hearing aid.

**"Hearing Screening"** means a binary pure tone screening at a preset intensity level for the purpose of determining if an individual screened needs further testing prior to the selection or sale of a hearing aid.

**"License"** means a license issued by the Commissioner to hearing aid dealers and fitters.

**"Practice of fitting and dealing in hearing aids"** means those practices used for the purpose of selection, adaptation and sale of hearing aids including direct observation of the ear together with the counseling and instruction pertaining thereto, the testing of human hearing for these purposes and the making of impressions for earmolds.

**"Qualified waiver"** means a written acknowledgment endorsed by the person supplied with a hearing aid, or his lawfully appointed guardian, that indicates the person supplied with a hearing aid was advised the ambient noise level of the testing environment used to fit a hearing aid exceeded 45 dB on a slow weighted dB (a) scale and the hearing test conducted could result in an inappropriately fitted hearing aid.

**"Sell"** or **"sale"** means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

**"Seller"** means any person who dispenses a hearing aid to any member of the consuming public.

~~"Temporary permit" means a permit issued while the applicant is training to become a licensed hearing aid dealer or fitter.~~

**310:265-1-3. Exemptions [REVOKED]**

- ~~(a) This act is not intended to prevent any person from engaging in the practice of measuring human hearing or making and fitting earmolds for the purpose of selection of hearing aids provided such person or organization employing such person does not sell hearing aids.~~
- ~~(b) Nothing in this act may be construed as preventing or restricting a person licensed by this state as an audiologist or physician from practicing the profession for which licensed.~~

**SUBCHAPTER 3. EXAMINATIONS [REVOKED]**

**310:265-3-1. Qualifications [REVOKED]**

- ~~(a) Applicants may obtain a hearing aid dealer or fitter license by successfully passing qualifying examinations, provided the applicant:
 
  - ~~(1) Is at least eighteen (18) years of age;~~
  - ~~(2) Is of good moral character. A criminal record shall not in itself bar an applicant from licensing, but evidence of such record may be considered along with other information in determining whether or not the applicant is of good moral character.~~
  - ~~(3) Has an education equivalent to a four year course in an accredited high school; and~~
  - ~~(4) Has filed with the Commissioner an application for registration and examination and paid the examination fee of Ninety five Dollars (\$95.00), or paid the examination fee to a national examination provider whose exam meets the requirements of this Chapter and who has entered into an agreement with the Department to provide the exam.~~~~
- ~~(b) An applicant for license by examination shall appear before such persons as the Commissioner may designate to be examined to demonstrate that he/she is qualified to practice the fitting and sale of hearing aids. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected of physicians.~~
- ~~(c) The Commissioner shall give examination as required to permit applicants to be examined within six (6) months following the submission of the official application form.~~
- ~~(d) Successfully passing the examination means passing each of the sections. When a passing score is obtained for any section, that section will not have to be taken again. A passing score for each section below will be approved by the Department based on the submitted and approved examination.
 
  - ~~(1) Written Examination meeting the requirements of this Chapter.~~
  - ~~(2) Oklahoma Audiometric Practical examination.~~
  - ~~(3) Oklahoma Hearing Aid Rules examination.~~
  - ~~(4) Oklahoma Ear Impression Practical examination.~~
  - ~~(5) Hearing Aid Trouble Shooting Practical Examination.~~~~

~~(e) No person may take any portion of the examination more than three (3) times and must wait at least seven days before retaking a portion of any examination. Any person failing any section of the examination three times shall not be allowed to apply for an Oklahoma Hearing Aid Dealers and Fitters License for one (1) year from their last testing date. If a person fails any portion of the examination three (3) times, the Department shall summarily suspend and seek permanent revocation of the person's current temporary hearing aid dealers and fitters permit.~~

**310:265-3-2. Contents of examination [REVOKED]**

~~The hearing aid dealer or fitter examination shall consist of an examination at the discretion of the Commissioner, taking into consideration the guidelines if available for a national examination and guidelines if available for similar examinations given by surrounding states. The tests under this section shall not require a higher education in the fields of medicine, audiology or communication disorders. The examination shall consist of tests of knowledge as it pertains to the sale and fitting of hearing aids as follows:~~

- ~~(1) Function of a hearing aid;~~
- ~~(2) Pure tone audiometry, including air conduction testing and bone conduction testing (continuous pulsing audiometer setting not accepted);~~
- ~~(3) Recorded voice speech audiometry;~~
- ~~(4) Masking when indicated;~~
- ~~(5) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;~~
- ~~(6) Taking earmold impressions;~~
- ~~(7) Rules and regulations pertaining to the sale and fitting of hearing aids; and~~
- ~~(8) Trouble Shooting pertaining to the identification of visible physical defects or damage to hearing aids.~~

**310:265-3-3. Fees for license applications and examinations [REVOKED]**

- ~~(a) Fees for license applications, permits and examinations shall be as follows:
 
  - ~~(1) Initial License Application Fee—\$50.00;~~
  - ~~(2) Examination Fee—\$95.00, or receipt for payment of an examination fee for an examination from a national provider that meets the requirements of this Chapter and who has entered into an agreement with the Department to provide the exam;~~
  - ~~(3) Temporary Permit Application Fee—\$15.00;~~
  - ~~(4) Renewal License Fee (on or before January 30)—\$50.00;~~
  - ~~(5) Reexamination Fee—\$95.00;~~
  - ~~(6) Temporary Permit Extension Fee—\$15.00;~~
  - ~~(7) Renewal of License (within thirty day grace period)—\$75.00; and~~
  - ~~(8) Renewal of License (after thirty day grace period)—\$100.00.~~~~
- ~~(b) Licensure by equivalency fees, grounds for renewal and procedures for the suspension and revocation shall be the same~~

# Permanent Final Adoptions

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as for initial licensing, renewal, suspension and revocation of a license.

(e) Application fees are non-refundable.

## SUBCHAPTER 5. LICENSE REQUIREMENTS [REVOKED]

### 310:265-5-1. License required [REVOKED]

(a) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting and sale of hearing aids without first obtaining a license or permit in accordance with these rules from the Commissioner or his designated representative. The license shall be conspicuously posted in his/her office or place of business. Duplicate licenses shall be issued by the Commissioner to valid license holders operating more than one office, without additional payment.

(b) Nothing in these regulations shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided it employs only properly licensed persons in the direct sale and fitting of such products. Such corporations, partnerships, trust, associations or other like organizations shall make a list of all licensed hearing aid dealers and fitters directly or indirectly employed by them available to the Department upon request.

(c) Nothing in these regulations shall permit a licensed hearing aid dealer or fitter to take facial measurements for eyeglasses or to fit, adjust, duplicate or adapt lenses or spectacle frames, except that a licensed hearing aid dealer or fitter may adapt or replace the temple or temples incorporating hearing aid components in eyeglass type hearing aids.

### 310:265-5-2. Applicant requirements for reciprocity [REVOKED]

(a) Whenever the Commissioner determines another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to these regulations excluding trouble shooting and Oklahoma regulations, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to these regulations are qualified to dispense and fit hearing aids, the Commissioner may issue a license to applicants who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction.

(b) Applicants must submit an application for reciprocity on forms as designated by the Department.

(c) Applicants must submit an Out of State Licensure Verification form filled out by the other licensing state.

(d) Applicants must register with the Department and pass the Oklahoma Hearing Aid Rules examination and Hearing Aid Trouble Shooting Practical Examination.

### 310:265-5-3. Address of place of business [REVOKED]

(a) A person who holds a license shall notify the Commissioner in writing of each address of the business(es) where he/she engages or intends to engage in the fitting or the sale of hearing aids. A post office box number by itself does not fulfill this requirement.

(b) The Commissioner shall keep a record of the place of business of licensees.

(c) Any notice required to be given by the Commissioner to a person who holds a license shall be mailed to him/her by certified mail at the address of the last place of business of which he/she has notified the Commissioner.

(d) Where more than one (1) office is operated by the licensee, duplicate licenses shall be issued by the Commissioner for posting in each location, without additional payment. The licensee must send a written request for a duplicate license indicating the address of the place of business where the duplicate license will be posted.

### 310:265-5-4. Receipts [REVOKED]

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his business address, (a post office box number by itself does not meet the requirement of a business address), and number of his State license, together with specifications as to the make and model of the hearing aid furnished, with full terms of the sale clearly stated. If an aid which is not new is sold, the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

(b) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: "Any examination or representation made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion or advice. Further, it is recommended that medical advice from a licensed physician should be obtained."

(c) No receipt for a hearing aid shall be valid without the original signature of a licensed hearing aid dealer and fitter. Said receipt shall constitute a contract of sale between the hearing aid dealer and fitter and the purchaser. The holder of a temporary license may not issue a receipt unless the original signature of the direct supervisor also appears on the receipt. Said receipt shall have the state license number of both the licensed hearing aid dealer and fitter and the temporary licensed person.

(d) The hearing aid dealer and fitter may retain a cancellation fee of 10% or \$150 per aid, whichever is less, of the purchase price of the hearing aid(s). The guarantee must entitle the purchaser, upon cancellation for any reason within the 30 day period after taking possession of the hearing aid(s), to receive the full refund less the cancellation fee. Said refund shall be provided to the purchaser within 30 days after the return of the hearing aid(s). If the hearing aid must be repaired, remade or adjusted during the 30 day refund period, the running of the

30-day period is tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery.

(e) The hearing aid provider shall provide a written receipt or contract to the purchaser that includes, in immediate proximity to the space reserved for the signature of the purchaser, the two specific statements as set forth in Appendix A, in all bold faced type capital letters no smaller than the largest print used in the written receipt or contract.

(f) The following information and measurements shall be included in each customer/patient file or permanent record, and be documented for the client:

- (1) A description, including location of any visible, congenital or deformity of the ear.
- (2) Whether the client has active, or a history of, drainage from the ear within the last 90 days.
- (3) Whether the client has acute or chronic dizziness.
- (4) Whether the client has unilateral hearing loss of a sudden or recent onset within the previous 90 days.
- (5) Whether the client has a history of sudden or rapidly progressive hearing loss within the previous 90 days.
- (6) Whether the client has an Audiometric Air Bone Gap equal to or greater than 15 decibels at 500 Hertz, 1000 Hertz and 2000 Hertz.
- (7) Whether the client has visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
- (8) Whether the client has pain or discomfort in the ear.

**310:265-5-5. Renewal of license [REVOKED]**

Each person who engages in the fitting and sale of hearing aids shall annually, on or before January 30, pay to the Commissioner a fee of Fifty Dollars (\$50.00) for renewal of his/her license, submit evidence of fulfilling the continuing education requirements, and shall keep such certificate conspicuously posted in his/her office or place of business at all times. A thirty (30) day grace period shall be allowed after January 30, during which time licenses may be renewed on a payment of a fee not to exceed Seventy five Dollars (\$75.00) to the Commissioner. After expiration of the grace period, the Commissioner may renew such licenses upon payment of One Hundred Dollars (\$100.00) to the Commissioner. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal unless the license has lapsed for five (5) years or more and/or the person has not been in the business for five (5) or more years.

**310:265-5-6. Continuing education requirements [REVOKED]**

(a) Each applicant for renewal of a hearing aid dealer or fitter license must submit written evidence showing he/she has completed ten (10) clock hours of continuing education, completed during the previous year and pertaining to the hearing sciences.

- (1) No more than four (4) online continuing education clock hours may be submitted for the required ten (10) annual hours.

(2) The continuing education hours must be approved by the International Institute of Hearing Instruments or have had the curriculum approved by the Department.

(b) Continuing education course approval by the Department. An entity which desires to sponsor education to licensees in compliance with the continuing education requirements of subsection (a) of this Section shall file an application for approval on the form prescribed by the Department. An application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of clock hours of classroom and supervised instruction. After completion of the course, the entity shall submit sign in sheets for all sessions which require a signature and social security number or state license number of each person in attendance. The program shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted unless changes have been approved prior to presentation. Changes which occur during the presentation shall be submitted to the Department within ten (10) days of the training session for review by the Department. Failure to obtain approval of changes may result in loss of certification.

- (c) Approval requirements for continuing education.
  - (1) All material and information presented shall pertain to the hearing aid dealers and fitters profession.
  - (2) All training should utilize materials that are to be generic and non-proprietary in nature.

**310:265-5-7. Temporary permits [REVOKED]**

(a) An applicant who fulfills the requirements regarding age, character and education as set forth in these regulations shall be entitled to a temporary hearing aid dealer or fitter permit upon application to the Commissioner. Previous experience or a waiting period shall not be required to obtain a temporary permit.

(b) Upon receiving an application as provided under this section and accompanied by a temporary permit application, the Commissioner shall issue a temporary permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period not to exceed six (6) months or until the holder has successfully passed the examination required for a license, whichever period is less. A person holding a valid Oklahoma Hearing Aid Dealers' and Fitters' License shall be responsible for the direct on-site supervision and training of such applicant.

(c) A temporary permit may be extended for an additional period by the Commissioner upon payment of a fee of Fifteen Dollars (\$15.00). The Commissioner shall not extend a temporary permit more than one (1) time.

(d) A maximum of two (2) people with temporary permits may work under the direct on-site supervision of a person holding a valid Oklahoma Hearing Aid Dealers' and Fitters' License.

**310:265-5-8. Procedures and instrumentation in fitting of hearing aids [REVOKED]**

(a) **Testing.**

# Permanent Final Adoptions

(1) All instruments used to measure thresholds shall be annually certified to meet American National Standard Specifications for Audiometer, S3.6 1969 or a standard which supersedes it. In addition, some form of live voice or recorded voice testing must be made to obtain at least a subjective evaluation of the individual's ability to discriminate. In the case of live voice testing, the tests should be run without visual cue. A hearing aid of similar characteristics can be refitted to an individual without a hearing test if this is done within six (6) months of the original fitting and original hearing test.

(2) Hearing testing for the purpose of fitting hearing aids shall not be conducted where ambient noise levels exceed 45 dB measured on a slow weighted dB (a) scale. If the testing environment exceeds 45 dB, the testing shall be considered a "Hearing Screening" and shall not be utilized to determine the auditory thresholds in the selection of a hearing aid unless a qualified waiver is executed by the person supplied with a hearing aid and is accompanied by written documentation from a competent medical authority as outlined in 310:265-5-8(c).

(b) **Screening.** A licensee may conduct a hearing screening at a health fair, state fair, public location or similar facility, but due to excessive background noise commonly found in these environments, measurement of auditory thresholds are not acceptable. A licensee should present to the person receiving the "Hearing Screening" a written statement at the time of the screening containing the following provisions: Results of a "Hearing Screening" are not a medical or audiological evaluation of your ear nor a diagnosis of a hearing disorder. You passed/failed (circle one) the hearing screening. Failing a screening is an indication you need further testing prior to the selection of a hearing aid.

(c) **Qualified waiver.** The waiver must be accompanied by written documentation from a competent medical authority that the person supplied with a hearing aid is not ambulatory and any transport of that person would create a serious risk of harm or cause an imminent threat to their health and wellbeing. A qualified waiver may not be utilized at a hearing screening conducted at a health fair, state fair, public location or similar facility that exceeds 45 dB on a slow weighted dB (a) scale.

## SUBCHAPTER 7. REGULATORY ENFORCEMENT [REVOKED]

### 310:265-7-1. Suspension or revocation of licenses [REVOKED]

(a) The Commissioner shall have the power and duty to suspend or revoke the license of any person registered under this act, after a hearing, and after an administrative determination that such licensee has violated or has failed to comply with any of the provisions of this act or any regulation adopted thereunder. The Commissioner shall have the power to reinstate any such suspended or revoked licenses, upon a satisfactory and acceptable showing and assurance that there was compliance by the said licensee with provisions of these regulations and that

conformity and compliance therewith will be continuous. Any action taken relative to the denial, suspension or revocation of a license shall conform to the Oklahoma Administrative Procedures Act.

(b) Any person registered under these regulations may have his license revoked or suspended for a fixed period by the Commissioner for any of the following causes:

(1) The conviction of any crime involving moral turpitude or a felony. The record of conviction, or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction. Provided that upon successful completion of the sentence of the court, the person may again be eligible for licensing by the Commissioner.

(2) Procuring of license by fraud or deceit practiced upon the Commissioner.

(3) Unethical conduct, including, but not limited to:

(A) The obtaining of any fee or the making of any sale by fraud or misrepresentation;

(B) Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by these regulations;

(C) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive or untruthful, or which may include making any misrepresentation of material fact, in whole or in part, or any claim that the services performed or the materials used are superior to that which is ordinarily performed or used in the business unless such claims can be documented as truthful and not misleading;

(D) Advertising a particular model or type of hearing aid for sale and/or advertising a particular sales price, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(E) Representing that the service or advice of a person licensed to practice medicine or audiology will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or holding oneself out to the public by any title or description of services incorporating the terms "doctor", "audiologist", "audiology", "clinic", "hearing clinic", "hearing center" or similar words, abbreviations or symbols which tend to connote the medical or audiology profession when such is not accurate. All hearing aid dealers and fitters operating within the State of Oklahoma must use a trade name or business name which clearly and fairly portrays the business as a hearing aid business, unless the trade or business name was used or employed by an entity that was a going concern as a hearing aid business on or before August 1, 2004. All changes in trade or business names made after August 1, 2004, must comply with the clear and fair trade or business name requirement of this subsection;



- (F) Habitual intemperance;
- (G) Gross immorality;
- (H) Permitting another's use of a license;
- (I) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist;
- (J) Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors;
- (K) Including an educational degree after the hearing aid dealer's or fitter's name but does not qualify the degree as to its field, or includes the title "Dr." where the degree is a non-medical doctorate and the advertisement does not disclose that fact;
- (L) Including any type of certification designation after the hearing aid dealer's or fitter's name, but does not append to his name, so written or printed in the same font size as his name, appropriate and easily understood words which clearly show and indicate the meaning of the certification designation and the group that provides the certification. Example: John Doe, BC HIS, Board Certified in Hearing Instrument Sciences, or the BC HIS logo.
- (M) Advertising an offered or sale price of a hearing aid without the make and model of the hearing aid, the price of the added features of the hearing aid, the price of any additional testing or fitting fees, the manufacturer's suggested retail price and discounted price, if any of the above are to be incurred. Advertisements shall be written in a manner to be clear, honest and easily understood by the public; or
- (N) Advertising a special promotional offer such as buy one get one free or a purchase with any rebate without also providing the details of the offer in the advertisement.

- (4) Engaging in the fitting and sale of hearing aids under false name or alias with fraudulent intent.
- (5) Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids.
- (6) Gross incompetence or negligence in fitting and selling hearing aids, including issuing a receipt to the purchaser which does not conform to OAC 310:265.
- (7) Violating any provisions of the Law, these Regulations, or Federal regulations pertaining to the sale and fitting of hearing aids.
- (8) Failing to provide information in response to a written request made by the department within 30 days.

**310:265-7-2. Prohibited acts [REVOKED]**

- (a) No person shall:

- (1) Sell, barter, or offer to sell or barter a license;
  - (2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing aids;
  - (3) Alter a license with fraudulent intent;
  - (4) Use or attempt to use as a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered;
  - (5) Willfully make a false statement in an application for a license or application for renewal of a license;
  - (6) Engage in the practice of fitting and dealing in hearing aids with a temporary permit unless under the direct on-site supervision of an Oklahoma Licensed Hearing Aid Dealer and Fitter;
  - (7) Allow a temporary permit holder to engage in the practice of fitting and dealing in hearing aids unless under the direct supervision of an Oklahoma Licensed Hearing Aid Dealer and Fitter;
  - (8) Sell a hearing instrument to a person under eighteen (18) years of age unless the prospective user, parent or guardian has presented to the licensee a medical evaluation signed by a physician who specializes in diseases of the ear, that states the client may be considered a candidate for a hearing instrument. This requirement may be waived if a physician who specializes in diseases of the ear is not available within 100 miles of the person's residence and a licensed physician provides the medical evaluation. This evaluation must have taken place within the preceding six (6) months of the testing and fitting. A licensed audiologist should perform the evaluation and rehabilitation; or
  - (9) Infer directly or indirectly in advertisement or written material that the hearing aid dealer and fitter is licensed as a physician or audiologist or performs diagnostic procedures to determine the cause of a hearing impairment.
- (b) Violations of this Section may be brought pursuant to Title 63 O.S. Section 1-1701.1A (Administrative penalty), as amended.

**310:265-7-3. Complaint procedure [REVOKED]**

- (a) **Purpose.** The purpose of this section is to specify the administration and investigation of complaints and the filing of disciplinary actions against hearing aid dealers and fitters who hold a license or temporary permit in Oklahoma, or against persons who sell hearing aids in Oklahoma without a license or temporary permit and who are not otherwise exempt from the license requirements.

(b) **Complaints.**

- (1) Any person may file a complaint against a licensed hearing aid dealer and fitter or temporary licensed dealer and fitter or a person selling or fitting hearing aids. A person desiring to report a complaint or violation by a licensee or seller shall notify the Department in writing. The Department will determine whether the complaint alleges a possible violation of the Act or this chapter. The Department may present the complaint to the Consumer Protection Licensing Advisory Council for consultation.

## Permanent Final Adoptions

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(2) The Department may request a written response to the complaint from the licensee to determine if the complainant has exhausted their remedy under the sales agreement.

(3) Except as provided in Paragraph (2) of this subsection, the complaint and the identity of the complainant may be confidential and unavailable for public inspection or disclosure unless otherwise required by law. The Department shall confirm whether or not a complaint has been received.

(e) **Investigation.** If the Department determines a possible violation of the Act or this Chapter has occurred, the Department may commence an investigation of the complaint.

(d) **Filing of an action.** The Department may begin a disciplinary action against a person who holds a license or temporary permit as a hearing aid dealer and fitter or a person selling

hearing aids who is not exempt from licensure. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, probation of a licensee, an administrative penalty, injunctive relief, or a combination of the foregoing remedies.

(e) **Referral of investigation.** Notwithstanding subsection (d) of this section, the Commissioner of Health may refer the results of an investigation, or complaint, received by the Department to the appropriate official(s) in consideration for criminal prosecution.

APPENDIX A. STATEMENTS REQUIRED BY OAC 310:265-5-4(E) [REVOKED]

As specified in 310:265-5-4(e), the statements below must be included in any written receipt or contract provided to the purchaser. The statements shall be placed in immediate proximity to the space reserved for the signature of the purchaser in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract.

(1) Statement One:

*OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID.*

*BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PER CENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS (\$150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER.*

*IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY-DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF \$ \_\_\_\_\_ .00. (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND).*

*IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISION, COMPLAINTS SHOULD BE FORWARDED TO:*

*OKLAHOMA STATE DEPARTMENT OF HEALTH  
OCCUPATIONAL LICENSING DIVISION  
1000 N.E. 10TH STREET  
OKLAHOMA CITY, OKLAHOMA 73117  
[15:764.1(A)(3)]*

(2) Statement two:

*DURING THE THIRTY-DAY PERIOD, IF THE HEARING AID IS RETURNED FOR REPAIRS OR ADJUSTMENTS THE THIRTY-DAY PERIOD SHALL BE TOLLED UNTIL RETURN OF THE AID(S) TO THE PURCHASER.*

*[OAR Docket #23-516; filed 6-12-23]*

# Permanent Final Adoptions

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 266. HEARING AID DEALERS AND FITTERS REGULATIONS

[OAR Docket #23-517]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions [NEW]  
310:266-1-1 [NEW]  
310:266-1-2 [NEW]  
Subchapter 3. Qualifications [NEW]  
310:266-3-1 [NEW]  
310:266-3-2 [NEW]  
Subchapter 5. Temporary Permits, Examinations and Licensure [NEW]  
310:266-5-1 [NEW]  
310:266-5-2 [NEW]  
310:266-5-3 [NEW]  
310:266-5-4 [NEW]  
310:266-5-5 [NEW]  
310:266-5-6 [NEW]  
310:266-5-7 [NEW]  
Subchapter 7. Fees [NEW]  
310:266-7-1 [NEW]  
Subchapter 9. Instruments and Testing [NEW]  
310:266-9-1 [NEW]  
310:266-9-2 [NEW]  
Subchapter 11. Regulatory Enforcement  
310:266-11-1 [NEW]  
310:266-11-2 [NEW]  
Subchapter 13. Required Documents and Complaint Procedures [NEW]  
310:266-13-1 [NEW]  
310:266-13-2 [NEW]  
310:266-13-3 [NEW]  
310:266-13-4 [NEW]  
Subchapter 15. Over-the-Counter Hearing Aids [NEW]  
310:266-15-1 [NEW]

**AUTHORITY:**

Commissioner of Health; Title 63 O.S. §§ 1-104, 1-1750 *et seq.*

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND  
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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Department's rules for hearing aid dealers and fitters have been rewritten and reorganized for increased clarity and ease of understanding. This includes: adding definitions of terms used in the Chapter; updating the education and supervision requirements for trainees; clarifying the fee schedule; and adding an exclusion from the licensing requirements for sales of over-the-counter hearing aids.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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

**310:266-1-1. Purpose**

The rules in this Chapter implement the Hearing Aid Dealers and Fitters Act, 63 O.S. § 1-1750 *et seq.* and 15 O.S. § 764.1. Hearing Aid Providers - Contracts - Rescission Period.

**310:266-1-2. Definitions**

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

"Act" means those statutes relating to Hearing Aid Dealers and Fitters codified at 63 O.S. §§ 1-1750 through 1-1754 and 15 O.S. § 764.1.

"Air-conduction hearing aid" means a hearing aid that conducts sound to the ear through the air. [Title 21 CFR Part 800, § 800.30]

"Commissioner" means the State Commissioner of Health or his/her authorized representative.

"Department" means the Oklahoma State Department of Health.

"Direct on-site supervision" means a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids.

"Hearing aid" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing. It includes both air conduction and bone conduction devices.

"Hearing aid provider" means a hearing aid dealer or fitter licensed pursuant to Section 1-1750 *et seq.* of Title 63 of the Oklahoma Statutes. [Title 15 O.S. § 764.1]

"Hearing Screening" means a binary pure tone screening at a preset intensity level for the purpose of determining if an individual screened needs further testing prior to the selection or sale of a hearing aid.

"Indirect supervision" means that the supervising licensed hearing aid dealer and fitter is not required to be present in the same facility as is the person being supervised, but is available for voice to voice contact by telephone, radio, or other means at the initiation of the person being supervised. It means specific supervisory activities, other than direct supervision, that are performed by a licensed hearing aid dealer and fitter and that may include consultation, record

review, consulting, and evaluation of audiotaped or videotaped sessions, at a minimum on a weekly basis.

**"Involvement of a licensed person"** means *the supervision, prescription, or other order, involvement, or intervention of a licensed person.* [Title 21 CFR Part 800, § 800.30]

**"License"** means a license issued by the Commissioner to hearing aid dealers and fitters.

**"Over-the-counter hearing aid"** means *an air-conduction hearing aid that does not require implantation or other surgical intervention, and is intended for use by a person age 18 or older to compensate for perceived mild to moderate hearing impairment. The device, through tools, tests, or software, allows the user to control the hearing aid and customize it to the user's needs. The device may use wireless technology or may include tests for self-assessment of hearing loss. The device is available over-the-counter, without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online, provided that the device satisfies the requirements in Title 21 CFR Part 800, § 800.30(b).*

**"Poses a reasonable threat"** means *the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.* [63 O.S. Section 1-1454(E)(2)]

**"Practice of fitting and dealing in hearing aids"** means those practices used for the purpose of selection, adaptation and sale of hearing aids including direct observation of the ear together with the counseling and instruction pertaining thereto, the testing of human hearing for these purposes and the making of impressions for earmolds.

**"Rescission period"** means *thirty (30) calendar days from the day the hearing aid is placed in the possession of the purchaser.* [15 O.S. § 764.1 (A) (3)]

**"Sell" or "sale"** means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

**"Sponsor"** means a person who is licensed and in good standing pursuant to this Chapter to fit and dispense hearing aids and who agrees to train and supervise a temporary permit holder.

**"Substantially relates"** means *the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness of ability to perform one or more of the duties or responsibilities necessarily related to the occupation.* [63 O.S. 1-1454 (E)(1)]

**"Temporary permit"** means a permit issued while the applicant is training to become a licensed hearing aid dealer or fitter.

**SUBCHAPTER 3. QUALIFICATIONS**

**310:266-3-1. General qualifications**

(a) Applicants for a hearing aid dealer or fitter temporary permit or license must, at a minimum, meet the following criteria:

- (1) At least eighteen (18) years of age;

- (2) Has a GED or high school diploma; and

- (3) Has submitted to a background check.

(b) A criminal record shall not itself bar an applicant from licensing, but evidence of such record may be considered along with other information in determining whether to issue a license.

**310:266-3-2. Reciprocity**

(a) Whenever the Department determines another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to these regulations, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to these regulations are qualified to dispense and fit hearing aids, the Department may issue an Oklahoma license to applicants who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction.

(b) Applicants must submit an application for reciprocity on forms as designated by the Department.

(c) Applicants must submit an Out-of-State Licensure Verification form filled out by the other licensing state.

(d) Applicants must register with the Department.

(e) Active duty military personnel and their spouses seeking a reciprocal license are not subject to the fees established for the first period of issuance of a license.

**SUBCHAPTER 5. TEMPORARY PERMITS, EXAMINATIONS AND LICENSURE**

**310:266-5-1. Temporary permits**

(a) An applicant who is at least 18 years of age and has a GED or high school diploma shall be entitled to a temporary hearing aid dealer or fitter permit upon application to the Commissioner if minimum qualifications are met.

(b) Once a complete application is received and eligibility confirmed, the Department will issue a temporary permit entitling the applicant to engage in the fitting and sale of hearing aids for a period up to twelve (12) months until the temporary permit holder becomes fully licensed.

(c) The temporary permit holder shall complete training under the direct on-site supervision of a Sponsor who holds a valid Oklahoma Hearing Aid Dealers' and Fitters' License. The Sponsor shall be responsible for direct on-site supervision and training of a temporary permit holder until they have passed every portion of the practical exam.

(d) The temporary permit holder must continue to receive indirect supervision from their Sponsor until they are fully licensed as a hearing aid dealer and fitter.

(e) If full licensure is not achieved in the twelve (12) month period, an additional temporary permit may be issued one (1) time by the Department within the subsequent twelve (12) months upon request for a payment of the Fifteen Dollar (\$15.00) fee.

(f) A maximum of three (3) people with temporary permits may work under the direct on-site supervision of a Sponsor

# Permanent Final Adoptions

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holding a valid Oklahoma Hearing Aid Dealers' and Fitters' License at one time.

### **310:266-5-2. License or permit required**

(a) No person shall engage in the sale or practice of fitting hearing aids or display a sign or in any other way advertise or represent themselves as a person who practices the fitting and sale of hearing aids without first obtaining a license or permit in accordance with these rules from the Department. The license shall be conspicuously posted in every physical place of business where the licensee practices. Duplicate licenses may be issued by the Department to valid license holders operating more than one office, without additional payment.

(b) A corporation, partnership, trust, association or other like organization may engage in the business of selling or offering for sale hearing aids at retail, provided it employs only properly licensed persons in the direct sale and fitting of such products. Such corporations, partnerships, trust, associations or other like organizations shall make available to the Department information related to licensed dealers upon request.

### **310:266-5-3. Examinations**

(a) A Sponsor shall attest to the temporary permit holder's readiness to take the practical examination.

(b) An applicant must wait a minimum of seven (7) days before applying to retake any failed section of the practical examination. A temporary permit holder is not required to retake any previously passed section of the practical exam, provided they pass all sections of the practical exam within the allowable timeframe.

(c) Upon submission of the application to take the practical examination, a temporary permit holder is eligible to take the International Licensing Examination for Hearing Healthcare Professionals written exam or other written exam approved by the Department.

(d) Temporary permit holders must pass the practical and written examinations to be eligible for a full license.

(e) Any temporary permit holder who fails a section of the practical examination or the written examination three (3) times will have their temporary permit revoked and will be required to wait a minimum of one (1) year from their last failed testing date to reapply for a new temporary permit.

### **310:266-5-4. Contents of examinations**

(a) The practical examination shall consist of tests pertaining to the sale and fitting of hearing aids as follows:

- (1) Technique
  - (A) Pure tone audiometry
  - (B) Recorded speech audiometry
- (2) Masking;
- (3) Earmold impressions; and
- (4) Detecting damage and defects.

(b) A temporary permit holder must pass all sections of the practical exam and the International Licensing Examination for Hearing Healthcare Professionals written examination or other Department approved written examination to be eligible for a full license.

### **310:266-5-5. Initial licensure**

An applicant must meet the General Qualifications as required in OAC 310:266-3-1, file a complete application with the Department, pay the required fee in full, and pass all required examinations in order to be licensed.

### **310:266-5-6. Renewal of license**

(a) Each person who engages in the fitting and sale of hearing aids shall pay to the Department the annual renewal fee, submit required documentation, and keep licensure certificate conspicuously posted in every place of business at all times. A license expired for a length of time greater than five years will require the holder of an expired license to follow the initial licensure process.

(b) At the time of renewal, the licensee must provide the following:

- (1) Documentation of required continuing education hours from an approved source;
- (2) Updated address(es) if applicable;
- (3) Copy of a current receipt or contract template;
- (4) Copy of a patient file template;
- (5) Verification all instruments meet the American National Standard Specifications for Audiometers according to factory standards, dated within the last three years;
- (6) The percentage of clients tested under an exception; and
- (7) Sponsor information to include the name and permit number of all temporary permit holders sponsored in the licensure year. Information shall include the start and end dates for each instance of direct on-site supervision.

### **310:266-5-7. Continuing education requirements**

Each applicant for renewal of a hearing aid dealer or fitter license must submit written evidence showing completion of ten (10) clock hours of continuing education, completed during the previous year pertaining to the hearing sciences. The continuing education hours must be approved by the International Hearing Society or the Oklahoma Hearing Aid Dispenser's Association.

## **SUBCHAPTER 7. FEES**

### **310:266-7-1. Fees**

(a) Fees for license applications, permits and examinations shall be as follows:

- (1) Temporary Permit Application Fee - \$15.00;
- (2) Temporary Permit Extension Fee - \$15.00;
- (3) Examination Fee - payable directly to the Department approved examination administrator;
- (4) Reexamination Fee - payable to the Department approved examination administrator;
- (5) Initial License Application Fee - \$50.00;
- (6) Renewal License Fee - \$50.00;
- (7) Renewal of License (within thirty-day grace period) - \$75.00; and

(8) Renewal of License (after thirty-day grace period) - \$100.00.

(b) Application fees are non-refundable.

**SUBCHAPTER 9. INSTRUMENTS AND TESTING**

**310:266-9-1. Procedures and instrumentation in fitting of hearing aids**

(a) All instruments used to measure thresholds shall be certified to meet American National Standard Specifications for Audiometer, S3.6-1969 or a standard which supersedes it. In addition, some form of live voice or recorded voice testing must be made to obtain at least a subjective evaluation of the individual's ability to discriminate. In the case of live voice testing, the tests should be run without visual cue. A hearing aid of similar characteristics can be refitted to an individual without a hearing test if this is done within six (6) months of the original fitting and original hearing test.

(b) Hearing testing for the purpose of fitting hearing aids shall not be conducted where ambient noise levels exceed 45 dB measured on a slow weighted dB (a) scale. If the testing environment exceeds 45 dB, the testing shall be considered a Hearing Screening and individuals informed that further testing should be done to determine auditory thresholds for the selection of a hearing aid.

**310:266-9-2. Exceptions**

(a) If a patient is incapable of presenting at a testing center, the licensed hearing aid dealer and fitter must maintain information in the patient file detailing the physical address where the testing occurred and why the testing was not done in a testing center.

(b) When utilizing an exception, the licensed hearing aid dealer and fitter must provide documentation to the patient signed by both the licensed hearing aid dealer and fitter and the patient, the patient's guardian, parent or their power of attorney. The documentation shall include:

- (1) Testing environment specification requirements as outlined in this chapter;
- (2) A description of the alternate testing environment;
- (3) The physical address of the alternate testing location;
- (4) The reason for testing at the alternate location;
- (5) A list of any testing environment requirements that may not be met at the alternate location; and
- (6) Notification that the test may not be as accurate when conducted outside a testing center.

(c) Testing exceptions will not be granted for the purposes of mass gatherings and are only intended for patients who cannot be physically present at a testing center.

**SUBCHAPTER 11. REGULATORY ENFORCEMENT**

**310:266-11-1. Revocation or suspension of license**

(a) The Commissioner shall have the power and duty to deny, suspend, or revoke the license of any person registered under this act, after a hearing, based upon a substantiated finding that the licensee has not operated in compliance with applicable laws, rules, and standards. Any action taken relative to denial, suspension or revocation of a license shall be initiated in compliance with the Oklahoma Administrative Procedures Act.

(b) The Commissioner shall have the power and duty to request administrative penalties pursuant to 63 O.S. §1-1701 et seq.

**310:266-11-2. Prohibited acts**

No person shall:

- (1) Buy, sell, or fraudulently obtain a license;
- (2) Alter a license with fraudulent intent;
- (3) Use or attempt to use the valid license of another;
- (4) Willfully make a false or misleading statement in an application for a license or application for renewal;
- (5) Violate the temporary permit supervision requirements stated in 310:266-5-1;
- (6) Sell a hearing instrument to a minor without receiving documentation from a licensed physician within six (6) months prior to fitting;
- (7) Represent in any manner that a hearing aid dealer and fitter is a licensed physician or audiologist or performs diagnostic procedures to determine the cause of a hearing impairment;
- (8) Use false or misleading advertisement;
- (9) Receive a criminal conviction for any crime that substantially relates to the practice of hearing aid dealing and fitting and poses a reasonable threat to public safety;
- (10) Obtain any fee or make any sale by fraud or misrepresentation;
- (11) Directly or indirectly giving or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by a licensee or influencing person to refrain from dealing in the products of competitors;
- (12) Commit gross incompetence or negligence in the fitting and selling of hearing aids; or
- (13) Fail to respond to a written request by the Department within thirty (30) days.

**SUBCHAPTER 13. REQUIRED DOCUMENTS AND COMPLAINT PROCEDURES**

**310:266-13-1. Contracts and return policies**

(a) A receipt or contract shall be provided to each person supplied with a hearing aid. It shall contain the licensee's signature, physical business address, state license number, make and model specifications of the hearing aid purchased, and full terms of the sale clearly stated. If applicable, the receipt shall

## Permanent Final Adoptions

be clearly marked as "used" or "reconditioned", with any terms of guarantee.

(b) The receipt or contract for a hearing aid shall include an original signature of a licensed hearing aid dealer and fitter. The holder of a temporary license may not issue a receipt unless the original signature of the direct supervisor also appears on the receipt or contract. The receipt shall have the state license number of both the licensed hearing aid dealer and fitter and the temporary licensed person.

(c) A hearing aid provider shall provide a thirty-day rescission period on a hearing aid purchase consistent with the following terms:

(1) The purchaser shall have the right to cancel for any reason if the hearing aid is returned to the hearing aid provider in the same condition as when purchased, ordinary wear and tear excepted, within thirty (30) days of the date of receipt of the hearing aid. The thirty-day rescission period shall be tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery.

(2) The purchaser is entitled to receive a full refund of the purchase price, provided the hearing aid provider may be entitled to a cancellation fee no greater than ten percent (10%) of the total purchase price for the hearing aid or One Hundred Fifty Dollars (\$150.00) per hearing aid, whichever is less.

(3) The hearing receipt or contract shall include, in immediate proximity to the space reserved for the signature of the purchaser, the specific statement in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract: OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID. BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PERCENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS (\$150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER. IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY-DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF \$ .00 (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND). IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISIONS, COMPLAINTS SHOULD BE FORWARDED TO: OKLAHOMA STATE DEPARTMENT OF HEALTH OCCUPATIONAL LICENSING DIVISION 123 ROBERT S. KERR AVENUE OKLAHOMA CITY, OK 73102 [Title 15 O.S. § 764.1(B)(3)]

### **310:266-13-2. Patient file**

The following information and measurements shall be included in each customer/patient file or permanent record, and documented for the client:

(1) A description, including location of any visible, congenital or deformity of the ear;

(2) Whether the client has active, or a history of, drainage from the ear within the last 90 days.

(3) Whether the client has acute or chronic dizziness;

(4) Whether the client has unilateral hearing loss of a sudden or recent onset within the previous 90 days;

(5) Whether the client has a history of sudden or rapidly progressive hearing loss within the previous 90 days;

(6) Whether the client has an Audiometric Air Bone Gap equal to or greater than 15 decibels at 500 Hertz, 1000 Hertz and 2000 Hertz;

(7) Whether the client has visible evidence of significant cerumen accumulation or a foreign body in the ear canal; and

(8) All documentation required in instances where exceptions have occurred.

### **310:266-13-3. Address of place of business**

When a hearing aid dealer and fitter changes business addresses, the licensee shall notify the Department, in writing, within thirty (30) days of the address change. The address provided must be a physical address. A post office box number by itself does not fulfill this requirement.

### **310:266-13-4. Complaint procedures**

Any person who believes a hearing aid dealer and fitter is operating contrary to the Act or these rules may file a complaint with the Department. The Department shall receive complaints verbally or in writing. Investigations will be completed and a written report of findings provided to the hearing aid dealer and fitter and to the complainant via email if a copy is requested. The identity of the complainant shall not be disclosed by the Department.

## **SUBCHAPTER 15. OVER-THE-COUNTER HEARING AIDS**

### **310:266-15-1. Over-the-counter hearing aid sales**

(a) Over-the-counter (OTC) hearing aids that satisfy the conditions in Title 21 CFR Part 800, § 800.30 may be available for sale over-the-counter, without the supervision, prescription, or other order intervention or involvement of a licensed person, to consumers through in-person transactions, by mail, or online. The term "sale" includes leases or rentals.

(b) OTC hearing aids are required to satisfy the conditions imposed by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 9 § 301 et seq. and the U.S. Food and Drug Administration rules in Title 21 CFR

Part 800 including without limitation:

(1) Labeling;

(2) Output limits;



- (3) Electroacoustic performance limits;
- (4) Design requirements; and
- (5) Conditions for sale of an OTC hearing aid - consumer age minimum of 18 years old with perceived mild to moderate hearing impairment.

(c) A license issued under this Chapter is not required for the sale of OTC hearing aids. Persons licensed under this Chapter may sell OTC hearing aids.

[OAR Docket #23-517; filed 6-12-23]

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

[OAR Docket #23-518]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Vendor Management
- Part 1. General Provisions
- 310:410-3-2 [AMENDED]
- Part 3. WIC Vendor Application and Authorization Process
- 310:410-3-10 [AMENDED]
- 310:410-3-12 [AMENDED]
- Part 9. WIC Vendor Compliance and Sanctions
- 310:410-3-52 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; Title 62 O.S. § 34.76

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

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September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The rules are amended to clarify and simplify the existing rules as they pertain to retail vendors in the Women, Infants and Children (WIC) Program. The proposal also updates the existing rules to comply with updated Federal Rules and Regulations pertaining to Civil Money Penalties.

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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 3. VENDOR MANAGEMENT**

**PART 1. GENERAL PROVISIONS**

**310:410-3-2. Definitions**

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

"**Above 50% WIC Vendor**" means a WIC retail vendor who expects to derive more than 50% of their annual food sales revenue from the redemption of WIC food benefits from all of the WIC Programs for which they are authorized.

"**Administrative warning**" means a written notice which describes the nature of a violation of the WIC Program and a request for correction of the violation.

"**APL**" means the Approved Products List.

"**Applicant**" means the individual, partnership, limited partnership, unincorporated association, or corporation applying to be a WIC retail vendor, includes both Above 50% and Regular WIC Vendors.

"**Application**" means the application forms and other required materials submitted by a business entity to notify the department that the business entity desires to become a WIC retail vendor.

"**Authorization**" means the approval of an applicant who has met the WIC vendor criteria and has accepted a WIC vendor agreement as a WIC retail vendor.

"**Business entity**" means the retail business which an applicant or authorized WIC vendor operates at a particular vendor site.

"**Commissioner**" means the Commissioner of the Oklahoma State Department of Health or his designee.

"**Corporate officer**" means the identity of the officer of a corporation as set forth in its articles of incorporation as filed with the secretary of state wherein such entity is incorporated.

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

"**Department representative**" or "**Representative of the Department**" means an employee or authorized agent of the department.

"**Food Benefits**" means an electronic benefits transfer card (EBT) that document the specified supplemental WIC approved foods and the quantities of these foods for a specified period of time that have been prescribed for a WIC participant and is used to obtain supplemental WIC approved foods.

"**Grocery store**" means a fixed and permanent retail store whose primary business is the sale of food.

"**Local agency**" means a public or private, non-profit health or human services agency which provides health services, either directly or through an agreement, in accordance with the USDA WIC Regulations, or this Subchapter.

"**MAR**" means the Maximum Allowable Reimbursement amount for WIC approved foods.

# Permanent Final Adoptions

"OAPA" means the Oklahoma Administrative Procedure Act.

"Oklahoma WIC retail food delivery system" means the system in which participants obtain WIC approved foods by processing a food benefit at a WIC retail vendor.

"Participant" means authorized pregnant women, breast-feeding women, postpartum women, infants or children who are receiving supplemental WIC approved foods or food benefits under the WIC Program.

"Participant requested delivery" means a participant requested delivery of WIC approved foods from a vendor to an address specified by the WIC participant or proxy.

"Participant/vendor ratio" means the total number of WIC participants in a given region divided by the total number of WIC retail vendors in the same region.

"Peer Group" means the classification of WIC retail vendors with regards to competitive pricing.

"Pharmacy" means any store, shop, department, or other place at a fixed and permanent location, where drugs, medicines, or liquid foods prescribed by a physician licensed to practice medicine in all its branches, for an individual are dispensed, or sold or offered for sale at retail value.

"Proxy" means a person who is authorized by the local agency and the WIC participant to accept and/or redeem food benefits on a participant's behalf.

"Regular WIC Vendor" means any WIC retail vendor who has not been determined to be an Above 50% WIC Vendor.

"Retail vendor price survey" means the current prices, reported to the department, by a vendor or a department representative as charges for WIC Approved Foods.

"Store type" means the classification of WIC retail vendors by their gross retail sales per year. Up to 1.5 million dollars in sales is a type 1 vendor site; 1.5 million to 5 million dollars in sales is a type 2 vendor site; over 5 million dollars in sales is a type 3 vendor site. A commissary is a type 4 vendor site and a pharmacy is a type 5 vendor site. An Above 50% vendor is a type 6 vendor site.

"SNAP" means the Supplemental Nutrition Assistance Program, formerly "Food Stamp."

"USDA" means the United States Department of Agriculture.

"USDA WIC regulations" means the regulations of the United States Department of Agriculture, Food and Nutrition Service, Special Supplemental Food Program for Women, Infants, and Children. 7 CFR 246 (1990).

"Vendor" or "WIC retail vendor" means the individual, partnership, limited partnership, unincorporated association, or corporation authorized by the department to accept food benefits and to provide supplemental food to WIC participants or proxies of WIC participants, includes both Above 50% and Regular Vendors.

"Vendor number" means the number assigned to a vendor by the department for tracking food benefit redemptions.

"Vendor site" means a fixed and permanent location, operating as a business entity, listed in the WIC vendor application, which has been authorized by the department for purposes of delivery of WIC approved foods to WIC participants or the proxy of a WIC participant.

"WIC food list" means the published list of State of Oklahoma authorized WIC approved foods.

"WIC approved foods" means those competitively priced foods which have been placed on the WIC food list, which have been determined by the department to be nutritionally qualified for the WIC Program in the state of Oklahoma.

"WIC service chief director" means the person responsible for the implementation and administration of the WIC Program.

"WIC vendor agreement" means an agreement signed by the WIC retail vendor and the department for the provision of WIC approved foods to participants.

"Women, Infants and Children Nutrition Program" or "WIC" means the federal special supplemental food program for women, infants and children authorized by Section 17 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786).

## PART 3. WIC VENDOR APPLICATION AND AUTHORIZATION PROCESS

### 310:410-3-10. Participant distribution and number of vendors

(a) Upon receipt of the application, the department shall utilize participant/vendor ratios and shall consider participant needs within geographical locations to determine if the applicant meets the county participant/vendor ratio to be eligible for selection.

(b) The participant/vendor ratio shall be calculated for the counties within the state of Oklahoma to determine the need for WIC retail vendors within such counties.

(1) The counties will be divided into two classifications:

(A) Urban Counties - Counties that have towns/cities located within their boundaries with a population of ~~or~~ 20,000 or greater (per current Census Population). ~~The following counties are considered urban counties:~~

- (i) Canadian
- (ii) Carter
- (iii) Cleveland
- (iv) Comanche
- (v) Garfield
- (vi) Jackson
- (vii) Kay
- (viii) Muskogee
- (ix) Oklahoma
- (x) Payne
- (xi) Pottawatomie
- (xii) Stephens
- (xiii) Tulsa
- (xiv) Washington

(B) Rural Counties - Counties that have towns/cities located within their boundaries with a population of less than 20,000 or consist of sparsely populated areas. ~~All counties not listed in (A) of this paragraph as urban counties are considered rural counties.~~

- (2) Participant/vendor ratios for the counties within Oklahoma shall be:
  - (A) Urban Counties - Greater than 200:1
  - (B) Rural Counties - Greater than 150:1
- (3) If an applicant applies for WIC authorization in a county which exceeds the maximum participant/vendor ratio, the application shall be denied. An exception shall be granted when the applicant's charges to the department or shelf price, whichever is lower, for WIC approved foods are at least five percent (5%) below the department's statewide average cost, and the applicant agrees to maintain these charges to the department at such level during the period of authorization or until the distance is such participant's access is restricted or the county becomes unsaturated.

**310:410-3-12. Authorization criteria and procedures**

(a) Only WIC retail vendors authorized by the department shall be eligible to accept food benefits or otherwise provide supplemental foods to WIC participants. Any applicant seeking authorization to become a WIC retail vendor has an obligation to meet the following criteria before authorization. In addition, any approved vendor has a continuing obligation to meet the below listed criteria during the period of authorization:

- (1) The vendor site shall be located within the boundary lines of the state of Oklahoma.
- (2) The vendor site shall have a fixed and permanent location. This site shall be the address indicated on the WIC vendor application and shall be the location where a WIC participant or proxy shall select WIC foods during business hours.
  - (A) This site shall not be at an address or within any building where food benefits are distributed to WIC participants without written agreement from the State, i.e., extenuating circumstances, outreach, participant access, and/or rural areas. Provided, however, the Department retains the right to place a service location within the same building where food benefits are redeemed.
  - (B) The price charged to the WIC Program for WIC foods provided through participant requested delivery shall not exceed those prices charged to cash paying customers nor the prices posted at the vendor site. The vendor shall not charge for delivery of WIC foods.
- (3) Each vendor site listed in the application shall have seventy percent (70%) or more gross receipts from the sale of products other than beer, hot foods and motor fuel.
- (4) Authorization to participate in the USDA SNAP or any other federal food program is not a prerequisite for authorization as a WIC retail vendor. If, however, an applicant or vendor has been authorized to participate in the USDA SNAP or other federal food program, he shall not have been denied, suspended, disqualified, terminated, or assessed a civil money penalty during the two (2) years preceding application for authorization as a WIC retail vendor.

- (5) Neither the applicant, vendor, nor any officers or officials shall have been involved in bribery as prohibited under Oklahoma Purchasing Act.
  - (6) Neither the applicant, vendor, its officers, directors, individual partners, nor their spouses or minor children who own more than seven and one-half percent (7 1/2%) ownership or beneficial interest in the business entity seeking authorization to participate in the WIC Program shall be employed by the state or county health departments directly or indirectly involved in the delivery or administration of WIC services.
  - (7) Neither the applicant, nor the vendor shall have been convicted of a misdemeanor involving fraud, misuse or theft of state or federal funds or of any felony. A certified copy of conviction may be offered and admitted into evidence as proof of such conviction.
  - (8) Neither the applicant, vendor, nor any owner of thirty percent (30%) or more ownership shall have been terminated from the WIC Program in the previous two (2) years.
  - (9) The applicant or vendor shall adhere to the provisions of the USDA WIC Regulations and this part.
- (b) Applicants shall be authorized as WIC retail vendors based upon the following:
- (1) An application and all supporting documents shall be properly completed and verified by the department. No application shall be deemed complete unless it includes all necessary supporting documents required by this part.
  - (2) The applicant's proposed vendor site may be initially inspected by the department.
    - (A) The department may conduct an initial inspection of the proposed vendor site after receipt of a completed application. Such inspection shall determine whether the applicant has the minimum quantities, sizes, and types of WIC foods and shall verify any business or financial information submitted by the applicant.
    - (B) If the inspection discloses that the applicant's proposed vendor site does not have the minimum quantities, sizes, or types of WIC foods necessary, or that business or financial information supplied by the applicant is erroneous, inaccurate, or insufficient, the department shall advise the applicant of the deficiencies and conduct another inspection of the vendor site.
    - (C) If the second inspection by the department discloses that the applicant's proposed vendor site does not meet the minimum quantities, sizes, and types of WIC foods or if business or financial information supplied by the applicant remains erroneous, inaccurate or insufficient, the application shall be denied.
  - (3) The minimum quantities, sizes, and types of WIC foods necessary at a vendor site are those specified in the WIC Vendor Agreement. A copy of this list shall be provided to each applicant and approved vendor.
  - (4) The department shall complete a retail vendor price survey of WIC foods during the initial inspection by collecting the lowest posted shelf prices for WIC foods. If the regular vendor applicant's prices are ten percent (10%)

# Permanent Final Adoptions

above the average prices in the same peer group for WIC foods, the application shall be denied. If the above 50% WIC vendor applicant's prices are above the statewide average prices for WIC foods~~their required peer group prices~~, the application shall be denied.

(5) The applicant shall be notified by the department within sixty (60) calendar days, whether or not the inspection or the proposed vendor site, the business, the financial, or other information provided by the applicant meet the criteria set forth in this part. If the applicant meets such criteria, he shall be notified of approval to attend the initial retail vendor training course.

## PART 9. WIC VENDOR COMPLIANCE AND SANCTIONS

### 310:410-3-52. WIC vendor sanctions

Any Class A or B violation shall subject the vendor to reimburse the department for any overcharges, charges for items not received by WIC participants, and monies paid for products not authorized as WIC approved foods.

(1) Any Class A violation shall constitute grounds for disqualification of authorization to the WIC Program. If the department determines that disqualification of the vendor would result in inadequate participant access, the department shall impose a civil money penalty in lieu of disqualification. The length of each disqualification is listed below.

(A) Permanent disqualification: A vendor convicted of trafficking in food benefits or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of Controlled Substances Act (21 U.S.C. 802) in exchange for food benefits.

(B) Six-year disqualification:

- (i) One incidence of buying or selling food benefits for cash (trafficking); or
- (ii) One incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits.

(C) Three-year disqualification:

- (i) One incidence of sale of alcohol or alcoholic beverages or tobacco products in exchange for food benefits; or
- (ii) A pattern of claiming reimbursement for sale of an amount of a specific WIC food item which exceeds the store's documented inventory of that WIC food item for a specific period of time; or
- (iii) A pattern of charging participants more for WIC food than non-WIC customers or charging participants more than the current shelf or agreement price; or
- (iv) A pattern of receiving, transacting and/or redeeming food benefits outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; or

(v) A pattern of charging for WIC food not received by the participant, proxy, or department representatives; or

(vi) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food benefits.

(D) One-year disqualification: A pattern of providing unauthorized food items in exchange for food benefits, including charging for supplemental foods provided in excess of those listed on the food benefit.

(E) Disqualification period equal to SNAP disqualification:

(i) Permanent disqualification, disqualification or suspension from participation in the USDA SNAP, or imposition of a civil money penalty by SNAP;

(ii) Such sanction shall not be subject to administrative or judicial review under the WIC program.

(F) Voluntary withdrawal or non-renewal of agreement:

(i) The department shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for violations listed in this section, but shall enter the disqualification on the record; or

(ii) The department shall not use non-renewal of the vendor agreement as an alternative to disqualification.

(G) Civil Money Penalty (For each violation subject to a mandatory sanction):

⊕ The department shall impose a Civil Money Penalty in lieu of WIC Program disqualification if such disqualification of the vendor would result in inadequate WIC participant access. The Civil Money Penalty is set forth in 7 CFR 246.12(l)(x)(C) and 7 CFR 3.91(b)(3)(v).

~~(ii) The civil money penalty shall not exceed \$15,041 for each violation and shall not exceed \$60,141 for a single investigation.~~

(2) Any Class B violation shall constitute grounds for the following sanctions:

(A) For the first Class B violation, the WIC retail vendor shall be given written notice of the violation and shall be given an administrative warning.

(B) For the second Class B violation committed within one (1) year of the first Class B violation, the vendor shall be subject to a fine assessment of five hundred dollars (\$500). The vendor shall also be required to attend a compliance training workshop.

(C) The third Class B violation committed within two (2) years of the first Class B violation shall subject the vendor to a fine assessment of one thousand dollars (\$1,000).

(D) The fourth Class B violation committed within two (2) years of the first Class B violation shall be

grounds for termination of the vendor authorization, and a fine assessment of two thousand, five hundred dollars (\$2,500).

(3) Any Class C violation shall constitute issuance of an administrative warning. Five (5) Class C violations within a one (1) year period shall be grounds for termination of the vendor authorization for a period of one (1) year.

(4) Second mandatory sanction, a vendor, who previously has been assessed a sanction for any of the violations listed in this part, receives another sanction for any of these violations, the department shall double the sanction.

(5) Third or subsequent mandatory sanction, a vendor, who previously has been assessed two or more sanctions for any of the violations in this part, receives another sanction for any of these violations, the department shall double the third sanction and all subsequent sanctions. The department shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in this part.

(6) The time period shall commence from the time the notice of violation, termination, or fine assessment is issued by the department.

(7) All fine assessments shall be paid by cashier certified check or money order in United States currency.

[OAR Docket #23-518; filed 6-12-23]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 512. CHILDHOOD LEAD POISONING PREVENTION RULES

[OAR Docket #23-519]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions 310:512-1-3 [AMENDED] 310:512-1-4 [AMENDED] Subchapter 3. Risk Assessment, Screening and Management 310-512-3-1 [AMENDED] 310-512-3-2.1 [AMENDED] 310-512-3-4.1 [AMENDED] 310-512-3-5 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 17, 2022

COMMENT PERIOD:

November 15, 2022 through December 15, 2023

PUBLIC HEARING:

December 15, 2023

ADOPTION:

January 25, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 25, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

September 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The purpose of the rule change is to align and comply with the change in the blood lead reference level from 5 micrograms per deciliter to 3.5 micrograms per deciliter, which became effective October 28, 2021, to add a small section that would allow flexibility for providers to test minors up to age 16 if they are part of a special high-risk population of recent refugees or immigrants. It also updates the level at which an environmental investigation is offered to families to help them determine the source of lead exposure from 20 micrograms per deciliter down to 10 micrograms per deciliter, allowing more families to receive this service to keep further detrimental effects of lead exposure and lead poisoning from affecting their family and to make some minor grammatical changes.

CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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

310:512-1-3. Lead poisoning prevention program

(a) The Department maintains a lead poisoning prevention program. This program is responsible for establishing and coordinating activities to prevent lead poisoning and to minimize risk of exposure to lead.

(b) The Department enforces rules for screening children for lead poisoning, and for follow-up of children who have elevated blood lead levels.

(c) The Department may enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs.

(d) The Department maintains a statewide surveillance system of all Oklahoma children's-resident's blood lead levels provided such information is monitored as confidential except for disclosure for medical treatment purposes or disclosure of non-identifying epidemiological data.

(e) The Department develops and implements public education and community outreach programs on lead exposure, detection and risk reduction.

310:512-1-4. Definitions

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

"Advisory Council" means the Infant and Children's Health Advisory Council.

## Permanent Final Adoptions

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**"Anticipatory guidance"** means providing parents or guardians of children under the age of six with information regarding the major causes of lead poisoning and means of preventing lead exposure. Such guidance is to be pertinent to the environment of the child.

**"Blood lead screening"** refers to measuring lead concentration by capillary or venous blood collection to identify elevated blood lead levels.

**"Case Management"** refers to providing a collaborative process to assess, educate, coordinate, monitor, or evaluate options and services required to meet the child's environmental health and human service needs.

**"CLIA"** means the Clinical Laboratory Improvement Amendments. These amendments apply to the Federal Law that governs laboratories who examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

**"Clinical Management Guidelines"** means voluntary guidelines produced by the Department for clinical management and treatment decisions based on the initial or confirmed blood lead level.

**"Confirmatory testing"** refers to the collection of a venous blood sample to confirm an initial elevated capillary blood lead screening result. The collection of a capillary sample within 12 weeks to confirm an initial elevated capillary blood lead screening test result may be used if the initial capillary level is less than 10 µg/dL.

**"Confirmed elevated blood lead level"** refers to a concentration of lead in the blood taken from a venous sample which is above the reference level. It may also refer to a second capillary test as described in "confirmatory testing".

**"Department"** refers to the Oklahoma State Department of Health.

**"Dwelling"** refers to a building or structure, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and without limiting the foregoing, includes child care facilities for children under six years of age, schools and nursery schools.

**"Elevated blood lead level"** means a concentration of lead in blood at or above the current reference level as defined by the Centers for Disease Control.

**"Environmental investigation"** means an on-site dwelling investigation to determine the existence, nature, severity, and location of lead or lead-based paint hazards, completed by a person licensed as a certified risk assessor by the Oklahoma Department of Environmental Quality.

**"Follow-up"** refers to actions by local health departments and health care providers that ~~may include~~ may include, depending on the blood lead level and exposure history of the child: risk reduction education, follow-up testing, confirmatory testing, medical evaluation, medical management, environmental investigation, and case management, in accordance with generally accepted medical standards and public health guidelines.

**"Follow-up testing"** refers to repeat blood lead testing by venous blood draw for any child with a previously confirmed elevated blood lead level.

**"Health care provider"** means any health professional or facility authorized to conduct blood lead screening. Health care provider includes, but is not limited to, physicians, physician assistants, advance practice registered nurses, city-county health departments, county health departments, medical clinics, medical offices, hospitals, and Head Start programs.

**"High risk lead exposure"** refers to any positive response on the LERAQ or other suitable risk assessment questionnaire.

**"Laboratory"** refers to any in-state CLIA approved laboratory or out-of-state CLIA approved laboratory providing blood lead testing for residents of Oklahoma. Laboratory may also refer to any entity using a point of care instrument for the purpose of blood lead testing of Oklahoma residents.

**"LERAQ"** refers to the Lead Exposure Risk Assessment Questionnaire which consists of a model set of questions developed by the Department to assess a child's risk of exposure to lead and includes information regarding areas of the state with ~~higher than average~~ higher-than-average risks for lead exposure.

**"Low risk lead exposure"** refers to negative responses to all questions on the LERAQ or other suitable risk assessment questionnaire.

**"Person"** means any natural person.

**"Point-of-Care Instrument"** refers to a blood lead testing device designed for the quantitative measurement of lead in fresh whole blood.

**"Primary Health Care Provider"** refers to any person or government entity that provides well child health care services, such as annual examinations and immunizations, to children under six years of age. Primary health care provider includes, but is not limited to, physicians, physician assistants, advance practice registered nurse, local health departments, medical clinics, medical offices, and hospital outpatient clinics.

**"Program"** refers to the Oklahoma Childhood Lead Poisoning Prevention Program (OCLPPP) of the Department.

**"Reference Level"** means a level of lead in the blood measured in micrograms per deciliter used to identify children with lead levels that are much higher than most children's lead levels. This level is based on the U.S. population of children ages 1-5 years who are in the highest 2.5% of children when tested for lead in their blood based on the 97.5 percentile of the National Health and Nutrition Examination Survey (NHANES) for the two most recent surveys. The reference level currently in use is 53.5 micrograms per deciliter.

**"Risk Assessment Questionnaire"** means a set of questions designed to determine an individual's risk for lead exposure and lead poisoning, as approved by the Department and based on recommendations from the CDC.

**"Satisfactory specimen"** means a specimen collected using an appropriate procedure which is suitable in both blood quantity and quality to perform screening for Blood Lead measurement.

**"Target population"** refers to any infant or child, 6 months to 72 months of age.

**"Unsatisfactory specimen"** means a blood specimen which is not suitable in quality or quantity to perform blood lead measurements.

**SUBCHAPTER 3. RISK ASSESSMENT, SCREENING AND MANAGEMENT**

**310:512-3-1. Risk assessment and screening criteria**

(a) All children in Oklahoma, 6 months to 72 months of age shall be assessed for blood lead exposure utilizing the risk assessment questionnaire as defined in paragraph (c) as part of each periodic health care visit occurring at age 6, 12, and 24 months and age 3 years, 4 years and 5 years.

(b) All children in Oklahoma shall have a blood lead screening test as part of each periodic health care visit occurring at age 12 and 24 months of age or at any age after age 24 months up to age 72 months, if not previously tested for blood lead.

(c) A risk assessment questionnaire based on recommendations from the CDC and approved by the Department before implementation should include questions related to the following:

- (1) Does the child live in or frequently visit a home built before 1978?
- (2) Does the child have a sibling or playmate with an elevated blood lead level?
- (3) Is the child eligible for Medicaid, WIC, or Head Start?
- (4) Does the child live with someone who has a job or hobby that may involve lead (example: jewelry making, building renovation or repair, working with automobile batteries, lead solder, or battery recycling)?
- (5) Does the child eat or mouth trinkets or items that contain lead?
- (6) Does the child live in an area identified as a ~~high risk~~high-risk target area by the Program?

(d) A "Yes" or "Don't know" answer to the questions in paragraph (c) is considered a positive answer and requires the child to have a blood lead test.

(e) The Department publishes available information regarding current ~~high-risk~~high-risk target areas on its website located at: <http://pp.health.ok.gov>. — <https://oklahoma.gov/health/lead-prevention>.

(f) The Department publishes the LERAQ as an approved risk assessment questionnaire on its website.

**310:512-3-2.1. Primary health care provider responsibilities for risk assessment and screening**

(a) Every primary health care provider who provides a periodic health care visit to a child at age 6, 12, and 24 months and age 3, age 4 and 5 years shall assess the child for risk of lead exposure using the LERAQ, or suitable risk assessment questionnaire approved by the Department.

(b) For children at high risk for lead exposure according to the LERAQ, or suitable risk assessment questionnaire, the primary health care provider shall perform a blood lead test beginning at 6 months of age, or when initially assessed, if older.

(c) Every primary health care provider who provides a periodic health care visit to a child shall order an initial capillary or

venous blood lead screening test at age 12 and 24 months, or at any age after age 24 months up to age 72 months if never tested.

(d) Every primary health care provider who provides a periodic health care visit to a child at age 6, 12, and 24 months and age 3, age 4, and 5 years shall:

(1) Give oral or written anticipatory guidance to a parent or guardian on prevention of childhood lead poisoning, including, at minimum, the information that children can be harmed by exposure to lead, especially deteriorating or disturbed lead-based paint and the dust from it, and are particularly at risk of lead poisoning from the time the child begins to crawl until 72 months of age; and

(2) Discuss the child's blood lead test results with the child's family and any necessary follow up.

(e) Any health care provider who performs blood lead screening of a child who is six months of age to six years of age and who is not the child's ongoing primary health care provider shall forward the blood lead test result, if elevated at or above the reference level, to the child's primary health care provider.

(f) If a parent or guardian refuses blood lead testing screening of their child, the health care provider shall have the parent or guardian indicate in writing this refusal in the child's medical record and provide a copy via mail or by fax to the Oklahoma Childhood Lead Poisoning Prevention Program.

(g) Any health care provider working with a special population such as a recent refugee or immigrant from a country known to have a higher incidence or risk of lead exposure may consider blood lead screening up to age 16.

**310:512-3-4.1. Health care provider responsibilities for follow-up after screening**

(a) Health care providers shall provide or make reasonable efforts to ensure the provision of confirmation and follow-up testing for each child with an elevated blood lead level above the reference level.

(b) If the initial blood lead test result is below the reference level on either a venous or capillary sample, the health care provider shall retest the child annually if answers on the LERAQ or suitable risk assessment questionnaire indicate continuing high risk for lead exposure.

(c) For each child who has an elevated blood lead level at or above the reference level, the health care provider shall take those actions that are reasonably and medically necessary and appropriate based upon the child's blood lead level to reduce, to the extent possible, the child's blood lead level below the reference level. Such actions may include the following:

- (1) Education of a parent or guardian on lead hazards and lead poisoning;
- (2) Clinical evaluation for complication of lead poisoning;
- (3) Follow-up blood lead analyses as indicated based on level of elevation and period of time;
- (4) Developmental screening;
- (5) Referral to the Department for an environmental investigation for a single venous blood lead test result equal to or greater than ~~20~~10 µg/dL; and
- (6) Chelation therapy should be considered and, when possible, a medical toxicologist, provider experienced

## Permanent Final Adoptions

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in chelation therapy, or pediatric environmental health specialist should be consulted for a child with a blood lead test greater than 45 µg/dL.

(d) If the initial capillary blood lead test result is elevated, the health care provider shall obtain a venous confirmation test in accordance with the Clinical Management Guidelines as established by the Department.

(e) If the initial venous blood lead test result or the confirmation test is elevated, the health care provider shall obtain venous follow-up testing in accordance with the Clinical Management Guidelines as set forth by the Department.

### 310:512-3-5. Reporting requirements

#### (a) Laboratory.

(1) Laboratories shall report the results of all blood lead tests performed on persons who are residents of Oklahoma to the Childhood Lead Poisoning Prevention Program. These reports are confidential and may be utilized only for the purpose of assuring service delivery, program administration, data analysis, and evaluation.

(2) Federal CLIA regulations at Title 42, of the Code of Federal Regulations, Section 493.1241 (relating to standards for test requests), require that laboratory requisitions contain sufficient patient data that must include patient's name, sex, date of birth, date of collection, test(s) to be performed, the source of the specimen, name and address of person requesting the test, as well as "Any additional information relevant and necessary for a specific test to ensure accurate and timely testing and reporting of results, including interpretation, if applicable." Laboratories shall report the following information to the Childhood Lead Poisoning Prevention Program by electronic data transmission: name, date of birth, sex, address, county of residence, type of sample (venous or capillary), blood lead level, health care provider ordering the test, laboratory identifiers, date the sample was collected, the date of analysis, and additional information already available such as race, ethnicity, Medicaid status and/or Medicaid Number. The laboratory receiving the sample from the health care provider taking the sample shall assure that the laboratory requisition slip is fully completed and includes the information required pursuant to the Subsection. In the event electronic submission is not available, lab reports must be submitted by a method and format approved by the Oklahoma Childhood Lead Poisoning Prevention Program.

(3) Test results that are reported to the Childhood Lead Poisoning Prevention Program have the following time limits:

(A) Results of all blood lead levels less than the reference level at a minimum of a monthly basis.

(B) Results of all blood lead levels equal to or greater than the reference level at a minimum of a weekly basis and if possible daily.

(4) All clinical laboratories shall notify the health care provider ordering the blood lead test when the results of any analysis in a child up to 72 months of age is equal to or

greater than ~~20~~10 µg/dL within 24 hours of the date of the analysis.

(5) Nothing in this Subsection shall be construed to relieve any laboratory from reporting results of any blood lead analysis to the physician, or other health care provider who ordered the test or to any other entity as required by State, Federal or local statutes or regulations or in accordance with accepted standard of practice.

#### (b) Health care providers.

(1) All health care providers shall ensure that all of the information as specified in 310:512-3-5(b) (relating to standards for test requests), is completed for all blood lead analyses ordered and that this information accompanies the sample to the testing laboratory.

(2) On written or verbal notification of an elevated capillary lead level, equal to or greater than the reference level, the child's health care provider will obtain confirmatory testing.

(3) All health care providers shall notify the Childhood Lead Poisoning Prevention Program of any blood lead level in a child up to 72 months of age equal to or greater than the reference level within 1 week and equal to or greater than ~~20~~10 µg/dL within 24 hours of having been notified of this result by the testing laboratory. The following information shall be provided when reporting: name, date of birth, sex, address, county of residence, type of sample (venous or capillary), blood lead level, health care provider ordering the test, laboratory identifiers, date the sample was collected and the date of analysis.

(4) Any health care provider utilizing a point-of-care instrument to test blood lead samples is required to report all such results, regardless of the level, to the Childhood Lead Poisoning Prevention Program, and follow the guidelines for reporting as stated in 310:512-3-5(a) (relating to laboratory reporting).

(5) Upon written notification of unsatisfactory specimens, the child's health care provider will obtain a repeat specimen.

(6) These reports are confidential and may be utilized only for the purpose of assuring service delivery, program administration, data analysis, and evaluation.

[OAR Docket #23-519; filed 6-12-23]

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING

[OAR Docket #23-520]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. Disease and Injury Reporting

310:515-1-3 [AMENDED]

310:515-1-4 [AMENDED]

#### AUTHORITY:

Commissioner of Health; Title 63 O.S. §§ 1-104, 1-106, 1-502, and 1-503.



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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The amendments modernize certain language related to reportable diseases and, clarifies Orthopox viruses (i.e., smallpox and monkeypox) and COVID-19 as reportable diseases.

**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. DISEASE AND INJURY REPORTING**

**310:515-1-3. Diseases and conditions to be reported immediately**

The following diseases/conditions associated with humans must be reported by any health practitioner or laboratory personnel to the OSDH electronically via secure electronic data transmission and by telephone (405 426-8710) immediately upon suspicion, diagnosis, or testing.

- (1) Anthrax (*Bacillus anthracis*).
- (2) Bioterrorism - suspected disease.
- (3) Botulism (*Clostridium botulinum*).
- (4) Diphtheria (*Corynebacterium diphtheriae*).
- (5) Free-living amebae infections causing primary amebic meningoencephalitis (*Naegleria fowleri*).
- (6) Hepatitis B during pregnancy (HBsAg+).
- (7) Measles (Rubeola).
- (8) Meningococcal invasive disease (*Neisseria meningitidis*).
- (9) Novel coronavirus.
- (10) Novel influenza A.
- (11) Outbreaks of apparent infectious disease.
- (12) ~~Plague (*Yersinia pestis*)~~ Orthopox viruses (i.e., Smallpox, Monkeypox).
- (13) ~~Poliomyelitis~~ Plague.

- (14) ~~Rabies~~ Poliomyelitis.
- (15) ~~Smallpox~~ Rabies.
- (16) Typhoid fever (*Salmonella Typhi*).
- (17) Viral hemorrhagic fever.

**310:515-1-4. Additional diseases, conditions, and injuries to be reported**

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

- (1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via secure electronic data transmission to the OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test.
  - (A) Acid Fast Bacillus (AFB) positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.
  - (B) AIDS.
  - (C) *Anaplasma phagocytophilum* infection.
  - (D) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus, chikungunya virus, Zika virus).
  - (E) Brucellosis (*Brucella* spp.).
  - (F) Campylobacteriosis (*Campylobacter* spp.).
  - (G) Congenital rubella syndrome.
  - (H) Cryptosporidiosis (*Cryptosporidium* spp.).
  - (I) Cyclosporiasis (*Cyclospora cayetanensis*).
  - (J) Dengue Fever.
  - (K) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*. (STEC)
  - (L) Ehrlichiosis (*Ehrlichia* spp.).
  - (M) *Haemophilus influenzae* invasive disease.
  - (N) Hantavirus infection, without pulmonary syndrome.
  - (O) Hantavirus pulmonary syndrome.
  - (P) Hemolytic uremic syndrome, postdiarrheal.
  - (Q) Hepatitis A infection (Anti-HAV-IgM+).
  - (R) Hepatitis B infection. If any of the following are positive, then all test results on the hepatitis panel must be reported: HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+. For infants < or = 18 months, all hepatitis B related tests ordered, regardless of test result, must be reported.
  - (S) Hepatitis C infection in persons having jaundice or ALT > or = 200 with laboratory confirmation. If hepatitis C EIA is confirmed by NAT for HCV RNA, or s/co ratio or index is predictive of a true positive then report results of the entire hepatitis panel. For infants < or = 18 months, all hepatitis C related tests ordered, regardless of test result, must be reported. Positive HCV RNA are reportable by both

# Permanent Final Adoptions

laboratories and providers. Negative test results for HCV RNA tests are reportable by laboratories only.

(T) HIV.

(i) All tests indicative of HIV infection are reportable by laboratories and providers. If any HIV test is positive, then all HIV test results on the panel must be reported by laboratories. For infants < or = 18 months, all HIV tests ordered, regardless of test result must be reported by laboratories.

(ii) All HIV nucleotide sequences and negative HIV test results are only reportable by laboratories.

(U) Influenza-associated hospitalization or death.

(V) Legionellosis (*Legionella* spp.)

(W) Leptospirosis (*Leptospira interrogans*).

(X) Listeriosis (*Listeria monocytogenes*).

(Y) Lyme disease (*Borrelia burgdorferi*).

(Z) Malaria (*Plasmodium* spp.).

(AA) Mumps.

(BB) Pertussis (*Bordetella pertussis*).

(CC) Psittacosis (*Chlamydia psittaci*).

(DD) Q fever (*Coxiella burnetii*).

(EE) Rubella.

(FF) Salmonellosis (*Salmonella* spp.).

(GG) ~~Shigellosis—(*Shigella* spp.)~~SARS-CoV-2 (COVID-19).

(HH) ~~Spotted Fever Rickettsiosis (*Rickettsia* spp.) hospitalization or death.~~Shigellosis (*Shigella* spp.).

(II) ~~Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).~~Spotted Fever Rickettsiosis (*Rickettsia* spp.) hospitalization or death.

(JJ) ~~*Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.~~Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).

(KK) Syphilis (*Treponema pallidum*).—Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = 18 months, all syphilis tests ordered, regardless of test result, must be reported. *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.

(LL) ~~Tetanus (*Clostridium tetani*).~~Syphilis (*Treponema pallidum*). Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = 18 months, all syphilis tests ordered, regardless of test result, must be reported.

(MM) ~~Trichinellosis (*Trichinella spiralis*).~~Tetanus (*Clostridium tetani*).

(NN) ~~Tuberculosis—(*Mycobacterium tuberculosis*).~~Trichinellosis (*Trichinella spiralis*).

(OO) ~~Tularemia—(*Francisella tularensis*).~~Tuberculosis (*Mycobacterium tuberculosis*).

(PP) ~~Unusual disease or syndrome.~~Tularemia (*Francisella tularensis*).

(QQ) ~~Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium*~~

~~spp., and other genera in the family).~~Unusual disease syndrome.

(RR) ~~Yellow Fever—Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).~~

(SS) ~~Yellow Fever.~~

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH via secure electronic data submission within one (1) month of diagnosis or test result.

(A) CD4 cell count with corresponding CD4 cell count percentage of total (by laboratories only).

(B) Chlamydia (*Chlamydia trachomatis*).

(C) Creutzfeldt-Jakob disease.

(D) Gonorrhea (*Neisseria gonorrhoeae*).

(E) HIV viral load (by laboratories only).

(F) LGV. *Lymphogranuloma Venereum* is reportable as Chlamydia and designated as LGV.

(3) **Occupational or environmental diseases.** Laboratories and healthcare providers must report blood lead level results pursuant to the requirements established in Title 310, Chapter 512, childhood Lead Poisoning Prevention Rules.

(4) **Injuries.**

(A) Burns.

(B) Drownings and near drownings.

(C) Traumatic brain injuries.

(D) Traumatic spinal cord injuries.

(E) Poisonings, including toxic and adverse effects.

[OAR Docket #23-520; filed 6-12-23]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 525. DIRECT SERVICES TO INDIVIDUALS

[OAR Docket #23-521]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Child Guidance  
310:525-3-4 [AMENDED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. §§ 1-104, 1-106, 1-108, 1-206.1(a), 1-208.1, 1-219, 1-227 et seq. 1-230 and 1-231 et seq.; 63 O.S. 1-106.1

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n/a

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n/a

**GIST/ANALYSIS:**

The rule amendment changes the eligibility of persons authorized to be served by Child Guidance programs from birth to thirteen (13) years of age to birth to eighteen (18) years of age. The purpose of the rule change is to expand the eligible age of individuals receiving Child Guidance services and reduce gaps in services for older teens, especially those residing in rural counties.

**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 3. CHILD GUIDANCE**

**310:525-3-4. Eligibility**

Persons authorized to be served by Child Guidance programs are children birth to ~~thirteen (13)~~ through eighteen (18) years of age, their families, and other adults responsible for influencing their development.

*[OAR Docket #23-521; filed 6-12-23]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 531. VISION SCREENING**

*[OAR Docket #23-522]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Vision Screening Standards for Children

310:531-5-3 [AMENDED]

310:531-5-5 [AMENDED]

310:531-5-6 [AMENDED]

310:531-5-7 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; 70 O.S. § 1210.284

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**GIST/ANALYSIS:**

The purpose of the rule change is to align and comply with HB 3823, which was effective November 1, 2022. This change exempts licensed optometrists and ophthalmologists from participating in vision screening standards and trainers training, required for all other trained screeners/trainers assisting with the state mandated vision screening for K, 1st and 3rd graders. The change also exempts licensed optometrists and ophthalmologists from being placed on the state screeners registry managed by OSDH/MCH.

**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. VISION SCREENING STANDARDS FOR CHILDREN**

**310:531-5-3. Approval of vision screening providers**

(a) In order to become an approved vision screening provider, an individual must make application to the Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

- (1) common eye problems;
- (2) the screening process;
- (3) required screening tools;
- (4) screening special populations; and,
- (5) basic anatomy and physiology of the eye.

(b) The Department will review and approve vision screening providers.

(c) The vision screening provider approval will be valid from the date of approval by the Department and ends three years from the most recently approved training.

(d) All approved vision screening providers will be added to the statewide registry on the Internet website maintained by the Department.

(e) Oklahoma licensed optometrists and ophthalmologists are exempt from the application and successful completion of vision screening standards training by an approved trainer, and are exempt from being placed on the approved vision screeners registry managed by the Department.

(ef) Unless otherwise provided by law, no person shall engage in vision screening as provided in 70 O.S. § 1210.284

# Permanent Final Adoptions

without first being listed on the vision screening registry maintained by the Department.

## 310:531-5-5. Re-approval of vision screening providers

A vision screening provider may renew his or her status by submitting documentation of completion of training, conducted by an approved trainer, using an approved curricula, prior to the end of his or her third year. Oklahoma licensed optometrists and ophthalmologists are exempt from the application and successful completion of vision screening standards training by an approved trainer, and are exempt from being placed on the approved vision screeners registry managed by the Department.

## 310:531-5-6. Approval of vision screening trainers

(a) In order to become an approved vision screening trainer an individual must be an approved vision screening provider and make application to the Department and include documentation of successful completion of training conducted by an approved trainer using an approved training curriculum that includes the following:

- (1) common eye problems;
- (2) the screening process;
- (3) required screening tools;
- (4) screening special populations;
- (5) basic anatomy and physiology of the eye; and,
- (6) techniques for effective training of vision screening providers.

(b) The applicant must provide to the Department documentation of successful completion of training, which is administered by a trainer approved by the Department using a training curriculum for trainers approved by the Department.

(c) The Department will review and approve vision screening trainers and the approved curricula used for training vision screening providers. The approval of a vision screening trainer ends three years from the most recent approval.

(d) Oklahoma licensed optometrists and ophthalmologists are exempt from the application and successful completion of vision screening standards training by an approved trainer, and are exempt from being placed on the approved vision screeners registry managed by the Department.

## 310:531-5-7. Re-approval of vision screening trainers

A vision screening trainer may renew his or her status by submitting documentation of completion of an approved training, conducted by an approved trainer, using an approved curricula, prior to the end of his or her third year. Oklahoma licensed optometrists and ophthalmologists are exempt from the application and successful completion of vision screening standards training by an approved trainer, and are exempt from being placed on the approved vision screeners registry managed by the Department.

[OAR Docket #23-522; filed 6-12-23]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 550. NEWBORN SCREENING PROGRAM AND RESOURCES FOR TRISOMY 13, 18, AND 21

[OAR Docket #23-523]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. Newborn Screening General Provisions  
310:550-1-2. [AMENDED]
- Subchapter 5. Newborn Screening Blood Specimen Collection  
310:550-5-2. [AMENDED]
- Subchapter 7. Newborn Screening Hospital Records  
310:550-7-1. [AMENDED]
- Subchapter 11. Advisory Committee for Newborn Screening  
[AMENDED]
- Subchapter 13. Newborn Screening Parent and Health Care Provider  
Education [AMENDED]
- Subchapter 17. Newborn Screening Follow-up for Physicians  
310:550-17-1. [AMENDED]
- Subchapter 19. Newborn Screening Reporting [AMENDED]
- Subchapter 21. Newborn Screening Information  
310:550-21-1. [AMENDED]
- Subchapter 23. Newborn Screening Standards, Procedures, and  
Follow-Up for Certified Laboratories [AMENDED]
- Subchapter 24. Resources for Trisomy 13, 18, and 21 [NEW]  
310:550-24-1. [NEW]  
310:550-24-2. [NEW]  
310:550-24-3. [NEW]  
310:550-24-4. [NEW]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104, 25 O.S. § 40, 63 O.S. § 1-533(A) and 63 O.S. § 1-575

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n/a

### GIST/ANALYSIS:

The amendments changed the following: the Chapter 550 title was changed to NEWBORN SCREENING AND RESOURCES FOR TRISOMY 13, 18, AND 21. This change was needed due to the addition of the trisomy resources pursuant to 63 O.S. § 1-575; Subchapters 1, 5, 7, 11, 13, 17, 19, 21, and 23 were amended to add Newborn Screening to each title to clarify content for stakeholders; minor grammar corrections were made in 310:550-1-2, 310:550-5-2, 310:550-7-1, and 310:550-17-; 310:550-21-1 and 310:550-17-1 added updated the contact information for the Public Health Laboratory and the Newborn Screening Follow Up Program; and Subchapter 24 "Resources for Trisomy 13, 18, and 21" was added pursuant to 63 O.S. § 1-575. This includes the additions of sections 310:550-24-1 through 310:550-24-4 to state the purpose, define terms, describe the duty of the provider, and describe availability of information from 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 SEPTEMBER 11, 2023:**

**SUBCHAPTER 1. NEWBORN SCREENING  
GENERAL PROVISIONS**

**310:550-1-2. Definitions**

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

**"Amino Acid Disorders"** refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process amino acids properly due to a defective enzyme function. This causes an amino acid or protein build up in the body. If not treated early in life, these defects can cause developmental disability or death. Each amino acid disorder is associated with a specific enzyme deficiency. Treatment depends on the specific amino acid disorder.

**"Biotinidase Deficiency"** means an inherited disease caused by the lack of an enzyme that recycles the B vitamin biotin, which if not treated, may cause serious complications, including coma and death.

**"Birth Defects Registry"** means a registry established by the Commissioner of Health to monitor and track birth defects for all infants born in Oklahoma.

**"Birthing Facility"** means a facility that provides care during labor and delivery, and to the newborn. This includes a unit of a hospital that is licensed and accredited to provide birthing services, or a freestanding birthing center.

**"Certified Laboratory"** refers to the Oklahoma State Public Health Laboratory and/or a laboratory approved by the Oklahoma State Department of Health to conduct newborn screening.

**"CCHD Screening"** means the screening test for the detection of critical congenital heart disease that is recommended by the United States Department of Health and Human Services.

**"CLIA '88"** means the Clinical Laboratory Improvement Amendments of 1988, public law 100-578. This amendment applies to the Federal Law that governs laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

**"Confirmatory Testing"** means definitive laboratory testing needed to confirm a diagnosis.

**"Congenital Adrenal Hyperplasia"** or **"CAH"** means the most common form of CAH, 21-hydroxylase deficiency. This genetic disorder is caused by the lack of an enzyme that the adrenal gland uses to process hormones. Serious loss of

body salt and water can result in death. In girls the genitalia may appear as those of a male, and can result in incorrect sex assignment. Hormone treatment is required for life.

**"Congenital Hypothyroidism"** means a disease caused by a deficiency of thyroid hormone (thyroxine) production, which if not treated, leads to developmental disabilities.

**"Critical Congenital Heart Disease"** means a congenital heart defect that places an infant at significant risk for disability or death if not diagnosed soon after birth.

**"Cystic Fibrosis"** means a multisystem genetic disorder in which defective chloride transport across mucous membranes causes dehydration of secretions. The result is a production of a thick, viscous mucous that disrupts the normal function of the lungs, gut, and pancreas. This leads to chronic lung infections, fatal lung disease, and problems with digestion. Early detection and treatment can prevent malnutrition, and enhance surveillance and treatment of lung infections.

**"Days of Age"** means the age of a newborn in 24-hour periods so that a newborn is one day of age 24 hours following the hour of birth for both blood spot screening and pulse oximetry screening.

**"Department"** refers to the Oklahoma State Department of Health.

**"Discharge"** means release of the newborn from care and custody of a perinatal licensed health facility to the parents or into the community.

**"Disorder"** means any condition detectable by newborn screening that allows opportunities, not available without screening, for early treatment and management to prevent developmental disability and/or reduce infant morbidity and mortality.

**"Echocardiogram"** means a test that uses ultrasound to provide an image of the heart.

**"Fatty Acid Oxidation Disorders"** refers to a group of inherited metabolic conditions in which the body is unable to oxidize (breakdown) fatty acids for energy due to a defective enzyme function. If not treated early in life, this defect may cause developmental disability or death.

**"Galactosemia"** means an inherited disease caused by the body's failure to break down galactose due to a defective enzyme function, which if not treated early in life, may cause developmental disability or death.

**"Hemoglobin"** means a protein in the red blood cell that carries oxygen.

**"Hemoglobinopathy"** means an inherited disorder associated with structural abnormality of hemoglobin, anemia, and variable impaired ability of the red blood cells to carry oxygen.

**"Infant"** means a child 6 months of age and younger.

**"Infant's Physician"** means the licensed medical or osteopathic physician listed by the submitter or the individual responsible for the medical care of the infant after discharge from the birthing facility.

**"Initial Specimen"** means the first blood specimen collected subsequent to birth, pursuant to these procedures.

**"Long-term Follow-up"** means follow-up services that begin with diagnosis and treatment and continues throughout the lifespan. This includes parent education, networking, referral, and care coordination.

## Permanent Final Adoptions

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**"Medical Home"** means a Planned Health Care Provider.

**"Medium-chain acyl coenzyme A dehydrogenase deficiency"** or **"MCAD"** means a genetic disorder of fatty acid metabolism. This disorder can cause metabolic crisis when an infant/child fasts. This crisis can lead to seizures, failure to breathe, cardiac arrest, and death. Treatment is effective by preventing fasting.

**"Mucopolysaccharidosis Type I"** or **"MPS I"** means a condition in which individuals are missing an enzyme to break down large sugar molecules. This disorder can impact many different organs and tissue leading to developmental delays if not identified and treated early.

**"Newborn"** means an infant thirty (30) days of age and younger.

**"Newborn Screening"** means the use of various laboratory and clinical tests ~~to screen~~ to screen infants for certain inherited disorders where a potential net benefit and availability of effective treatments have been demonstrated.

**"Newborn Screening Form Kit"** or **"Form Kit"** means a filter paper approved by the Department for collection of the newborn screening specimen and associated demographic data.

**"Newborn Screening Laboratory"** means a laboratory operated by the Department or a laboratory certified by the Department to conduct the tests and carry out the follow-up required by these procedures.

**"Newborn Screening Program"** or **"The Program"** refers to the Public Health Laboratory and Short-term Follow-up Program at the Department.

**"Newborn Screening Program Coordinator"** refers to the coordinator of the Short-term Follow-up Program at the Department.

**"Organic Acid Disorders"** refers to a group of inherited metabolic conditions in which the body is unable to metabolize or process organic acids properly due to a specific enzyme deficiency, which if not treated early in life, may cause developmental disability and death.

**"Pediatric Subspecialist"** means a physician licensed in Oklahoma, board certified in pediatrics and a pediatric subspecialty.

**"Phenylketonuria"** or **"PKU"** means an inherited disease caused by the body's failure to convert the amino acid phenylalanine to tyrosine due to defective enzyme function, which if not treated early in life, causes developmental disability.

**"Planned Health Care Provider"** or **"Medical Home"** means the health care provider who will be providing health care for the infant after discharge from the hospital.

**"Pompe"** or **"Pompe Disease"** means a condition in which individuals are missing an enzyme to break down complex sugar molecules. This disorder can lead to muscle weakness, poor muscle tone and heart defects if not identified and treated early.

**"Premature Newborn"** means a newborn weighing less than 2500 grams or any live birth before the thirty-seventh week of gestation.

**"Pulse Oximetry Screening"** means a test using a device placed on an extremity to measure the percentage of oxygen in the blood.

**"Repeat Specimen"** means an additional newborn screening specimen to be collected after the initial specimen.

**"Satisfactory Specimen"** means a blood specimen collected using a single Form Kit that is suitable in both quantity and quality to perform newborn screening for the disorders approved by the Commissioner of Health and listed in 310:550-1-1. Federal CLIA '88 regulations require that the Form Kit includes the patient's name, date of birth, sex, date of collection, test(s) to be performed, and complete name and address of person requesting the test.

**"Screened"** means a specimen that has been collected and tested on an infant less than 6 months of age.

**"Screening"** means a test to sort out well persons who may have a disease or defect from those who may not. A screening test is not intended to be diagnostic.

**"Severe Combined Immunodeficiency"** means a group of potentially fatal inherited disorders related to the immune system, which if not treated, can lead to potentially deadly infections.

**"Short-term Follow-up"** includes services provided by the Department and the health care provider that begin when the laboratory reports an abnormal, unsatisfactory screen result, or a result is not reported due to specific collection criteria, and ends with a diagnosis of "normal", the infant is lost to follow-up (repeat testing not achieved), the parent(s) or guardian(s) refuse follow-up, or the affected infant receives appropriate treatment and referral to a pediatric subspecialist.

**"Sick Newborn"** means a newborn with any condition or episode marked by pronounced deviation from the normal healthy state; illness.

**"Sickle Cell Disease"** means an inherited disease caused by abnormal hemoglobin(s)(hemoglobinopathy), which may cause anemia and variable impaired ability of the red blood cells to carry oxygen, and if not treated early in life, may result in severe illness, developmental disability or death.

**"Specimen"** means blood collected on the Newborn Screening Form Kit.

**"Spinal Muscular Atrophy"** or **"SMA"** means conditions in which the loss of specialized nerves cells leads to progressive weakness and atrophy of muscles, and developmental disability. In severe cases, the muscles used for breathing and swallowing may be affected.

**"Submitter"** means a hospital, other facility, or physician submitting a blood specimen on a Newborn Screening Form Kit.

**"The Program"** means the Newborn Screening Program in the Department.

**"Transfer"** means release of the newborn or infant from care and custody from one licensed health facility to another.

**"Unsatisfactory Specimen"** means a blood specimen submitted on a Form Kit that is not suitable in quantity or quality to perform screening for the disorders approved by the Commissioner of Health and listed in 310:550-1-1 and/or Federal CLIA '88 regulations are not followed and the Form Kit does not include the required patient's name, date of birth,

sex, date of collection, test(s) to be performed, and the provider ordering the newborn screen.

"X-Linked Adrenoleukodystrophy" or "X-ALD" means a condition affecting the nervous system and adrenal glands in which the ability of the nerves to relay information to the brain and the adrenal glands to make certain hormones (adrenocortical insufficiency) are impacted. Affected individuals may experience learning and developmental disability, difficulty swallowing, muscle weakness, weight loss, skin changes, vomiting, and coma.

**SUBCHAPTER 5. NEWBORN SCREENING  
BLOOD SPECIMEN COLLECTION**

**310:550-5-2. Guidelines for newborn screening blood specimen collection and pulse oximetry screening**

- (a) **Newborn screening blood specimen collection.**
  - (1) Specimens obtained with a Newborn Screening Form Kit should be collected in accordance with the standard for Blood Collection on Filter Paper for Newborn Screening Programs, NBS01-A6, Sixth Edition, as adopted and published by the Clinical and Laboratory Standards Institute on July 31, 2013, or most recent version. Failure to follow these methods of blood collection may cause inaccurate results, or unsatisfactory specimen results that require repeat collection.
  - (2) Submitters are responsible for submitting a satisfactory newborn screening blood specimen.
- (b) **Pulse oximetry screening.**
  - (1) **Pulse oximetry screening.** Pulse oximetry screening will be performed utilizing the hospital protocol. A recommended protocol is provided by the Program.
  - (2) **Authorized provider.** An authorized health care provider shall perform the pulse oximetry screening.
  - (3) **Newborns receiving routine care.**
    - (A) The duties of the birthing facility or nurse include the following:
      - (i) Perform pulse oximetry screening on the newborn between twenty-four (24) hours and forty-eight(48) hours of life; or
      - (ii) Schedule the newborn to be screened at the facility between twenty-four (24) hours and forty-eight (48) hours of life, if unable to perform the pulse oximetry screening; or
      - (iii) Notify the infant's physician if screening was not performed.
    - (B) If the newborn is scheduled for discharge from a birthing facility after twelve (12) hours of life but before twenty-four (24) hours of life, the birthing facility shall perform pulse oximetry screening as late as is practical before the newborn is discharged and notify the infant's physician of the early screening.
    - (C) If the newborn is discharged before twelve (12) hours of life, the birthing facility shall perform the pulse oximetry screening between twenty-four (24) hours and forty-eight (48) hours of life.

(4) **Newborns in special care or intensive care settings.** For newborns who have been in special care or intensive care units, birthing facilities shall perform pulse oximetry screening prior to discharge utilizing the hospital protocol, unless the newborn has an identified congenital heart defect or has had an echocardiogram performed. A recommended protocol is provided by the Program. Continuous pulse oximetry monitoring may not be substituted for CCHD screening.

(5) **Circumstances in which pulse oximetry screening is not indicated.** If pulse oximetry screening is not performed, the reason shall be documented on the Newborn Screening Form ~~Kit~~Instances~~Kit~~. Instances where pulse oximetry screening is not indicated include but are not limited to:

- (A) Clinical evaluation of the newborn has included an echocardiogram which ruled-out CCHD; or
- (B) The newborn has confirmed CCHD based on prenatal or postnatal testing.

**SUBCHAPTER 7. NEWBORN SCREENING  
HOSPITAL RECORDS**

**310:550-7-1. Hospital records**

- (a) **Newborn screening blood test results.**
  - (1) The hospital is responsible for implementing a procedure to ensure that a newborn screening blood specimen has been collected on every newborn and transported to the Newborn Screening Laboratory within twenty-four (24) to forty-eight (48) hours of collection. If more than one newborn screen is collected on an infant, each copy of the newborn screen kit should be placed in the infant's medical record. Specimens should be transported in the manner designated by the Department and/or receiving laboratory.
  - (2) The hospital shall immediately notify the infant's physician, parent(s) or guardian(s), and Newborn Screening Program Coordinator if an infant is discharged without a sample having been collected. ~~Thes notifications~~These notifications shall be documented in the infant's hospital record.
  - (3) If test results are not received by the hospital within fifteen (15) days after the date of collection, the hospital shall contact the Newborn Screening Laboratory to verify that a specimen was received. If a specimen was not received, the hospital shall notify the physician.
  - (4) Any hospital or any other laboratory that collects, handles or forwards newborn screening blood specimens shall keep a log containing the name and date of birth of the infant, name of the ordering physician, name of infant's provider, medical record number, serial number of the Newborn Screening Form Kit, date of specimen collection, date specimen was sent to the certified laboratory, date that test results were transmitted or received and the test results.
- (b) **Pulse oximetry screening results.**
  - (1) **Record of results.**

# Permanent Final Adoptions

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- (A) All pulse oximetry screening results shall be recorded in the infant's medical record and the results reported to a parent(s) or guardian(s) prior to discharge from the hospital.
- (B) All pulse oximetry screening results shall be recorded on the Newborn Screening Form Kit, along with the infant's name, date of birth, submitting facility, mother's name, and the infant's physician.
- (C) If the newborn is not screened for CCHD prior to the Newborn Screening Form Kit being forwarded to the Newborn Screening Laboratory for testing, CCHD screen results shall be communicated to the Newborn Screening Program Coordinator utilizing the Pulse Oximetry Screening Result Form provided by the Program.
- (D) The Pulse Oximetry Screening Result Form must be completed in its entirety.
- (2) **Abnormal pulse oximetry screen results.**
- (A) It is the responsibility of the authorized health care provider who conducted the pulse oximetry screening to communicate abnormal results to the attending physician or attending clinician immediately.
- (B) The newborn shall be evaluated immediately by an attending physician in order to complete the recommended protocol.
- (C) The newborn may not be discharged from care until:
- (i) A cause for the abnormal pulse oximetry screen has been determined;
  - (ii) An echocardiogram has been performed, read, and determined not to indicate CCHD; and/or
  - (iii) A plan of care and follow-up has been established with the newborn's parent(s) or guardian(s).
- (D) The birthing facility shall report pulse oximetry screening results to the Department as specified in this Chapter.
- (E) It is the responsibility of the birthing facility to notify the newborn's parent(s) or guardian(s), the physician or clinician following the newborn in the hospital, and the infant's physician of abnormal pulse oximetry results.
- (3) **Newborns not screened for CCHD.**
- (A) If a newborn is not screened for CCHD secondary to discharge before 12 hours of life, the birthing facility shall:
- (i) Follow-up with the parent(s) or guardian(s) to schedule screening of the newborn at the birthing facility between twenty-four (24) and forty-eight (48) hours of life; or
  - (ii) Follow-up with the parent(s) or guardian(s) to schedule referral of the newborn to an authorized facility for screening between twenty-four (24) and forty-eight (48) hours of life; and
  - (iii) Report screening results to the Department utilizing the Pulse Oximetry Screening Result Form provided by the Program, and indicating

the reason for not screening which may be "early discharge".

(B) If pulse oximetry screening is not indicated for the newborn, the birthing facility shall report the reason for not screening, which may be "screening not indicated due to," and provide other CCHD findings for the newborn to the Department utilizing the Pulse Oximetry Screening Result Form provided by the Program.

(C) If the newborn is not screened for CCHD because of parent or guardian refusal, the birthing facility shall send the Newborn Screening Program Refusal Form to the Department utilizing the form provided by the Program and indicate the reason for not screening, which may be "parent refusal".

## **SUBCHAPTER 11. ADVISORY COMMITTEE FOR NEWBORN SCREENING**

## **SUBCHAPTER 13. NEWBORN SCREENING PARENT AND HEALTH CARE PROVIDER EDUCATION**

## **SUBCHAPTER 17. NEWBORN SCREENING FOLLOW-UP FOR PHYSICIANS**

### **310:550-17-1. Follow-up for physicians**

(a) If a physician examines ~~an~~ an infant in ~~h~~is first three months of life, the physician will verify that the infant has been screened, and document results in the infant's medical record. If the infant has not been screened or if results of screening are not available, the physician shall submit a satisfactory newborn screening blood specimen as soon as possible.

(b) On written notification by the Newborn Screening Program of follow-up requirements for a newborn screen result of abnormal, unsatisfactory, or for specimens collected from a newborn at or less than 24 hours of age; the infant's physician or designee will ensure that required repeat screening, confirmatory testing, or diagnostic studies are performed in the timeframe specified so that therapy, when indicated, can be initiated expediently.

(c) The infant's physician may selectively rescreen the infant as clinically indicated.

(d) Because patients may relocate without a forwarding address or contact information, physicians and birthing facilities have the burden to make a reasonable search and effort to locate and notify the parent(s) or guardian(s). If the parent(s) or guardian(s) are not contacted, then the Newborn Screening Program Coordinator will be notified of the inability to notify after efforts to contact the parent(s) or guardian(s) have been exhausted.

(e) For appropriate comprehensive medical care, all confirmed cases of a disorder on the newborn screening blood testing panel, should have a referral to a pediatric subspecialist,



and the parent(s) or guardian(s) should be referred for enrollment in newborn screening long-term follow-up services as designated by the Newborn Screening Program. For referral information, contact the Newborn Screening Short-term Follow-up Program at (405) 271-6617(405) 426-8310 or 1-800-766-2223.

**SUBCHAPTER 19. NEWBORN SCREENING REPORTING**

**SUBCHAPTER 21. NEWBORN SCREENING INFORMATION**

**310:550-21-1. Information**

(a) For information regarding laboratory procedures, results of laboratory tests, or to order Form Kits, contact the Public Health Laboratory Service, Oklahoma State Department of Health, P.O. Box 24106, Oklahoma City, Oklahoma 73124 0106, (405) 271-5070, FAX (405) 271-4850 or visit the website at <http://phl.health.ok.gov>. 4615 W Lakeview Dr, Stillwater, OK 74075, (405) 564-7750, FAX (405) 900-7611 or visit the website at <https://oklahoma.gov/health/locations/public-health-laboratory.html>.

(b) For general information or information regarding follow-up for newborn screening or pulse oximetry screening, contact Newborn Screening Short-term Follow-up Program, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102, (405) 426-8220(405)-426-8310, option 2 or 1-800-766-2223, option 2, FAX (405) 900-7556. General information about the Newborn Screening Program is available on the OSDH Newborn Screening website at <http://nsp.health.ok.gov> <https://Oklahoma.gov/health/newbornscreening>.

**SUBCHAPTER 23. NEWBORN SCREENING STANDARDS, PROCEDURES, AND FOLLOW-UP FOR CERTIFIED LABORATORIES**

**SUBCHAPTER 24. RESOURCES FOR TRISOMY 13, 18, AND 21**

**310:550-24-1. Resources for Trisomy 13, 18, and 21 Purpose**

The rules in this Subchapter implement Courtney's Law, as codified in 63 O.S. § 1-575.

**310:550-24-2. Resources for Trisomy 13, 18, and 21 Definitions**

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

**"Chromosomal disorder"** means:

- (A) Trisomy 13, otherwise known as Patau syndrome;
- (B) Trisomy 18, otherwise known as Edwards syndrome; or
- (C) Trisomy 21, otherwise known as Down syndrome.

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

**"Genetic counselor"** means any person who is licensed pursuant to the provisions of the Genetic Counseling Licensure Act or offers to or engages in genetic counseling. The term does not include those professions exempted by Section 1-566 of the Act.

**"Health care facility"** means a facility licensed or certified by the State Department of Health, but shall not include a nursing care facility, assisted living facility or home care agency.

**"Health care provider"** means a person who is licensed, certified or registered by this state to provide health care services or a medical group, independent practice association or professional corporation providing health care services.

**310:550-24-3. Resources for Trisomy 13, 18, and 21 Duty to provide information**

Any health care facility, health care provider, or genetic counselor, upon receipt of a positive test result from a test for a chromosomal disorder, shall provide the expectant or new parent with information provided by the Department if such information is made available by the Department for the specific disorder.

**310:550-24-4. Resources for Trisomy 13, 18, and 21 Availability of information from the Department**

To the extent the information is available, the Department shall maintain on its website:

- (1) Up-to-date, evidence-based written information about chromosomal disorders that has been reviewed by medical experts and national advocacy organizations for people with intellectual and other developmental disorders. The written information will be compiled from credible sources and will include physical, developmental, educational and psychosocial outcomes, life expectancy, clinical course, and intellectual and functional development and treatment options; and
- (2) Contact information for programs and support services including one or more hotlines specific to a chromosomal disorder, resource centers or clearinghouses, national and local organizations, and other education and support programs.

[OAR Docket #23-523; filed 6-12-23]

# Permanent Final Adoptions

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 642. EMERGENCY RESPONSE SYSTEMS STABILIZATION AND IMPROVEMENT REVOLVING FUND

[OAR Docket #23-524]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Scoring  
310:642-5-1 [AMENDED]

### AUTHORITY:

Commissioner of Health; Title 63 O.S. §§ 1-104 and Title 63 O.S. § 1-2512.1

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

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#### Superseded rules:

Subchapter 1. General Provisions [REVOKED]

310:642-1-1 [REVOKED]

310:642-1-2 [REVOKED]

310:642-1-3 [REVOKED]

Subchapter 3. Proposals [REVOKED]

310:642-3-1 [REVOKED]

310:642-3-2 [REVOKED]

Subchapter 5. Scoring [REVOKED]

310:642-5-1 [REVOKED]

Subchapter 7. Disbursement [REVOKED]

310:642-7-1 [REVOKED]

310:642-7-2 [REVOKED]

Subchapter 9. Evaluation [REVOKED]

310:642-9-1 [REVOKED]

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n/a

### GIST/ANALYSIS:

The Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund (OERSSIRF) allows for the awarding of funds to stabilize and improve emergency response systems in Oklahoma. The amendments to Chapter 642 will revoke paragraphs 642-5-1(2)(H) and (I) to distribute the funds in closer alignment with the requirements of 63 O.S. § 1-2512.1, Oklahoma Emergency Response Systems Stabilization and Improvement Revolving Fund, and in a more equitable way. The revocation will eliminate funding procedures that tend to result in repeated funding advantages for certain applicants

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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 5. SCORING

### 310:642-5-1. OERSSIRF funding priority point system

Proposals shall be ranked based on the total number of points awarded by the Department consistent with this Chapter.

(1) The following formula shall be used to rank funding proposals:  $T = S + M + D + H + E + AR + PM + PG + PE$ , where:

- (A) T = Total points
- (B) S = Statutory purposes
- (C) M = Multiple jurisdictions
- (D) D = Population density
- (E) H = Distance to the nearest level I or II trauma center
- (F) E = Number of project-area EMTs
- (G) AR = Amount of funding requested
- (H) PM = Project matching
- (I) PG = Previous funding assistance
- (J) PE = Previous funding evaluation

(2) Points may be awarded as described below:

(A) **Statutory purposes (S):** Points shall be awarded for each of the relevant statutory purposes of the proposal as follows:

- (i) Funding assessment activities: 50 points
- (ii) Stabilization and/or reorganization of at-risk emergency medical services: 100 points
- (iii) Development of regional EMS: 50 points
- (iv) Training for emergency medical directors: 50 points
- (v) Access to training front line emergency medical services personnel: 100 points
- (vi) Capital and equipment needs: 50 points

(B) **Multiple jurisdictions (M):** Points shall be awarded for projects addressing the EMS needs of multiple jurisdictions, as follows:

- (i) Two cities or towns: 25 points
- (ii) Three cities or towns: 50 points
- (iii) County wide: 100 points
- (iv) Multi-county: 150 points
- (v) State wide: 200 points

(C) **Population density (D):** Points shall be awarded for projects encompassing areas of lowest per-mile population density as recorded by the United States Census Bureau, as follows:

- (i) 5,000.0 to 8,968.1: 0 points
- (ii) 1,000.0 to 4,999.9: 10 points
- (iii) 200.0 to 999.9: 20 points
- (iv) 79.6 to 199.9: 30 points
- (v) 30.0 to 79.5: 40 points
- (vi) 10.0 to 29.9: 50 points

- (vii) Less than 10.0: 100 points
- (D) **Distance to trauma center (H):** Points shall be awarded for project areas where the average distance between the furthest and closest points within the project area to a trauma center classified by the State of Oklahoma or the American College of Surgeons as level I or II, as follows:
  - (i) 0-25 miles: 0 points
  - (ii) 25-49 miles: 10 points
  - (iii) 50-74 miles: 20 points
  - (iv) 75-99 miles: 30 points
  - (v) 100-124 miles: 40 points
  - (vi) 125-149 miles: 50 points
  - (vii) 150 miles and over: 100 points
- (E) **EMTs (E):** Points shall be awarded for proposals encompassing project areas with fewer resident licensed EMTs at any level of licensure as recorded by the Department as follows:
  - (i) 100 or more resident EMTs: 0 points
  - (ii) 50-99 resident EMTs: 20 points
  - (iii) 25-49 resident EMTs: 40 points
  - (iv) 0-24 resident EMTs: 60 points
- (F) **Amount of funding requested (AR):** Points under this category for amount of funding requested are determined as follows:
  - (i) \$400,001 to \$500,000: -50 points
  - (ii) \$300,001 to \$400,000: -40 points
  - (iii) \$200,001 to \$300,000: -30 points
  - (iv) \$100,001 to \$200,000: -20 points
  - (v) \$80,000 to \$100,000: 10 points
  - (vi) \$60,000 to \$79,999: 20 points
  - (vii) \$40,000 to \$59,999: 30 points
  - (viii) \$20,000 to \$39,999: 50 points
  - (ix) Any AR greater than \$500,000 shall be denied
- (G) **Project matching (PM).** If the proposal proposes the use of matching funds, points shall be awarded consistent with the following formula:
  - (i) 90% of the requested funds: 90 points
  - (ii) 80% of the requested funds: 80 points
  - (iii) 70% of the requested funds: 70 points
  - (iv) 60% of the requested funds: 60 points
  - (v) 50% of the requested funds: 50 points
  - (vi) 40% of the requested funds: 40 points
  - (vii) 30% of the requested funds: 30 points
  - (viii) 20% of the requested funds: 20 points
  - (ix) 10% of the requested funds: 10 points
- (H) **Previous funding assistance (PG).** If a qualified entity has been approved for one (1) or more OERSSIF proposals from the Department for projects awarded in the past, points shall be deducted from the proposal according to all of the following provisions that apply unless the previous proposal was for an assessment of the need for the establishment of EMS or stabilization of an at risk EMS:
  - (i) One (1) funded project in the preceding twelve (12) month period: -80 points.

- (ii) More than one (1) OERSSIF project in the preceding twelve (12) month period: -100 points.
- (iii) One (1) OERSSIF funded project more than twelve (12) months in the past: -50 points.
- (iv) Two (2) OERSSIF funded projects more than twelve (12) months in the past: -80 points.
- (v) Three (3) OERSSIF funded projects more than twelve (12) months in the past: -100 points.
- (vi) Four (4) OERSSIF funded projects more than twelve (12) months in the past: -150 points.
- (vii) Five (5) or more OERSSIF funded projects more than twelve (12) months in the past: -175 points.
- (viii) If the qualified entity has received a previous OERSSIF funding for a project that remains un-evaluated or for which any refund has not been paid as of August 31st of the year following the approved completion date of the project, the proposal will be given -50 points for each such funded project.
- (I) **Previous funding evaluation (PE).** The project score established through the Department's evaluation required by OAC 642-9-1(a) for each previously completed OERSSIF project shall earn the following points:
  - (i) Significantly Improved: -100 points
  - (ii) Improved: -50 points
  - (iii) Not Improved: -50 points
  - (iv) Worsened: -100 points

[OAR Docket #23-524; filed 6-12-23]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 645. EMERGENCY SERVICE  
DISTRICT SUPPLEMENTAL REGULATIONS  
[REVOKED]**

[OAR Docket #23-525]

**RULEMAKING ACTION:  
PERMANENT final adoption  
RULES:**

- Subchapter 1. General Provisions [REVOKED]
- 310:645-1-1 [REVOKED]
- 310:645-1-2 [REVOKED]
- Subchapter 3. Procedure to Establish a District [REVOKED]
- 310:645-3-1 [REVOKED]
- 310:645-3-2 [REVOKED]
- Subchapter 5. Establishment of the District [REVOKED]
- 310:645-5-1 [REVOKED]
- 310:645-5-2 [REVOKED]
- Subchapter 7. Denial of a District [REVOKED]
- 310:645-7-1 [REVOKED]
- 310:645-7-2 [REVOKED]
- 310:645-7-3 [REVOKED]
- Subchapter 9. Contract for a Provider [REVOKED]
- 310:645-9-1 [REVOKED]
- Subchapter 11. Dissolution and New Contracts [REVOKED]
- 310:645-11-1 [REVOKED]

# Permanent Final Adoptions

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n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

This chapter is being revoked. The statutory authority for Chapter 645 was repealed in 2005. The regulations are no longer needed or supported by statute.

## CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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 [REVOKED]

### 310:645-1-1. Purpose [REVOKED]

The purpose of this Chapter is to implement standards for establishment of supplemental Emergency Service Districts.

### 310:645-1-2. Definitions [REVOKED]

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

**"Board of Commissioners"** means the duly elected county commissioners of the proposed Supplemental Emergency Service District.

**"Commissioner"** means the State Commissioner of Health.

**"Department"** means the State Department of Health.

**"Division"** means the Division of Emergency Medical Services, Oklahoma State Department of Health.

**"Fire Marshal"** means the Oklahoma State Fire Marshal Office.

## SUBCHAPTER 3. PROCEDURE TO ESTABLISH A DISTRICT [REVOKED]

### 310:645-3-1. Procedure [REVOKED]

(a) The Board(s) of Commissioners will contact the Division when a Supplemental Emergency Service District is contemplated prior to taking any action toward the formation of such district. The Division will provide technical assistance to the Board of Commissioners on the procedure and feasibility to establish a district. Contact can be made in writing, or by telephone, at the following address: Oklahoma State Department of Health, Emergency Medical Services, Division 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152, (405) 271-4027 or 4062.

(b) Forms for the establishment of Supplemental Emergency Service District may be obtained at the address given above.

### 310:645-3-2. Application to establish a district [REVOKED]

An application will be submitted to the Department, for the purpose of the establishment of a Supplemental Emergency Service District, and shall include, but not be limited to, a certified copy of the written resolution adopted by the Board(s) of Commissioners and must contain the following information:

(1) A definition and map of the boundaries of the proposed Supplemental Emergency Service District, which must be contiguous with the border of Oklahoma and any neighboring state.

(2) The purpose of the proposed supplemental Emergency Service District, which shall be one of the following:

(A) An Emergency Medical Service and a Fire Protection District;

(B) An Emergency Medical Service District, or;

(C) A Fire Protection District.

(3) The name, address, contact person, and phone number of the emergency service provider who desires to contract for the provision.

(4) A statement of need and a declaration of the finding that a deficiency exists for fast, efficient fire protection or emergency medical services, pursuant to 63 O.S., Supp. 1990, Section 1-2501, et seq.

(5) A statement that the proposed contractor is a municipality or other governmental body or a trust whose beneficiary is a municipality or other governmental body.

(6) A letter from the state of residence for the emergency service provider, which verifies that such provider complies with, or exceeds, the requirement and terms which license, certify, or permit such provider within that State. Such verification shall satisfy any similar licensing or permit requirements arising pursuant to Oklahoma law, for the purpose of services to be contracted for.

(7) Proof of publication, within the proposed district, for two (2) consecutive weeks of the intention to adopt a Supplemental Emergency Service District.

(8) Any notification of an objection, or objections, to the establishment of a Supplemental Emergency Service

District, which have been properly issued to the Board(s) of Commissioners.

(9) Any other information found necessary by the Commissioner to complete the application and formation of a Supplemental Emergency Service District.

**SUBCHAPTER 5. ESTABLISHMENT OF THE DISTRICT [REVOKED]**

**310:645-5-1. No objection(s) [REVOKED]**

If no formal objection occurs during the publication period, the Commissioner shall issue an order to establish the Supplemental Emergency Service District and its boundaries, upon the following considerations:

- (1) All requirements of the procedure and application are found to be valid.
- (2) This review, and subsequent written report, are conducted by the Department, and Fire Marshal, if a Fire District is called for.
- (3) The review is based upon a determination by the Department, and/or Fire Marshal, that no Oklahoma emergency service provider or fire department will be adversely affected.

**310:645-5-2. Formal objection(s) [REVOKED]**

If a formal objection occurs during the publication, the Commissioner, or a duly appointed hearing officer, shall conduct a hearing, as an individual proceeding within the meaning and pursuant with the provisions of the Administrative Procedure Act (75 O.S. 1981, Section 315.1). Written notice, established by verification of delivery, and a reasonable opportunity to be heard shall be given to all objecting parties and the Board(s) of Commissioners. Objecting parties will be those established by the Board of Commissioners resolution, as required by 63 O.S. Supp. 1990, Section 30.87(A), or this Chapter.

- (1) Objections must be based upon the reason that the described area of such county, or counties, is currently being adequately served by fast, efficient fire protection or emergency medical services, which are provided by a municipality or other governmental body located in the State of Oklahoma.
- (2) If a final determination by the Commissioner is that the area in question is not adequately served as described within 63 O.S. Supp. 1990, Section 30.85, et seq., the Commissioner shall issue an order to establish the Supplemental Emergency Service District and its boundaries, based upon the following considerations:
  - (A) That all requirements of the procedure and application are found to be valid.
  - (B) That this review, and subsequent written report, will be conducted by the Department, or Fire Marshal as appropriate.
  - (C) That the review will be based upon a determination by the Department, and/or Fire Marshal, that

no Oklahoma emergency service provider or fire department will be adversely affected.

(3) The Commissioner shall provide written authorization within thirty (30) working days in the form of a certified mail receipt, to establish a Supplemental Emergency Service District. This authorization will be sent to the Board(s) of Commissioners who initiated the application for a Supplemental Emergency Service District.

**SUBCHAPTER 7. DENIAL OF A DISTRICT [REVOKED]**

**310:645-7-1. Denial of a district [REVOKED]**

If a denial occurs, the Commissioner shall provide written denial within thirty (30) working days. This denial will be sent to the Board(s) of Commissioners who initiated the application for a Supplemental Emergency Service District.

**310:645-7-2. Written denial format and remedy [REVOKED]**

- (a) The written denial to establish a Supplemental Emergency Service District, shall state each item or requirement which failed to meet the application or establishment process.
- (b) The applicant or any party may request reconsideration of the Department's decision to issue or deny a Supplemental Emergency Service District. A request for reconsideration must be in writing and must be received by the Department within thirty (30) days after receipt of the denial. A reconsideration hearing may be held by the Department, if a determination for "good cause" is established.
- (c) The applicant or any party aggrieved by the Department's determination may file a petition in a court of competent jurisdiction within thirty (30) days after receipt of the denial.
- (d) Contacts concerning projects before the Commissioner or the Department should be directed to the Department staff. Applicants and other parties shall not attempt to discuss the merits of a particular case with the Commissioner or the hearing officer except during the preliminary conference or public hearing. Any party who attempts to make an improper ex parte communication with the Commissioner or the hearing officer may be disqualified from further participation in the review of the case.

**310:645-7-3. New application requirement [REVOKED]**

After a written denial has been issued, any newly adopted resolution by the Board(s) of Commissioners to re-establish the same District must be presented, and will be considered, under an initial application process for the Supplemental Emergency Service District.

**SUBCHAPTER 9. CONTRACT FOR A PROVIDER [REVOKED]**

# Permanent Final Adoptions

## 310:645-9-1. Provider contract requirements [REVOKED]

The contract for an emergency service provider must contain, but not be limited to, provisions for the following:

- (1) A requirement that an out of state emergency service provider shall meet, and continue to meet, all terms and provisions which recognize any license or permit required by the state of residence. Such license or permit shall satisfy any similar licensing or permit requirements arising pursuant to Oklahoma law, only for the purposes of services rendered pursuant to this contract.
- (2) The contractual term will be for one (1) year. A clause requiring the Department to monitor for a continual need within the District and to meet the requirement of paragraph 601.1, of these rules and regulations.
- (3) A clause that the contract can be canceled within forty five (45) days, by either party.
- (4) The provision for authority to investigate complaints which may arise during performance of the contract, and pursue remedy under Oklahoma law.
- (5) A provision that the emergency medical provider will furnish service within the district, when called upon.
- (6) A provision that the contractor must provide the Department written notice of any change in the condition or terms covering the emergency service provider within the state in which it is situated. Further, the contractor will provide the Division with annual verification of any license or permit covering the provision within the state in which it is situated. Such notice will be within thirty (30) days of any change in the condition or terms, as described.
- (7) A clause that charges for the service shall be determined only an amount sufficient to cover the full cost of rendering such service, including the cost of commercial liability insurance which may cover the service performed by the contractor. These charges shall be commensurate to those comparable in Oklahoma for the same purpose.
- (8) The allowance for a fee which will be collected to process a contract to establish an emergency service provider within the Supplemental Emergency Service District, which is equivalent to the fee for the establishment of an ambulance provider license in Oklahoma.
- (9) A paragraph which mandates compliance with state law, to be submitted on forms supplied by the Department along with other information as required.

## SUBCHAPTER 11. DISSOLUTION AND NEW CONTRACTS [REVOKED]

### 310:645-11-1. Dissolution of districts and contracts [REVOKED]

The Commissioner may dissolve any established district, if the need ceases to exist for same.

[OAR Docket #23-525; filed 6-12-23]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 659. HEALTH MAINTENANCE ORGANIZATIONS [REVOKED]

[OAR Docket #23-526]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [REVOKED]

310:659-1-1 [REVOKED]

310:659-1-2 [REVOKED]

310:659-1-3 [REVOKED]

310:659-1-4 [REVOKED]

310:659-1-5 [REVOKED]

310:659-1-6 [REVOKED]

310:659-1-7 [REVOKED]

Subchapter 3. Examinations [REVOKED]

310:659-3-1 [REVOKED]

310:659-3-2 [REVOKED]

310:659-3-3 [REVOKED]

310:659-3-4 [REVOKED]

### AUTHORITY:

Commissioner of Health; Title 63 O.S. §§ 1-104, 1-105, and 1-106.1; Title 36 O.S. Section 6901 et seq.

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

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n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

This chapter of rule is being revoked because the Health Maintenance Act, Title 36. O.S. 6901 et seq. of the Oklahoma Insurance Code gives the Oklahoma Insurance Department regulatory authority over health maintenance organizations.

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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 [REVOKED]

**310:659-1-1. Purpose [REVOKED]**

This Chapter is intended to ensure that health maintenance organizations comply with provisions that the State Commissioner of Health is charged to enforce under the Health Maintenance Organizations Act of 2003, Title 36 O.S. Section 6901 et seq.

**310:659-1-2. Definitions [REVOKED]**

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

"**Commissioner**" means the Commissioner of Health.

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

"**HMO Act**" means the Health Maintenance Organizations Act of 2003, Title 36 O.S. Section 6901 et seq.

**310:659-1-3. Application materials [REVOKED]**

The applicant for a certificate of authority shall include narratives and documentation sufficient to demonstrate compliance with the requirements of 36 O.S. Section 6907 in its application filed with the Oklahoma Insurance Commissioner pursuant to 36 O.S. Section 6903(C).

**310:659-1-4. Filing fee [REVOKED]**

Each HMO shall pay the Department a fee of \$1,500.00 (One Thousand Five Hundred Dollars) for review of an application for certificate of authority. The fee shall be in the form of a check payable to the Oklahoma State Department of Health, and is due when the application is submitted to the Oklahoma Insurance Commissioner.

**310:659-1-5. Governing body oversight [REVOKED]**

The HMO's governing body or its designee shall be responsible for the quality assurance program. The governing body or designee shall approve and regularly evaluate this program. If the HMO contracts with other entities to operate the quality assurance program, then the governing body or designee may consider reports from those entities. The governing body or designee shall receive reports on the quality assurance program at least once every six (6) months.

**310:659-1-6. Managed care referral and non-formulary drugs [REVOKED]**

Each HMO shall be considered a managed care entity for the purposes of 63 O.S. Sections 2550.1, 2550.2, and 2550.4. Each HMO's quality assurance program shall ensure compliance with the requirements applicable to managed care plans for referrals to specialists and approvals of non-formulary or prior authorized drugs.

**310:659-1-7. Administrative penalties [REVOKED]**

The Department shall assess an administrative penalty in the amount of One Hundred Dollars (\$100.00) per occurrence for an HMO that has been found in violation of 36 O.S. Section

6907(H) or a malpractice carrier that has been found in violation of 36 O.S. Section 6907(H)(8). Each day that the violation continues shall be considered a separate occurrence.

**SUBCHAPTER 3. EXAMINATIONS [REVOKED]**

**310:659-3-1. Purpose [REVOKED]**

(a) The Department shall examine the quality of an HMO's health care services within the first 12 months of member enrollment. This review is for the purpose of confirming that all required processes, systems and protocols are in place and are being implemented pursuant to 36 O.S. Section 6907.

(b) The Department may conduct the examination or the Department may require the HMO to contract for the examination pursuant to 36 O.S. Sections 6907(E) and 6919(B). If the Department requires the HMO to contract for the examination, the HMO shall select an independent quality examiner that has been approved by the Department.

**310:659-3-2. Independent quality examiner [REVOKED]**

(a) The Department shall maintain a list of approved independent quality examiners who have demonstrated conformity to the following requirements:

(1) The examiner has written criteria and standards for assessing the quality of clinical care and the availability, accessibility and continuity of care;

(2) The examiner limits clinical judgements to physicians with experience in the delivery of health care in an HMO setting, and all final conclusions, opinions and recommendations shall be made or endorsed by physicians;

(3) The examiner has a training program for review team members to ensure uniform application of standards;

(4) The examiner ensures the confidentiality of medical and health care information; and

(5) The examiner institutes reasonable measures to ensure that review team members and their families have no financial interest in the HMO being examined or in any HMO operating in the geographic service area covered by the HMO being examined.

(b) Any person may file a request to be included on the Department's list of approved independent quality examiners. The request shall be in writing and shall demonstrate conformity to the requirements in (a) of this Section. The Department shall respond in writing within thirty (30) days after receiving the request. The Department at any time may remove approval status from an examiner for failure to maintain compliance with (a) of this Section, or for providing to or accepting from an HMO any gift or favor other than a reasonable and usual charge for the performance of a quality examination.

(c) The examination process shall include:

(1) Preliminary reviews to familiarize the examiner with the requirements of this Chapter and the HMO;

(2) A site visit to review records and to interview HMO officers, the medical director, members of the governing

# Permanent Final Adoptions

body, members of the quality assurance committee, the patient care coordinator, a customer service representative, other providers, and HMO personnel;

(3) An on-site summation; and

(4) Written preliminary and final reports.

(d) The HMO and the quality examiner shall provide the Department access to observe record reviews, interviews, and the on-site summation.

### 310:659-3.3. Reports [REVOKED]

(a) The quality examiner shall prepare a report based upon the assessment team's findings. One (1) copy of each report shall be submitted to the Department. The report shall contain, at a minimum, the following information:

(1) An overview of the HMO's quality assurance program, an evaluation of recent quality assurance studies undertaken by the HMO, and the degree of implementation of the written quality assurance plan;

(2) A description of the HMO's quality assurance program;

(3) A description of the types and numbers of medical records reviewed, selection criteria, and review methods;

(4) A summary of charts that met and did not meet the established review criteria;

(5) Recommendations for follow up, when indicated; and

(6) A listing of the names and titles of individuals that conducted and analyzed the review.

(b) The HMO shall forward to the Department a complete and unaltered copy of the final report within five (5) working days after the HMO receives the report from the quality examiner.

### 310:659-3.4. Conflict of interest [REVOKED]

(a) An independent quality examiner contracted by an HMO or a qualified person contracted by the Department pursuant to 36 O.S. Section 6929 shall:

(1) Have knowledge and expertise in the area they are contracted to review; and

(2) Have no history of disciplinary action or sanctions related to quality of care, fraud, or other criminal activity.

(b) No contracted examiner or qualified person shall have any material, professional, familial or financial conflict of interest with:

(1) The HMO;

(2) Any officer, director, or management employee of the HMO;

(3) Any provider contracted with the HMO; or

(4) Any other HMO in the service area.

(c) A potential reviewer or qualified person shall disclose information regarding potential conflicts of interest to all parties to the review.

[OAR Docket #23-526; filed 6-12-23]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE

[OAR Docket #23-527]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:661-1-2 [AMENDED]

Subchapter 2. Licenses

310:661-2-1 [AMENDED]

### AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

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

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n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The rule amendments: removed the hospice alternate administrative location (AAO) 50-mile radius limitation, inclusion of locations in the definition of AAO and removing where employees should be supervised; 310:661-2 modified the definition of AAO to include the verbiage, "stores supplies, and/or is used for documentation"; 310:661-2-1(f) modified base of operation by removing the verbiage, "at that location"; 310:661-2-1(f)(A) removed the requirement for AAO to be located within a geographical area of 50 miles from the main hospice; and 310:661-2-1(f)(B) removed the criteria for determination of 50 miles.

### 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. GENERAL PROVISIONS

### 310:661-1-2. 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 Oklahoma Hospice Licensing Act, 63 O.S. 1991, §§ 1-860.1 et seq.

**"Alternate Administrative Office"** means an approved location from which the hospice provides the same full range of hospice care and services that is required of the hospice issued, stores supplies, and/or is used for documentation the license and meets the requirements of 310:661-2-1(f)(2). Each location shall meet all of the applicable requirements of Chapter 661. Hospice.

**"Attending physician"** means a doctor of medicine or osteopathy, identified by the patient or representative at the time the patient or representative elects to receive hospice care, as having the most significant role in the determination and delivery of the patient's medical care.

**"Bereavement counseling"** means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

**"Clinical note"** means a notation of a contact with the patient and/or the family that is written and dated by any person providing services and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, and any changes in physical, emotional, psychosocial or spiritual condition during a given period of time.

**"Comprehensive assessment"** means an evaluation of the patient's physical, psychosocial, emotional and spiritual status related to the terminal illness and related conditions. This includes an evaluation of the caregiver's and family's willingness and capability to care for the patient.

**"Continuous care"** means nursing care that is provided by a skilled nurse or a qualified hospice aide for as much as 24-hours a day during periods of medical crisis as necessary to maintain a hospice patient at their place of residence.

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

**"Dietary counseling"** means education and interventions provided to the patient and family regarding nutritional intake as the patient's condition changes. Dietary counseling is provided by qualified individuals, which may include a registered nurse or dietitian, when identified in the patient's plan of care.

**"Employed"** means contracting with a person for services, regardless of compensation. This term also includes volunteers.

**"Employee"** means a person who: (1) Works for the hospice and for whom the hospice is required to issue a W-2 form on his or her behalf; (2) if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice; or (3) is a volunteer under the jurisdiction of the hospice.

**"Fast-track"** The process where advance approval may be secured for construction starts while design details are completed.

**"First-year license"** means a license issued for the initial twelve (12) month license period.

**"Follow-up inspection"** means the inspection by representatives of the Department that shall occur after a hospice has provided hospice services for at least six (6) months.

**"Governing body"** means a person, persons, or legal entity that is legally responsible for the conduct of the facility as an institution and carries out the functions, ownership, and governance in accordance with these regulations and the laws of this state.

**"Initial assessment"** means an evaluation of the patient's physical, psychosocial and emotional status related to the terminal illness and related conditions to determine the patient's immediate care and support needs.

**"License"** means a first-year or permanent hospice license issued pursuant to the Act and these rules.

**"Licensed independent practitioner"** means any individual permitted by law and by the licensed hospice to provide care and services, without direct supervision, within the scope of the individual's license and consistent with clinical privileges individually granted by the licensed hospice. Licensed independent practitioners may include advanced practice nurses with prescriptive authority, physician assistants, dentists, podiatrists, optometrists, chiropractors, and psychologists.

**"Medical Crisis"** means an event or situation in which a registered nurse, through direct assessment of the hospice patient, determines that the patient has entered into a period of crisis which requires a physician's intervention and continuous nursing care to achieve palliation or management of acute medical symptoms. Peaceful symptom controlled death is an expected patient outcome and is not considered a medical crisis. A medical crisis would include, but not be limited to the following: uncontrolled terminal agitation as demonstrated by hallucinations, confusion, and combativeness; uncontrolled pain; uncontrolled respiratory distress; uncontrolled nausea and vomiting; hemorrhaging; uncontrolled seizures; family distress as a result of ongoing symptom management for the patient requiring administration of medications to maintain the patient's comfort; and, any uncontrolled symptom that requires the administration of medications with ongoing assessment of the effectiveness and adjustment of the medication regimen to achieve control of symptoms.

**"Palliative care"** means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.

**"Permanent license"** means a license first issued to a hospice program after the first-year license period has been completed and the required follow-up inspection has been conducted.

**"Physician designee"** means a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical advisor when the medical advisor is not available.

**"Registered nurse"** means a person who is currently licensed to practice registered nursing in the State of Oklahoma.

**"Representative"** or **"Court appointed guardian"** means a person who is authorized in accordance with State law to execute or revoke an election for hospice care or terminate medical care on behalf of the terminally ill individual.

# Permanent Final Adoptions

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"**Skilled nurse**" means a person who is currently licensed to practice registered nursing or practical nursing in the State of Oklahoma.

"**Social worker**" means a person who has a degree from a school accredited or approved by the Council on Social Work Education and conforms to the requirements of the State Licensure Laws of Oklahoma for Social Workers.

## SUBCHAPTER 2. LICENSES

### 310:661-2-1. Licensure

(a) **Applicant.** Any public or private agency or person desiring to establish a hospice in Oklahoma shall apply for and obtain a license from the Department.

(b) **Application.** An application for a hospice license shall be filed on a form prescribed by the Department and shall be accompanied by the information required by the Act.

(c) **Plan of delivery.** The initial application shall be accompanied by a plan of delivery of home and inpatient hospice services to patients and their families. The plan shall include, but not be limited to, those items listed in the Act.

(d) **Expiration/renewal.**

(1) **First-year license.**

(A) The first-year license shall expire one (1) year from the date of issuance unless suspended or revoked. A hospice holding a first-year license is required to successfully complete an initial inspection by representatives of the Department prior to the provision of services and shall be subject to a follow-up inspection after providing hospice services for at least six (6) months. The Department may require any hospice to renew the first-year license for one additional year. A hospice shall not hold a first-year license for more than twenty-four (24) months.

(B) A follow-up survey that demonstrates compliance with the Act and these rules shall be required prior to a hospice program being issued a permanent license.

(2) **Permanent license.** The permanent license shall expire one (1) year from the date of issuance, unless suspended or revoked. An application for renewal shall be submitted according to the Act. Only hospice programs in compliance with the Act and these rules shall be issued a permanent license.

(e) **Base of operation.** Every hospice providing hospice services shall operate from a place of business which is accessible to the public and physically located in Oklahoma. Staff providing services from the hospice shall be supervised by personnel at that location.

(f) **Eligibility for license.**

(1) A hospice making appropriate application that has been determined to be compliant with this Chapter and the Act is eligible for a license.

(2) A hospice may operate alternate administrative offices under one (1) license as long as the following requirements are met:

~~(A) The offices shall be located within a geographical area with a radius of no more than fifty (50) miles from the main hospice.~~

~~(B) The mileage limit used for approval of each administrative office shall be the mileage between town centers of the parent location town and the proposed administrative office location town as reported by the Oklahoma Department of Transportation as approximately the shortest route between town centers utilizing both State Highways System (free) and State Turnpike System (toll) roads.~~

~~(C) The alternate administrative offices shall be operated under the same administration and governing body as an extension site for services of the main hospice. These offices shall operate under the same name(s) as the licensee.~~

~~(D) An application for license, or renewal thereof, to establish or operate each hospice alternate administrative office of an agency licensed in the State of Oklahoma shall be accompanied by a nonrefundable licensing fee of five hundred dollars (\$500.00) and application at least thirty (30) days before beginning operations.~~

(g) **Compliance with Federal, State and local laws and regulations.** The hospice and its staff shall operate and furnish services that comply with all applicable Federal, State, and local laws and rules. The hospice shall ensure that staff comply with applicable State practice acts and rules in the provision of hospice services.

(h) **Hospice inpatient facility.**

(1) Each licensed hospice program may operate one (1) hospice inpatient facility with twelve (12) or fewer inpatient beds as long as the facility complies with hospice inpatient facility service requirements at OAC 310:661-6 and hospice inpatient facility physical plant requirements at OAC 310:661-8.

(2) A hospice inpatient facility may not be independently licensed as a hospice unless the hospice provides a full continuum of hospice program services to patients in their homes and temporary places of residence including the inpatient hospice facility.

[OAR Docket #23-527; filed 6-12-23]

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 662. HOME CARE AGENCIES

[OAR Docket #23-528]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Client Services  
310:662-5-3 [AMENDED]

**AUTHORITY:**

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; SB 42

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

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

OAC 310:662-5-3(f) is amended to remove the reference to certification that is no longer required for personal caregivers. The rule amendment is necessary to remove text that is contradictory to new language in the Home Care Act since SB 42 was passed. The change removes the sentence that reads as follows, "All unlicensed, non-skilled providers of personal care to home care clients shall be certified by the Department as home health aides, regardless of the job title of the personal caregiver."

**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. CLIENT SERVICES**

**310:662-5-3. Services provided**

(a) **Available services.** Home care services provided by the agency shall be available on a visiting basis in the place of residence used as a client's home. If the client's home is a licensed facility, services provided by the licensed facility shall not be duplicated by the agency. Additional personal care services provided shall not be considered a duplicate service.

(b) **Coordination of services.** All personnel furnishing services shall maintain liaison to ensure their efforts are coordinated effectively, documented and support the objectives in the plan of care. If services are provided in a licensed facility, the agency shall advise facility staff of services provided to ensure care is coordinated. If an agency client is transferred to another health care provider or facility, a summary of the services provided and condition of the client shall be forwarded to the receiving provider/facility if requested.

(c) **Skilled nursing.** The agency shall furnish skilled nursing services by, or under the supervision of, a registered nurse and in accordance with the physician's or non-physician practitioner's orders.

(1) The duties of the registered nurse shall include, but not be limited to the following:

- (A) Performing the initial evaluation visit.
- (B) Regularly reevaluating the client's nursing needs.
- (C) Initiating the plan of care and necessary revisions.
- (D) Furnishing those services requiring specialized nursing skills.
- (E) Coordinating services.
- (F) Informing the physician or non-physician practitioner and other personnel in a timely manner of changes in the client's condition and needs.
- (G) Supervision and teaching.

(2) Duties of the licensed practical nurse shall include, but not be limited to:

- (A) Furnishing services in accordance with agency policy.
- (B) Assisting the physician, non-physician practitioner and registered nurse in performing specialized procedures.
- (C) Assisting the client in learning appropriate self-care techniques.

(d) **Therapy services.** Any therapy services offered by the home care agency shall be given by a qualified therapist or by a qualified therapy assistant under the supervision of a qualified therapist in accordance with the plan of care. The qualified therapist shall assist the physician or non-physician practitioner in evaluating the level of function and participate in the development of the plan of care and any necessary revisions.

(e) **Medical social services.** If the agency furnishes medical social work services, those services shall be provided by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, in accordance with the plan of care. All providers of medical social services in Oklahoma shall be licensed if required and meet all defined education and experience criteria required by the Oklahoma State Board of Licensed Social Workers.

(f) **Home health aide.** Home health aides shall be certified by the Department and placed on the Home Health Aide Registry maintained by the Department. ~~All unlicensed, non-skilled providers of personal care to home care clients shall be certified by the Department as home health aides, regardless of the job title of the personal caregiver.~~ Home health aides shall be in compliance with all requirements of the Act and the rules promulgated thereto. No home care agency shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless such individual is a licensed health professional or unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the Department.

(g) **Supportive home assistant.** If supportive home assistants are utilized, they shall be employed, trained, tested, and supervised as required at 63 O.S Supp. 2009 § 1-1962(B).

(h) **Supervision of services.** All personnel providing home care services shall have periodic evaluations of performance

# Permanent Final Adoptions

on file in agency records. Appropriate supervision shall be available during all hours services are provided.

- (1) When home health aide or personal care services are provided in conjunction with a skilled service, a registered nurse shall make a supervisory visit to the client's home at least every sixty (60) days to assess relationships, client care and determine whether goals are met. The frequency of supervisory visits shall be increased if the acuity of the client's illness requires more frequent visits.
- (2) If a client is receiving only skilled therapy services and home health aide or personal care services as an extension of the therapy services, a skilled therapist may make the supervisory visit at least every sixty (60) days, in lieu of a registered nurse. The frequency of these supervisory visits shall also be increased if the acuity of the client's illness requires more frequent visits.
- (3) When only home health aide or personal care services are furnished to a client, a physician or a licensed nurse shall make a supervisory visit to the client's residence at least once every six (6) months. The frequency of supervisory visits shall be increased if the acuity of the client's illness requires more frequent visits.
- (4) Services furnished by a qualified physical therapy assistant or qualified occupational therapy assistant shall be provided only under the supervision of a qualified physical or occupational therapist according to agency policy and consistent with current standards of practice.

[OAR Docket #23-528; filed 6-12-23]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 669. TRAUMA CARE ASSISTANCE REVOLVING FUND

[OAR Docket #23-529]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:669-1-1 [AMENDED]

310:669-1-3 [AMENDED]

### AUTHORITY:

Commissioner of Health; Title 63 O.S. §§ 1-104 and 1-2530.9

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

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### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed amendments update statutory citations and remove a typographical scrivener's error.

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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

### 310:669-1-1. Purpose

This Chapter implements a Trauma Care Assistance Revolving Fund under authority of the following laws: 63 O.S. Supp. 2000, Section 330.97§1-2530.9; and 75 O.S. Supp. 2000, Section 250.1 through 323, (Administrative Procedures Act).

### 310:669-1-3. Rounding of numbers

The Department shall take the pro rata distributions to the second decimal point or hundredths place (.00) by rounding back from the third or thousandths place (.000); and.

[OAR Docket #23-529; filed 6-12-23]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 673. ALZHEIMER'S DISEASE/DEMENTIA AND OTHER FORMS OF DEMENTIA SPECIAL CARE DISCLOSURE RULES

[OAR Docket #23-530]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:673-1-1 [AMENDED]

310:673-1-2 [AMENDED]

Subchapter 3. Standardized Disclosures and Reviews

310:673-3-1 [AMENDED]

310:673-3-2 [AMENDED]

310:673-3-3 [AMENDED]

310:673-3-4 [REVOKED]

310:673-3-5 [REVOKED]

310:673-3-6 [NEW]

310:673-3-7 [NEW]

### AUTHORITY:

Commissioner of Health; Title 63 O.S. §§ 1-104

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**GIST/ANALYSIS:**

The proposed amendments modify the procedure for completing the Alzheimer's Dementia and Other Forms of Dementia Disclosure Form in compliance with 63 O.S. § 1-879.2c. The addition of Section 310:673-3-6 is to provide consequences for violating the rules. The addition of Section 310:673-3-7 describes those required to receive a disclosure 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 SEPTEMBER 11, 2023:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:673-1-1. Purpose**

This Chapter provides for the disclosure of information on special care provided to persons with Alzheimer's disease ~~dementia and related disorders~~ other forms of dementia at facilities, homes and centers for entities subject to the Alzheimer's Dementia and Other Forms of Dementia Special Care Disclosure Act and licensed by the Oklahoma State Department of Health. This rule is authorized under the following laws: the ~~Alzheimer's Disease Special Care Disclosure Act~~ Alzheimer's Dementia and Other Forms of Dementia Special Care Disclosure Act (63 O.S. Supp. 1998, Section 1-879.2a et seq.); and the Oklahoma Public Health Code (63 O.S. Supp. 1998, Section 1-104 et seq.); and, the Administrative Procedures Act (75 O.S. Supp. 1998, Sections 250.1 through 323

**310:673-1-2. 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 Alzheimer's Disease Special Care Disclosure Act~~ Dementia and Other Forms of Dementia Special Care Disclosure Act.

~~"Department" means the Oklahoma State Department of Health.~~

~~"Provider" means an entity licensed by the Department as one or more of the following:~~

~~(A) A nursing facility or specialized nursing facility under 63 O.S. Supp. 1998, Section 1-1901 et seq.;~~

~~(B) A residential care home under 63 O.S. Supp. 1998, Section 1-819 et seq.;~~

~~(C) An assisted living center or continuum of care facility under 63 O.S. Supp. 1998, Section 1-890.1 et seq.;~~

~~(D) An adult day care center under 63 O.S. Supp. 1998, Section 1-870 et seq.~~

~~"Special care provider facility" means a provider that advertises, markets or otherwise promotes itself as providing care or treatment to persons with Alzheimer's disease or related disorders in a special unit or under a special program~~ any nursing facility, residential care facility, assisted living facility, adult day care center, continuum of care facility, or special care facility that publicly advertises, intentionally markets, or otherwise engages in promotional campaigns for the purpose of communicating that said facility offers care or treatment methods within the facility that distinguish it as being especially applicable to or suitable to persons with Alzheimer's dementia or other forms of dementia. [63:1-879.2c].

**SUBCHAPTER 3. STANDARDIZED DISCLOSURES AND REVIEWS**

**310:673-3-1. Disclosure required ~~and~~ posting requirement**

~~(a) Before entering an agreement to offer care or treatment or services as a special care provider, each provider shall file~~ submit a standardized disclosure form with the Department.

~~(b) Each special care provider shall include the standardized disclosure form with each license renewal application filed by the special care provider under applicable license laws and rules enforced by the Department. When there is any change in the information on file with the department, an updated form shall be submitted to the department at the time the change is made.~~

~~(c) In addition to filing the disclosure with the Department, each special care provider shall provide the standardized disclosure to the State Long Term Care Ombudsman, and to any person seeking placement on behalf of a person with Alzheimer's disease or related disorders~~ [63:1-879.2c.A.2] with the special care provider. During regular inspections by the Department, the facility shall provide a current disclosure form for the Department to verify if the form is current and the services are provided to residents as described in the form.

~~(d) A current form shall be posted on the facility's website.~~

# Permanent Final Adoptions

## 310:673-3-2. Description of standardized disclosure form

The standardized disclosure form requires the following:

- (1) A written description of the Alzheimer's disease special care unit's overall philosophy and mission as it relates to the needs of residents with Alzheimer's disease or related disorders, special care unit, program, or facility's overall philosophy and mission as it relates to the needs of residents with Alzheimer's dementia or other forms of dementia;
- (2) The process and criteria for placement in, or transfer or discharge from, the unit, program, or facility;
- (3) The process used for assessment, establishment, and implementation of a patient resident plan of care, as it relates to Alzheimer's dementia and other forms of dementia, including the method by which the plan evolves and is responsive to changes in the condition of the patient, the frequency of assessment, and how the facility will respond to changes in the condition of the resident;
- (4) Staff-to-resident ratios, staff training and continuing education that are in addition to all regularly prescribed training and are commensurate with Alzheimer's disease residents' needs for increased care and supervision, the need for increased care and supervision for residents with Alzheimer's dementia and other forms of dementia;
- (5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
- (6) The types and frequency of resident activities designed for residents with Alzheimer's dementia or other forms of dementia and descriptions of those therapeutic activities designed to address cognitive function and engage residents with varying stages of dementia;
- (7) The involvement of families in care planning and other aspects of care, and the availability of family support programs; and
- (8) The fees for care and any additional fees; and [63:1-879.2c.B.];
- (9) Any accreditations or certifications issued to the facility related to the care and services provided to residents with Alzheimer's dementia or other forms of dementia. [63:1-879.2c.B].

## 310:673-3-3. Timeframes for Department review

A facility will be sent an electronic notification to the email provided within the disclosure form once it has been submitted to the electronic filing system. The Department shall review and verify the special care provider's standardized disclosure within timeframes applicable to the issuance or denial of the provider's license. Disclosure forms for completeness and accuracy each time a form is submitted as required by law. During the regular inspection, the Department shall verify the disclosure form is current and the services provided match those described within the disclosure form.

## 310:673-3-4. Standardized disclosure changes [REVOKED]

~~Each special care provider shall submit for the Department's review any substantial change in the information originally submitted in the standardized disclosure form. Within thirty (30) days after receipt, the Department shall review and verify proposed changes or required filings.~~

## 310:673-3-5. Conditions to refuse to renew [REVOKED]

~~The Department may refuse to issue or refuse to renew a license for a special care provider, or take such other steps as appropriate, if the special care provider fails to:~~

- ~~(1) Submit a required standardized disclosure; or~~
- ~~(2) Correct inaccurate information reported in the standardized disclosure.~~

## 310:673-3-6. Violations of disclosure form requirements

A violation of any of the provisions in the Alzheimer's Dementia and Other Forms of Dementia Special Care Disclosure Act shall subject the offending facility to the notice and enforcement provisions for the facility's license.

## 310:673-3-7. Disclosures provided

- (a) The facility shall provide a current disclosure to any representative of a person with Alzheimer's dementia or other forms of dementia who is considering placement within a special care unit, program, or facility in addition to having a current disclosure form as required by 63 O.S. 1-879.2 c.
- (b) The Department shall provide a copy of the disclosure to the State Long-Term Care Ombudsman.

[OAR Docket #23-530; filed 6-12-23]

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

[OAR Docket #23-531]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions
- 310:677-1-2. Definitions [AMENDED]
- 310:677-1-3. Applicability [AMENDED]
- 310:677-1-6. Temporary emergency waiver [AMENDED]
- Subchapter 3. Nurse Aide Training and Competency Examination Program
- 310:677-3-1. Categories of training programs [REVOKED]
- 310:677-3-2. Approved programs [AMENDED]
- 310:677-3-3. Application [AMENDED]
- 310:677-3-4. Program requirements [AMENDED]
- 310:677-3-5. Training program review and approval [AMENDED]
- 310:677-3-6. Closing an approved nurse aide training and competency examination program [AMENDED]
- 310:677-3-7. Criminal arrest history background checks [AMENDED]

- 310:677-3-9. Requirements for administration of the competency examination [AMENDED]
- 310:677-3-10. Content of the competency examination [AMENDED]
- 310:677-3-12. Failure to complete the competency examination [AMENDED]
- 310:677-3-13. Training program to inform trainee of renewal requirements [NEW]
- Subchapter 5. Nurse Aide Registry
- 310:677-5-1. Establishment of registry [REVOKED]
- 310:677-5-2. Registry operation [AMENDED]
- 310:677-5-4. Automatic removal from registry [AMENDED]
- 310:677-5-5. Denial, suspension, withdrawal, and nonrenewal of certification [AMENDED]
- Subchapter 7. Hearings
- 310:677-7-1. Right to a hearing [AMENDED]
- 310:677-7-2. Hearing [REVOKED]
- 310:677-7-3. Petition and hearing [AMENDED]
- 310:677-7-4. Orders [AMENDED]
- Subchapter 9. Home Health Aides
- 310:677-9-1. General requirements [AMENDED]
- 310:677-9-2. Deemed to meet state certification requirements [AMENDED]
- 310:677-9-4. Curriculum [AMENDED]
- 310:677-9-5. Competency ~~and skills~~ examination [AMENDED]
- Subchapter 11. Long Term Care Aides
- 310:677-11-1. General requirements [AMENDED]
- 310:677-11-2. Deemed to meet state certification requirements [AMENDED]
- 310:677-11-4. Curriculum [AMENDED]
- 310:677-11-5. Competency ~~and skills~~ examination [AMENDED]
- Subchapter 13. Certified Medication Aides
- 310:677-13-1. General requirements [AMENDED]
- 310:677-13-3. Instructor qualifications [AMENDED]
- 310:677-13-4. Curriculum [AMENDED]
- 310:677-13-5. Competency ~~and skills~~ examination [AMENDED]
- 310:677-13-7. Skills and functions [AMENDED]
- 310:677-13-8. Certification and ~~recertification~~ renewal [AMENDED]
- Subchapter 15. ICF/IID Care Aides
- 310:677-15-1. Deemed to meet state certification requirements [AMENDED]
- 310:677-15-4. Competency ~~and skills~~ examination [AMENDED]
- 310:677-15-5. Recertification [REVOKED]
- Subchapter 17. Residential Care Aides
- 310:677-17-1. Deemed to meet state certification requirements [AMENDED]
- 310:677-17-4. Competency ~~and skills~~ examination [AMENDED]
- 310:677-17-5. Recertification [REVOKED]
- Subchapter 19. Adult Day Care Program Aides
- 310:677-19-1. Deemed to meet state certification requirements [AMENDED]
- 310:677-19-4. Competency and skills examination [AMENDED]
- 310:677-19-5. Recertification [REVOKED]

**AUTHORITY:**

Commissioner of Health; Title 63 O.S. §§ 1-104, 1-819 et seq., 1-890.1 et seq., 1-1901 et seq., 1950.1 through 1-1950.4, 1-1951 and 1-1960 et seq.

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n/a

**GIST/ANALYSIS:**

The proposed rule amendments clarify and streamline requirements for current and initial nurse aides. The amendments include: conformed definitions to statutory definitions; updated legal citations; deleted references to specific form numbers; clarified references to the scope of the rules by referring to those who are subject to the rules as an "entity"; clarified "form" refers to the written application; deleted reference to "subsequent waivers"; edited "Application" and "Program requirements" provisions to clarify and remove redundancy in the text; added "immediately" to indicate when notification of closing a training and examination program is due to the Department; changed criminal "arrest" to criminal "history background"; clarified and removed redundancy in the administration and content of the competency examination; and added requirement to inform trainee of renewal requirements; edited and removed redundancy in the registry operations of the rules; and edited text to move the text to the most relevant sections in the rules.

**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. GENERAL PROVISIONS**

**310:677-1-2. Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. The singular includes the plural as necessary.

**"Abuse"** means ~~any intentional physical or mental injury or sexual assault on a resident of a facility; by any person-the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish.~~ [63 O.S. ~~4994~~ § 1-1902(15)]-

**"Certified medication aide"** means a certified nurse aide who has passed a Department approved program for administering medications.

**"Client"** means an individual receiving services from a home care agency or employer.

**"Clinical skills observer"** means a registered nurse, qualified intellectual disability professional, licensed practical nurse, registered pharmacist or other qualified professional who has at least one (1) year experience and has successfully completed a Department approved clinical skills observer training program.

**"Commissioner"** or **"Commissioner of Health"** means the Oklahoma State Commissioner of Health, the chief executive officer of the Department.

**"Deemed"** means meeting specified requirements to qualify for other categories of nurse aide certification.

**"Department"** means the *State Department of Health*. [63 O.S. ~~4994~~, § 1-1902(~~7~~)(8)]-

## Permanent Final Adoptions

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**"Direct supervision"** means a licensed nurse or other qualified individual actually observes a trainee performing tasks.

**"Educational based program"** means a nurse aide training and competency examination program sponsored by a State approved educational entity including, but not limited to, vocational technical schools, schools of higher learning or State certified educational facilities.

**"Employer"** means any of the following entities: facilities, agencies or programs including, but not limited to, nursing facilities, specialized facilities, residential care homes, adult day care centers, assisted living centers, or a nurse registry or a home care agency.

**"Employer based program"** means a nurse aide training and competency examination program sponsored by, or offered in, a nursing facility, a residential care home, an adult day care center, a home care agency, or a specialized facility.

**"Entity"** means the provider of a Department-approved nurse aide training and competency evaluation program including but not limited to an employer based or an educational based program provider.

**"Examination"** means a competency examination that includes a written or oral portion and/or a clinical skills portion.

**"Health related services"** means those services provided to patients, clients, or residents that include but are not limited to the following: personal hygiene, transferring, range of motion, supervision or assistance in activities of daily living, basic nursing care such as taking temperature, pulse or respiration, positioning, incontinent care, identification of signs and symptoms of disease, and behavior management.

**"ICF/IID"** means an Intermediate Care Facility for Individuals with Intellectual Disabilities.

**"Inservice education"** means activities intended to assist the nurse aide to acquire, maintain, and/or increase competence in fulfilling the assigned responsibilities specific to the employer's expectations.

**"Instructor"** means a qualified professional who teaches in an approved training program.

**"Licensed health professional"** means a physician, dentist, podiatrist, chiropractor, physician assistant, nurse practitioner, pharmacist, physical, speech, or occupational therapist, registered nurse, licensed practical nurse, licensed social worker or licensed registered dietician.

**"Licensed nurse"** means a registered nurse or a licensed practical nurse that is currently licensed by the Oklahoma Board of Nursing.

**"Misappropriation of property"** means the taking, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident or client without the effective consent of the resident or client or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of a resident's/client's property.

**"Mistreatment"** means a negligent act or personal wrong against a resident or client which causes the resident or client

actual physical pain, discomfort or mental anguish. This type of personal wrong does not necessarily have to present external or visible signs of existence but does not include actions which are unavoidable.

**"Neglect"** means ~~a failure to provide adequate medical or personal care or maintenance which results in physical or mental injury to a resident.~~ failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness. [63 O.S. 1994 §1-1902-];

**"Orientation"** means the training for a particular job activity given to a new employee.

**"Performance record"** means a list of the major duties and skills to be learned in a nurse aide training program and the trainee's performance of each.

**"Qualified professional"** means an individual qualified to perform training and skills testing in an approved nurse aide training and competency program.

**"Reciprocity"** means the process that allows a certified nurse aide from another state to be listed in the Department's nurse aide registry.

**"Reconsideration"** means a process that allows an applicant to obtain reconsideration of an adverse decision on an application by submission of clarifying materials to the original decision-making body.

**"Registry"** means a Department maintained list of individuals who have successfully completed a nurse aide training and competency examination program or a competency examination program approved by the Department or who have been deemed or waived to meet the requirements.

**"Specialized facility"** *means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for [individuals with intellectual or developmental disabilities].* [63-1-1902(11)63 O.S. §1-1902(11)]

**"Supervised practical training"** means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual.

**"Trainee"** means an individual who is enrolled in and has begun, but has not completed, a nurse aide training program.

**"Trainer"** means a qualified person who teaches in a nurse aide training and competency examination program.

**"Training and competency examination program"** means a program approved by the Department to teach and evaluate individuals to work as a nurse aide.

**"Waiver"** means a process that allows an individual with acceptable qualifications to be placed in the Department's registry without meeting other required qualifications.

### 310:677-1-3. Applicability

(a) This Chapter shall apply to specified employers, nurse aides, certified medication aides and other unlicensed employees providing health related services, and training and competency evaluation programs.

(b) An employer shall not use an individual as a nurse aide unless the employer has consulted the Oklahoma Nurse Aide Registry to determine whether the individual is listed on the



nurse aide registry and whether the individual has no confirmed findings of abuse, neglect or misappropriation of patient/resident/client property.

(c) The Department shall grant an exception to the nurse aide training requirements in OAC 310:677-9-4 for home health aides, OAC 310:677-11-4 for long term care aides, OAC 310:677-13-4 for certified medication aides, OAC 310:677-15-3 for ICF/IID care aides, OAC 310:677-17-3 for residential care aides and OAC 310:677-19-3 for adult day care aides, and allow an individual to sit for the competency examination if the individual submits all information specified on the Training Exception Application (~~ODH Form 832~~), which requires the following:

- (1) Individual's full name and personal identifying information;
- (2) Telephone number and address to include street, city, state, and zip code;
- (3) Copy of official transcript documenting classroom and clinical training equal to or greater than the classroom and clinical training as prescribed in OAC 310:677-9-4, OAC 310:677-11-4, OAC 310:677-13-4, OAC 310:677-15-3, OAC 310:677-17-3 and OAC 310:677-19-3; and
- (4) Type of nurse aide training to be excepted.

(d) The Department shall grant to a graduate of an approved practical or registered nurse program located in the United States a waiver to be placed on the nurse aide registry if the following criteria are met:

(1) The individual submits all information specified on the Department's Nurse Aide Training and Competency Evaluation Program Waiver Application (~~ODH Form 844~~), which requires the following:

- (A) Individual's full name and personal identifying information;
- (B) Telephone number and address to include street, city, state, and zip code;
- (C) Photocopy of diploma from an approved practical or registered nurse program;
- (D) Type of nurse aide training and competency testing requesting to be waived; and
- (E) Identification of all states, territories and districts of the United States and other countries where the individual has practiced or been licensed, certified or registered as a nurse; and

(2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States or in another country, to be evidenced by the individual's attestation.

(e) The Department shall allow a graduate of an approved practical or registered nurse program located outside the United States a training exception and shall be authorized to sit for a nurse aide competency examination if the following criteria are met:

(1) The individual submits the Foreign Graduate Training Exception Application (~~ODH Form 843~~), which requires the following:

- (A) Individual's full name;
- (B) Telephone number and address to include street, city, state, and zip code;
- (C) The location outside of the United States where the individual received their nursing education and licensing examination if applicable;
- (D) The type of nurse aide training requesting to be excepted;
- (E) Documentation verifying legal entry and resident status in the United States including but not limited to a photocopy of a Social Security Card, Visa, Green Card or naturalization papers; and
- (F) A photocopy of a certified, translated diploma and transcript in English; and

(2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States, to be evidenced by the individual's attestation.

(f) An individual who has not completed an approved Oklahoma Nurse Aide Training program and is submitting an application to be included on the Oklahoma Nurse Aide Registry as a certified nurse aide shall submit the following nonrefundable fee with the required completed application:

(1) Deeming Application, fifteen dollar (\$15.00) fee applicable to each of the following deeming applications except (A) of this paragraph;

- (A) Home Health Aide deemed to Long Term Care Aide (~~ODH Form 755~~) with no fee required;
- (B) Home Health Aide deemed to ICF/IID Care Aide (~~ODH Form 836~~);
- (C) Home Health Aide deemed to residential Care Aide (~~ODH Form 837~~);
- (D) Home Health Aide deemed to Adult Day Care Aide (~~ODH Form 838~~);
- (E) Long Term Care Aide deemed to ICF/IID Care Aide (~~ODH Form 830~~);
- (F) Long Term Care Aide deemed to Residential Care Aide, (~~ODH Form 831~~);
- (G) Long Term Care Aide deemed to Adult Day Care Aide, (~~ODH Form 839~~);
- (H) ICF/IID Care Aide deemed to Residential Care Aide (~~ODH Form 834~~); and
- (I) ICF/IID Care Aide deemed to Adult Day Care Aide (~~ODH Form 835~~);

(2) Home Health Aide Reciprocity Application (~~ODH Form 735~~), \$15.00 fee;

(3) Training Exception Application (~~ODH Form 832~~), or Foreign Graduate Training Exception Application (~~ODH Form 843~~), \$15.00 fee; or

(4) Nurse Aide Training and Competency Evaluation Program Waiver Application (~~ODH Form 844~~), \$15.00 fee.

(5) The fees specified in (1) through (4) of this subsection apply to applications for home health aides, certified medication aides, ICF/IID care aides, residential care aides, and adult day care aides. A fee shall not be charged

## Permanent Final Adoptions

on an application requesting certification as a long term care aide only.

(g) An individual who has previously completed a Department approved Nurse Aide Training and Competency Evaluation Program and is unable to renew certification may obtain approval to take a retest by filing a Certified Nurse Aide Retest Application (~~ODH Form 841~~) if any of the following criteria are met:

(1) The individual did not provide eight (8) hours of nursing or health related services for compensation during the twenty-four (24) months prior to expiration of the certification;

(2) The individual did not provide eight (8) hours of nursing or health related services for compensation up to twenty-four (24) months after expiration; or

(3) The individual's nurse aide certification has been expired for over two (2) years but less than three (3) years.

(4) A Certified Nurse Aide Retest Application (~~ODH Form 841~~) submitted by a home health aide, ICF/IID care aide, residential care aide, or adult day care aide shall be accompanied by a fifteen dollar (\$15.00) nonrefundable fee.

(5) An individual who fails the approved retest shall be required to retrain before taking any subsequent retests.

(h) An individual may request a duplicate or amended certification card by submitting a Duplicate or Amended Nurse Aide Card Application (~~ODH Form 738~~) with a nonrefundable ten dollar (\$10.00) fee. A fee shall not be charged on an application requesting a duplicate or amended long term care aide certification card.

### 310:677-1-6. Temporary emergency waiver

(a) **Purpose.** This section implements temporary emergency waivers authorized in 63 O.S. § 1-1950.3(A)(2) for nursing facilities, specialized facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes.

(b) **Eligibility for waiver.** ~~A facility, center or home~~An entity is eligible to receive a waiver if it:

(1) Makes diligent efforts to recruit and retain certified nurse aides, to be evidenced by one or more of the following:

- (A) Employment advertisements;
- (B) Competitive salaries;
- (C) Retention incentives; or
- (D) Recruitment incentives; and

(2) Has not been cited with a deficiency or violation that:

(A) Was identified by the department during an investigation or inspection conducted on or after the effective date of this section; and

(B) Relates to one or more of the following areas of noncompliance:

- (i) Failure to develop and implement policies and procedures that prohibit mistreatment, neglect, abuse and misappropriation of property;
- (ii) Failure to implement infection control procedures;

(iii) Failure to ensure that staff observe resident rights and responsibilities;

(iv) Failure to comply with criminal history background checks in 63 O.S. §1-1950.1;

(v) Failure of a nurse aide to perform proficiently on nursing or personal care services;

(vi) Incompetence of a nurse aide; or

(vii) Failure to conduct performance appraisals or training as required for nurse aides; and

(C) Is associated with one or both of the following aggravating circumstances:

(i) The deficiency or violation has not been corrected within required time frames; and/or

(ii) The deficiency or violation is based on activity or inactivity of an uncertified nurse aide that caused a resident serious injury, harm, impairment or death.

(c) **Process.** This subsection specifies the process to obtain a waiver.

(1) ~~A facility, center or home~~An entity shall submit a written request on an application form made available by the Department. ~~The form shall require~~written application, at minimum, shall include:

(A) Identifying information for the facility;

(B) ~~Documentation that the facility complies with the eligibility requirements specified in OAC 310:677-1-6(b);~~

~~(C) Numbers of certified nurse aides, uncertified nurse aides, and other direct care staff persons projected to be employed by the facility during the effectiveness of the waiver;~~

~~(D) A narrative describing the reasons why the facility is unable to meet the staffing requirements of 63 O.S. §1-1950.3, the means by which uncertified nurse aides shall be trained and evaluated during the waiver, and the anticipated duration of the waiver, not to exceed six months; and~~

~~(E) An attestation of the truth of the information provided in the application.~~

(2) If the Department finds that an application is incomplete, the Department shall advise the applicant in writing and offer an opportunity to submit additional or clarifying information.

(3) Within thirty days after receipt of a completed request for a waiver, the Department shall approve or disapprove the request and send written notice of the decision to the ~~facility, center or home~~entity.

(4) The Department shall provide notice to the Office of the Oklahoma Long Term Care Ombudsman established under section 307(a)(12) of the Older Americans Act of 1965 of the Department's action on each waiver application.

(5) The ~~facility, center or home~~entity shall notify residents, clients or participants (or, where appropriate, the guardian or legal representative) and members of their immediate families of the Department's action on the waiver application. A copy of the notice shall be posted in

an easily accessible and conspicuous place in the facility, center or home entity.

(6) ~~Upon denial, An applicant who disagrees with the Department's disapproval of the waiver application may file a written petition requesting review by an administrative law judge in an individual proceeding under may appeal the Department's decision within thirty days of receipt, pursuant to the Oklahoma Administrative Procedures Act.~~

(7) A non-refundable fee of one hundred dollars (\$100) shall be included with the initial application for waiver.

(8) A non-refundable fee of seventy-five dollars (\$75) shall be included with an application for subsequent waiver under paragraph (d)(3) of this section.

(d) **Conditions for obtaining Length of waiver.** The following additional conditions apply.

(1) ~~To remain eligible for a waiver, the facility must continue after November 1, 2004 to comply with the substantive training limitations specified in 63:1-1950.3(A)(1), (B), (C) and (D).~~

(2) A waiver approved by the Department is effective for the period specified by the Department and not to exceed six months, unless sooner withdrawn by the Department for failure to meet eligibility requirements.

(3) If a facility, center or home applies for a subsequent waiver it shall submit another application for waiver in accordance with (c) of this section and include the following additional information on each uncertified nurse aide employed during the preceding waiver period:

- (A) Name and date of birth;
- (B) Date the facility began using the person as a nurse aide;
- (C) Date the person entered training and competency evaluation; and
- (D) Date the person completed training and competency evaluation, or, if training and evaluation have not been completed, the person's status at the time of application and the projected date when evaluation will be completed.

**SUBCHAPTER 3. NURSE AIDE TRAINING AND COMPETENCY EXAMINATION PROGRAM**

**310:677-3-1. Categories of training programs [REVOKED]**

The Department shall approve training and competency evaluation programs including, but not limited to, educational-based programs and employer-based programs.

**310:677-3-2. Approved programs**

(a) The Department shall approve a nurse aide training and/or competency examination program that meets the criteria for a State approved program.

(b) An entity seeking approval of a nurse aide training and/or competency examination program shall file the appropriate application form (ODH 743) and, for training programs

~~other than long term care aide~~, a non-refundable application fee of one hundred dollars (\$100.00). There is no application fee for long-term care aide training, or long term care aide competency evaluation, programs.

(c) The Department's approval of a program shall not be transferable or assignable.

**310:677-3-3. Application**

(a) An entity ~~which desires to sponsor a nurse aide training and competency examination program~~ shall file an application ~~for approval on the forms prescribed~~ provided by the Department.

(b) ~~An entity may not operate a~~ No nurse aide training and competency examination program shall be operated, and no trainee shall be solicited or enrolled, until prior to the approval of the Department has approved the program.

(c) The application requires the following information will include:

- (1) Name and address for the entity sponsoring the program and for the contact person for the program;
- (2) The location of the administrative office of the program and the location where records are maintained;
- (3) A program plan that follows the curriculum established by the Department including, but not limited to:
  - (A) Program objectives;
  - (B) A breakdown of the curriculum into clock hours of classroom/lecture, laboratory and supervised clinical instruction;
- (4) A Skills Performance Checklist, documenting the date the nurse aide trainee successfully demonstrated all those basic nursing skills and personal care skills that are generally performed by nurse aides and the signature of the instructor that observed the successful demonstration of the skills. The skills must include the basic nursing skills and personal care skills listed in 42 Code of Federal Regulations (CFR) 483.152 (b)(2) and (3);
- (5) A Training Verification Form;
- (6) A description of the program's standards for classroom and skills training facilities including, but not limited to:

- (A) Heat and cooling systems;
- (B) Clean and safe conditions;
- (C) Adequate space to accommodate all trainees;
- (D) Adequate lighting;
- (E) Proper equipment and furnishings;
- (F) The specific location of the classroom and lab if known at the time of the application; and

(7) Position descriptions and education and experience requirements for training supervisors and instructors, and the program's procedure for ensuring that supervisors and instructors satisfy such descriptions and requirements.

(d) ~~The entity shall file an application for each program with a non-refundable application fee.~~

(e) A training and competency examination program shall not be offered by or in a facility which, within the previous two years:

## Permanent Final Adoptions

(1) has operated under a registered nurse staffing waiver under Section 1819(b)(4)(C)(ii)(II) or Section 1919(b)(4)(C)(ii) of the Social Security Act; or

(2) has been assessed a penalty that has been determined, after opportunity for hearing, to be due and payable in an amount of not less than \$5,000;

(3) had a license revoked, a Medicare or Medicaid certification terminated, a denial of payment for new admissions imposed, a temporary manager appointed, or was closed or had residents transferred pursuant to an emergency action by the Department; or

(4) was found to have provided substandard quality of care. For the purpose of this Section, "substandard quality of care" means one or more deficiencies related to participation requirements under 42 CFR 483.13, Resident Behavior and Facility Practices, 42 CFR 483.15, Quality of Life, or 42 CFR 483.25, Quality of Care. The deficient practice must constitute immediate jeopardy which has caused or is likely to cause serious injury, harm, impairment, or death to an individual resident or a very limited number of residents receiving care in a facility; or deficient practice that results in actual harm to residents' physical, mental and psychosocial well-being and occurs as a pattern affecting more than a very limited number of residents or widespread affecting a large number or all of the facility's residents; or deficient practice that results in potential for more than minimal physical, mental and /or psychosocial harm to residents' that is widespread and affects the entire facility population.

~~(f)~~ The Department may waive for a period not to exceed two years the imposition of ~~(e)(d)~~ of this Section and allow the offering of a training and competency evaluation program in, but not by, a facility upon the written request of the facility if:

- (1) The Department determines that no other such program is offered within a round-trip travel time of one hour from the facility;
- (2) The facility has no deficiencies that constitute substandard quality of care at the time of the request and has no deterioration in care that results in substandard quality of care during the waiver period; and
- (3) The Department provides notice of such determination and assurances to the Oklahoma Long Term Care Ombudsman; and
- (4) The penalty or remedy was not related to the quality of care provided to residents.

~~(g) The Department may waive for a period not to exceed two years the imposition of (e)(2) and (e)(3) of this Section and allow the offering of a training and competency evaluation program in, but not by, a facility upon the written request of the facility if the penalty or remedy was not related to the quality of care provided to residents.~~

### 310:677-3-4. Program requirements

(a) Before the Department approves a nurse aide training and competency examination program or a competency examination program, the Department shall determine whether the nurse aide training and competency examination program

or the competency examination program meets the minimum requirements.

(b) The Department shall not approve, ~~or shall withdraw approval, of~~ an employer based program when the employer has been assessed the following penalties or actions by the Department:

- (1) License suspended or revoked or had a conditional license issued.
- (2) An administrative money penalty of five thousand dollars (\$5,000) or more for deficiencies cited under state licensure.
- ~~(3) Closed or had its residents or clients transferred pursuant to the Department's action.~~
- (4) Enforcement actions based on the Department's authority under Medicare and Medicaid certification programs, except for facilities certified as Intermediate Care Facilities for individuals with intellectual disabilities.
- ~~(5)~~ For Intermediate Care Facilities for Individuals with Intellectual Disabilities, repeated enforcement actions based on the Department's authority.

(c) The Department may withdraw approval of a nurse aide training and competency examination program sponsored by an entity when the following occurs:

- (1) The entity has been determined by the Department to have a competency examination failure rate greater than fifty (50) per cent during a calendar year.
- (2) The entity no longer meets, at a minimum, the following requirements to be a certified program:
  - (A) The training program falls below the required clock hours of training; or
  - (B) The curriculum does not include at least the subjects specified under 310:677-9-4 Home Health Aides, 310:677-11-4 Long Term Care Aides, 310:677-13-4 Certified Medication Aides, 310:677-15-3 ICF/IID Care Aides, 310:677-17-3 Residential Care Aides, and or 310:677-19-3 Adult Day Care Aides; the minimum requirements specified in rule;
  - ~~(C) A minimum of 16 hours of specified training for Long Term Care Aides is not provided prior to direct contact with residents;~~
  - ~~(D) At least sixteen (16) hours of supervised practical training under the direct supervision of a registered nurse or a licensed practical nurse. The sixteen (16) hours does not include the administration of the skills examination.~~

(3) The entity uses an uncertified individual as a nurse aide for longer than four months. ~~To use an uncertified individual as a nurse aide for four months or less, an entity must have a temporary emergency waiver approved pursuant to 63 O.S. Section 1-1950.3 closed or had its residents or clients transferred pursuant to the Department's action.~~

(4) The onsite ~~reviews~~ survey determines the training program is out of compliance with the requirements of 63 O.S. ~~Section~~ §§ 1-1950.1, 1-1950.3 or 1-1951, or OAC 310:677.

(d) The Department shall withdraw approval of a nurse aide training and competency evaluation program if:

- (1) The entity refuses to permit the Department to make unannounced visits; or
- (2) The entity falsifies records of competency or training.

(e) Withdrawal of approval shall be for a period of two (2) years or until the Department is assured through review that the entity complies with the requirements.

(f) If the Department withdraws approval of a nurse aide training and competency examination program, the Department shall ~~notify the entity in writing of the reason(s) for the withdrawal.~~

- (1) ~~Notify the entity in writing, indicating the reason for withdrawal of approval.~~
- (2) ~~Allow the trainees who have started a training and competency examination program to complete the program or allow the trainees who have started the program to transfer to another approved program.~~

(g) The Department shall allow the trainees who have started a training and competency examination program to complete the program, or allow the trainees who have started the program to transfer to another approved program.

(gh) A program entity may request reconsideration of the Department's decision in accordance to Chapter 2 of this Title and appealed according to the Administrative Procedures Act.

(hi) The entity shall notify the trainee in writing, that successful completion of the nurse aide training and competency examination program shall result in the individual being listed in the Department's nurse aide registry and shall retain a copy of such notice, signed by the trainee, in the trainee's file.

~~(i) A trainee shall not perform any services for which the trainee has not been trained and found proficient by an instructor.~~

**310:677-3-5. Training program review and approval**

(a) Within 30 days after receipt of an application for a program that is not currently approved, the Department shall determine if the application is complete and consistent. If the application is incomplete or inconsistent, the Department shall advise the applicant in writing and offer an opportunity to submit additional information. Within 30 days after completeness, the Department shall approve or disapprove the application. If the action is to disapprove, the Department shall advise the applicant in writing of the specific reasons for the disapproval, and shall offer the applicant an opportunity to demonstrate compliance.

(b) Each program is subject to site visits by the Department. Approved programs shall be evaluated by the Department every two years.

(c) An approved program shall ~~notify complete an application notifying the Department in writing before making substantive changes to the program prior to making any changes that would affect the program's requirements and/or the Department's approval of the program. Substantive changes shall include but not be limited to:~~

- (1) ~~A change in location of the administrative offices of the training program;~~

~~(2) A change in the requirements or procedures for selection of instructors;~~

~~(3) A change in the curriculum;~~

~~(4) A different legal entity sponsoring the program; or~~

~~(5) A change in location of the class, clinical training site, or laboratory.~~

**310:677-3-6. Closing an approved nurse aide training and competency examination program**

~~(a) When an entity decides to close a nurse aide training and competency examination program, it shall:~~

- (1) ~~Immediately Notify~~ notify the Department ~~at least sixty (60) days in advance, in writing, stating the reason, of its plan to close, and date of intended closing, the location where its records will be stored, and the plan for its currently enrolled trainees; and~~
- (2) Continue the program until the classes for currently enrolled trainees are completed.

~~(b) The entity shall notify the Department of its plan to safeguard the program records.~~

~~(b) The entity shall notify the Department of its plan to safeguard the program records.~~

**310:677-3-7. Criminal ~~arrest~~ history background checks**

(a) An employer based program shall complete the State required criminal ~~arrest~~ history background check. The record of the finding shall be maintained by the employer. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate. [63 O.S. §:1-1950.3(H)1950.1(E)]

(b) A non-employer based program shall notify trainees that if a criminal ~~arrest~~ history background check reveals a cause which bars employment in a health care entity, then the trainee shall be withdrawn from the training program.

(c) If a non-employer based training program does not require an OSBI criminal ~~arrest~~ history background check as part of the admission requirements to the training program, the training program shall provide the trainee with written notification of 63 O.S. §:1-1950.1 as part of the training program application.

**310:677-3-9. Requirements for administration of the competency examination**

(a) The competency examination shall be administered and evaluated only by a Department approved entity which shall be periodically monitored by the Department.

(b) Each approved examination entity must provide the Department with the following:

- (1) Written job analysis studies to determine the pool of test questions.
- (2) Test question validation studies.
- (3) Capabilities of providing competency results in the proper format for compatibility with the Department's nurse aide registry within thirty (30) days of scoring.
- (4) Assurances that the written and skills testing process are not compromised.

(c) Each approved examination entity shall provide the examinee with the following:

## Permanent Final Adoptions

- (1) The notice showing pass/fail results.
  - (2) The notice shall specify the areas of failure to the nurse aide.
- (d) The Department shall withdraw approval of a testing entity when it allows one or more of the following:
- (1) Disclosure of the competency examination.
  - (2) Allowing another entity not approved by the Department to score the competency examination.
  - (3) Tampering with the competency examination.
  - (4) The competency examination was administered by a non-qualified individual.
- (e) If the Department permits the competency examination to be proctored by facility qualified entity personnel, the procedures adopted by the entity must ensure that the competency examination:
- (1) Is secure from tampering.
  - (2) Is standardized and scored by a testing, educational, or other organization approved by the Department.
  - ~~(13) The test results must be~~ Is transmitted to the scoring entity immediately after completion of the written or oral and skills examination.
  - ~~(2) A record of successful completion of the competency examination must be included in the nurse aide registry within 30 days of the date the individual is found to be competent. Competency is determined by a passing score on the written or oral examination and skills examination.~~
  - ~~(3) If the competency evaluation is to be proctored by facility personnel and the entity chooses to delay the administration of the written or oral examination and/or skills examination after completion of the training which will delay certification, this information shall be provided in writing in the training program application and signed by the trainee.~~
- (f) If the competency evaluation is to be proctored by facility personnel and the entity chooses to delay the administration of the written or oral examination and/or skills examination after completion of the training which will delay certification, this information shall be provided in writing in the training program application and signed by the trainee.
- (g) The Department may revoke the approval of an entity to proctor the nurse aide competency examination if the Department finds evidence of impropriety, including evidence of tampering by facility staff.
- ~~(h)~~ (h) The trainee may sit for the written or oral examination and skills examination at a different location than where training was completed if the testing entity is provided with a Training Verification Form.

### 310:677-3-10. Content of the competency examination

- (a) ~~The competency examination shall include a written or oral examination portion of the competency examination, in English, which shall:~~
- (1) Allow a nurse aide to choose between a written and an oral examination.
  - (2) Address each requirement specified in the minimum curriculum prescribed by the Department.
  - (3) Be developed from a pool of test questions, only a portion of which is used in any one (1) examination.

- (4) Use a system that prevents disclosure of both the pool of test questions and the individual competency examination results.
  - (5) If oral, the examination portion shall be read from a prepared text in a neutral manner.
- (b) The skills examination portion of the competency examination shall:
- (1) Consist of randomly selected items drawn from a pool of tasks generally performed by nurse aides except as provided in section 9-5 (b).
  - (2) Be performed in an entity in which the individual will function as a nurse aide or a similar laboratory setting.
  - (3) Be administered and evaluated by a qualified clinical skills observer.
- ~~(c) The Department shall permit the skills examination to be proctored by qualified entity personnel if the Department finds that the procedure adopted by the testing entity ensures that the competency examination:~~
- ~~(1) Is secure from tampering.~~
  - ~~(2) Is standardized and scored by a testing, educational, or other organization approved by the Department.~~
  - ~~(3) Is transmitted to the scoring entity immediately after completion of the skills examination. A record of successful completion of the skills examination must be included in the Nurse Aide Registry within 30 days of the date the individual is found to be competent or has passed the skills examination.~~
- ~~(d) The Department shall revoke the approval of any entity to proctor the nurse aide competency examination if the Department finds evidence of impropriety, including evidence of tampering by facility staff.~~

### 310:677-3-12. Failure to complete the competency examination

If an individual does not complete the competency examination successfully, the individual shall be notified by the testing entity of, at least, the following:

- (1) The areas which the individual did not pass.
- (2) That the individual may retake the examination a total of ~~three~~two times without further training.

### 310:677-3-13. Training program to inform trainee of renewal requirements

Training programs shall inform the long term care aide, home health aide, ICF/IID care aide, residential care aide, and adult day care aide that they shall complete a new nurse aide training and competency examination or competency examination if, upon applying for renewal of certification, the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation during the previous twenty four (24) months.

## SUBCHAPTER 5. NURSE AIDE REGISTRY

**310:677-5-1. Establishment of registry [REVOKED]**

The Department shall, in addition to fulfilling the responsibilities assigned under 63 O.S. Section 1-1951.D., provide a written or verbal response to the public and employers about the registry status of a certified nurse aide or nurse aide trainee.

**310:677-5-2. Registry operation**

(a) The Department shall maintain overall operation of the registry.

~~(b) Only the Department may place in the registry findings of abuse, neglect, mistreatment or misappropriation of property.~~

~~(c) The nurse aide registry shall indicate which individuals:~~

- ~~(1) Successfully completed a nurse aide training and competency examination;~~
- ~~(2) Were given a training exception to bypass training requirements and sit for the competency examination;~~
- ~~(3) Had the nurse aide training and competency examination program requirements waived; or~~
- ~~(4) Were placed on the Oklahoma Nurse Aide Registry via reciprocity from another state.~~

~~(d) A home health aide, long term care aide, ICF/IID care aide, residential care aide, and adult day care aide shall renew individual certification once every two (2) years. The individual certified as a home health aide, ICF/IID care aide, residential care aide, or adult day care aide shall file a Recertification Renewal Application (ODH Form 717). The individual certified as a long term care aide shall file a Recertification Renewal Application for Long Term Care Aide (ODH Form 840). Each recertification/renewal application requires:~~

- ~~(1) Personal identifying and contact information for the applicant;~~
- ~~(2) Documentation that the applicant has provided at least eight (8) hours of nursing or health related services for compensation during the preceding 24 months. On and after July 1, 2008, the documentation shall consist of one of the following:~~

~~(A) A statement signed by the administrator or the administrator's representative for the licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility where the applicant provided services;~~

~~(B) A statement signed by a physician or nurse under whose supervision the applicant provided services; or~~

~~(C) A check stub, IRS Form W-2 or similar proof of wages paid to the applicant by a licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility; and~~

~~(3) An oath of truthfulness and completeness to be signed by the applicant, affirming that the applicant completed at least eight (8) hours of nursing or health~~

~~related services for compensation during the preceding 24 months.~~

~~(3) Upon request of the Department, the applicant shall produce documentation of at least eight (8) hours of nursing or health related services performed for compensation during the preceding 24 months.~~

~~(ec) A home health aide, ICF/IID care aide, residential care aide, or adult day care aide shall pay a ten dollar (\$10.00) fee for the processing and renewal of certifications and for replacement of a wallet card for change of name or other reason.~~

**310:677-5-4. Automatic removal from registry**

~~(a) The Department shall automatically remove any nurse aide from the Department's automated telephone system the day after certification expires, if the nurse aide failed to request renewal of certification by the day the certification expires.~~

~~(b) If any nurse aide requests renewal of certification and there has been a continuous period of twenty-four (24) consecutive months during none of which the individual provided nursing or health related services for monetary compensation, the individual shall complete a new training and competency evaluation or a new competency evaluation program, whichever option they choose, to become recertified. The Department shall automatically remove any nurse aide from the Nurse Aide Registry if there has been a continuous period of twenty four (24) consecutive months during which the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation. The nurse aide shall produce documentation of work upon request for renewal of certification.~~

~~(c) The aide shall not be removed from the registry if the individual's registry notation has a pending or permanent finding of abuse, neglect, mistreatment, or misappropriation of property.~~

~~(d) If a nurse aide has been removed from the registry due to failure to renew certification and no more than forty eight (48) months have passed since the date of the last renewal, and the nurse aide cannot produce documentation of at least eight (8) hours of nursing or health related services for compensation, the nurse aide shall complete a new nurse aide training and competency evaluation program or just the competency evaluation, both the written and skills examination. This will be the choice of the nurse aide.~~

~~(e) A nurse aide may renew certification for up to forty eight months from the date of the last renewal, if the nurse aide is able to produce documentation of eight (8) hours of nursing or health related services for compensation within twenty four (24) months after expiration.~~

~~(f) If the nurse aide failed to renew certification for more than forty eight months since the last renewal, and is unable to produce documentation of compensated employment providing nursing or health related services, the nurse aide shall complete a new nurse aide training and competency evaluation program to be reinstated in the registry.~~

~~(gb) The Department shall review when requested and may grant an exception in removing any nurse aide from the nurse aide registry pursuant to OAC 310:677-5-4(b)(a) if the nurse aide has completed a practical or registered nursing education~~

# Permanent Final Adoptions

program after certification and files with the Department a waiver application form, which requires ~~the following information at minimum:~~

- (1) Individual's full name;
- (2) Telephone number and address to include street, city, state, and zip code;
- (3) Photocopy of Social Security card;
- (4) Photocopy of a diploma from an approved practical or registered nurse program; and
- (5) Type of nurse aide certification requesting to be waived.

~~(hc)~~ Upon receipt of the waiver application form, ~~the~~ The Department ~~shall~~ must verify the following information:

- (1) The nurse aide/LPN/RN student has completed a practical or registered nursing education program after certification;
- (2) The individual is in good standing with the Oklahoma Board of Nursing, ~~or~~ and the individual does not have confirmation of abuse, neglect or misappropriation of patient/resident/client property;
- (3) The individual is not a subject of a current ongoing investigation by the Oklahoma Board of Nursing or the Oklahoma Attorney General or other known legal entity; and
- (4) The individual has no restrictions preventing sitting for the nursing board exam.

~~(id)~~ The Department shall automatically remove a nurse aide from the nurse aide registry and place them in the archive database if there has been a continuous period of forty-eight (48) consecutive months in which the nurse aide has not applied for renewal of certification, ~~unless the individual's registry notation has a pending or permanent finding of abuse, neglect, mistreatment, or misappropriation of property.~~ The individual shall complete a new nurse aide training and competency examination to be reinstated in the registry. However, a nurse aide with a pending or permanent finding of abuse, neglect, mistreatment, or misappropriation of property shall not be removed from the registry.

~~(je)~~ The Department shall review and may grant an exception to place an individual, who failed to renew certification, back on the registry if the individual can produce documentation of continuous employment for the past forty-eight (48) months in a hospital, the Advantage Program through the Department of Human Services, or an entity that does not require certification of nurse aides.

## **310:677-5-5. Denial, suspension, withdrawal, and nonrenewal of certification**

(a) The Department may deny, suspend, withdraw or not renew certification of a nurse aide based on the aide's noncompliance with 63 O.S. §§ 1-1950.3, 1-1950.4a, 1-1950.5, 1-1951, or this Chapter.

~~(ab)~~ Grounds for certification action against a certified nurse aide may include:

- (1) Intentionally providing false or misleading information to a training program, a facility, or the Department;
- (2) Failing to provide care as ordered by a health care professional or required in the plan of care, with resulting

actual harm that is either life threatening or has a negative outcome for the resident;

- (3) Altering or falsifying medical records;
- (4) Removing medical records or other documentation pertaining to resident care from the employment setting without authorization;
- (5) Altering or falsifying certified nurse aide identification cards;
- (6) Representing oneself as a certified nurse aide without supervision by a licensed health Professional and providing services that are not included in a Department approved nurse aide training and competency evaluation program.

~~(bc) The Department may deny, suspend, withdraw or not renew certification of a nurse aide based on the aide's noncompliance with 63 O.S. Section 1-1950.3, 1-1950.4a, 1-1950.5 or 1-1951, or OAC 310:677.~~ The Department shall notify the aide of the intent to deny, suspend, withdraw or not renew certification. The notice shall cite the specific reasons for the action and offer the aide an opportunity to demonstrate compliance. Prior to the effectiveness of the denial, suspension, withdrawal, or nonrenewal of certification, the Department shall offer the aide an opportunity for a hearing.

~~(de) The suspension of a certificate shall be effective for not less than at least six months, and a~~ denial, withdrawal or nonrenewal of a certification shall be effective for not less than at least one year. The Department shall specify the duration of the denial, suspension, withdrawal or nonrenewal of certification ~~in excess of the minimums~~ based on the seriousness of the underlying violation and the likelihood that the aide will maintain compliance in the future.

## **SUBCHAPTER 7. HEARINGS**

### **310:677-7-1. Right to a hearing**

(a) Before the registry is notified that a finding of client or resident abuse, neglect, mistreatment or misappropriation of a client's or resident's property has been made against a certified nurse aide or nurse aide trainee, the Department shall offer the certified nurse aide or nurse aide trainee an opportunity for a hearing. If the certified nurse aide or nurse aide trainee fails to request a hearing in writing within thirty (30) days from the date of the notice, the Department shall include on the registry a finding of client or resident abuse, neglect, mistreatment or misappropriation of a client's or resident's property against the certified nurse aide or nurse aide trainee.

(b) If the certified nurse aide or nurse aide trainee requests a hearing before the Department completes its investigation, a hearing will not be scheduled until the Department completes its investigation.

### **310:677-7-2. Hearing [REVOKED]**

~~(a) Conducting the hearing. The hearing shall be conducted in accord with this subchapter and Chapter 2 of this Title.~~



(b) ~~Investigation when hearing requested.~~ If the certified nurse aide or nurse aide trainee requests a hearing before the Department completes its investigation, the investigation shall be completed before a hearing is conducted.

**310:677-7-3. Petition and hearing**

(a) **Petition.** ~~If~~After the certified nurse aide or nurse aide trainee requests a hearing, ~~an individual proceeding shall be commenced upon the filing of a petition by the Department against a certified nurse aide or nurse aide trainee which states the facts supporting the allegation the Department shall file a petition which states the facts supporting the allegation.~~

(b) **Notice of hearing.** All parties shall be given notice of the date, time and place of the hearing. The notice of hearing shall include a copy of the petition.

(c) **Time.** The hearing shall be scheduled at least fifteen (15) working days after the certified nurse aide or nurse aide trainee has received notice of the hearing.

(d) **Conducting the hearing.** The hearing shall be conducted in accordance with this Subchapter and Chapter 2 of this Title.

**310:677-7-4. Orders**

(a) **Authority.** The Administrative Law Judge shall issue a decision within fifteen (15) working days following the close of the hearing record. The decision shall include Findings of Fact and Conclusions of Law separately stated.

(b) **Delegation.** The Commissioner of Health may delegate the authority to issue a final decision in these matters as specified in OAC 310:002-3-6.

(c) **Registry notification.** The decision shall direct the nurse aide registry to ~~include~~ place the findings ~~as they relate to the~~ against the certified nurse aide or nurse aide trainee onto the registry. The decision shall direct the nurse aide registry to accept and add to the registry ~~include any~~ statement submitted by the certified nurse aide or nurse aide trainee disputing the final decision if the certified nurse aide or nurse aide trainee chooses to submit such statement. The statement of the certified nurse aide or nurse aide trainee shall be submitted to the nurse aide registry within thirty (30) days after the decision is issued.

(d) **Notice.** Each party and attorney of record shall be mailed a copy of the Final Order. The Department shall transmit a copy of the Final Order to the nurse aide registry when the Order is mailed.

(e) **Appeal.** An appeal of the Final Order shall be perfected under the Administrative Procedures Act.

**SUBCHAPTER 9. HOME HEALTH AIDES**

**310:677-9-1. General requirements**

(a) The home care agency shall:  
(1) Complete an annual performance review of each home care aide and provide at least twelve (12) hours of in-service training each calendar year.

(2) Have in-service education generally supervised by a registered nurse who has at least two (2) years nursing experience with at least one (1) year of which shall be in the provision of home care.

(3) Ensure that all certifications are current and not expired.

(b) An individual may apply for placement in the nurse aide registry by reciprocity from another State if the individual is listed on another State registry as a certified home care nurse aide and does not have a notation of confirmed abuse, neglect, mistreatment, or misappropriation of property.

(c) The training program shall inform the trainee that a home care aide shall complete a new nurse aide training and competency examination or competency examination if, upon applying for renewal of certification, the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation in the previous twenty-four (24) months. ~~Failure to renew within the certification period will result in the individual's name being removed from the automated telephone system.~~

**310:677-9-2. Deemed to meet state certification requirements**

(a) The Department shall deem a certified home care aide to meet the nurse aide certification requirements for the following employers after successful completion of at least sixteen (16) hours of documented orientation specific to the employer's population. ~~Documentation of the sixteen hours of orientation shall be submitted to the Department to enter the certified nurse aide's name in the registry as being certified in that category.~~ The employers to which this requirement applies are the following:

- (1) Residential care.
- (2) Adult day care.
- (3) Specialized facility.

(b) An individual who is listed in the nurse aide registry as a long term care aide may be employed by a home care agency upon successful completion of a Department approved home care skills examination and at least sixteen (16) hours of orientation specific to the employer's population. The individual will be placed on the registry as being certified as a Home Health Aide after successfully passing the examination.

**310:677-9-4. Curriculum**

(a) The home care aide training program ~~shall~~ curriculum must include:

- (1) At least seventy-five (75) hours of training or the equivalent.
- (2) At least sixteen (16) hours of classroom training before beginning any supervised practical training.
- (3) At least sixteen (16) hours of supervised practical training.

(b) The home care aide training program shall include, but is not limited to, the following subject areas:

- (1) Communication skills.
- (2) Observation, reporting and documentation of client status and the care or services furnished.

# Permanent Final Adoptions

- (3) Taking and recording temperature, pulse, and respiration;
- (4) Basic infection control procedures.
- (5) Basic elements of body functioning and changes in body function that must be reported to the aide's supervisor.
- (6) Maintenance of a clean, safe, and healthy environment.
- (7) Recognizing an emergency and necessary emergency procedures.
- (8) The physical, emotional, and developmental needs of, and ways to work with, the populations served by the home care agency, including the need for respect for the client, and the client's privacy and property.
- (9) Appropriate and safe techniques in personal hygiene and grooming including but not limited to the following: bed bath, sponge, tub or shower bath, shampoo, sink, tub, or bed, nail and skin care, oral hygiene and toileting and elimination.
- (10) Safe transfer techniques and ambulation.
- (11) Normal range of motion and positioning.
- (12) Adequate nutrition and fluid intake;
- (13) Any other task that the home care agency may choose to have the home care aide perform.

## 310:677-9-5. Competency and skills examination

- (a) The written or oral examination and skills examination shall be administered by a registered nurse.
- (b) The skills examination portion shall include at least the following:
  - (1) Taking and recording temperature, pulse, and respiration.
  - (2) Appropriate and safe techniques in personal hygiene and grooming.
  - (3) Safe transfer techniques and ambulation.
  - (4) Normal range of motion and positioning.

## SUBCHAPTER 11. LONG TERM CARE AIDES

### 310:677-11-1. General requirements

- (a) The facility shall:
  - (1) Complete a performance review of every nurse aide at least once every twelve (12) months and provide two (2) hours of inservice training specific to their job assignment each month.
  - (2) Have in-service education generally supervised by a registered nurse who has at least two (2) years nursing experience with at least one (1) year of which shall be in the provision of long term care services.
  - (3) Ensure that each nurse aide certification is current and not expired.
- (b) An individual may apply for listing in the nurse aide registry by reciprocity from another State and the Department may approve such application if the individual is listed in another State registry as a certified long term care aide and

does not have a notation of abuse, neglect, mistreatment, or misappropriation of property.

~~(c) The training program shall inform the trainee that a long term care aide shall complete a new nurse aide training and competency examination program or competency examination if, upon applying for renewal of certification, the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation during the previous twenty four (24) months.~~

~~(d)~~ The training program shall inform a trainee that the trainee shall not perform any resident services until the trainee has completed the required sixteen (16) hours of training identified in 310:677-11-4 and the aide shall not perform services for which they have not trained and been found proficient by the instructor.

### 310:677-11-2. Deemed to meet state certification requirements

(a) The Department shall deem a certified long term care aide to meet the nurse aide certification requirements for the following employers after successful completion of at least sixteen (16) hours of documented orientation specific to the employer's population. ~~Documentation of the sixteen (16) hours shall be submitted to the Department and the certified nurse aides name will be entered in the registry as being certified in that category.~~ This requirement shall apply to the following employers:

- (1) Residential care.
  - (2) Adult day care.
  - (3) Specialized facility.
- (b) A home care aide may be employed by a long term care facility following at least sixteen (16) hours of training in the following areas:
- (1) Resident rights.
  - (2) Caring for the resident when death is imminent.
  - (3) Care of the cognitively impaired resident.
  - (4) Avoiding the need for restraints in accordance with current professional standards.
  - (5) The minimum data set, care plans and the interdisciplinary team.
- (c) Documentation of the sixteen (16) hours of training shall indicate time spent in each area, be signed by the nurse aide and the instructor and be kept in the nurse aide's personnel file. Documentation shall also be submitted to the Department to place the certified home care aide on the registry as a certified long term care aide.

### 310:677-11-4. Curriculum

- (a) The training program for long term care aides shall include:
  - (1) At least, seventy-five (75) hours of training or the equivalent.
  - (2) At least sixteen (16) hours of training in the following areas prior to any direct contact with a resident that is documented and signed by the nurse aide trainee:
    - (A) Communication and interpersonal skills.
    - (B) Infection control.

- (C) Safety and emergency procedures, including the Heimlich maneuver.
  - (D) Promoting a resident's independence.
  - (E) Respecting a resident's rights.
- (3) At least sixteen (16) hours of supervised practical training that is documented and signed by the nurse aide trainee.
- (b) The long term care aide training program shall include the subjects specified in paragraphs (b)(2) through (7) of 42 CFR 483.152(b)- including:
- (1) Basic nursing skills;
  - (2) Personal care skills;
  - (3) Mental health and social service needs;
  - (4) Care of cognitively impaired residents;
  - (5) Basic restorative services; and
  - (6) Residents' Rights.
- (c) Pursuant to 63 O.S. § 1-1951(A)(3), the long term care aide training program shall *include a minimum of ten (10) hours of training in the care of Alzheimer's patients.*

**310:677-11-5. Competency ~~and skills~~ examination**

- ~~(a)~~ The competency examination must comply with 42 CFR 483.154- and is addressed under OAC 310:677-3-9 and OAC 310:677-3-10.
- ~~(b) The skills examination shall:~~
- ~~(1) Consist of a demonstration of randomly selected items drawn from a pool of tasks generally performed by long term care aides. This pool shall include all of the personal care skills.~~
  - ~~(2) Be performed in a facility or laboratory setting comparable to the setting in which the individual shall function as a long term care aide.~~
  - ~~(3) Be administered and evaluated by a registered nurse with at least one (1) year experience in providing care for the elderly or the chronically ill of any age and a qualified clinical skills observer.~~

**SUBCHAPTER 13. CERTIFIED MEDICATION AIDES**

**310:677-13-1. General requirements**

- (a) An individual shall be able to read, write, and speak English and be certified in good standing as a home health aide, a long term care aide, or a ICF/IID care aide listed in the Department's Nurse Aide Registry, prior to admission to a State approved certified medication aide training program. The Department shall make available an attestation form that training programs may use for admission to certified medication aide training.
- (b) A certified medication aide shall complete at least eight (8) hours of continuing education every twelve (12) months, excluding the first year of certification, from a State approved program. A record of successful completion shall be kept in the certified medication aide's personnel file.
- (c) An employer shall not use as a certified medication aide any individual who does not comply with 63 O.S. ~~Section~~§

1-1950.3(E), OAC 310:677, and the employer's policies and procedures.

(d) A certified medication aide shall renew certification every 12 months. ~~Recertification~~ Renewal requires the following:

- (1) Documentation of completion of at least eight (8) hours of continuing education every twelve (12) months, excluding the first year after certification as a medication aide. Classroom and supervised practical training hours completed by a CMA in a Department-approved advanced training program may count towards the eight required hours of continuing education;
  - (2) Current certification as a long term care aide, home health aide or ICF/IID care aide. CMAs may also be certified in the other two (2) categories in addition to the required certification as a long term care aide, home health aide and ICF/IID care aide; and
  - (3) Current listing in the nurse aide registry.
- (e) The Department shall approve certified medication aide training programs that meet the requirements of OAC 310:677-13-3 through 13-5, and OAC 310:677-13-9.
- (f) The Department shall review, approve or disapprove a Certified Medication Aide Continuing Education Program application and notify the entity of its action within thirty (30) days of the request or receipt of additional information from the applicant.
- (g) The following words or terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise:
- (1) "Stable diabetes" means diabetes associated with a blood glucose level consistently between 80 and 140 milligrams per deciliter (mg/dl) fasting and less than or equal to 180 mg/dl after a meal, and/or a Hemoglobin A1c (HbA1c) at or below 7.0 within the last three months.
  - (2) "Unstable diabetes" means:
    - (A) A non-acutely ill person with blood glucose levels more than three times over a six week period that are under 80 mg/dl or more than 140 mg/dl fasting, or more than 180 mg/dl two hours after a meal;
    - (B) A person with diabetes who has prescriptions for both insulin and glucagon;
    - (C) A person with Type I diabetes who experiences hypoglycemia unawareness;
    - (D) A person who is newly diagnosed with diabetes and for whom insulin is prescribed; or
    - (E) A person who has been previously diagnosed with diabetes and now requires insulin administration for management. They may be considered stable again when their glucose is maintained in the stable range specified in subsection (g)(1) of this section, which may include maintaining an HbA1c at or below 7.0.
  - (3) "Newly diagnosed" means a person who now has a diagnosis of either Type I or Type II diabetes, has a new prescription for insulin, has not been diagnosed with diabetes in the past and who does not have stable diabetes.

# Permanent Final Adoptions

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## 310:677-13-3. Instructor qualifications

- (a) Each training program instructor shall be qualified as a physician, licensed nurse, pharmacist, respiratory therapist, speech therapist, or certified diabetes educator ~~who may teach within her or his area of expertise or scope of practice.~~ Each instructor shall have one year of experience in ~~her or his~~ their area of expertise. The program shall designate a registered nurse as the training program supervisor if a licensed practical nurse serves as an instructor.
- (b) Other personnel from the health professions may supplement the instructor within their area of expertise or scope of practice, as required by the curriculum and approved by the Department.

## 310:677-13-4. Curriculum

- (a) The certified medication aide training program shall include a minimum of forty (40) hours of ~~combined~~ classroom and supervised practical training with a minimum of sixteen (16) hours of supervised practical training.
- (b) The certified medication aide training shall include, but is not limited to each of the following subject areas:
- (1) Preparation and administration of medication.
    - (A) Documentation of medication administration.
    - (B) Proper medication storage procedures.
      - (i) Scheduled controlled substances.
      - (ii) Internal and external medications.
    - (C) Purposes of medications.
    - (D) Oral medications.
    - (E) Topical medications.
    - (F) Eye, ear, and nose medications.
    - (G) Vaginal medications.
    - (H) Rectal medications.
    - (I) Oral inhalants.
    - (J) Transdermal medications.
    - (K) Medical terminology, symbols, and abbreviations.
    - (L) The rights of medication administration, including the right patient, drug, date, time, dosage, route and form.
    - (M) Controlled drug procedures.
    - (N) Recognizing appropriate situations requiring assistance of the charge nurse.
    - (O) Drug-reference sources.
    - (P) Vital sign measurement with drug administration.
    - (Q) Medication labeling.
  - (2) Observe, report, and document resident's status.
    - (A) Blood pressure measurement and documentation.
    - (B) Drug to drug interactions.
    - (C) Drug to food interactions, and medication timed to coincide with meals.
  - (3) Principles of safety.
    - (A) Infection control techniques.
      - (B) Principles of positioning for medication administration.
  - (4) Knowledge of measurement systems.
    - (A) Distinguish weight and volume measurements.

- (B) Decimal and fraction concepts in medication administration.
  - (C) Appropriate measurement equipment.
- (5) Body systems and common diseases.
  - (A) Digestive system and common diseases to medication administration.
  - (B) Respiratory system and common diseases to medication administration.
  - (C) Drug metabolism.
  - (D) Cardiovascular system and common diseases to medication administration.
  - (E) Endocrine system in relation to diabetes and hormone therapy.
  - (F) Elimination system and common diseases to medication administration.
  - (G) Skin system and common diseases to medication administration.
  - (H) Muscular-skeletal system and common diseases to medication administration.
  - (I) Nervous system and common diseases to medication administration.
- (c) The advanced training program for care of diabetes and the administration of diabetic medications by CMAs shall include:
- (1) A minimum of twelve hours of classroom training and a minimum of four hours of supervised practical training;
  - (2) Training in the following subject areas with curriculum standards as indicated:
    - (A) Pathophysiology of diabetes, with the successful learner able to:
      - (i) Define diabetes as a chronic metabolic disorder in which the body is unable to metabolize glucose properly;
      - (ii) Describe the action of insulin in the body; and
      - (iii) Explain the differences between the types of diabetes;
    - (B) Diabetes disease management, with the successful learner able to:
      - (i) Describe the relationship between insulin, diet, and physical activity in management of diabetes; and
      - (ii) Explain how diet relates to blood glucose control;
    - (C) Blood glucose testing and use of equipment, with the successful learner able to:
      - (i) Explain the purpose of blood glucose testing;
      - (ii) Demonstrate how to use blood glucose testing equipment, and demonstrate accuracy; and
      - (iii) Explain the quality control requirements for glucose monitoring equipment, demonstrate both high and low controls, and explain their purpose and frequency of control testing;
    - (D) Stable and unstable diabetes, with the successful learner able to:

- (i) Identify appropriate blood glucose levels for persons with diabetes;
  - (ii) Define hypoglycemia and list three causes and three symptoms;
  - (iii) Define hyperglycemia and list three causes and three symptoms; and
  - (iv) Define and describe the difference between stable and unstable diabetes;
- (E) Diabetes care by managing blood glucose levels, with the successful learner able to:
- (i) List three carbohydrate choices used to treat hypoglycemia;
  - (ii) Describe measures to prevent hypoglycemia;
  - (iii) Describe the relationship between blood glucose levels and indications for glucagon use;
  - (iv) Describe measures to prevent hyperglycemia; and
  - (v) State when to contact and what to report to a licensed health care provider;
- (F) Charting, graphing, and record-keeping, with the successful learner able to:
- (i) Explain the reason for accurate documentation of all aspects of diabetes management and care, including blood glucose results, quality control testing, medication administration, and adverse reactions;
  - (ii) Identify correct forms for documentation; and
  - (iii) Demonstrate the ability to accurately document diabetes management and care;
- (G) Diabetic medications and adverse reactions (Insulin), with the successful learner able to:
- (i) Describe the purpose of insulin;
  - (ii) State the types of insulin and each onset, peak and duration of action;
  - (iii) Explain the difference between basal and bolus insulin; and
  - (iv) State common side effects, adverse reactions and precautions for insulins;
- (H) Diabetic medications and adverse reactions (Oral agents), with the successful learner able to:
- (i) Describe the purpose, action and recommended doses of each oral agent; and
  - (ii) State common side effects, adverse reactions and precautions for each oral agent;
- (I) Administration of diabetic medications, with the successful learner able to:
- (i) State the correct administration times for insulin and oral agents relevant to meals and mechanisms of action;
  - (ii) Identify the preferred sites for an insulin injection and describe site rotation patterns;
  - (iii) Discuss the proper storage of insulin;
  - (iv) Demonstrate the accurate measurement and correct technique for preparation of a single and a mixed dose of insulin;
  - (v) Explain why it is required to check insulin type and dose drawn with another certified medication aide or licensed health care provider; and
  - (vi) Demonstrate administration of a dose of insulin (or saline) to self or another person and/or to a training mannequin appropriate for injections during classroom training; and
  - (vii) Demonstrate administration of a dose of insulin (or saline) to self or another person during supervised practical training;
- (J) Infection control and universal precautions for blood borne pathogens, with the successful learner able to:
- (i) Define the term "universal precautions";
  - (ii) Demonstrate safe handling of syringes, needles, pen devices, glucometer equipment and test strips, lancing devices and lancets; and
  - (iii) Explain proper disposal of used syringes, needles, test strips and lancets; and
- (3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.
- (d) The advanced training program for administration of medications and nutrition via nasogastric and gastrostomy tubes, and for administration of oral metered dose inhalers and nebulizers, shall include:
- (1) A combined minimum of eight (8) hours of classroom and supervised practical training;
  - (2) Training in at least the following subject areas:
    - (A) Gastrointestinal system and alternative methods for providing medications and nourishment;
    - (B) Nasogastric and gastrostomy equipment and supplies;
    - (C) Procedures and techniques for insertion of nasogastric tube by a licensed nurse, and assessment of patient by registered nurse after placement of nasogastric or gastrostomy tube and before administration of medication or feedings;
    - (D) Procedures and techniques for checking stomach contents through a gastrostomy tube prior to the administration of medication and/or feedings per licensed nurse delegation, when assessment of gastrostomy tube placement and assessment of resident status by a licensed nurse is not indicated based on the resident's current assessment and care plan and/or status and condition;
    - (E) Methods and techniques for administration of medications and nutrition via nasogastric and gastrostomy tubes;
    - (F) Identification of and responses to potential problems associated with administration of medications and nutrition via nasogastric and gastrostomy tubes;
    - (G) Respiratory system and methods for delivery of medications;
    - (H) Equipment and supplies for administration of medication via metered dose inhalers and nebulizers;

# Permanent Final Adoptions

- (I) Methods and techniques for administering medications via metered dose inhalers and nebulizers; and
- (J) Identification of and responses to potential problems associated with administration of medications via metered dose inhalers and nebulizers; and
- (3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.
- (e) The advanced training program for care of diabetes and the monitoring of blood glucose only, with no administration of insulin by CMAs, shall include:
  - (1) A minimum of six (6) hours of classroom training and a minimum of two hours of supervised practical training; and
  - (2) ~~Training in the subject areas identified in subparagraphs (c)(2)(A), (B), (C), (D), (E), (F) and (J) of this section; and~~
  - (3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.
- (f) The advanced training program for administration of medications and nutrition via nasogastric and gastrostomy tubes only, with no administration via oral metered dose inhalers and nebulizers, shall include:
  - (1) A combined minimum of four (4) hours of classroom training and two (2) hours of supervised practical training; and
  - (2) ~~Training in the subject areas identified in subparagraphs (d)(2)(A), (B), (C), (D) and (E) of this section; and~~
  - (3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 80% or greater.
- (g) The advanced training program for administration of oral metered dose inhalers and nebulizers only, with no administration via nasogastric and gastrostomy tubes, shall include:
  - (1) A combined minimum of two (2) hours of classroom training and one (1) hour of supervised practical training;
  - (2) Training in the subject areas identified in subparagraphs (d)(2)(F), (G), (H) and (I) of this section; and
  - (3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 80% or greater.

## 310:677-13-5. Competency ~~and skills~~ examination

- (a) The following shall apply to the written or oral portion of the competency examination.
  - (1) The examination shall be drawn from a pool of test questions that address the course requirements.
  - (2) The examination shall be administered and scored by a Department approved entity.
  - (3) The examination shall comply with the examination administration requirements in OAC 310:677-3-9.
  - (4) A minimum score of seventy percent (70%) shall be required to pass the written competency examination for certification as a medication aide.

(5) A minimum score of eighty percent (80%) shall be required to pass the written competency examination for insulin administration.

(6) A candidate who fails to score at least the required minimum on three consecutive written competency examinations shall be required to retrain before retesting.

(b) The following shall apply to the skills demonstration.

(1) The skills demonstration shall be performed in a laboratory or a site comparable to the setting in which the certified medication aide will function.

(2) The skills demonstration shall be administered and scored by a physician, licensed nurse or registered pharmacist.

(3) The student shall achieve one hundred (100) percent accuracy on a medication pass on at least twenty (20) or more individuals under direct observation by an instructor.

(4) The successful completion of the medication pass shall be documented and retained in the certified medication aide's training file.

(5) The skills demonstration shall comply with the administration requirements in OAC 310:677-3-9 and the content requirements in OAC 310:677-3-10.

(c) The competency ~~and~~ skills examination program shall obtain a written attestation of compliance with OAC 310:677-13-8(a) from each candidate for medication aide certification before administering the examination to the candidate. The Department shall make available a form that examination entities may use to obtain attestations from testing candidates.

## 310:677-13-7. Skills and functions

(a) **Task assignments.** Approved training programs and facilities, centers and homes shall ensure that a task selected, taught and assigned to certified medication aides ~~conforms to 63 O.S. Section 1-1950.3 and OAC 310:677-13~~ meets the minimum requirements of this chapter.

(b) **Limitations.** A certified medication aide shall not:

(1) Administer medication that requires assessment unless a registered nurse is available to perform the assessment within the required time;

(2) Perform oral, nasal or tracheal suctioning;

(3) Apply topical wound care medications that involve decubitus treatment ordered by the attending physician;

(4) Act as preceptor for a medication aide in training;

(5) Administer PRN medication without a documented assessment unless authorization is obtained from a licensed nurse on duty or on call, and unless fully documented by the certified medication aide;

(6) Perform blood glucose testing unless the CMA has completed a Department-approved advanced training program and has demonstrated competency for care of diabetes;

(7) Administer insulin unless the CMA has successfully completed a Department-approved advanced training program and competency and skills examination, and unless a physician or licensed nurse is on-site if the individual:

- (A) Is newly diagnosed with diabetes;
  - (B) Requires insulin administration based on blood glucose levels and does not have clear physician orders for variable or sliding scale insulin; or
  - (C) Has unstable diabetes; or
- (8) Administer medications or nutrition via nasogastric or gastrostomy tubes, or administer oral metered dose inhalers or nebulizers, unless the CMA has completed a Department-approved advanced training program and has demonstrated competency for such services; or
- (9) Take or note physician orders.
- (c) **Skills review.** The facility, center or home shall validate certified medication aide skills before the certified medication aide performs medication administration. The certified medication aides' skills shall be reviewed annually for performance competency.
- (d) **Functions.** The functions of the certified medication aide are:
- (1) Knowing the resident, including:
    - (A) Reviewing the resident's plan of care; and
    - (B) Recognizing normal and abnormal conditions for the specific resident;
  - (2) Collection and documentation of data;
  - (3) Identifying a change in condition;
  - (4) Reporting to the licensed nurse and/or physician;
  - (5) Contacting emergency medical services;
  - (6) Receiving facility-specific training and orientation from the facility's licensed nurse;
  - (7) Demonstrating competency and proficiency to the facility's licensed nurse; and
  - (8) Receiving delegated tasks from the facility licensed nurse, and performing based upon such delegation.

**310:677-13-8. Certification and ~~recertification~~renewal**

- (a) Effective August 1, 2006, the following, to be evidenced by the aide's attestation, are prerequisites for certification as a medication aide:
- (1) Minimum age: 18;
  - (2) Minimum education: high school or general equivalency diploma;
  - (3) Current Oklahoma nurse aide certification with no abuse notations;
  - (4) Experience working as a certified nurse aide for six months; and
  - (5) Physical and mental capability to safely perform duties.
- (b) Application criteria and processing requirements for ~~recertification~~renewal are as follows:
- (1) The certified medication aide shall submit a ~~Recertification~~Renewal Application (~~ODH Form 717~~) that requires information to demonstrate compliance with OAC 310:677-13-1(d).
  - (2) The ~~Recertification~~Renewal Application (~~ODH Form 717~~) shall be accompanied by a ten dollar (\$10.00) fee.
  - (3) Each ~~recertification~~renewal shall be effective for twelve months from the expiration date of the medication aide's previous certification.

- (4) The medication aide shall be required to retest if certification has expired by more than one year. The individual may obtain approval to take a retest by filing a Certified Medication Aide Retest Application (~~ODH Form 842~~) with a fifteen dollar (\$15.00) nonrefundable fee. The aide shall retrain and test if the aide fails the retest or if certification has expired by more than three years.
  - (5) The ~~Recertification~~Renewal Application (~~ODH Form 717~~) for a medication aide shall include documentation of continuing education equivalent to eight hours for every twelve months of certification, excluding the first year of certification.
- (c) A certified medication aide who completes a Department-approved advanced training program and demonstrates competence may request a Department-issued certificate that bears an endorsement for the advanced training. When an advanced-training certificate is issued by the Department to a certified medication aide, a notation reflecting the advanced training shall be placed on the aide's record in the Nurse Aide Registry. A request for endorsement shall be accompanied by a ten dollar (\$10.00) endorsement fee and proof of training and competence on an application form that requires:
- (1) The name and contact information for the certified medication aide; and
  - (2) The name of the training program, dates of attendance, details on the CMA's demonstration of competence, and copies of documents from the program confirming training and competence.

**SUBCHAPTER 15. ICF/IID CARE AIDES**

**310:677-15-1. Deemed to meet state certification requirements**

- (a) A certified ICF/IID care aide is deemed to meet the nurse aide certification requirements for the following employers after successful completion of at least sixteen (16) hours of documented orientation specific to the facility population. ~~Documentation of the sixteen (16) hours of orientation shall be submitted to the Department and the certified ICF/IID care aide will be placed on the registry as a certified residential care aide or a certified adult day care aide.~~ The employers to which this subsection applies are:
- (1) Residential care.
  - (2) Adult day care.
- (b) The Department shall deem a certified long term care aide or a home care aide who has at least sixteen (16) hours of training specific to individuals with intellectual or developmental disabilities to meet the requirements for an ICF/IID care aide. ~~Documentation of the sixteen (16) hours of training shall be submitted to the Department and the certified long term care nurse aide or the certified home care nurse aide will be added to the registry as being certified as a ICF/IID care aide.~~

# Permanent Final Adoptions

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## 310:677-15-4. Competency and skills examination

(a) The ~~written or oral examination~~ competency examination shall be administered by a Department approved program. The skills portion of the examination shall be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a ICF/IID care aide.

(b) ~~The clinical skills observer shall be a licensed nurse or a qualified intellectual disability professional.~~

## 310:677-15-5. Recertification [REVOKED]

(a) ~~The training program shall inform the certified ICF/IID care aide that they shall complete a new nurse aide training and competency examination or competency examination if, upon applying for renewal of certification, the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation during the previous twenty four (24) months.~~

(b) ~~The ICF/IID shall ensure that all certifications are current and not expired.~~

## SUBCHAPTER 17. RESIDENTIAL CARE AIDES

### 310:677-17-1. Deemed to meet state certification requirements

(a) The Department shall deem a certified residential care aide to meet the adult day care program aides certification requirements after successful completion of at least sixteen (16) hours of training specific to the facility population.

(b) The Department shall deem a certified long term care aide, a certified home care aide or a certified ICF/IID care aide who has at least sixteen (16) hours of documented training specific to the residential care population to meet the requirements for a certified residential care aide. ~~Documentation of the sixteen (16) hours of training shall be submitted to the Department and the certified nurse aide will be listed on the registry as a certified residential care aide.~~

### 310:677-17-4. Competency and skills examination

(a) The ~~written or oral~~ competency examination shall be administered by a Department approved program. The skills portion of the examination may be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a residential care aide.

(b) ~~The clinical skills observer shall be a licensed nurse.~~

### 310:677-17-5. Recertification [REVOKED]

(a) ~~The training program shall inform the certified residential care aide that they shall complete a new nurse aide training and competency examination or competency examination if, upon reapplying for renewal of certification, the Department determines that the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation during the previous twenty four (24) months.~~

(b) ~~The residential care facility shall ensure that all certifications are current and not expired.~~

## SUBCHAPTER 19. ADULT DAY CARE PROGRAM AIDES

### 310:677-19-1. Deemed to meet state certification requirements

(a) The Department shall deem a certified adult day care program aide to meet the nurse aide certification requirements for a residential care employer after successful completion of at least sixteen (16) hours of documented training specific to the facility population. ~~Documentation of the sixteen (16) hours shall be submitted to the Department and the certified adult day care aide will be placed on the registry as a certified residential care aide.~~

(b) The Department shall deem a certified long term care aide, a certified home care aide or a certified ICF/IID care aide who has at least sixteen (16) hours of training specific to the adult day care population to meet the requirements for certification as an adult day care aide. Documentation of the sixteen (16) hours of training shall be submitted to the Department and the certified long term care aide, certified home care aide or certified ICF/IID care aide shall be certified as a certified adult day care aide.

### 310:677-19-4. Competency and skills examination

The ~~written or oral~~ competency examination shall be administered by a Department approved program. The skills portion of the examination may be performed in a facility or laboratory setting comparable to the setting in which the individual will function as an adult day care program aide.

### 310:677-19-5. Recertification [REVOKED]

(a) ~~The training program shall inform the certified adult day care aide that they shall complete a new nurse aide training and competency examination program or competency examination if, upon applying for renewal of certification, the Department determines that the nurse aide has not provided at least eight (8) hours of nursing or health related services for compensation during the previous twenty four (24) months.~~

(b) ~~The adult day care center shall ensure that each certification is current and not expired.~~

*[OAR Docket #23-531; filed 6-12-23]*

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## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 681. MEDICAL MARIJUANA REGULATIONS [REVOKED]

*[OAR Docket #23-532]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [REVOKED]

310:681-1-1 [REVOKED]

310:681-1-2 [REVOKED]

310:681-1-3 [REVOKED]



310:681-1-4 [REVOKED]  
310:681-1-5 [REVOKED]  
310:681-1-6 [REVOKED]  
310:681-1-7 [REVOKED]  
310:681-1-8 [REVOKED]  
310:681-1-9 [REVOKED]  
310:681-1-9.1 [REVOKED]  
Subchapter 2. Medical Marijuana Licenses [REVOKED]  
310:681-2-1 [REVOKED]  
310:681-2-2 [REVOKED]  
310:681-2-3 [REVOKED]  
310:681-2-3.1 [REVOKED]  
310:681-2-4 [REVOKED]  
310:681-2-5 [REVOKED]  
310:681-2-6 [REVOKED]  
310:681-2-7 [REVOKED]  
310:681-2-8 [REVOKED]  
310:681-2-9 [REVOKED]  
310:681-2-10 [REVOKED]  
310:681-2-11 [REVOKED]  
Subchapter 3. Transporter License [REVOKED]  
310:681-3-1 [REVOKED]  
310:681-3-2 [REVOKED]  
310:681-3-3 [REVOKED]  
310:681-3-4 [REVOKED]  
310:681-3-5 [REVOKED]  
310:681-3-6 [REVOKED]  
Subchapter 4. Research Facilities and Education Facilities [REVOKED]  
310:681-4-1 [REVOKED]  
310:681-4-1.1 [REVOKED]  
310:681-4-2 [REVOKED]  
310:681-4-3 [REVOKED]  
310:681-4-4 [REVOKED]  
310:681-4-5 [REVOKED]  
310:681-4-6 [REVOKED]  
Subchapter 5. Medical Marijuana Businesses [REVOKED]  
310:681-5-1 [REVOKED]  
310:681-5-1.1 [REVOKED]  
310:681-5-2 [REVOKED]  
310:681-5-2.1 [REVOKED]  
310:681-5-3 [REVOKED]  
310:681-5-3.1 [REVOKED]  
310:681-5-3.2 [REVOKED]  
310:681-5-4 [REVOKED]  
310:681-5-4.1 [REVOKED]  
310:681-5-5 [REVOKED]  
310:681-5-6 [REVOKED]  
310:681-5-6.1 [REVOKED]  
310:681-5-7 [REVOKED]  
310:681-5-8 [REVOKED]  
310:681-5-8.1 [REVOKED]  
310:681-5-9 [REVOKED]  
310:681-5-10 [REVOKED]  
310:681-5-11 [REVOKED]  
310:681-5-12 [REVOKED]  
310:681-5-13 [REVOKED]  
310:681-5-14 [REVOKED]  
310:681-5-17 [REVOKED]  
310:681-5-18 [REVOKED]  
Subchapter 6. Commercial Licensees [REVOKED]  
310:681-6-1 [REVOKED]  
310:681-6-2 [REVOKED]  
Subchapter 7. Packaging, Labeling, and Advertising [REVOKED]  
310:681-7-1 [REVOKED]  
310:681-7-2 [REVOKED]  
310:681-7-3 [REVOKED]  
Subchapter 8. Laboratory Testing [REVOKED]  
310:681-8-1 [REVOKED]  
310:681-8-2 [REVOKED]  
310:681-8-3 [REVOKED]  
310:681-8-4 [REVOKED]  
310:681-8-5 [REVOKED]  
Subchapter 9. Waste Disposal Facilities [REVOKED]  
310:681-9-1 [REVOKED]

310:681-9-1.1 [REVOKED]  
310:681-9-2 [REVOKED]  
310:681-9-3 [REVOKED]  
310:681-9-4 [REVOKED]  
310:681-9-5 [REVOKED]  
310:681-9-6 [REVOKED]  
310:681-9-7 [REVOKED]  
310:681-9-8 [REVOKED]  
310:681-9-9 [REVOKED]  
Subchapter 10. Receivership [REVOKED]  
310:681-10-1 [REVOKED]  
310:681-10-2 [REVOKED]  
310:681-10-3 [REVOKED]  
310:681-10-4 [REVOKED]  
Appendix A. Testing Thresholds [REVOKED]  
Appendix B. LQC Results [REVOKED]  
Appendix C. Schedule of Fines [REVOKED]  
Appendix D. Sample Collection for Final Medical Marijuana Products [REVOKED]  
Appendix E. Sample Collection for Pre-Rolls [REVOKED]  
**AUTHORITY:**  
Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104; SB 1543  
**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
October 17, 2022  
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**SUPERSEDED EMERGENCY ACTIONS:**  
**Superseded rules:**  
Subchapter 1. General Provisions [REVOKED]  
310:681-1-1 [REVOKED]  
310:681-1-2 [REVOKED]  
310:681-1-3 [REVOKED]  
310:681-1-4 [REVOKED]  
310:681-1-5 [REVOKED]  
310:681-1-6 [REVOKED]  
310:681-1-7 [REVOKED]  
310:681-1-8 [REVOKED]  
310:681-1-9 [REVOKED]  
310:681-1-9.1 [REVOKED]  
Subchapter 2. Medical Marijuana Licenses [REVOKED]  
310:681-2-1 [REVOKED]  
310:681-2-2 [REVOKED]  
310:681-2-3 [REVOKED]  
310:681-2-3.1 [REVOKED]  
310:681-2-4 [REVOKED]  
310:681-2-5 [REVOKED]  
310:681-2-6 [REVOKED]  
310:681-2-7 [REVOKED]  
310:681-2-8 [REVOKED]  
310:681-2-9 [REVOKED]  
310:681-2-10 [REVOKED]  
310:681-2-11 [REVOKED]  
Subchapter 3. Transporter License [REVOKED]  
310:681-3-1 [REVOKED]  
310:681-3-2 [REVOKED]  
310:681-3-3 [REVOKED]  
310:681-3-4 [REVOKED]  
310:681-3-5 [REVOKED]  
310:681-3-6 [REVOKED]

# Permanent Final Adoptions

## Subchapter 4. Research Facilities and Education Facilities [REVOKED]

310:681-4-1 [REVOKED]  
310:681-4-1.1 [REVOKED]  
310:681-4-2 [REVOKED]  
310:681-4-3 [REVOKED]  
310:681-4-4 [REVOKED]  
310:681-4-5 [REVOKED]  
310:681-4-6 [REVOKED]

## Subchapter 5. Medical Marijuana Businesses [REVOKED]

310:681-5-1 [REVOKED]  
310:681-5-1.1 [REVOKED]  
310:681-5-2 [REVOKED]  
310:681-5-2.1 [REVOKED]  
310:681-5-3 [REVOKED]  
310:681-5-3.1 [REVOKED]  
310:681-5-3.2 [REVOKED]  
310:681-5-4 [REVOKED]  
310:681-5-4.1 [REVOKED]  
310:681-5-5 [REVOKED]  
310:681-5-6 [REVOKED]  
310:681-5-6.1 [REVOKED]  
310:681-5-7 [REVOKED]  
310:681-5-8 [REVOKED]  
310:681-5-8.1 [REVOKED]  
310:681-5-9 [REVOKED]  
310:681-5-10 [REVOKED]  
310:681-5-11 [REVOKED]  
310:681-5-12 [REVOKED]  
310:681-5-13 [REVOKED]  
310:681-5-14 [REVOKED]  
310:681-5-17 [REVOKED]  
310:681-5-18 [REVOKED]

## Subchapter 6. Commercial Licensees [REVOKED]

310:681-6-1 [REVOKED]  
310:681-6-2 [REVOKED]

## Subchapter 7. Packaging, Labeling, and Advertising [REVOKED]

310:681-7-1 [REVOKED]  
310:681-7-2 [REVOKED]  
310:681-7-3 [REVOKED]

## Subchapter 8. Laboratory Testing [REVOKED]

310:681-8-1 [REVOKED]  
310:681-8-2 [REVOKED]  
310:681-8-3 [REVOKED]  
310:681-8-4 [REVOKED]  
310:681-8-5 [REVOKED]  
310:681-9-1 [REVOKED]  
310:681-9-1.1 [REVOKED]  
310:681-9-2 [REVOKED]  
310:681-9-3 [REVOKED]  
310:681-9-4 [REVOKED]  
310:681-9-5 [REVOKED]  
310:681-9-6 [REVOKED]  
310:681-9-7 [REVOKED]  
310:681-9-8 [REVOKED]  
310:681-9-9 [REVOKED]

## Subchapter 10. Receivership [REVOKED]

310:681-10-1 [REVOKED]  
310:681-10-2 [REVOKED]  
310:681-10-3 [REVOKED]  
310:681-10-4 [REVOKED]

## Appendix A. Testing Thresholds [REVOKED]

## Appendix B. LQC Results [REVOKED]

## Appendix C. Schedule of Fines [REVOKED]

## Appendix D. Sample Collection for Final Medical Marijuana Products [REVOKED]

## Appendix E. Sample Collection for Pre-Rolls [REVOKED]

### Gubernatorial approval:

November 17, 2022

### Register publication:

40 Ok Reg 419

### Docket number:

22-888

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

OAC 310:681 Medical Marijuana Regulations is revoked in its entirety. Effective November 1, 2022, the Oklahoma State Department of Health is no longer the regulatory agency for medical marijuana. OMMA, the Oklahoma Medical Marijuana Authority, is an independent state agency with regulatory authority over medical marijuana. OMMA has adopted rules regulating medical marijuana.

### CONTACT PERSON:

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, 405-426-8563. AudreyT@health.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 STATE DEPARTMENT OF HEALTH, 123 ROBERT S. KERR AVENUE, OKLAHOMA CITY, OKLAHOMA 73102 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):**

### SUMMARY

OAC 310:681 Medical Marijuana Regulations is revoked in its entirety. The Oklahoma State Department of Health is no longer the regulatory agency for medical marijuana. OMMA, the Oklahoma Medical Marijuana Authority, is an independent state agency with regulatory authority over medical marijuana. OMMA has adopted rules regulating medical marijuana.

*[OAR Docket #23-532; filed 6-12-23]*

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 10. RACING ORGANIZATION

*[OAR Docket #23-539]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

325:10-1-2 Definitions [AMENDED]

### AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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

October 31, 2022

### COMMENT PERIOD:

December 2, 2022, and ending January 4, 2023

### PUBLIC HEARING:

January 4, 2023

### ADOPTION:

January 19, 2023

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

January 26, 2023

### LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

### FINAL ADOPTION:

May 31, 2023

### EFFECTIVE:

September 11, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments modify definitions to conform language.

### CONTACT PERSON:

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

325:10-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Conditions of a race" means the qualifications which determine the eligibility of a horse to be entered in a race.

"Controlling owner" means a person or family who owns or votes fifty percent (50%) or more of the voting shares of a corporation, partnership, syndicate, or other association or entity or who is the Managing, General, or Limited Partner in a partnership which has been issued a currently valid organization license.

"Day" means a 24-hour period ending at midnight.

"Dark day" means a day during a live race meeting when no pari-mutuel wagering is conducted.

"Horse" means:

"Horse racing facility - major pari-mutuel" means a facility having those physical and locational characteristics in accord with the Oklahoma Horse Racing Act, and which will qualify it for the Breeders' Cup Series and/or other graded stakes races as granted by The North American Graded Stakes Committee.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person who nominates a horse as a possible contender in a race.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Organization license" means a state requirement of any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an organization licensee or any person who is a lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Post time" means the scheduled time set for the arrival of the horses at the starting gate for the race.

"Program" means the published listing of all contests and contestants for a specific performance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Shareholder" means a person who owns some share of ownership, including entitlement to potential profits or losses in a corporation, partnership, syndicate, association or other multiple ownership entity.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Week" means a calendar week period of seven (7) days.

"Year" means a calendar year.

[OAR Docket #23-539; filed 6-15-23]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 15. LICENSING

[OAR Docket #23-540]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
325:15-1-2. Definitions [AMENDED]
Subchapter 5. Occupation Licensing
325:15-5-1. Occupation licenses [AMENDED]

AUTHORITY:

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ADOPTION:

January 19, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 26, 2023

LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

FINAL ADOPTION:

May 31, 2023

EFFECTIVE:

September 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments modify definitions to conform language; update language; and modify requirements for certain occupation license.

CONTACT PERSON:

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

# 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 11, 2023:

## SUBCHAPTER 1. GENERAL PROVISIONS

### 325:15-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Act"** means the Oklahoma Horse Racing Act [3A:200 et seq.].

**"Apprentice Jockey"** means a race rider who has ridden less than forty (40) winners or less than two (2) years since first having been licensed in any racing jurisdiction, and who otherwise meets the license qualifications of a jockey.

**"Authorized Agent"** means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor in whose behalf the Agent will act, and limited to the actions as specified on the affidavit. The affidavit shall be on file with the Commission.

**"Commissioner"** means a member of the Oklahoma Horse Racing Commission.

**"Controlling Owner"** means a person or family who owns or votes fifty percent (50%) or more of the voting shares of a corporation, partnership, syndicate, or other association or entity or who is the Managing, General, or Limited Partner in a partnership which has been issued a currently valid organization license.

**"Day"** means a 24-hour period ending at midnight.

**"Dark day"** means a day during a live race meeting when no pari-mutuel wagering is conducted.

**"Entry"** means:

- (A) A horse eligible for and entered in a race.
- (B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training.

**"Horse"** means:

- (A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;
- (B) an intact equine male five (5) years of age and older.

**"Horse racing facility - major pari-mutuel"** means a facility having those physical and locational characteristics in accord with the Oklahoma Horse Racing Act and which will qualify it for the Breeders' Cup Series or other graded stakes races as granted by The North American Graded Stakes Committee, or both.

**"Jockey"** means a rider licensed to race.

**"Jockey Agent"** means a licensed, authorized representative of a Jockey.

**"Lessee"** means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

**"Lessor"** means the Owner of a horse that is leased.

**"Occupation license"** means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

**"Organization license"** means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

**"Owner"** means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

**"Program Trainer"** is a licensed Trainer who, for the purposes of the official Race program, is identified as the Trainer of a horse and is acting on behalf of another individual that is either licensed or not licensed, cannot be licensed, is prohibited from racing for any reason, or is attempting to assume the appearance of being the Trainer of a horse that he/she does not have in his/her care, custody or control, or which is under the control of and/or trained by the licensed or unlicensed individual.

**"Race"** means a contest between horses.

**"Race Day"** means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

**"Restricted area"** means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

**"Rules"** means the rules adopted by the Commission to implement the provisions of the Act.

**"Scratch time"** means the deadline for withdrawal of entries from an overnight race.

**"Shareholder"** means a person who owns some share of Ownership, including entitlement to potential profits or losses in a corporation, partnership, syndicate, association or other multiple Ownership entity.

**"Stable name"** means a name used other than the actual legal name of an Owner or Lessee which is registered with the Commission.

**"Safety Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Steward"** means a duly appointed Racing Official with powers and duties specified by statutes or rules.

**"Trainer"** means a person qualified and licensed by the Commission as a Trainer.

**"Week"** means a ~~calendar week~~ period of seven (7) days.

**"Year"** means a calendar year.

**SUBCHAPTER 5. OCCUPATION LICENSING**

**325:15-5-1. Occupation licenses**

In accordance with the statutory provisions of 3A O.S., §§ 204, 204.2, and 204.3, no person required to be licensed shall participate in a race meeting without ~~their~~ holding a valid license authorizing that participation. Licenses shall be obtained prior to the time such persons engage in their vocations upon such racetrack grounds at any time during the calendar year for which the organization license has been issued.

(1) A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses as prescribed in (A) through (N) of this paragraph. [3A:204.2(A) and 3A:204.2(B)]

- (A) Officer, Director, or Partner of a Racing Organization
- (B) Horse Owner, Owner/Trainer, Horse Owner by Open Claim
- (C) Trainer, Jockey, Apprentice Jockey, Jockey Agent
- (D) Veterinarian, Blacksmith
- (E) Racing Official, Racing Organization Manager or Official
- (F) Bloodstock Agent
- (G) Authorized Agent, Valet, Jockey Room Attendant or Custodian or Food Service Person, Colors Attendant, Paddock Attendant
- (H) Mutuel Department Employee, Assistant to a Racing Official or Official or Manager, Assistant Starter, Assistant to the Veterinarian, Assistant Manager, Announcer, Superintendent, Flagman
- (I) Exercise Rider, Pony Rider, Outrider
- (J) Assistant Trainer, Groom, Stable Employee, Stable Agent
- (K) Video Operator, Photo Finish Operator
- (L) Security Officer, Security Guard, Stable Gate-man, Fire Guard, Security Investigator
- (M) Clerical Employee or Uncatergorized Employee of any Organization, Horsemen's Organization, or Concessionaire, Vendor
- (N) Volunteers of Service and/or Civic Organizations which have been Approved by the Commission.

(2) A person acting in the capacity of Authorized Agent shall register an Authorized Agent Agreement and shall pay the required fee for each agreement.

(3) A person whose license-identification badge is lost or destroyed shall pay the required fee and procure a replacement license-identification badge.

(4) The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license for the capacity in which licensed. Every original or renewal license or registration shall expire on December 31 of the year in which it is issued except a triennial license which expires on December 31 of the third year. A license renewal shall be made on an annual or triennial basis beginning January 1. [3A:204.2(B)]

(5) All license applicants shall be required to provide two (2) complete sets of fingerprints on forms provided by or acceptable to the Commission, and pay the required fee for processing the fingerprint cards through state and federal law enforcement agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be ~~refingerprinted~~ refingerprinted, again, at no additional cost. [3A:204.2(E) and 3A:204.2(F); see also 3A:203.3(C)(1)]

(6) All applicants for occupation licenses, except applicants for a Horse Owner license, ~~must~~ shall be a minimum of sixteen (16) years old. However, this requirement shall not preclude dependent children under the age of sixteen (16) from working for their parents or guardian if ~~said~~ the parents or guardian are licensed as a Trainer or Assistant Trainer and permission has been obtained from the organization licensee. A Trainer or his/her authorized representative accompanying a horse in the Test Barn enclosure or signing a Test Barn Sample Tag or log ~~must~~ shall be licensed and a minimum of eighteen (18) years of age. Also, the requirement for all applicants for occupation licenses to be a minimum of sixteen (16) years old shall not preclude dependent children under the age of sixteen but over the age of fourteen from working for their parents or guardian if ~~said~~ the parent or guardian is licensed and permission has been obtained from the organization licensee. There shall be no minimum age requirement for a Horse Owner license ~~so long as if~~ the parent or guardian of a minor is licensed by the Commission as an authorized agent.

(7) Except for authorized Commission representatives, no person shall in any manner alter, change, add to or delete any information from an occupation license identification badge.

(8) Each triennial licensee shall submit a license validation form, annually. The form shall require the licensee to provide any changes in the licensee's personal information and any alleged violation of any statute or rule in any jurisdiction that has occurred since the issuance of the licensee's previous license or annual validation.

[OAR Docket #23-540; filed 6-15-23]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 25. ENTRIES AND DECLARATIONS**

[OAR Docket #23-541]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

325:25-1-2. Definitions [AMENDED]

325:25-1-18. List of horses within the enclosure [AMENDED]

**AUTHORITY:**

3A O.S. § 200 et seq. and Oklahoma Horse Racing Commission

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

October 31, 2022

# Permanent Final Adoptions

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**COMMENT PERIOD:**

December 2, 2022, and ending January 4, 2023

**PUBLIC HEARING:**

January 4, 2023

**ADOPTION:**

January 19, 2023

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

January 26, 2023

**LEGISLATIVE APPROVAL:**

Approved May 31, 2023 by SJR 22

**FINAL ADOPTION:**

May 31, 2023

**EFFECTIVE:**

September 11, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments modify definitions to conform language; modify requirements of certain list of horses within an enclosure; and update language.

**CONTACT PERSON:**

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

**325:25-1-2. Definitions**

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Act"** means the Oklahoma Horse Racing Act [3A:200 et seq.].

**"Accredited Oklahoma-Bred horse"** means a horse that is eligible pursuant to the Act and Commission rules and whose registration in the Oklahoma-Bred Program has been completed by the official Registering Agency.

**"Added money"** means the amount exclusive of trophy added into a stakes by the Organization Licensee, or by sponsors, state-bred programs, or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

**"Age"** means that the age of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.

**"Also eligible"** means:

(A) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched from a race prior to scratch time.

(B) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

**"Assistant Trainer"** means a person qualified and licensed by the Commission as an Assistant Trainer.

**"Authorized Agent"** means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor on whose behalf the Agent will act and limited to the actions as specified on the affidavit. The affidavit shall be on file with the Commission.

**"Closing"** means the time published by the Organization Licensee after which nominations or entries will not be accepted for a race.

**"Commissioner"** means a member of the Oklahoma Horse Racing Commission.

**"Conditions of a race"** means the qualifications which determine the eligibility of a horse to be entered in a race.

**"Coupled entry"** means two or more contestants in a race that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

**"Day"** means a 24-hour period ending at midnight.

**"Declaration"** means the act of withdrawing an entered horse from a race before the closing of entries.

**"Draw"** means the process of publicly assigning post positions and selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

**"Entry"** means:

(A) A horse eligible for and entered in a race.

(B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training (also see "Coupled Entry").

**"Field"** means all horses competing in a race.

**"Horse"** means:

(A) Any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) An intact equine male five (5) years of age and older.

**"Lessee"** means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

**"Lessor"** means the Owner of a horse that is leased.

**"Maiden"** means a horse which has never won an official or recognized race as defined in breed registry rules. A maiden which has been disqualified after finishing first is still a maiden.

**"Mutuel field"** means two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

**"Nomination"** means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

**"Nominator"** means the person who nominates a horse as a possible contender in a race.

**"Occupation license"** means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

**"Occupation licensee"** means any person who has obtained an occupation license.

"**Organization license**" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"**Owner**" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"**Post position**" means the position in the starting gate assigned to the horse for the start of the race.

"**Post time**" means the scheduled time set for the arrival of the horses at the starting gate for the race.

"**Pre-race inspections**" means part of the routine for the safety and welfare of the horse on race day. These inspections are performed by a Commission veterinarian or designated veterinarian to provide an evaluation of the horse's racing fitness to compete prior to the race.

"**Program**" means the published listing of all contests and contestants for a specific performance.

"**Race**" means a contest between horses.

"**Race day**" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"**Races**" mean:

(A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.

(B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.

(C) **Exhibition.** A race on which no wagering is permitted.

(D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary.

(E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.

(F) **Maiden.** A race restricted to non-winners.

(G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.

(H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offspring of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race in which nomination, entry, or starting fees contribute to the purse.

(N) **Trial.** A race or a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

"**Restricted area**" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"**Rules**" means the rules adopted by the Commission to implement the provisions of the Act.

"**Scratch**" means the act of withdrawing an entered horse from a race after the closing of entries.

"**Scratch time**" means the deadline for withdrawal of entries from a scheduled race.

"**Starter**" means a horse whose stall door of the starting gate opens in front of such horse at the time the Starter (the Official) dispatches the horses.

"**Safety Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Subscription**" means the act of nominating a horse to a nomination race.

"**Trainer**" means a person qualified and licensed by the Commission as a Trainer.

"**Week**" means a ~~calendar week~~ calendar week period of seven (7) days.

"**Weight for age**" means a race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year.

"**Year**" means a calendar year.

**325:25-1-18. List of horses within the enclosure**

The organization shall maintain a list or record of all horses admitted onto the enclosure by name; and stabling location. ~~Such~~ The list or record shall ~~also~~ contain the arrival and departure times of ~~such~~ the horses and the name of the Owner and Trainer of ~~such~~ the horses. ~~Such~~ The ~~lists~~ list or record shall be made available for inspection by the Stewards or the Commission.

[OAR Docket #23-541; filed 6-15-23]

# Permanent Final Adoptions

## TITLE 325. OKLAHOMA HORSE RACING COMMISSION CHAPTER 35. GENERAL CONDUCT

[OAR Docket #23-542]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

325:35-1-2. Definitions [AMENDED]

325:35-1-9. Firearms [AMENDED]

### AUTHORITY:

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

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

October 31, 2022

### COMMENT PERIOD:

December 2, 2022, and ending January 4, 2023

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January 4, 2023

### ADOPTION:

January 19, 2023

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

January 26, 2023

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September 11, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments modify definitions to conform language and modify requirements for possession of certain weapons within certain enclosure.

### CONTACT PERSON:

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

### 325:35-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"**Assistant Trainer**" means a person qualified and licensed by the Commission as an Assistant Trainer.

"**Authorized Agent**" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner, Trainer, Parent or Guardian of a minor in whose behalf the Agent will act, and limited to the actions as specified on the affidavit. The affidavit shall be on file with the Commission.

"**Commissioner**" means a member of the Oklahoma Horse Racing Commission.

"**Conditions of a race**" means the qualifications which determine the eligibility of a horse to be entered in a race.

"**Day**" means a 24-hour period ending at midnight.

"**Entry**" means:

(A) A horse eligible for and entered in a race.

(B) Two (2) or more horses entered in the same race which have common ties of Ownership, lease, or training.

"**Family**" means husband, wife, and any dependent children.

"**Horse**" means:

(A) Any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) An intact equine male five (5) years of age and older.

"**Jockey**" means a rider licensed to race.

"**Lessee**" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

"**Lessor**" means the Owner of a horse that is leased.

"**Occupation license**" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"**Organization license**" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"**Owner**" means any person who holds in whole or in part, any right, title or interest in a horse or an Organization Licensee or any person who is a Lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"**Race**" means a contest between horses.

"**Race day**" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"**Restricted area**" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards, tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the Organization Licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"**Rules**" means the rules adopted by the Commission to implement the provisions of the Act.

"**Safety Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Steward**" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"**Substance**" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the Oklahoma Horse Racing Act, 3A O.S. § 200 et seq.



"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Week" means a calendar week period of seven (7) days.

"Year" means a calendar year.

325:35-1-9. Firearms

No person shall possess any firearm or other offensive weapon prohibited by law within the enclosure unless ~~she~~ that person is a fully-qualified Peace Officer as defined ~~in~~ by the ~~Laws~~ laws of the State of Oklahoma or a properly licensed armed Security Officer employed or contracted to an organization licensee.

[OAR Docket #23-542; filed 6-15-23]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 50. HUMAN SUBSTANCE ABUSE TESTING

[OAR Docket #23-543]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

325:50-1-2. Definitions [AMENDED]

AUTHORITY:

3A O.S. § 200 et seq. and Oklahoma Horse Racing Commission

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

October 31, 2022

COMMENT PERIOD:

December 2, 2022, and ending January 4, 2023

PUBLIC HEARING:

January 4, 2023

ADOPTION:

January 19, 2023

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

January 26, 2023

LEGISLATIVE APPROVAL:

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FINAL ADOPTION:

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EFFECTIVE:

September 11, 2023

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments modify definitions to conform language.

CONTACT PERSON:

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

325:50-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.].

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Controlled substance" means any substance included in the five schedules of the Oklahoma Uniform Controlled Dangerous Substances Act.

"Day" means a 24-hour period ending at midnight.

"Month" means a calendar month.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Prima Facie evidence" means evidence that, until its effect is overcome by another evidence, will suffice as proof of fact in issue.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Random testing" means a strategy for testing for alcohol or controlled substances not based on a reasonable belief that an individual has drugs or alcohol in his/her system. The strategy assures all affected individuals have an equal probability of being selected for testing.

"Reasonable cause/reasonable suspicion testing" means a strategy for testing for alcohol or controlled substances based on a Commission Steward or Law Enforcement Agent having good reason to believe a licensee has alcohol or controlled substances in his/her system.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substance" means any kind of physical matter existing in a solid, liquid, or gaseous state or some combination thereof and includes any drugs or medications referred to under the provisions of the Oklahoma Horse Racing Act, Section 200 et seq. of Title 3A of the Oklahoma Statutes.

"Substantial evidence" means evidence which a reasoning mind would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance.

# Permanent Final Adoptions

"Week" means a ~~calendar week~~ period of seven (7) days.

"Year" means a calendar year.

[OAR Docket #23-543; filed 6-15-23]

## TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-544]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

365-1-1-4. Requests for information [AMENDED]

365:1-1-4.1. Fees [REVOKED]

365:1-1-7. Electronic Signatures [NEW]

Subchapter 7. Hearings

365:1-7-1. Setting hearings; demands for hearings [AMENDED]

365:1-7-4. Conduct of hearings [AMENDED]

Subchapter 9. Description of Forms and Instructions

365:1-9-1. Company licensure forms [AMENDED]

365:1-9-5. Surplus lines forms [AMENDED]

365:1-9-11. Applications [AMENDED]

365:1-9-12. Agency ~~and customer service representative~~ appointment forms [AMENDED]

365:1-9-13. Suggested language for producers bonds [AMENDED]

365:1-9-16. Producer licensing forms [AMENDED]

365:1-9-17. Other agents forms [AMENDED]

365:1-9-17.2. Name change on an individual license [AMENDED]

365:1-9-18. Bail bond forms [AMENDED]

Subchapter 11. E.A.G.L.E. Mediation Program

365:1-11-9. Reporting [AMENDED]

Subchapter 13. Electronic filings

365:1-13-1. Electronic filings [AMENDED]

### AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

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

November 7, 2022

### COMMENT PERIOD:

December 1, 2022-January 6, 2023

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January 4, 2023

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### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Updates our rules to reflect open records fees as prescribed by statute. Adds language allowing for electronic signature and for hearings to be held remotely in certain circumstances. The rule also sets timeframes for the Department to receive evidence when a hearing is to be held remotely. Updates requirements to in rules to reflect new statutory changes. Removes unnecessary rules pursuant to the Governors Executive Order on rule regulation (EO2020-03).

### CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

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 1. GENERAL PROVISIONS

### 365:1-1-4. Requests for information

(a) The public may obtain information relating to insurance and regulation thereof by completing and submitting the Oklahoma Insurance Department Open Records Request form to [oidopenrecords@oid.ok.gov](mailto:oidopenrecords@oid.ok.gov), by fax to (405) 522-0125, or by mail to the Insurance Commissioner, 400 N.E. 50<sup>th</sup> Street, Oklahoma City, Oklahoma 73105. Physical copies of the form are available at the Insurance Department at the address provided above.

(b) Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service will be provided upon payment of the costs involved.

(c) Requests submitted to the agency will not be deemed to have been received unless and until the request has been properly submitted in accordance with these rules.

(d) A request shall be deemed abandoned if the requester fails to pay any fees lawfully assessed within thirty (30) days of notice by the Insurance Department of the fee amount or if requester fails to respond within thirty (30) days to any request by the Department for additional information the Department has determined is reasonably necessary to identify the records sought or to accurately process the request.

(e) Pursuant to 36 O.S. § 321 and 51 O.S. § 24A.5(4), the Department charges \$0.40 per page, \$1.00 per certified page, and \$5.00 for each Certificate of Commissioner, under seal. The Department also may charge a reasonable search and copying fee when a request is for a commercial purpose and would clearly cause excessive disruption of essential functions of the Department [51:24A.5(4)]. A current fee schedule is available on the Department website, <https://www.oid.ok.gov/>, and at its principal location at the address provided above.

### 365:1-1-4.1. Fees [REVOKED]

The Oklahoma Insurance Department is required and provided for by the following laws to collect certain fees as follows:

(1) ~~36 O.S. §311.1. Provides a late fee required with annual statements filed after the first day of March.~~

(2) ~~36 O.S. §321. Provides for the following fees:~~

~~(A) Copies 40¢ per page.~~

~~(B) Appointing Commissioner as agent for service of process.~~

- (C) Licensure and reporting requirements for company licensing, mergers and acquisitions.
- (D) Life, Accident and Health policy filings.
- (E) Amendments to by laws and articles.
- (F) Retaliatory fees.
- (3) ~~36 O.S. §348.1.~~ Authorizes the Commissioner to collect fees and licenses for the Rate and Form Compliance Division of the Insurance Department.
- (4) ~~36 O.S. §621.~~ Summons process fees.
- (5) ~~36 O.S. §628.~~ Life, Accident and Health policy filings retaliatory fee.
- (6) ~~36 O.S. §635.~~ Initial application fee and annual renewal for Multiple Employer Welfare Arrangements (MEWAs).
- (7) ~~36 O.S. §1115.~~ Surplus lines taxes.
- (8) ~~36 O.S. §1435.23(A)(4)(e).~~ Crop hail licensure fees.
- (9) ~~36 O.S. §1435.23 and §1435.29.~~ Fees and licenses for insurance agents, surplus lines insurance brokers, and limited insurance representatives. Also includes annual fee for agents continuing education providers.
- (10) ~~36 O.S. §1450.~~ TPA license fee.
- (11) ~~36 O.S. §1464.~~ Broker license fee
- (12) ~~36 O.S. §1661.~~ Holding company registration fee.
- (13) ~~36 O.S. §2126.1.~~ Solicitation and trade fee.
- (14) ~~36 O.S. §2731.~~ Fraternal license and appointment.
- (15) ~~36 O.S. §3105.~~ Motor club license and appointment.
- (16) ~~36 O.S. §6124.~~ Provides for initial fee and renewal fee for prepaid funeral benefits organizations.
- (17) ~~36 O.S. §6130, §1659.~~ Fines and \$5 service charges.
- (18) ~~36 O.S. §6144.~~ Prepaid Dental Company License
- (19) ~~36 O.S. §6212.~~ Adjuster's exams, license and manuals fees.
- (20) ~~36 O.S. §6465.~~ Risk retention group filing fees and purchasing group filing fees.
- (21) ~~36 O.S. §6557, §6559, §6560 and 74 O.S. §1306.2(B).~~ Provides for application and renewal fees for entities performing utilization review.
- (22) ~~36 O.S. §6604.~~ Provides for a license fee for service warranties licensure.
- (23) ~~51 O.S. §24A.1 et seq.~~ The Open Records Act provides authority to charge reasonable fees to provide information requested by the public. The Act authorizes a "search fee" when records are requested for commercial purposes. The Data Processing Division of the Insurance Department makes certain computer records available upon request. A schedule of the records available and the current fee for each is available upon request from this Division.
- (24) ~~59 O.S. §1305, §1308, §1308.1, §1309, §1314(d) and §1317(a).~~ Provide for license fees, investigation fees, annual fees for OBA, examination fees, renewal fees and appointment fees for bail bondsmen.
- (25) ~~59 O.S. §858-708.~~ Gives the Insurance Department authority to collect fees for licensure and examination fees for Real Estate Appraisers.

- (26) ~~68 O.S. §50001.~~ Fire Marshall tax.
- (27) ~~59 O.S. § 4003.~~ Pursuant to the provisions of 59 O.S. 4003 A, upon presentation of satisfactory evidence that an applicant for initial licensure or certification is a low income individual, the Board shall grant a one time one year waiver of any fees associated with such licensure or certification. For purposes of the section, "low income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

**365:1-1-7. Electronic signatures**

The Insurance Commissioner permits electronic signatures in lieu of original or wet signatures. This provision does not prohibit the Insurance Commissioner from requiring original or wet signatures. Electronic signatures must meet any technical requirements of the Department.

**SUBCHAPTER 7. HEARINGS**

**365:1-7-1. Setting hearings; demands for hearing**

- (a) The Insurance Commissioner may hold hearings on any matters within his/her jurisdiction under the Insurance Code, either upon his/her own motion or upon written demand therefor by any person aggrieved by any act, threatened act, or failure to act of the Insurance Commissioner or by any report, regulation, rule or order of the Insurance Commissioner. The written demand for hearing should specify the grounds to be relied upon as a basis for relief demanded at the hearing.
- (b) Upon receipt of a written demand for a hearing as outlined in (a) of this Section, the Insurance Commissioner shall either set down the matter for hearing within thirty (30) days from the receipt of the demand therefor or shall issue a written order denying hearing.
- (c) Appearances by parties of record and testimony by witnesses may be offered remotely, via telephone or other available electronic means, at a hearing in the following circumstances:

- (1) Non-contested Form A and Form R hearings;
- (2) With the consent of all parties of record and the Commissioner or hearing examiner; or
- (3) Upon request of a party of record, made in writing at least five (5) business days prior to the scheduled date of the hearing, and a determination by the Commissioner or hearing examiner that:
  - (A) Requestor has shown good cause for the request, and
  - (B) An in-person hearing is not necessary for the effective and efficient presentation of evidence or argument.

## Permanent Final Adoptions

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(d) Any pleading, other document, or exhibit used in a proceeding conducted by telephone or videoconference may be transmitted between the Department's location and any remote site by electronic means. Signatures on any document transmitted by electronic means shall have the same force and effect as an original signature.

### 365:1-7-4. Conduct of hearings

- (a) **Hearings to be open.** All hearings shall be open to the public.
- (b) **Right to counsel.** Any person affected by the hearing shall have the right to appear in person and by counsel, provided, however, that such counsel representing the party, must be duly licensed to practice law by the Supreme Court of Oklahoma. The party and his counsel may be present during the giving of evidence, may have a reasonable opportunity to examine and inspect all documentary evidence, may examine witnesses and may present evidence in the party's own behalf.
- (c) **Rules of evidence.** The formal rules of pleading and evidence need not be observed. Evidence for hearings to be held remotely must be received by the Insurance Commissioner no later than three (3) business days prior to the time of the hearing. Failure to provide evidence within the required time may be grounds for exclusion of the evidence or a continuance of the hearing. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, a party shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the specialized knowledge of the Insurance Commissioner. The Commissioner's experience, technical competence and specialized knowledge shall be utilized in the evaluation of evidence.

## SUBCHAPTER 9. DESCRIPTION OF FORMS AND INSTRUCTIONS

### 365:1-9-1. Company licensure forms

- (a) **License of authority form.** The license of authority form, executed under the hand and seal of the Insurance Commissioner and delivered, is evidence of an insurance company's authority to transact business within Oklahoma.
- (b) **Annual statement form.** Annual statement forms must be filed by all admitted companies and postmarked on or before the first day of March of each year, reporting their business and financial condition as of December 31st of the preceding year. The completed forms must be subscribed and sworn to by the President, Secretary and other proper officers of the company. The Annual Statement is referred to as the "Convention Blank" and is in the general form and content approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported.
- (c) **Quarterly statement form.** Quarterly statement forms must be filed by all domestic insurers and postmarked on or before May 15th, August 14th and November 14th of each year, reporting their business and financial condition as of March

31st, June 30th, and September 30th respectively. The completed forms must be subscribed and sworn to by the President, Secretary, and other proper officers of the company.

(d) **Appointment of Insurance Commissioner as attorney for services of process form.** The appointment of Insurance Commissioner as attorney for service of process form for the State of Oklahoma must be filed by all licensed alien and foreign insurers, and shall continue in force so long as any liability remains outstanding in Oklahoma against the filing company, as required by 36 O.S. § 621.

(e) **Agreement and application form.** The agreement and application form for Oklahoma License must be submitted by all companies desiring admission or renewal license within Oklahoma. A company agrees in its execution of such form to transact business, upon issuance of license, in accordance with the laws of Oklahoma, and to pay all fees and taxes as may at any time be imposed by law, as required by 36 O.S. § 311 and § 615 and Section 1, Article 19, Okl. Const.

(f) **Designation of agent form.** The designation of agent form, which lists the person to whom service of process is to be forwarded, must be filed by all companies. This designation is required by 36 O.S. § 621.

(g) **Certificate of deposit form.** The certificate of deposit form, when executed by the Insurance Commissioner, certifies to the securities on deposit with the State of Oklahoma. All alien and foreign insurers must file a substantially similar form, executed by their domiciliary insurance department, upon making application for license in Oklahoma.

(h) **Certificate of compliance form.** The certificate of compliance form, when executed by the Insurance Commissioner, certifies that the company named therein has complied with all the requirements of the Oklahoma law and is authorized to transact business within Oklahoma. All alien and foreign insurers must file a substantially similar form, executed by their domiciliary insurance department, upon making application for license in Oklahoma.

(i) **Annual Oklahoma premium tax report.** The Oklahoma annual premium tax report, submitted with the Annual Statement filed with the Insurance Commissioner, reports Oklahoma tax on premium income of the filing insurer, and includes retaliatory tax and fire ~~marshal~~ marshal tax calculations if applicable as well as a precalculated credit for Guaranty Association assessment.

(j) **Appointment of examiner form.** The appointment of examiner form is used by the Insurance Commissioner to appoint examiners to represent Oklahoma and/or Zone 3 of the National Association of Insurance Commissioners in the examination of an insurance company, which empowers the person so appointed to enter into the examination of the insurance company named therein.

(k) **Publication synopsis of the annual statement form.** Certain alien and foreign companies doing business in Oklahoma are required to publish a synopsis of their annual statement due to the retaliatory provisions of the Oklahoma law. When such publication is required, the publication synopsis of the annual statement form must be completed and returned to the Insurance Commissioner.

**365:1-9-5. Surplus lines forms**

(a) **Surplus lines broker quarterly summary form.** The surplus lines broker quarterly summary includes forms that detail the types of coverages written, the aggregate amount of insurance issued, the gross premiums charged, and the gross return premium. Form SL-3a must be signed by the broker ~~with an original/live signature~~, notarized, and filed on or before the last day of the month following the close of a calendar quarter. The specific forms are:

- (1) SL-3a Affidavit of a true and correct report. File in one-part.
- (2) SL-3b Spreadsheet to accumulate premium and tax data by the company number and company name of the surplus line carrier. File in one-part only.
- (3) SL-3c Affidavit of coverage. File in one-part.
- (4) SL-3d Affidavit for return of premiums and the credit or refund of premium taxes.

(b) **Surplus lines direct placement by an insured summary form.** The direct placement by an insured summary includes forms that detail the types of coverages written, the aggregate amount of insurance issued, the gross premiums charged, the gross return premium, and the tax due. Form DSL-3a must be signed by the affiant, generally the individual responsible for procuring risk coverage, ~~with an original signature~~, notarized and filed within thirty (30) days next succeeding the issuance of evidence of coverage. The specific forms are:

- (1) DSL-3a Affidavit of a true and correct report. File in one-part.
- (2) DSL-3b Spreadsheet to accumulate premium and tax data by the company number and company name of the surplus lines carrier. File in one part only.
- (3) DSL-3c Affidavit of coverage. File in one-part.
- (4) DSL-3d Affidavit for return of premiums and the credit or refund of premium taxes.

**365:1-9-11. Applications**

Unless otherwise provided by electronic means by the Insurance Commissioner or an administrator approved by the Commissioner, the following applications must be completed by the person(s) making application and upon completion, must comply with the applicable Oklahoma statutes:

- (1) NAIC Uniform Application for Individual Insurance Producer License.
- (2) NAIC Uniform Business Entity Application or NAIC Uniform Non-Resident Agency Application.
- (3) Application for License as Third Party Administrator (TPA-1).
- (4) Application for Corporate License as Third Party Administrator (TPA-2).
- (5) Application for License as Insurance Adjuster (CR-1).
- ~~(6) Application for License as Insurance Consultant (IC-1).~~
- ~~(67) Application for License as Managing General Agent or Agency (MGA).~~
- ~~(78) Application for Resident Insurance Brokers License should be made using either the NAIC Uniform~~

Application for Individual Insurance Producer License or NAIC Uniform Non-Resident Agency Application.

~~(89) Catastrophe Registration as Emergency Insurance Adjuster (EIA).~~

~~(10) Application for Customer Service Representative (H-1).~~

**365:1-9-12. Agent and customer service representative appointment forms**

(a) **Company Appointment form (R-11).** The company appointment form is to be completed by an insurer appointing specific individuals as agents of the company and for renewal of agents' appointments.

(b) **Cancellation of Appointment form (CAA).** The cancellation of appointment form is to be used by an insurer when canceling the appointment of an agent or agents. This form is to be reproduced by the insurer in quantities sufficient for their needs.

~~(c) Customer Service Representative Appointment form (CSR-1). The customer service representative appointment form shall be completed by a licensed insurance producer appointing and employing a customer service representative.~~

~~(d) Cancellation of Customer Service Representative Appointment form (NAN-1). The cancellation of appointment form shall be utilized by a licensed producer to cancel the customer service representative's appointment and employment.~~

**365:1-9-13. Suggested language for producers bonds**

(a) **Insurance Bond.** The Insurance Bond form provides suggested language for preparing an insurance bond.

(b) **Surplus Lines Insurance Brokers Bond.** The Surplus Lines Insurance Brokers Bond form provides suggested language for preparing an insurance brokers bond.

~~(c) Insurance Consultants Bond. The Insurance Consultants Bond form provides suggested language for preparing an insurance consultants bond.~~

~~(c4) Non-Resident Agents License Bond.~~ The Non-Resident Agents License Bond form provides suggested language for preparing a non-resident agents insurance bond.

~~(de) Public Adjusters Bond.~~ The Public Adjusters Bond form provides suggested language for preparing a public adjusters bond.

~~(ef) Third Party Administrators Bond.~~ The Third Party Administrators Bond form provides suggested language for preparing a third party administrators bond.

**365:1-9-16. Producer licensing forms**

(a) **Licenses.** The license form is executed under the hand and seal of the Insurance Commissioner and delivered. This form is evidence of a producer's authority to transact business within Oklahoma.

~~(b) Insurance Consultant License Certificate. The Insurance Consultant License Certificate is executed under the hand and seal of the Insurance Commissioner and delivered. This form is evidence of an individual's authority to act as an insurance consultant in the State of Oklahoma.~~

## Permanent Final Adoptions

~~(e) **Life or Accident and Health Insurance Broker License Certificate.** The Life or Accident and Health Insurance Broker License Certificate is executed under the hand and seal of the Insurance Commissioner and delivered. This form is evidence of an individual's authority to act as an insurance broker in the State of Oklahoma.~~

~~(bd) **Managing General Agent's License.** The Managing General Agent's License is executed under the hand and seal of the Insurance Commissioner and delivered. This form is evidence of an individual's authority to act as a managing general agent in the State of Oklahoma.~~

~~(ce) **Temporary Insurance Producer's License.** The Temporary Insurance Producer's License is executed under the hand and seal of the Insurance Commissioner and delivered. This form is evidence of an individual's authority to act as a temporary insurance agent in the State of Oklahoma. The appointing company that requests the license may receive a temporary license after completion of a properly completed application and an affidavit as prescribed by the Insurance Commissioner. The temporary license shall be valid for up to one hundred eighty (180) days from the date of issuance, or until the applicant passes the license examination, whichever time is shorter.~~

~~(df) **Third Party Administrator License Certificate.** The Third Party Administrator License Certificate is executed under the hand and seal of the Insurance Commissioner and delivered. This form is evidence of an individual's authority to act as a third party administrator in the State of Oklahoma.~~

~~(eg) **Renewal Notice.** The Producer Licensing Division of the Insurance Department may send a Renewal Notice to producers to remind them to comply with renewal requirements by either electronic or paper means.~~

### 365:1-9-17. Other agents forms

(a) **Letter of certification.** A letter of certification is provided to an agent at his/her request to provide license status for a non-resident license out of state.

(b) **Limited Power of Attorney.** The Limited Power of Attorney form is used for an individual to appoint and terminate agents.

~~(e) **Suggested Consulting Agreement for Use by Insurance Agents.** The Suggested Consulting Agreement for Use by Insurance Agents form provides suggested language for preparing an agent's consulting agreement.~~

~~(cd) **TPA Plan Supplemental Information Sheet.** This form shall be submitted with each renewal and shall provide a summary of each plan administered.~~

### 365:1-9-17.2. Name change on an individual license

~~(a) Name changes for an individual license, excluding legal entities, require proper documentation at the time of the written request, such as a copy of a court order, marriage license or divorce decree.~~

~~(b) A duplicate license fee shall be submitted for a new licensed to be issued.~~

### 365:1-9-18. Bail bond forms

(a) **Application for bail bondsman license form.** Unless otherwise provided by electronic means by the Insurance Commissioner or an administrator approved by the Commissioner, bail bond applications must be completed by the person making application and, upon completion, must comply with the applicable Oklahoma statutes. The application shall include the license fee, a complete set of fingerprints, one recent credential-size full face photograph, an investigative fee, a high school diploma from an accredited high school or copy of GED, copy of current Oklahoma driver's license, and evidence of completion of sixteen (16) hours of education in compliance with 59 O.S. § 1308.1, and any other information the Commissioner deems necessary. ~~The Commissioner may propose any reasonable interrogatories to an applicant for a license.~~

(b) **Bail bondsman license forms.** The bail bondsman license form, executed under the hand and seal of the Insurance Commissioner, upon execution and delivery, is evidence of an individual's authority to act as a bail bondsman within Oklahoma.

(c) **Bail bond appointment form.** The bail bond appointment form ~~is to~~shall be completed by an insurer when appointing specific surety bondsmen as agents of the insurer.

(d) **Bail bond appointment cancellation form.** The notice of cancellation of bondsman appointment form ~~is to~~shall be used by an insurer ~~when they desire~~ to cancel the appointment of a surety bondsman.

(e) **Professional bondsman and multicounty agent bondsman securities deposit/withdrawal form.** The deposit/withdrawal form (State Form 31) ~~is~~shall be used for all professional bondsmen and multicounty agent bondsmen for depositing/withdrawing securities with the Insurance Commissioner's office.

(f) **Pledge of Account form.** The bondsman shall execute a pledge of the certificate of deposit to the Insurance Commissioner for the payment of unpaid bond forfeitures.

(g) **Assignment of Account form.** The bondsman shall execute an assignment of the annuity deposit to the Insurance Commissioner for the payment of unpaid bond forfeitures.

(h) **Proof of Courses.** As a prerequisite for submission of a renewal or reinstatement application, when, when requested by the Insurance Commissioner, each licensee shall have completed the total number of continuing education hours required.

(i) **Required submissions for reinstatement.** After the license expires and within one year after the license expiration date, a licensee shall be eligible for reinstatement by completing required Continuing Education and submitting a new application and double the license fee. A licensee shall not be eligible for reinstatement if previously the license was revoked, suspended or continuance denied.

(j) **Name change on an individual license.** Name changes for an individual license require proper documentation at the time of the written request, such as a copy of a court order, marriage license, or divorce decree. A duplicate license fee shall be submitted for a new license to be issued.

SUBCHAPTER 11. E.A.G.L.E. MEDIATION PROGRAM

365:1-11-9. Reporting

When a mediation session is adjourned, the mediator shall forward the original signed Agreement to Mediate a Dispute, Rules of Conduct for Outside Parties Attending Mediation Hearing, Mediation Agreement and Record of Termination forms to the Program Director at the Oklahoma Insurance Department. The Program Director shall submit an annual report to the Administrative Director of the Courts no later than July 30 of each year, in compliance with Rule 13 of the Rules and Procedures for the Dispute Resolution Act.

SUBCHAPTER 13. ELECTRONIC FILINGS

365:1-13-1. Electronic filings

(a) Effective January 1, 2009, the following filings, and fees relating thereto, shall be made with the Insurance Department by electronic means and format as approved by the Insurance Commissioner:

- (1) Insurance agent/producer initial and renewal license applications;
(2) Insurance adjuster initial and renewal license applications;
(3) Limit Limited lines producers initial and renewal license applications;
(4) Life, accident and health insurance brokers initial and renewal license applications;
(5) Insurance consultants initial and renewal license applications;
(6) Customer service representatives initial and renewal license applications;
(57) Motor service club agent's initial and renewal license applications;
(68) Appointments and terminations of appointments of those listed in Paragraphs 1 through 57 of this section;
(97) Continuing education providers initial and renewal applications; and
(108) Continuing education course submissions;
(119) Continuing education course completion filings;
(1210) Schedule of continuing education course offerings;
(1311) Filings submitted to the Rate and Form Compliance Division of the Insurance Department.

(b) The Insurance Commissioner may exclude or exempt a specific filing, filings or categories of filings from the requirements of this section at the Commissioner's discretion. Requests for exemption must specify the reasons that compliance with this subchapter constitutes a hardship.

[OAR Docket #23-544; filed 6-15-23]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 10. LIFE, ACCIDENT AND HEALTH

[OAR Docket #23-545]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Minimum Standards; Contract Guidelines
Part 9. Universal Life Rule
365:10-5-81. Valuation [AMENDED]
365:10-5-82. Nonforfeiture [AMENDED]
Part 13. Medicare Supplement Insurance Minimum Standards
365:10-5-129. Open enrollment [AMENDED]

AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. § 358 and 1302.

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November 7, 2022

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n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

Updates our rules to reflect correct citations and amends the open enrollment time frame for Medicare supplement policies.

CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

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 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 9. UNIVERSAL LIFE RULE

365:10-5-81. Valuation

(a) Requirements. The minimum valuation standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method, as described below for such policies, and the tables and interest rates specified below.

- (1) The terminal reserve for the basic policy and any benefits and/or riders for which premiums are not paid

## Permanent Final Adoptions

separately as of any policy anniversary shall be calculated as follows: ~~newline.~~

(2) Future guaranteed benefits, as used in the formula in (1) of this subsection, are determined by:

(A) projecting the greater of the Guaranteed Maturity Fund and the policy value, taking into account future Guaranteed Maturity Premiums, if any, and using all guarantees of interest, mortality, expense deductions, etc., contained in the policy or declared by the insurer; and

(B) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

(3) All present values in the formula in (1) of this subsection shall be determined using:

(A) an interest rate (or rates) specified by the ~~Standard Valuation Law, as amended in 1980~~ 36 O.S. § 1510 for policies issued in the same year;

(B) the mortality rates specified by the ~~Standard Valuation Law, as amended in 1980~~ 36 O.S. § 1510, for policies issued in the same year or contained in such other table as may be approved by the Commissioner for this purpose; and

(C) any other tables needed to value supplementary benefits provided by a rider which is being valued together with the policy.

(b) **Alternative Minimum Reserves.**

(1) If, in any policy year, the Guaranteed Maturity Premium on any universal life insurance policy is less than the valuation net premium for such policy, calculated by the valuation method actually used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such contract shall be the greater of:

(A) The reserve calculated according to the method, the mortality table, and the rate of interest actually used.

(B) The reserve calculated according to the method actually used but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the Guaranteed Maturity Premium in each policy year for which the valuation net premium exceeds the Guaranteed Maturity Premium.

(2) For universal life insurance reserves on a net level premium basis, the valuation net premium is  $EqnPVFBx_a$  and for  $a_x$  reserves on a Commissioners Reserve Valuation Method, the valuation net premium is  $EqnPVFBx_a + a - bx_a$ .

### **365:10-5-82. Nonforfeiture**

(a) **Minimum cash surrender values for flexible premium universal life insurance policies.** Minimum cash surrender values for flexible premium universal life insurance policies shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

(1) The minimum cash surrender value (before adjustment for indebtedness and dividend credits) available on a date as of which interest is credited to the policy shall be calculated as follows:

(A) The minimum cash surrender value shall be equal to the accumulation to that date of the premiums paid minus the accumulations to that date of:

(i) the benefit charges,

(ii) the averaged administrative expense charges for the first policy year and any insurance increase years,

(iii) actual administrative expense charges not exceeding the initial or additional expense allowances, respectively,

(iv) any service charges actually made (excluding charges for cash surrender or execution of a paid-up nonforfeiture benefit) and

(v) any deductions made for partial withdrawals.

(B) All accumulations shall be at the actual rate or rates of interest at which interest credits have been made unconditionally to the policy (or have been made conditionally, but for which the conditions have since been met), and minus any unamortized unused initial and additional expense allowances.

(2) Interest on the premiums and on all charges referred to in OAC 365:10-5-82(a)(1)(A)(i) through (v) above shall be accumulated from and to such dates as are consistent with the manner in which interest is credited in determining the policy value.

(3) The benefit charges shall include the charges made for mortality and any charges made for riders or supplementary benefits for which premiums are not paid separately. If benefit charges are substantially level by duration and develop low or no cash values, then the Commissioner shall have the right to require higher cash values unless the insurer provides adequate justification that the cash values are appropriate in relation to the policy's other characteristics.

(4) The administrative expense charges shall include charges per premium payment, charges per dollar of premium paid, periodic charges per thousand dollars of insurance, periodic per policy charges, and any other charges permitted by the policy to be imposed without regard to the policyholder's request for services.

(5) The averaged administrative expense charges for any year shall be those which would have been imposed in that year if the charge rate or rates for each transaction or period within the year had been equal to the arithmetic average of the corresponding charge rates which the policy states will be imposed in policy years two through twenty in determining the policy value.

(6) The initial acquisition expense charges shall be the excess of the expense charges, other than service charges, actually made in the first policy year over the averaged administrative expense charges for that year. Additional acquisition expense charges shall be the excess of the expense charges, other than services charges, actually



made in an insurance-increase year over the averaged administrative expense charges for that year. An insurance-increase year shall be the year beginning on the date of increase in the amount of insurance by policyowner request (or by the terms of the policy).

(7) Service charges shall include charges permitted by the policy to be imposed as the result of a policyowner's request for service by the insurer (such as the furnishing of future benefit illustrations) or of special transactions.

(8) The initial expense allowance shall be the allowance provided by the policy to be imposed as the result of a policyowner's request for service by the insurer (such as the furnishing of future benefits illustrations) or of special transactions.

(9) The initial expense allowance shall be the allowance provided by items (ii), (iii) and (iv) of subsection ~~(E)~~(G) or by items (ii) and (iii) of subsection ~~(G)(4)(a)(I)(4)(a)~~ as applicable, of 36 O.S. ~~Supp.1984, Section~~ § 4029 for a fixed premium, fixed benefit endowment policy with a face amount equal to the initial face amount of the flexible premium universal life insurance policy, and maturing on the latest maturity date permitted under the policy, if any, otherwise at the highest age in the valuation mortality table. The unused initial expense allowance shall be the excess, if any, of the initial expense allowance over the initial acquisition expense charges as defined in this section.

(10) If the amount of insurance is subsequently increased upon request of the policyowner (or by the terms of the policy), an additional expense allowance and an unused additional expense allowance shall be determined on a basis consistent with this subsection and with 36 O.S. ~~Supp.1984, Section~~ § 4029(G)(4)(e) ~~4029(I)(4)(e)~~, using the face amount and the latest maturity date permitted at that time under the policy.

(11) The unamortized unused initial expense allowance during the policy year beginning on the policy anniversary at age  $x + t$  (where "x" is the same issue age) shall be the unused initial expense allowance multiplied by  $E_{\overline{qx}+t}$  where  $a_{\overline{x}+t}$  and  $a_x$  are present values of an annuity of one per year payable on policy anniversaries beginning at ages  $x + t$  and  $x$ , respectively, and continuing until the highest attained age at which a premium may be paid under the policy, both on the mortality and interest bases guaranteed in the policy. An unamortized unused additional expense allowance shall be the unused additional expense allowance multiplied by a similar ratio of annuities, with  $a_x$  replaced by an annuity beginning on the date as of which the additional expense allowance was determined.

(b) **Minimum cash surrender value for fixed premium universal life insurance policies.** For fixed premium universal policies, the minimum cash surrender values shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately.

(1) The minimum cash surrender value (before adjustment for indebtedness and dividend credits) available on a

date as of which interest is credited to the policy shall be equal to  $[A - B - C - D]$ , where:

(2) Future guaranteed benefits are determined by:  
 (A) projecting the policy value, taking into account future premiums, if any, and using all guarantees of interest, mortality, expense deductions, etc., contained in the policy or declared by the insurer, and  
 (B) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

(3) All present values shall be determined using:  
 (A) an interest rate (or rates) specified by ~~the Standard Nonforfeiture Law for Life Insurance, as amended in 1980~~ 36 O.S. § 4029 for policies issued in the same year and  
 (B) the mortality rates specified by ~~the Standard Nonforfeiture Law for Life Insurance, as amended in 1980~~ 36 O.S. § 4029 for policies issued in the same year or contained in such other table as may be approved by the Commissioner for this purpose.

(c) **Minimum paid-up nonforfeiture benefits.**

(1) If a universal life insurance policy provides for the optional election of a paid-up nonforfeiture benefit, it shall be such that its present value shall be at least equal to the cash surrender value provided for by the policy on the effective date of the election. The present value shall be based on mortality and interest standards at least as favorable to the policyowner as:

(A) in the case of a flexible premium universal life insurance policy, the mortality and interest basis guaranteed in the policy for determining the policy value, or

(B) in the case of a fixed premium policy the mortality and interest standards permitted for paid-up nonforfeiture benefits by ~~the Standard Nonforfeiture Law for Life Insurance, as amended in 1980~~ 36 O.S. § 4029.

(2) In lieu of the paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits, or, if applicable, a greater amount or earlier payment of endowment benefits.

### **PART 13. MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS**

#### **365:10-5-129. Open enrollment**

(a) An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an

## Permanent Final Adoptions

individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this subsection without regard to age.

(b) If an applicant qualifies under subsection (a) or subsection (d) of this Section and submits an application during the time period referenced in said subsection (a) or subsection (d)), and

(1) as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition; or

(2) as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

(c) Except as provided in Subsection (b) and Section 365:10-5-140, subsection (a) and subsection (d) of this Section shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

(d) At least one (1) of the ten (10) standardized Medicare supplement plans currently available from an issuer shall be made available to all applicants who qualify under this subsection by reason of disability. The issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual first enrolled for benefits under Medicare Part B. The premium rate charged for such disabled person may not exceed the lowest available aged premium rate for such plan.

(e) In the event Social Security backdates the Medicare enrollment date, the six-month enrollment period shall be calculated from the date the individual first receives notification of approval of Medicare coverage.

(f) A person who has a Medicare supplement policy, including a person entitled to Medicare benefits due to a disability, and has been covered by that policy with no gap in coverage greater than ninety (90) days beginning from the person's open enrollment period shall be provided continuity of coverage under a new supplement policy with the same or lesser benefits issued by the same or different issuer.

(1) The issuer of a new Medicare supplement policy for any person described in subsection (f) shall waive any medical underwriting or preexisting conditions exclusion to the extent benefits would have been payable under the prior Medicare supplement policy and any earlier Medicare supplement policy if those policies were still in effect. The subsection does not require the succeeding insurer to

pay any benefits that are not within the terms of coverage of the succeeding policy solely because they would have been paid by the prior policy.

(2) When a determination of benefits under the prior policy is required, the issuer of the prior policy shall, at the request of the issuer of the succeeding policy, furnish a statement of benefits available or pertinent information sufficient to permit verification of the benefit determination or the determination itself by the issuer of the succeeding policy. For purposes of this subsection, benefits of the prior policy are determined in accordance with the definitions, conditions, and covered expense provisions of that policy rather than those of the succeeding policy. The benefit determination must be made as if coverage had not been replaced.

(g) In the case that an individual enrolled in a Medicare supplement policy by reason of disability becomes eligible for open enrollment under subsection (a) of this Section, the issuer of the Medicare supplement policy shall provide notice of such rights no sooner than ninety (90) days and no later than sixty (60) days prior to the first day of the first month in which the individual becomes sixty-five (65) years of age.

[OAR Docket #23-545; filed 6-15-23]

### TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #23-546]

#### RULEMAKING ACTION:

PERMANENT final Adoption

#### RULES:

Subchapter 1. General Provisions

365:15-1-1. Purpose [REVOKED]

365:15-1-2. Severability [REVOKED]

365:15-1-7. Fictitious grouping defined [REVOKED]

365:15-1-10. Policy of insurance shall include insurer's complete name and street address and insurance claim warning [AMENDED]

Subchapter 3. Claims Resolution and Unfair Claim Settlement Practices [REVOKED]

365:15-3-1. Purpose [REVOKED]

365:15-3-2. Definitions [REVOKED]

365:15-3-2.1. Minimum standard of performance [REVOKED]

365:15-3-3. File and record documentation [REVOKED]

365:15-3-4. Misrepresentation of policy provisions [REVOKED]

365:15-3-5. Failure to acknowledge pertinent communications [REVOKED]

365:15-3-6. Standards for prompt investigation of claims [REVOKED]

365:15-3-7. Standards for prompt, fair and equitable settlements applicable to all insurers [REVOKED]

365:15-3-8. Standards for prompt, fair and equitable settlements applicable to automobile insurance [REVOKED]

365:15-3-9. Separability provision [REVOKED]

Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation

365:15-7-1. Purpose [REVOKED]

365:15-7-2. Severability [REVOKED]

#### AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

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

November 7, 2022

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ADOPTION: January 18, 2023
SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: January 18, 2023
LEGISLATIVE APPROVAL: Approved May 31, 2023, by SJR22
FINAL ADOPTION: May 31, 2023
EFFECTIVE: September 1, 2023
SUPERSEDED EMERGENCY ACTIONS: n/a
INCORPORATIONS BY REFERENCE: n/a
GIST/ANALYSIS: Removes unnecessary rules pursuant to the Governors Executive Order on rule regulation (EO2020-03) and updates a rule to reflect statutory provision.
CONTACT PERSON: Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

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 1. GENERAL PROVISIONS

- 365:15-1-1. Purpose [REVOKED]
The rules in this chapter provide regulations relating to property and casualty insurance.
365:15-1-2. Severability [REVOKED]
If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provisions to the persons or circumstances shall not be affected thereby.
365:15-1-7. Fictitious grouping defined [REVOKED]
(a) "Fictitious grouping" means a grouping by other than common majority ownership of the risk to be insured.
365:15-1-10. Policy of insurance shall include insurer's complete name and street address and insurance claim warning
(a) Purpose. The purpose of this section is to set forth information which shall be included on an insurance policy.
(b) Insurer's name and address required on policy.
(1) 36 O.S. § 3613 (1981), entitled "Contents of Policies in General," provides that each contract of insurance shall set forth the insurer's name and complete address [36:3613(B)(2)].

- (2) Every policy of insurance issued or delivered in this State shall specify, on its face, or by endorsement, or rider attached to the policy:
(1A) the complete name of the insurer;
(2B) the complete street address of the home or principal office of the insurer.
(eb) Insurance claim warning required on policy. Every insurance claim form and insurance policy issued or delivered in this State shall specify on its face, or application, or by endorsement, or rider attached to the policy, printed in ten point or larger, the warning statement type a statement that clearly indicates in substance, as required in 36 O.S. § 3613.1, the following:
(d) Claim forms. Every claim form shall contain a statement that clearly indicates in substance, as required in 36 O.S. § 3613.1, the following:

SUBCHAPTER 3. CLAIMS RESOLUTION AND UNFAIR CLAIM SETTLEMENT PRACTICES [REVOKED]

- 365:15-3-1. Purpose [REVOKED]
(a) This subchapter is promulgated pursuant to the Insurance commissioner's authority as set forth in 36 O.S. Section 1250.16. It prohibits insurers and agents doing business in the state from engaging in unfair claims settlement practices and provides that if any insurer or agent performs any of the acts or practices prohibited by the Unfair Claims Settlement Practices Act, the insurer or agent may be fined following an administrative hearing. The Unfair Claim Settlement Practices Act provides that a property and casualty insurer found by the Commissioner to engage in unfair claim settlement practices with such frequency as to indicate a general business practice shall be closely supervised by the Commissioner; the Commissioner may further require the property and casualty insurer to file periodic reports.
(b) The purpose of this subchapter is to set forth rules and procedures regarding the settlement of claims and to set forth the punishment for violation of this subchapter.
(c) The provisions of this subchapter are not exclusive and other acts, not specified herein, may also be deemed to be unfair claims settlement practices or unfair claim resolution acts.
365:15-3-2. Definitions [REVOKED]
For the purpose of this subchapter, the terms "agent", "claimant", "first party claimant", "insurer", "investigation", "notification of claim", "third party claimant", and "commissioner", shall have the meaning set forth in 36 O.S. § 1250.2, the Unfair Claims Settlement Practices Act.
365:15-3-2.1. Minimum standard of performance [REVOKED]
The minimum standard of performance for all insurers is to comply with the provisions of 36 O.S. § 1250.1 et seq.

# Permanent Final Adoptions

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## 365:15-3-3. File and record documentation [REVOKED]

(a) The insurer's claim files shall be subject to examination by the Commissioner or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed. Such records shall reflect the date the insurer or the insurer's agent received notification of the claim.

(b) Notification given to an agent of an insurer shall be notification to the insurer.

## 365:15-3-4. Misrepresentation of policy provisions [REVOKED]

(a) ~~Disclosure to first party claimants.~~ No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(b) ~~Agent shall not conceal relevant policy information.~~ No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(c) ~~Denial and proof.~~ No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(d) ~~Time limits on proof of loss.~~ No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.

(e) ~~Release signed by first party claimant.~~ No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(f) ~~Partial payments restricted.~~ No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

## 365:15-3-5. Failure to acknowledge pertinent communications [REVOKED]

(a) ~~Acknowledgment of receipt of claim.~~ Every property and casualty insurer, upon receiving notification of a claim shall, within thirty (30) business days, acknowledge the receipt of such notice unless payment is made within such period of time. If any acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insured and dated. Notification given to an agent of an insurer shall be notification to the insurer.

(b) ~~Response to inquiries from Insurance Department.~~ Every property and casualty insurer, upon receipt of any inquiry from the Insurance Department respecting a claim shall, within thirty (30) days from the date of such inquiry, furnish the Department with an adequate response to the inquiry.

(c) ~~Response to other pertinent communications.~~ An appropriate reply shall be made within thirty (30) days of receipt on all other pertinent communications from a claimant which reasonably suggests that a response is expected.

(d) ~~Insurer shall provide forms and assistance on claims to first party claimants.~~ Every property and casualty insurer, upon receiving notification for claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within thirty (30) days of notification of a claim shall constitute compliance with subsection (a) of this section.

## 365:15-3-6. Standards for prompt investigation of claims [REVOKED]

Every property and casualty insurer shall complete investigation of a claim within 45 business days after receipt of proof of loss, unless such investigation cannot reasonably be completed within such time.

## 365:15-3-7. Standards for prompt, fair and equitable settlements applicable to all insurers [REVOKED]

(a) ~~Claims accepted or denied within 45 days.~~

(1) Within 45 business days after receipt by the property and casualty insurer of properly executed proof of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer. If investigation cannot reasonably be completed within such time the insurer shall notify the claimant within 45 business days after receipt of the proofs of loss giving reasons why more time is needed. No insurer shall deny a claim on the grounds of a specific policy provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the claimant in writing and the claim file of the insurer shall contain a copy of the denial.

(2) Where there is a reasonable basis supported by specific information available for review by the Commissioner that the first party claimant had fraudulently caused or contributed to the loss by arson, the insurer is relieved from the requirements of this section. Provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(b) ~~Notation of denial in claim file until confirmed in writing.~~ If a claim is denied for reasons other than those described in (a) of this section and is made by any other means than writing, an appropriate notation shall be made in the claim file of the property and casualty insurer until such time as a written confirmation can be made.

(c) ~~Notification of delay in determination of acceptance or denial.~~ If the property and casualty insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within 45

business days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty five days from the date of the initial notification and every forty five days thereafter, send to such claimant a letter setting forth the reasons additional time is needed for investigation.

~~(d) **Failure to settle on grounds of another party's liability.** Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.~~

~~(e) **Negotiations shall not be delayed unreasonably.** Insurers shall not continue to delay negotiations for settlement with a claimant who is neither an attorney nor represented by an attorney, for a length of time which causes the claimant's rights to be affected by a statute of limitations or a policy or contract time limit, without giving the claimant written notice that the time limit may be expiring and may affect the claimant's rights. Such notice shall be given to first party claimants thirty days before the date on which such time limit may expire. Such notice shall be given to third party claimants sixty days before the date on which such time limit may expire.~~

~~(f) **Rights of third party claimant.** No insurer shall make statements which indicate that the rights of a third party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third party claimant of a provision of a statute of limitations.~~

~~(g) **Lawsuit supercedes time limitations.** If a lawsuit on the claim is initiated, the time limits provided for in this section shall not apply.~~

**365:15-3-8. Standards for prompt, fair and equitable settlements applicable to automobile insurance [REVOKED]**

~~(a) **Automobile total losses.** When the insurance policy provides for the adjustment and settlement of first party automobile total losses on the basis of actual cash value or replacement with another of like kind and quality, one of the following methods must apply:~~

~~(1) The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.~~

~~(2) When a first party motor vehicle total loss is settled on a basis which deviates from the methods described in (1) and (2) of this subsection, the deviation must be supported by documentation giving particulars of the automobile condition. Any deductions from such cost, including but not limited to, deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. The basis for such settlement shall be fully explained to the first party claimant.~~

~~(b) **Third party claimants.** Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's insurance policy or insurance contract.~~

~~(c) **Unreasonable travel.** Insurers shall not require a claimant to travel unreasonably either to inspect a replacement motor vehicle, to obtain a repair estimate or to have the motor vehicle repaired at a specific repair shop.~~

~~(d) **Including deductible in subrogation demands.** Insurers shall, upon the claimant's request, include the first party claimant's deductible, if any, in subrogation demands. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. No deduction for expenses can be made from the deductible recovery unless an outside attorney is retained to collect such recovery. The deduction may then be for only a pro rata share of the allocated loss adjustment expense.~~

~~(e) **Estimates.** If an insurer prepares an estimate of the cost of motor vehicle repairs, such estimate shall be in an amount for which it may be reasonably expected the damage can be satisfactorily repaired. The insurer shall give a copy of the estimate to the claimant and may furnish to the claimant, the names of one or more conveniently located repair shops, if requested by the claimant.~~

~~(f) **Reductions due to betterment or depreciation.** When the amount claimed is reduced because of betterment or depreciation, all information for such reduction shall be contained in the claim file. Such deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions~~

~~(g) **Repairs.** When the insurer elects to repair a damaged motor vehicle and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged motor vehicle to be restored to its condition prior to the loss at no additional cost and within a reasonable period of time. The claimant shall also be furnished an itemized statement of repair at the time of acceptance of the repaired motor vehicle.~~

**365:15-3-9. Separability provision [REVOKED]**

If any provisions of this subchapter, or application of such provisions to any person or circumstances shall be held invalid, the remainder of the subchapter, and the application of such provisions to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**SUBCHAPTER 7. PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION**

**365:15-7-1. Purpose [REVOKED]**

The rules in this chapter provide regulations relating to property and casualty insurance.

# Permanent Final Adoptions

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## 365:15-7-2. Severability [REVOKED]

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the section and the application of such provisions to the persons or circumstances shall not be affected thereby.

*[OAR Docket #23-546; filed 6-15-23]*

## TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. OTHER LICENSEES

*[OAR Docket #23-547]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Chapter 25. Other Licensees [AMENDED]

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Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

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November 7, 2022

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### PUBLIC HEARING:

January 4, 2023

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September 1, 2023

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 7. Companies

Part 11. Credit for Reinsurance

365:25-7-65. Credit for reinsurance- Reinsurers maintaining trust funds [AMENDED]

365:25-7-66. Credit for reinsurance required by law [AMENDED]

365:25-7-67. Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of 365:25-7-62 through 66 and 365:25-7-73 [AMENDED]

365:25-7-68. Trust agreements qualified under Section 365:25-7-67 [AMENDED]

365:25-7-70. Reinsurance contract [AMENDED]

365:25-7-72. Letters of credit qualified under 365:25-7-67 [AMENDED]

365:25-7-73. Credit for reinsurance- certified reinsurers [AMENDED]

365:25-7-74. Credit for reinsurance- reciprocal jurisdiction [NEW]

### Gubernatorial approval:

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22-387

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

Removes unnecessary rules pursuant to the Governors Executive Order on rule regulation (EO2020-03).

Formalizes emergency rules on Credit for Reinsurance.

Updates language to reflect statutory provisions.

### CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

**DUE TO THE 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 INSURANCE DEPARTMENT, LOCATED AT 400 NE 50TH STREET, OKC, OK 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):**

Regulation is being revoked due to the Governors EO 2020-03. Rule changes remove unnecessary regulation that is already addressed in the statutes and assists our licensees by reducing the number of regulations they must review for compliance. We also update the regulations to reflect statutory changes that were made last year on Insurance Consultants, Customer Service Representatives, Bail Bondsman, Captive insurers, Cemetery Merchandise Trusts, Prepaid Funeral Home Benefits, and Pharmacy Benefit Managers. We are also updating all of our forms as many are outdated or not required any longer. Removes an additional CE requirement, which aligns our Department with the NAIC Producer Licensing Model Act. The changes to the Cemetery Merchandise Trust rules help to better align with other similar entity types and reduce any duplicate statutory language. Makes 2022 emergency rules on Credit for Reinsurance permanent to ensure compliance with a larger effort to modernize reinsurance regulation in the United States. The adopted changes are in compliance with the Covered Agreements between the United States and the EU as well as the UK. These agreements were entered into under the authority of the Dodd-Frank Act and the revisions ensure that the States are in compliance and therefore not subject to preemption by the federal government. Finally, the regulations are updated to reflect Annuity & Suitability & Best Interest Standard Model #275 training requirement.

*[OAR Docket #23-547; filed 6-15-23]*

## TITLE 365. INSURANCE DEPARTMENT CHAPTER 40. HEALTH MAINTENANCE ORGANIZATION (HMO)

*[OAR Docket #23-548]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Financial

Part 3. Holding Company System

365:40-3-17. Forms: general requirements [AMENDED]

### AUTHORITY:

Insurance Commissioner; 36 O.S. §§ 307.1, 1541, 1641, 6123, 6958-6968; 59 O.S. §§ 358 and 1302.

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

November 7, 2022

### COMMENT PERIOD:

December 1, 2022-January 6, 2023

### PUBLIC HEARING:

January 4, 2023

### ADOPTION:

January 18, 2023

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

January 18, 2023

### LEGISLATIVE APPROVAL:

Approved May 31, 2023, by SJR22

### FINAL ADOPTION:

May 31, 2023

### EFFECTIVE:

September 1, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

Updated to allow for electronic filings, electronic signatures and electronic statements.

**CONTACT PERSON:**

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

**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. FINANCIAL**

**PART 3. HOLDING COMPANY SYSTEM**

**365:40-3-17. Forms: general requirements**

(a) **Forms A, B, C, D, E and R.** HMO Forms A, B, C, D, E and R, as set forth in Appendices A, B, C, D, E, and F of this Chapter, are intended to be guides in the preparation of the statements required by Article 16A of Title 36, Section 6930 of Title 36 and O.A.C. 365:40-3-12, 13 and 16. They are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) **Filing statements.** ~~Two (2) complete copies of each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Insurance Commissioner by personal delivery to the Office of the Insurance Commissioner in Oklahoma City, Oklahoma, or by mail addressed to the Insurance Commissioner of the State of Oklahoma, 3625 NW 56<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma 73112.~~ Statements shall be filed electronically. Third-party verifications sent by the third party may be filed electronically. A copy of an HMO Form B and C shall be filed in each state in which an HMO is authorized to do business, if the HMO authority of that state has notified the HMO of its request in writing, in which case the HMO has thirty (30) days from receipt of the notice to file such form. ~~At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed.~~ Appropriate electronic signatures are permitted. The Commissioner may request a wet signature at his or her discretion. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(c) **Format of statements.** ~~Statements should be prepared on paper 8 1/2" x 11" in size and preferably bound at the top or the top left hand corner. Electronic statements shall meet all technical requirements of the Commissioner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size.~~ All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for reproduction/photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on copies. Statements shall be in the English language, and monetary values shall be stated in United States Currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States Currency.

[OAR Docket #23-548; filed 6-15-23]

**TITLE 375. OKLAHOMA STATE BUREAU OF INVESTIGATION  
CHAPTER 9. OKLAHOMA OPEN RECORDS**

[OAR Docket #23-505]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Criminal History Information
  - 375:9-1-1.1. Definitions [AMENDED]
  - 375:9-1-2. Request for criminal history records [AMENDED]
    - 375:9-1-2.1. Payment in arrears for criminal history checks [AMENDED]
    - 375:9-1-3.1. Challenges to the correctness and/or completeness of criminal history records [AMENDED]
  - 375:9-1-4. Open Records Act requests for criminal history records [AMENDED]
  - 375:9-1-5. Obtaining criminal history record [AMENDED]
  - 375:9-1-6. Form and content of criminal history data [AMENDED]
- Subchapter 7. Uniform Crime Report
  - 375:9-7-1. Purpose [AMENDED]
  - 375:9-7-2. Definitions [AMENDED]
  - 375:9-7-3. Requests for the UCRCrime in Oklahoma [AMENDED]

**AUTHORITY:**

74 O.S. 150 et seq; Oklahoma State Bureau of Investigation

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

January 6, 2023

**COMMENT PERIOD:**

February 1, 2023 through March 3, 2023

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

March 8, 2023

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

March 8, 2023

**LEGISLATIVE APPROVAL:**

Approved May 31, 2023 by SJR 22

**FINAL ADOPTION:**

May 31, 2023

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September 1, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

# Permanent Final Adoptions

## GIST/ANALYSIS:

Amendments and additions to Chapter 9 of the Oklahoma State Bureau of Investigation [OAC 375:9] are proposed to implement changes made to the rules to reflect actual practices and changes to federal requirements

## CONTACT PERSON:

Kim Conyers, General Counsel, Oklahoma State Bureau of Investigation, 6600 North Harvey Place, Oklahoma City, OK 73116

**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 1. CRIMINAL HISTORY RECORDS

### 375:9-1-1. 1 Definitions

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

**"Arrears"** means money which is owed but left unpaid until a future date.

**"Bureau"** means the Oklahoma State Bureau of Investigation.

**"CHIRP"** means the Criminal History Information Request Portal, the OSBI's online system for members of the public to request criminal history record checks.

**"Commercial purpose"** means for purposes of employment, licensing (including Self-Defense Act), adoption, foster parenting, child care, insurance, workers compensation claims, tenancy requirements, civil law suit, and any criminal history record check mandated by law.

**"Criminal history record"** means the "rap sheet" form prepared by the OSBI containing a chronological history of individuals arrests, charges and the dispositions of same within the state of Oklahoma including "rap-back information" as determined appropriate and necessary by the OSBI. OSBI criminal history records do list an individual's national arrest status.

**"Criminal justice agency"** means an agency which is a governmental agency which meets the definition of a criminal justice agency as contained in the Department of Justice Regulation on Criminal Justice Information Systems (title 28, CFR, Part 20, Subpart A), which defines criminal justice agency as "(c)...(1) courts; (2) a governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice ("allocates a substantial portion" has been interpreted to mean more than 50% by the originator of Regulations. State and Federal Inspector General offices are included.) (d) The administration of criminal justice means performance by any of the following activities; detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of

criminal justice shall include criminal identification activities and the collections, storage, and dissemination of criminal history record information."

**"Director"** means the Director of the Oklahoma State Bureau of Investigation.

**"Non-serious"/"Non-reportable offense"** means offenses which are not recorded in criminal history records, adapted from the list of FBI non-serious offenses. Other misdemeanor and municipal offenses may also qualify as non-serious. See offenses exempted definition. ~~Non-serious~~ Non-reportable offenses include:

(A) ~~Allow minor in bar; Abusive language; Alms solicitation; Amnesia; AWOL;~~ (unless referred to District Court);

(B) ~~Begging; Breach of Peace; Body attachments; Bond (surrender, increase, exoneration, or revocation);~~

(C) ~~Card game playing;~~ Careless or reckless driving (As long as under influence of drugs or liquor, hit and run, vehicular manslaughter; involuntary manslaughter NOT involved); Civil commitment; ~~Criminal registration;~~ Curfew violation;

(D) ~~Detention only; Detoxification; Dice game playing; Disregarding traffic signals; Disobeying lawful order; Disturbance; Disturbing public worship; Disturbing the peace' Dog laws; Drag racing; Driving while license suspended or revoked; Drunk; (non-traffic charge); Drunk in or about auto; Drunk in public restroom or resultant; Drunk on highway; Drug Court sanction/District Court sanction;~~

(E) Ex-convict registration;

(F) ~~Failure to give good account; Failure to operate in prudent manner (auto); Failure to register in hotel or register in hotel with someone other than husband or wife; Failure to pay child support warrant; false fire alarm; fighting; fireworks; fishing without a license; for identification purposes only;~~

(G) Failure to yield for emergency vehicle (blue light or siren); ~~False fire alarm;~~ Felony registration; ~~Fireworks; Fishing without a license; Fighting; For Identification Purposes only;~~

(H) General principals; Going through red light;

(I) ~~Head lighting; Hold (In-State, Federal, and Tribal ONLY);~~ Hunting without a license; ~~Hitchhiking;~~

(J) ~~Illegal consumption of beer; Illegal possession of beer; Inadequate brakes; Inquiry (unaccompanied by criterion charge); Interview; Intoxication; Investigation (unaccompanied by criterion charge); Investigation (accompanied by criterion charge); Investigation mental; jaywalking; juvenile commitment (mental);~~

(K) ~~Late hours; Loafer; Lodger; Littering; Loitering; Lottery playing; Lunacy; (unless print pertains to major charge);~~

(L) ~~Mandatory appearance; Material witness; Medical treatment; Mental/Lunacy; Minor in bar;~~



Minor attempting to buy beer/liquor; Minor in consumption; Minor in gambling house; Minor in possession of alcohol/~~beer~~; ~~Misrepresenting age (liquor)~~; ~~Moohing~~; Minor in possession of tobacco;

(M) ~~Narcotics registration~~; ~~Negligent driving~~; No driver's license (operating auto with altered license is considered a serious charge); ~~No inspection sticker or expired sticker~~; ~~no visible means~~;

(N) Obstructing traffic; Operating without a license;

(O) ~~Panhandling/aggressive panhandling~~; Parental responsibility-failure to control juvenile; Parking warrants; ~~Patient (unless print pertains to MAJOR charge, i.e. rape, murder)~~ Peace bond; ~~Peace warrant~~; Possession of lottery tickets' policy slips or numbers; Possess of open bottle or container; ~~Probation or parole check~~; Profane language; Public drunk; Public Intoxication; Public nuisance; ~~Purchasing liquor as minor~~;

(P) Re-booked on suspension; Runaway;

(Q) Sanction (Drug Court/District Court); ~~Safe-keeping~~; ~~Sex registration~~; ~~Sleepover~~; ~~Sleeping in the subway~~; ~~Speeding~~; ~~State work furlough~~; ~~Suspect~~; ~~Suspicion (unaccompanied by criterion charge)~~; ~~Suspicious person~~; ~~Sentencing~~; ~~Soliciting without a permit~~; Suicide (attempted);

(R) Taxes due the state; Transporting open container; Traffic violations (minor traffic, vehicle and licensing charge); ~~train riding(hobo)~~; ~~Tramp~~; ~~Transient~~; Truancy; ~~Frustry commitment~~;

(S) ~~Urinating in public~~; ~~Uninsured motor vehicle~~; ~~Unlawful blood alcohol content (alone only not with driving charge)~~; Use of language to arouse anger;

(T) ~~Vagabond or rogue~~; ~~Vagrancy~~; ~~Venereal control registration~~; ~~Visiting a common nuisance~~; Voluntary commitment;

(U) ~~Walking on highway~~; ~~Wayward~~; ~~Weekender~~; Writ; Warrant (failure to appear, pay or comply for a non-reportable offense);

~~(V) Use of language to arose anger~~;

**"Offenses exempted"** means ~~non-serious non-reportable~~ offenses or crimes listed under the definition of ~~non-serious non-reportable~~ offenses. The OSBI may also determine that other misdemeanor and municipal offenses are also ~~non-serious non-reportable~~. Offenses may be considered by the OSBI to be ~~non-serious non-reportable~~ if it is a minor infraction which would not result in substantial harm to any individual or to the public's health or safety. Where harm is pecuniary, substantial shall mean an amount in excess of \$50.00. For example, although the offense of driving under the influence is a misdemeanor it does not qualify as a ~~non-serious non-reportable~~ offense. It shall be maintained in criminal history records because the offense poses a significant risk of harm to the individual's public safety.

**"OSBI"** means the Oklahoma State Bureau of Investigation

**"Other purpose"** shall include such things as personal safety and community awareness.

**"Rap-back information"** means a follow-up chronological history of individuals arrests, charges and the dispositions of same within the state of Oklahoma that occur after the date after the request.

**"Request"** means a request for criminal history records from the OSBI.

**"Requestor"** means the person, governmental agency, or other entity who makes a request for criminal history records.

**375:9-1-2. Request for criminal history records**

(a) **Obtaining criminal history records.**

(1) Members of the public may request criminal history records from the OBSI online through OSBI's Criminal History Information Request Portal (CHIRP) or by completing a Record Check Request Form and ~~faxing~~, delivering or mailing the form to the following address: Oklahoma State Bureau of Investigation, Criminal History Reporting Unit, 6600 N. Harvey, Oklahoma City, Oklahoma 73116.

(2) Delivery of the request in person may be made Monday through Friday (except holidays) between the hours of 8:30 a.m. and 4:30 p.m. unless otherwise posted in advance.

(A) If the request is made by an individual for the sole purposes of determining whether or not his or her own criminal history records is accurate, the cashier at the OSBI will have the individual complete an "Individual Request for Criminal History Record Inspection Form."

(B) Upon completion of the form, a records check clerk will conduct a criminal history check based upon the information provided. After completion of this check, the original form will be returned to the requestor, along with a copy of the requestor's criminal history record if any such record exists.

(C) The request form and the individual's criminal history record will be stamped, dated, and initialed by the records clerk prior to their issuance to the requestor. A copy of the request form will be retained in the files of the OSBI.

(D) If a fee is applicable, the cashier will accept payment and prepare a receipt. One copy of the receipt shall be given to the requestor. A records clerk will conduct a criminal history check based on the information provided, returning the completed form to the requestor. The form(s) and record(s) will be stamped with the appropriate stamp(s), dated, and initialed by the searcher prior to their return. A copy of the completed record check form and receipt will be retained for the OSBI files. Criminal Justice Agencies will not be charged for these services.

(3) All requests delivered by mail shall include a stamped, self-addressed envelope. Replies will be made by return mail.

(4) All request forms must be typed or the information legibly printed by the requestor. Handwritten requests which are not easily read will be returned unprocessed.

## Permanent Final Adoptions

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(5) Individuals wanting to request criminal history information online must do so through the OSBI's CHIRP System.

(A) Requestors must create an account to access CHIRP. Account access is free and OSBI will only charge for the searches requested. The third party payment site may charge an online convenience transaction fee for requestors paying by credit card or electronic funds transfer (EFT).

(B) Search requests may be submitted at any time. Searches submitted through CHIRP will be checked against OSBI's computerized criminal history databased for potential candidate matches. Searches where no potential candidate matches are identified will be returned automatically. Searches requiring OSBI Review, which includes all searches of the Department of Corrections Sex Offender and Violent Offender Registries, will be conducted by OSBI Staff during normal business hours (Monday through Friday, 8:30 a.m.- 4:30 p.m., excluding holidays). OSBI's Criminal History Database is sometimes unavailable for system maintenance.

(C) Billing customers may select from possible candidates identified based upon the subject identifiers provided or can elect to have OSBI staff make candidate determinations during regular business hours.

(D) Search results, in electronic format, will be available in CHIRP through the requestors account. Search requests will remain in CHIRP indefinitely, but search results expire after 60 days and will be removed.

(E) Search result forms will contain the date the search was requested and the date OSBI's computerized criminal history database was queried to determine the result.

(b) **Required information.** Persons, businesses, government agencies, and other entities making requests for criminal history records shall provide the following information to the OSBI:

- (1) the full name of the subject of the record;
- (2) the date of birth or approximate age of the subject of the record;
- (3) the social security number of the subject, if known;
- (4) inked fingerprints of the subject, if ~~available~~applicable; and,
- (5) any other information which tends to establish the identity of the subject such as sex and race.

(c) **Method of search.** Searches for criminal history records shall be conducted by systems and personnel of the Oklahoma State Bureau of Investigation.

(d) **Fees.**

(1) Requests which clearly would cause excessive disruption of the Oklahoma State Bureau of Investigation's essential functions or any request for criminal history information made by any private entity, state agency, board, department, or commission for licensing, or other non-law

enforcement purpose will pay a fee based on the following schedule for the type of record requested:

(A) Name Search, Oklahoma records only, the cost is \$15.00.

(B) Fingerprint search, Oklahoma records only, the cost is \$19.00.

(C) Fingerprint search, Oklahoma and FBI records, the cost is \$41.00. Fingerprint searches of Oklahoma and FBI records sought under the authority of the federal Volunteers for Children Act/National Child Protection Act shall be reduced to ~~\$35.00.~~ \$29.50.

(D) Oklahoma Department of Corrections Offender Lookup

(i) Mary Rippy Violent Offender Check, the cost is \$2.00.

(ii) Sex Offender Check, the cost is \$2.00.

(2) All requests not for a commercial purpose must be accompanied by a document copying fee of \$.25 per page. Certified copies of any requested documents will be supplied for \$1.00 per page.

(3) Persons checking the accuracy of their records will not be charged a fee.

(4) Fees may be paid by nationally recognized credit card, electronic funds transfer, money order, cashier's check, certified check, or cash when the application is made in person. Cash will not be accepted with applications delivered by mail.

(5) Personal checks will not be accepted under any circumstances. Fees submitted for requests numbering two or more shall be paid with one credit card or electronic funds transfer transaction, money order, cashier's check, certified check, or business check rather than with a \$15.00 remittance for each name search requested. Checks shall be made payable to OSBI.

### **375:9-1-2.1. Payment in arrears for criminal history checks**

(a) **Who may request payment in arrears.** Public schools, government agencies, corporations or other commercial entities who anticipate making frequent voluminous requests for criminal history records may make application to the OSBI for the privilege of making payment in arrears for this service.

Such applications must include the following information:

(1) Name, business address, and service agent of entity making application, and a current credit report.

(2) The minimum number of monthly requests to be 50.

(3) In the case of corporations, certifications from the Oklahoma Secretary of State that corporate taxes are paid in full and that the corporation is licensed to do business in the State of Oklahoma.

(4) To qualify for establishing an account, the customer must demonstrate their need through three months of 50 or more requests.

(b) **Payment in arrears procedures.**

(1) Once the OSBI has agreed to accept payment in arrears, the applicant must advise the OSBI in writing of any changes which affect the application information.

(2) Payments in arrears may be made by cashiers check, or drawn upon an account of a bank or savings and loan. Checks should be made payable to the OSBI. Payments must be made within (30) thirty days of the date of billing invoice.

(3) The OSBI may bill in arrears certain customers who submit fifty or more subject names per month. The OSBI may discontinue billing in arrears those customers who fail to submit fifty or more subjects per month for two consecutive months. Customers who are removed from billing will not be added back as a billing customer; and if so, can only be re-instated with a letter of explanation on how the previous problem had been corrected and a statement the customer acknowledges that future ~~billings~~ billings not meeting the minimum requirement will result in cancellation of the privilege with no possibility of re-instatement. The requirement of fifty or more subjects per month does not apply to the OSBI for billing arrears as outlined in (a) of this section. The OSBI Director shall determine on a case by case basis which public schools and state agencies are to be billed in arrears.

(4) The OSBI may discontinue billing in arrears those customers whose account is more that (30) thirty days delinquent from the date the invoice was printed. Such customers must repay for any requests made after notification in writing of the discontinuation of their billing account. Notifications will be made by certified mail.

~~(5) Request forms that are faxed by billing customers shall not include more than ten names. Customers will be billed for duplicate names and duplicate faxes.~~

~~(6-5)~~ Request forms must be typed or the information legibly printed by the requestor. Handwritten requests which are not easily read will be returned unprocessed.

~~(7-6)~~ The minimum monthly requirement must be maintained on an ongoing basis or the billing privilege will be revoked (occasional volume less than the minimum monthly requirement will be allowed provided it does not exceed three months in a twelve month period.) Re-instatement will only be allowed upon written explanation of the change in business that will result in maintaining the minimum monthly requirement; failure to maintain the level for more that three months in a twelve month period will result in permanent cancellation of account privileges.

**375:9-1-3.1. Challenges to the correctness and/or completeness of criminal history records**

(a) **Who may challenge the correctness and/or completeness of criminal history records.** Only those persons, their parent(s) in the case of a minor, their attorney(s), or their legal guardian(s) whose records are in questions may challenge the correctness and/or completeness of their criminal history records.

(b) **Procedure to challenge the correctness or completeness when the identify of the person identified in the record is not in question.**

(1) All documentation identified in this subsection shall be delivered or mailed to the OSBI at the following

address: Oklahoma State Bureau of Investigation, Criminal History Management Unit, 6600 N. Harvey, Suite 140, Oklahoma City, Oklahoma 73116. Persons identified in subsections (a) of this section who believed their criminal history record(s) to be incorrect and/or incomplete may seek to correct or supplement the records by providing the OSBI with certified copies of the following official documents pertaining to the applicant's case. Included with this documentation, the person must also provide his or her current mailing address to the OSBI. Persons who fail to provide such address will not have their requests processed.

- (A) Fingerprint card submissions;
- (B) Certified court documents;
- (C) Arrest Disposition Reporting System (ADRS) entries;
- (D) Official documents from a District Attorney (internal forms or letters on District Attorney letterhead with an original signature of the District Attorney or Assistant District Attorney may be submitted along with a certified document from the court clerk indicating no court records are available); or
- (E) Official documents from an arresting agency (internal forms or letters on letterhead with an original signature of the agency head or the agency head's designees may be submitted along with a certified document from the court clerk indicating no court records are available).

(2) The OSBI shall review the documentation provided by the person(s) challenging the record and shall take appropriate action to correct and/or supplement the criminal records when the OSBI deems it appropriate.

(c) **Procedure to challenge the correctness or completeness when the identity of the person identified in the records is in question.**

(1) If an individual claims not to be the same person as identified on a criminal history record despite matching identifying information in the record, an accuracy check shall be performed as follows:

(A) The individual must present themselves, a valid government issued photo identification, and their social security card to the OSBI during regular business hours of the OSBI at the following address: Oklahoma State Bureau of Investigation, Criminal History Management Unit, 6600 N. Harvey, Oklahoma City, Oklahoma 73116.

(i) ~~Upon an individual showing to the satisfaction of the Director of the OSBI Information Services Division or his designee that presenting themselves to the OSBI in person at the address of the of the Oklahoma State Bureau of Investigation at 6600 N. Harvey, Oklahoma City, Oklahoma 73116 shall constitute an undue burden, the person shall be allowed to present themselves and photo identification at an alternate law enforcement agency location approved by the Director of the OSBI Information services Division or his designee for the purpose of being fingerprinted as~~

## Permanent Final Adoptions

~~set forth in these rules.~~ Individuals who are unable to present themselves to the OSBI during regular business hours without undue burden may request to present themselves, a valid government issued photo identification, and their social security card to an alternate law enforcement agency. The Director of the Information Services Division of the OSBI or his/her designee shall review and approve/deny such requests. If approved, the Director or designee will specify which law enforcement agency the individual will use for being fingerprinted as set forth in these rules.

(ii) Any such alternative location so approved shall forward the fingerprints, along with a copy of the individual's government issued photo identification, social security card and photo of the individual directly to the following address: Oklahoma State Bureau of Investigation, Criminal History Management Unit, 6600 N. Harvey, Oklahoma City, Oklahoma 73116. A letter, written on agency letterhead, shall accompany the documentation and shall identify the law enforcement officer(s) who met with and fingerprinted the individual. Such fingerprints shall not be returned to the person so fingerprinted except by the OSBI, after following the procedure to verify the accuracy of a criminal history record as set forth in these rules.

(B) The individual will be fingerprinted and have his/her government issued photo identification and social security card verified by OSBI personnel or alternative personnel approved on a case-by-case basis by the Director of the Information Services Division of the OSBI or his designee.

(C) The prints of the individual will be compared to the fingerprints associated with the contested criminal history record.

(D) If it is determined that the individual contesting the records is the same person identified in the contested criminal history records, the individual will be ~~given a copy of his/her criminal history record~~ notified accordingly.

(E) If it is determined that the individual contesting the records is not the same person identified in the contested criminal history record, the individual's fingerprints taken by OSBI or designated law enforcement personnel will be processed through OSBI AFIS to ~~check/determine~~ if the individual is the subject of any other criminal history record.

(F) if a check of those prints through OSBI AFIS indicates the individual is the subject of some other criminal history records, but not the contested record which the person contends inaccurately identifies him, the Director of the OSBI may direct that the contested information be taken off the public record and not disseminated to members of the general public. Any documentation supporting such a decision shall be retained by the OSBI and made available to law

enforcement agencies and District Attorney offices for criminal justice purposes.

(G) If a check of those prints through OSBI AFIS indicates the individual has not criminal history record, the fingerprints care will be stamped with a stamp that indicates a search of that fingerprint card through OSBI reveals that the individual does not have an arrest record in the files of the OSBI and that the individual is not the same person associated with the contested criminal history record now determined to be inaccurate. The individual will also be provided with a letter on official OSBI letterhead indicating the same information.

(H) If a check of those prints through OSBI AFIS indicates that individual has no criminal history record, the Director of the OSBI may direct that the records be taken off the public record and not disseminated to members of the general public. Any documentation supporting such a decision shall be retained by the OSBI and made available to law enforcement agencies and District Attorney offices for criminal justice purposes.

### (d) **Obtaining a copy of an individual's own criminal history for the purpose of checking accuracy.**

(1) An individual may request a copy of his or her own criminal history record for the purposes of checking the accuracy of such record.

(2) An individual shall be provided with one copy of such record free of charge. All other requests for the criminal history record by the individual shall require payment of the fee as set forth by administrative rule unless the criminal history record reflects new information that has been added or modified as a direct result of documentation provided by the individual since the last free copy was provided. In that case, another free copy of the criminal history record shall be provided.

(3) Any such copy of a criminal history record obtained for the purpose of checking its accuracy shall not be used for any other purpose and shall not be given to any other person. Such criminal history records shall be stamped with a stamp indicating that the record is not to be used for employment or other purposes.

(4) If a request for a criminal history record is made in order to check the accuracy of the record and the check indicates that no record exists, the person requesting the record shall be informed of that fact verbally. If the person wishes to obtain further documentation of that fact, they shall pay a record search fee as set forth by administrative rule.

### **375:9-1-4. Open Records Act requests for criminal history records**

(a) **Open Records Act requests.** When a request for a criminal history record is properly submitted pursuant to Title 51 O.S. §24A.1, et seq. (the Oklahoma Open Records Act) it shall be forwarded to the OSBI's Criminal Identification Section. A criminal history check will be performed and ~~an attempt will be made to locate dispositions for all arrest entities on any~~

~~record found as a result of such a search. The record check results will be sent to the requestor along with a form letter.~~

(b) **Freedom of Information Act request.** Those requests for criminal history records which purport to be submitted pursuant to Title 5 U.S.C. section 552 et seq. (The Freedom of Information Act), shall be treated as Open Records Act requests.

**375:9-1-5. Obtaining criminal history record**

(a) A requestor may not seek a national criminal history record unless there is a statutory ~~requirement~~authorization underlying the request which provides that a national or FBI criminal history records check may be conducted for a particular governmental purpose.

(b) The OSBI provides specific informational services to the public in processing criminal history records. OSBI employees receive and process requests which have all the necessary information for conducting the search. When OSBI delivers the results of a criminal records check to a requestor, OSBI employees shall explain the elements of the record for the requestor. OSBI employees will refer the requestor to the arresting agency for additional information. OSBI employees shall not give advice to the requestor about how the criminal history information applies to the requestor's reason or purpose in obtaining the record. The requestor must use his or her discretion, seek counsel on the issued from the office which gave rise to the request, and analyze any laws and regulations which may apply to the requestor's purpose.

**375:9-1-6. Form and content of criminal history data**

(a) The form of reporting criminal history information shall be on the form of OSBI fingerprint cards, on the attached carbon, forms or supplemental forms. The content of the information to be reported shall be:

- (1) Initial report of arresting agency:
  - (A) Arresting agency ORI Number
  - (B) Offender Tracking Number (OTN)
  - ~~(A)~~ Name and arrestee and known aliases
  - ~~(B)~~ Date of arrest
  - ~~(C)~~ Date of birth
  - ~~(D)~~ Place of birth
  - ~~(E)~~ Alien registration number, if applicable
  - ~~(F)~~ Sex of arrestee
  - ~~(G)~~ Age of arrestee
  - ~~(H)~~ Charge designation (misdemeanor or felony)
  - ~~(I)~~ Offenses of arrest
  - ~~(J)~~ Social Security Number
  - ~~(K)~~ Physical characteristics of arrestee (race, height, weight, eyes, hair)
  - ~~(L)~~ Right and left hand fingerprints
  - ~~(M)~~ Signature of arrestee and official taking fingerprints
  - ~~(N)~~ Disposition, if available (release on bail; released without charges; declination to prosecute; dismissed; guilty plea to charge; sentences; deferred sentence or prosecution; acquittal)

(2) Subsequent reports by District Attorneys, Prosecuting Authorities or Municipal Courts:

- (A) Disposition (dismissal, guilty plea and charge, conviction, acquittal, deferred sentence or prosecution sentence)
- (B) Involvement of controlled substances
- (C) Offenses actually charged
- (D) Date of charges filed
- (E) Court case number identification
- (F) Designation as felony or misdemeanor
- (G) Number of counts
- (H) Offenses identified by code

(b) The method of reporting criminal history information to the OSBI shall be by completion of OSBI fingerprint card forms and the attached carbon forms commonly referred to as "buck slips". OSBI shall supply all reporting entities with fingerprint cards. The entity reporting the information shall ~~be transmitted~~transmit the information by mail to the OSBI.

**SUBCHAPTER 7. UNIFORM CRIME REPORT**

**375:9-7-1. Purpose**

The rules of this subchapter have been adopted for the purpose of complying with the relevant provisions of 75 O.S., Sections 250 et seq. (The Oklahoma Administrative Procedures Act). The rules contained in this subchapter outline the procedures for obtaining copies of the publication ~~"Uniform Crime Report,"~~Crime in Oklahoma.

**375:9-7-2. Definitions**

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

"**Bureau**" means the Oklahoma State Bureau of Investigation.

"**Director**" means the Director of the Oklahoma State Bureau of Investigation.

"**Educational institution**" means any school, institution of higher education, or institution established for the purpose of training law enforcement officers, whether publicly or privately operated, which is not operated for profit.

"**Law enforcement agency**" means any governmental law enforcement agency.

"**Law enforcement professional**" mean any individual law enforcement officer, or other employee of a law enforcement agency.

"**Non-profit organization**" means a corporation or other entity which is not operated for profit.

"**Public library**" means any government operated library which is open to public use.

"**OSBI**" means the Oklahoma State Bureau of Investigation.

~~"**UCR**" means "Uniform Crime Report, Crime in Oklahoma"~~

# Permanent Final Adoptions

## 375:9-7-3. Requests for the UCR Crime in Oklahoma

- (a) **Obtaining copies or subscriptions.**
- (1) Crime in Oklahoma is available on the OSBI web-site at [www.osbi.ok.gov](http://www.osbi.ok.gov) under the news and publications menu. Law enforcement agencies, law enforcement professionals, other governmental agencies, educational institutions, public libraries, nonprofit organizations, corporation or other business entities, and other persons or entities may request copies of the UCR from the OSBI by delivering or mailing a letter of request to the following address: Oklahoma State Bureau of Investigation, Uniform Crime Reporting Department, 6600 N. Harvey, Suit 300, Oklahoma City, Oklahoma 73116
- (2) Individuals who need assistance obtaining a copy may contact the Statistical Analysis Center of the OSBI. Delivery of the request in person may be made Monday through Friday (except holidays) between the hours of 8:30 a.m. and 4:30 p.m.
- (b) **Required information.**
- (1) Law enforcement agencies and other governmental agencies making a request for the UCR shall provide the following information to the OSBI:
- (A) the full name of the agency;
  - (B) the number of copies needed; and
  - (C) the address of the agency.
- (2) Nonprofit organizations, educational institution, and public libraries making a request for the UCR shall provide the following information to the OSBI:
- (A) the full name of the organization or institution;
  - (B) a brief statement of why the organization or institution requests copies of the UCR;
  - (C) the number of copies needed; and
  - (D) the address of the organization or institution.
- (3) Law Enforcement Professionals making a request for the UCR shall provide the following information to the OSBI:
- (A) the full name of the person;
  - (B) the name of the law enforcement agency the person works for;
  - (C) job title; and
  - (D) the address of person.
- (4) Corporations, persons and other entities making a request for the UCR shall provide the following information to the OSBI:
- (A) the full name of the person or organization;
  - (B) the address of the person or organization.
- (c) **Fees.**
- (1) Law enforcement agencies, law enforcement professionals, educational institutions, members of the Oklahoma State Legislature, news media, public libraries, and non profit organizations shall not be charged a fee to receive copies of the UCR.
- (2) All corporations, individuals, or organizations not described in subsection (c)(1) of this section shall pay a fee of five dollars (\$5.00) for every copy of the UCR received.

(3) Payment of the fee shall be made in advance by check or money order payable to "Oklahoma State Bureau of Investigation".

[OAR Docket #23-505; filed 6-9-23]

## TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD CHAPTER 1. ADMINISTRATIVE RULES OF PROCEDURE

[OAR Docket #23-506]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

420:1-1-3. Location, office hours [AMENDED]

### AUTHORITY:

Oklahoma Liquefied Petroleum Gas Board; 52 O.S., § 420.3.

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

January 24, 2023

### COMMENT PERIOD:

February 15, 2023 - March 17, 2023

### PUBLIC HEARING:

March 20, 2023

### ADOPTION:

March 21, 2023

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

March 29, 2023

### LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

### FINAL ADOPTION:

May 31, 2023

### EFFECTIVE:

August 27, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed revision updates the address for the Oklahoma Liquefied Petroleum Gas Administration due to the Board's recent office move from 3815 N. Santa Fe, Suite 117, Oklahoma City, OK 73118 to 2501 N. Lincoln Blvd., Suite 218, Oklahoma City, OK 73105.

### CONTACT PERSON:

Chandra Heitzinger, Administrator, LP Gas Administration, 2501 N. Lincoln Blvd., Ste 218, Oklahoma City, Oklahoma, 73105, (405) 521-2458, Chandra.Heitzinger@lpgas.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 27, 2023:**

### 420:1-1-3. Location, office hours

(a) Any member of the public may obtain information or make submissions and requests to the Oklahoma Liquefied Petroleum Gas Administration, 3815 N. Santa Fe, Suite 117, Oklahoma City, Oklahoma 73118 located at 2501 N. Lincoln Blvd., Suite 218, Oklahoma City, Oklahoma 73105. Office hours from 7:30 a.m. to 4:30 p.m., Monday through Friday, except for holidays legally declared by the State of Oklahoma.

(b) Any person seeking information, making submissions or requests shall contact the Administrator who shall act ~~in~~ on behalf of the Administration.

[OAR Docket #23-506; filed 6-12-23]

**TITLE 420. OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD  
CHAPTER 10. LIQUEFIED PETROLEUM GAS ADMINISTRATION**

[OAR Docket #23-507]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 420:10-1-5. Permits [AMENDED]
- 420:10-1-6. Application for certificate or permit [AMENDED]
- 420:10-1-14. Standards for the storage and handling of liquified petroleum gas [AMENDED]
- 420:10-1-16. Training Schools [AMENDED]
- 420:10-1-18. Insurance requirements [AMENDED]

**AUTHORITY:**

Oklahoma Liquefied Petroleum Gas Board; 52 O.S., § 420.3.

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

January 24, 2023

**COMMENT PERIOD:**

February 15, 2023 - March 17, 2023

**PUBLIC HEARING:**

March 20, 2023

**ADOPTION:**

March 21, 2023

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

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**LEGISLATIVE APPROVAL:**

Approved May 31, 2023, by SJR 22

**FINAL ADOPTION:**

May 31, 2023

**EFFECTIVE:**

August 27, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

In addition to correcting errors, the proposed revisions to the rules: create an annual Class VIII Un-Odorized LGP permit, consistent with recent statutory changes to 52 O.S., § 420.4(C) (H.B. 1072, 58th Leg., 2d Reg. Sess. (Okla. 2022) (enacted)); establish a one hundred dollar (\$100.00) fee for Class VIII Un-Odorized LGP permit plan review; establish a one hundred dollar (\$100.00) fee for every Class VIII Un-Odorized LGP permit inspection, including failed inspections, annual re-inspections, and any other re-inspection needed to check that identified hazards have been corrected; establish a five hundred dollar (\$500.00) annual fee for a Class VIII Un-Odorized LGP permit; require Class III and Class VII permit holders to obtain LP Gas from a lawfully-permitted Class I dealer; allow applications for permits to include electronic or online forms; reduce the frequency of meter proving, from every year to once every two years (for meters that are located on vehicles or that are otherwise moveable), and once every four years (for stationary meters); clarify that underground containers may only be installed by individuals who are properly trained and permitted as a Class X or Class IV permit holder; require said installers to provide proof of completion of Board-approved Cathodic Protection training, upon request; exempt inactive Class I and Class X permit holders from training school requirements; and establish insurance requirements for Class VIII Un-Odorized LPG Permit.

**CONTACT PERSON:**

Chandra Heitzinger, Administrator, LP Gas Administration, 2501 N. Lincoln Blvd., Ste 218, Oklahoma City, Oklahoma, 73105, (405) 521-2458, Chandra.Heitzinger@lpgas.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 27, 2023:**

**420:10-1-5. Permits**

(a) **Permits required.** No person, firm, corporation, association or other entity shall engage in the manufacturing, assembling, fabrication, installing or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus or appliance without having first obtained a permit to do so as provided in this section.

(b) **Permit classifications.** The permits required for engaging in business shall be divided into the following classifications:

(1) **Class I - Dealer permit.** The Class I Dealer Permit permits the holder to engage in any phase of the LP Gas business. A Class X Manager's permit must be secured for the person actually in charge of an LP Gas operation at each separate branch or base of operation of a Class I permit holder. The initial permit fee for a Class I is One Thousand Dollars (\$1,000.00) The annual renewal fee required to be paid for the Class I permit is Five Hundred Dollars (\$500.00).

(A) Class I holder can go on inactive status, but will have to meet all the requirements of the permit, including paying the annual renewal fee, and having proper insurance requirements filed with the Administrator, before going back on active status. If requirements are not met the permit will then be revoked. The annual renewal fee required to be paid for a Class I permit holder on inactive status is Four Hundred Dollars (\$400.00).

(B) Applicant must furnish to the Board, evidence of the following insurance:

- (i) A minimum of \$1,000,000.00 general liability insurance, as per OAC 420:10-1-18;
- (ii) Worker's Compensation insurance shall be required as per state requirements;
- (iii) Motor vehicle insurance must meet State and Federal requirements.

(C) Brokers/wholesalers selling LP Gas to anyone other than Class I permit holders or refinery/gas processing type facilities shall obtain a Class I permit and meet the requirements thereof, except for minimum storage and metering, when said sales are by transport bulkhead to bulkhead.

## Permanent Final Adoptions

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(D) Before testing for a Class I permit, an applicant must meet the following requirements as approved by the Board:

- (i) Five (5) years experience as an active Class X Manager or equivalent; and
- (ii) Forty (40) hours of specified training.

(E) Prior to application or renewal of any Class I Permit, the applicant or holder shall provide the Administration as part of this application or renewal a complete list of facilities and each delivery location, including the name of facility, street address of facility, name of contact person, and contact information of said facility, to which Un-Odorized LP Gas is being delivered. Sales and deliveries of Un-Odorized LP Gas shall only be made to facilities in Oklahoma that are properly permitted by this Administration.

(2) **Class II - Truck Transporter permit.** The Class II Transporter Permit permits the holder to transport LP Gas as a common carrier or private carrier to another of the following: a person, firm, or corporation engaged in the production or manufacture of LP Gas and/or selling or reselling LP Gas to transporters, industrial consumers, processors, distributors, retailers, and/or to holders of Class I, III, or VI permits. A Class II permit shall not authorize the resale of LP Gas to an end-user. A Class II permit shall not be a substitute where a Class I is needed. A transport must meet all CFR 49 requirements. The initial permit fee for a Class II is One Thousand Dollars (\$1,000.00). The annual fee for a Class II permit is Four Hundred Dollars (\$400.00). All LP Gas transport drivers employed by a Class II permit holder are required to obtain a fuel handlers card. The annual filing fee for a fuel handlers card is Ten Dollars (\$10.00).

(3) **Class III - DOT Cylinder Transporter Permit.**

(A) The Class III DOT Cylinder Transporter Permit permits the holder to operate a LP Gas cylinder sale or delivery service for LP Gas in accordance with all other rules and regulations and NFPA Pamphlets 54 and 58. A Class III DOT Cylinder Transporter Permit holder shall obtain LP Gas for sale or delivery from a lawfully-permitted Class I dealer.

(B) The Class III DOT Cylinder Transporter Permit for Un-Odorized LP Gas Endorsement. A separate endorsement to a Class III permit is required, if applicable, and in addition to the Class III DOT Cylinder Transporter Permit, and allows the holder to operate a DOT cylinder sale or delivery service for un-odorized LP Gas in accordance with all other rules and regulations, NFPA Pamphlets 54 and 58, and the following:

- (i) Pursuant to this Endorsement, un-odorized LP Gas shall be sold or delivered in approved DOT cylinders only.
- (ii) All deliveries shall be made in appropriately marked and placarded vehicles.
- (iii) Delivery vehicles shall be operated by licensed personnel holding appropriate certificates and qualifications for the safe handling of LP Gas.

(iv) Prior to application or renewal of any Class III DOT Cylinder Transporter Permit for Un-Odorized LP Gas Endorsement, the applicant or holder shall provide the Administration as part of this application or renewal a complete list of facilities and each delivery location, including the name of facility, street address of facility, name of contact person and contact information of said facility, and the name and location of the Class I permit dealer supplying the Un-Odorized LP Gas to the permit holder.

(v) Sales and deliveries of Un-Odorized LP Gas made pursuant to this Endorsement shall only be made to facilities in Oklahoma that are properly permitted by this Administration.

(C) The Bulk Delivery Class III A Endorsement. The separate Class III A Bulk Delivery Endorsement to the Class III permit is required if applicable and shall permit the holder to invoice the end user for bulk delivery of odorized LP Gas to the facility of the end user only when the LP Gas is delivered to that location by a Class I permit holder.

(D) The annual fee for a Class III permit is \$300. The annual fee for the Un-Odorized LP Gas Endorsement is \$300. The annual fee for the Bulk Delivery Endorsement is \$300.

(E) All DOT cylinder transport drivers employed by a Class III permit holder are required to obtain a fuel handlers card. The annual filing fee for a fuel handlers card is Ten Dollars (\$10.00).

(4) **Class IV - Installer permit.**

(A) The Class IV Installer Permit permits the holder to install and service LP Gas systems, appliances, and other LP Gas equipment. The applicant is required to have immediate supervision for two (2) weeks with a Class IV, IV-D, Class X, or a person licensed by Oklahoma Construction Industries Board with a Mechanical License, and then shall be required to pass a written examination for each separate endorsement. The endorsements will be as follows:

- (i) LP, Low Pressure systems covered by NFPA 54;
- (ii) HP, High Pressure systems covered by NFPA 58;
- (iii) RV, Recreational Vehicle systems covered by NFPA 1192;
- (iv) MC, Meter Calibration systems covered by NIST Handbook 44;
- (v) TI, Truck Inspections and Piping covered by NFPA 58 and CFR 49;
- (vi) DO, Dispenser Operator for Class IV permit holders that also dispense propane.

(B) Exception from two (2) week training period would be anyone already licensed by Oklahoma Construction Industries Board with a Mechanical License. If the supervising person determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV application has



been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV's, as of September 1, 1994, are not required to take a written exam. Upon renewal, endorsements will be based on services provided as authorized by the Administrator. The annual fee for a Class IV permit with one (1) endorsement is Seventy Dollars (\$70.00). Each additional endorsement is Ten Dollars (\$10.00).

(C) Class IV permit does not permit the holder to install or service LP-Gas carburetion systems.

(D) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(5) **Class IV-D - Driver/Installer Permit.**

(A) The Class IV-D Driver/Installer Permit permits the holder to deliver LP Gas by bobtail and install and service LP Gas systems, appliance, and other LP Gas equipment. Class IV-D permit can only be issued under a Class I permit. New applicants must be under immediate supervision from a current Class IV-D, or Class X while in a minimum of a two (2) week training period before testing. Permit holder shall be required to pass a written examination. The tests shall be given according to current policies of the LP Gas Administration. If the supervising Class X determines that the new applicant is properly trained, proper documentation of the training is on file, and a Class IV-D application has been forwarded to the LP Gas Administration, the applicant at that time may begin performing the duties of a Class IV-D permit holder until such time as the test is administered and the permit issued. This time shall not exceed thirty (30) days or the applicant shall cease to perform these duties. Current Class IV permit holders, as of September 1, 1994, properly trained in delivery of LP Gas will not be required to take the test and will be issued a IV-D permit. The annual fee for a Class IV-D is Fifty Dollars (\$50.00).

(B) Class IV-D permit does not permit the holder to install or service LP Gas carburetion systems.

(C) Any installer not under the personal and direct supervision of a Class X holder at the immediate time and location of installation shall be required to have a Class IV or IV-D permit.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operator Permit.**

(A) The Class VI DOT Cylinder and/or LP Gas Motor Fuel Station Operator Permit permits the holder to operate DOT cylinder dispensing station and/or a motor fuel dispenser for public resale. Said Permit must be prominently displayed for public and

official inspection at all times. A permit is required for each DOT cylinder dispensing station and/or motor fuel station. The endorsements will be as follows:

(i) AAG, This Attended Autogas "AAG" endorsement permits the holder to operate LP Gas dispenser stations that fill DOT cylinders and/or Attended LP Gas motor fuel refueling dispensers for resale.

(ii) UAG, This Unattended Autogas "UAG" endorsement permits the holder to operate Unattended self-service LP Gas motor fuel dispenser stations; however, these installations require more stringent regulations than those that are attended. In addition to the requirements in this section, the permit holder shall be required to install equipment that meets or exceeds the minimum installation and performance standards described in OAC ~~Section 420:10-1-14(28)~~420:10-1-14(b)(26). For the purpose of defraying the cost and expenses of administering and enforcing this rule, persons, firms and corporations shall pay at the time of initial inspection a fee of Three Hundred Dollars (\$300.00) for each unattended LP Gas motor fuel dispenser station. Thereafter, the annual inspection fee is One Hundred Fifty Dollars (\$150.00) for each unattended LP Gas motor fuel dispenser station.

(B) Permit holder must comply with reasonable training requirements of the Class ~~4I~~ and Class ~~40X~~ manager of the LP Gas provider ensuring that all employees dispensing LP Gas at each location of permit holder are trained and permitted by this agency including notification to the Class ~~40X~~ manager whenever training is necessary for new and/or unpermitted employees. Class VI locations may not become operational until a permit has been issued. A Class VI-A LP Gas Dispensing permit must be secured for the person actually in charge of an LP Gas dispensing operation of a Class VI permit holder. A permit will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VI permit is One Hundred Fifty Dollars (\$150.00).

~~(C) Un-Odorized LP Gas End User Endorsement. Facilities obtaining un-odorized LP Gas in approved DOT cylinders or otherwise for use must obtain an Un-Odorized LP Gas End User Endorsement. To obtain such an endorsement, detailed plans describing such use and location of cylinder storage, and any and all LP Gas plumbing in said facility must be submitted in writing and approved for any facility using un-odorized LP Gas in any manner. These plans must be submitted to the Administration Office along with the proper fee, and an on-site inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the introduction of LP Gas into the system. A \$100.00 plan review fee must~~

## Permanent Final Adoptions

~~accompany all plans submitted. The fee for the inspection is \$100.00. The annual fee for the Un-Odorized LP Gas End User Endorsement is \$500. This endorsement must be prominently displayed for official inspection at any time.~~

(7) **Class VI-A - LP Gas Dispensing Permit.** All employees involved in dispensing LP Gas must acquire a Class VI-A permit, except a Class IV, Class IV-D, and Class X. A Class VI-A LP Gas Dispensing permit is required for a person actively in charge of or engaged in LP Gas dispensing operations for the holder of a Class VI permit. All Class VI-A permit holders must be an employee of said Class VI permit holder. Class VI-A applicants must be properly trained by a Class X or at a Board-approved training class on proper filling of ASME tanks and DOT cylinders, and inspection thereof per NFPA 58. Applicants shall be required to pass an approved written examination. Test shall be administered by a Safety Code Enforcement Officer, or by Class X manager. In either case, the test fee for the Class VI-A permit is Ten Dollars (\$10.00). Holder must post permit at the facility they are employed by and attend a Board-approved annual safety school once every year. This does not prohibit any person, firm or corporation from filling his own equipment from his own supply line, or dispensing motor fuel from an approved limited access self-service dispenser. The annual fee for a Class VI-A permit is Thirty-Five Dollars (\$35.00).

(8) **Class VII - Cylinder Exchange Program Permit.** The Class VII Cylinder Exchange Program Permit permits the holder to participate in the cylinder exchange program for odorized LP Gas only. A permit is required for each cylinder exchange location. Class VII locations may not become operational until a permit has been issued. Permits will not be issued until the proper fee has been paid and certificate of insurance is received by the LP Gas Administration. The annual fee for a Class VII permit is Fifty Dollars (\$50.00). A Class VII Cylinder Exchange Program Permit holder shall obtain LP Gas for its cylinder exchange from a lawfully-permitted Class I dealer.

(9) **Class VIII - Un-Odorized LPG Permit.** Facilities obtaining un-odorized LP Gas in approved DOT cylinders or otherwise for use must obtain an Un-Odorized LPG Permit. To obtain a permit, detailed plans describing such use and location of cylinder storage, and any and all LP Gas plumbing in said facility must be submitted in writing and approved for any facility using un-odorized LP Gas in any manner. These plans must be submitted to the Administration Office along with the proper fee, and a successful on-site inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the introduction of LP Gas into the system. A plan review fee of One Hundred Dollars (\$100.00) must accompany all plans submitted. The fee for inspection is One Hundred Dollars (\$100.00), and it will be assessed for each and every inspection, including, but not limited to, failed inspections, annual re-inspections and any other re-inspection needed to check that identified hazards have been corrected. The

annual fee for the Un-Odorized LPG Permit is Five Hundred Dollars (\$500.00).

~~(10)~~ **Class IX - LP Gas Container Sales Permit.** The Class IX Gas Container Sales Permit permits the holder to manufacture and/or sell LP Gas containers. This permit is required by both wholesalers and retailer. The annual fee for a Class IX permit is Seventy Dollars (\$70.00).

~~(11)~~ **Class IX-A - Manufactured Homes and Recreation Sales Permit.**

(A) The Class IX-A Manufactured Homes and Recreation Sales Permit permits the holder to manufacture, fabricate and sell all LP Gas facilities or systems used in manufactured homes, campers, recreational vehicles and portable buildings whether such LP Gas system is manufactured, fabricated or sold separately or as an integral part of such trailer, camper, recreational vehicle or portable building. The annual fee for a Class IX-A is Seventy Dollars (\$70.00).

(B) This shall not be construed to require a permit for a sale by the owner of a manufactured home or recreational vehicle who is not engaged in such business on a commercial basis and does not make over two such sales in one year.

~~(12)~~ **Class X - Manager's Permit.**

(A) A Class X Manager's permit is required for a person actively in charge of LP Gas operation for holder of Class I permit and at each separate branch or base of operation of a Class I permit. All Class X holders must be a full-time employee of said Class I holder. The annual fee for a Class X permit is One Hundred Fifty Dollars (\$150.00).

(B) Before testing for a Class X permit, an applicant must meet the following requirements as approved by the Board:

- (i) Hold an active Class IV or Class IV-D permit and employed under an active Class I Dealer for a minimum of three (3) years or equivalent; and
- (ii) One (1) year of the minimum three (3) years required experience can be satisfied with forty (40) hours of specified training.

(C) Temporary exemptions for emergency conditions can be granted by the Administrator.

~~(13)~~ **Additional permits required for employees of Class I dealers.** Class IV, IV-D, VI-A, and X permits are the only additional permits that may be required for the employees of a Class I dealer, or as may be required by future Board action.

~~(14)~~ **LP Gas Trailer, Bobtail or Cargo Tank inspections.** For the purpose of defraying the cost and expenses of administering and enforcing this act, persons, firms and corporations shall also pay at the time of inspection an annual inspection fee of One Hundred Fifty Dollars (\$150.00) for each LP Gas bobtail, MC 330 or MC 331 trailer or cargo tank that transports LP Gas in this State. All requirements imposed subsequent to these inspections must be met within thirty (30) days of the initial inspection. Failure to comply will necessitate a re-inspection at a charge of One Hundred Fifty Dollars (\$150.00) for each

inspection. The inspection fee shall increase to Three Hundred Dollars (\$300.00) for each LP Gas bobtail, MC 330 or MC 331 trailer or cargo tank that transports LP Gas in this State if said LP Gas bobtail, MC 330 or MC 331 trailer or cargo tank is not initially inspected within sixty (60) days following the current permit expiration date, or if requirements imposed subsequent to the initial inspection are not completed within sixty (60) days of the initial inspection, whichever is later, or at the discretion of the Administrator.

(1415) **Containers or cylinders.** There is hereby levied the following fee, to be paid to the Administrator, upon all first sales, purchases, rentals or uses in this state of liquefied petroleum gas containers or cylinders; on all Department of Transportation (DOT) cylinders, vehicle fuel containers, a fee of Three Dollars (\$3.00) each, and on all other containers, a fee of Ten Dollars (\$10.00) each.

**420:10-1-6. Application for certificate or permit**

(a) **Filing Fee.** Application for any new permit under the rules of this chapter shall be filed with the Administrator on written forms to be prescribed by the Board or Administrator, including, but not limited to, electronic or online forms, and shall be accompanied with the filing fee in the amount of Ten Dollars (\$10.00) for each permit, along with the appropriate permit fee.

(b) **Examination.** Before any permit shall be issued, except those which may be specifically exempt from requirement for examination by the statutes, or by this chapter the applicant shall be required to pass a necessary written examination to satisfy the Board or Administrator that the applicant possesses the necessary technical knowledge and qualifications so as to safely deal with the product, commodity or render the services authorized by the permit. All examination fees are Ten Dollars (\$10.00), except Class I (\$55.00), and Class X (\$55.00).

(c) **Exception to acquiring Class I through examination.** An applicant for a Class I Dealers Permit may purchase a Class I permit from its present owner, as per O.S. Title 52, but must meet the following conditions:

- (1) Only Active Class I Dealer Permits are transferable. An Inactive Class I Dealer Permit is not transferable;
- (2) Pay a Class I Transfer Fee of Five Thousand Dollars (\$5,000.00);
- (3) A Class X Manager's permit must be in place, before the transfer, for the person actually in charge of the LP gas operation at each separate branch or base of operation of the Class I permit holder;
- (4) Have on file with the LP Gas Administration the required Class I insurance requirements as per OAC 420:10-1-18.

(d) **Other requirements.**

(1) The mere filing of an application for a permit does not of itself authorize the engaging of any of the operations sought in said application. Such operations are prohibited except pursuant to an order of the Board or Administrator issuing such permit and only after the applicant has satisfied the Board or Administrator as to its qualifications and fitness by a written examination, when required, and

filing of all the necessary insurance and meeting other requirements of the statutes and of this chapter.

(2) Any person, firm or corporation to whom a permit is issued shall commence operation within ninety (90)90 days from the date of issuance of such permit, unless this time be extended by the authority issuing the permit for good cause.

**420:10-1-14. Standards for the storage and handling of liquefied petroleum gas**

(a) **NFPA standards.** The standards for the storage and handling of liquefied petroleum gases adopted by the National Fire Protection Association (NFPA) and published in its pamphlets No. 58, and the standards for the installation of gas appliances and gas piping adopted by said ~~National Fire Protection Association~~NFPA and published in its pamphlet No. 54 have been adopted by the Legislature in 52 O.S., ~~1991~~, Section ~~402.3~~ (e)420.3(E) and shall be accepted standards for the State of Oklahoma. All Class I, Class II, and Class III permit holders must have a current electronic or paper copy of NFPA 58 and 54 available for use at each separate branch.

(b) **Supplemental standards.** The following standards are supplemental to NFPA pamphlet No. 58 and shall be part of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board:

(1) **Definitions.**

(A) The word "approved" as used in this section means acceptable to the State Liquefied Petroleum Gas Administrator. A device or system having materials or forms different from those detailed in this section may be examined and tested according to the intent of the regulations and if found equivalent, may be approved.

(B) In this section those provisions which are considered essential for adequate protection of life and property from fire are indicated by the words "shall" and "must,". The words "should" or "preferably" indicate advisory provisions concerning which the State Liquefied Petroleum Gas Administrator of Oklahoma should be consulted.

(C) In each place mentioned in NFPA No. 54 and NFPA No. 58 where it refers to "the authority having jurisdiction" this would mean the Liquefied Petroleum Gas Administrator.

(D) An "important building" shall be any building, open to the public, or inhabited by people, in which any LP Gas system ~~or of~~ any type is installed.

(2) **Submittal of plans.**

(A) Prior to the installation of new, or the modification of liquefied petroleum gas plumbing systems, excluding tank change outs, in school buildings, churches, courthouses, office ~~building~~buildings and other ~~building~~buildings to which the public is invited, such as cafes, dance halls, tourist courts and parks, plans and specifications for such installation in duplicate, shall be submitted to, and approved, ~~by,~~ the State Liquefied Petroleum Gas Administrator, and before such systems are filled with liquefied petroleum gas,

## Permanent Final Adoptions

they shall be physically inspected and approved by a licensed installer and a report made by him or her to the State Liquefied Petroleum Gas Administrator on LPG Form 4, or its revision, furnished by the LP Gas Administrator's office.

(B) Plans must be submitted and approved on any dispenser used to fill DOT cylinders and/or ASME containers, and used for public resale of LP Gas, including unattended self-service LP Gas motor fuel dispenser stations. These plans must be submitted by a Class I permit holder to the Administration office along with the proper fee, and an onsite inspection must be performed by a Safety Code Enforcement Officer prior to final approval and before the dispenser can be placed into service. A One Hundred Dollar (\$100.00) plan review fee must accompany all dispenser plans submitted. If a dispenser is taken out of service, written notice must be given to the Administration office within seven (7) working days. If a dispenser is moved to a new location, new plans must be submitted to the Administrator and onsite inspection performed by a Safety Code Enforcement Officer prior to final approval and dispenser being placed into service. A complete list of dispensers by location shall be submitted to the LP Gas Administration as indicated on Class I permit renewal forms.

(C) Plans must be submitted to, and approved, by the Administrator on any fixed installation with individual water capacity of 2,000 gallons or more, or aggregate water capacity exceeding 4,000 gallons.

(D) Plans must be submitted and approved for any facility using Un-Odorized LP Gas in any manner and a permit ~~endorsement~~ must be obtained pursuant to ~~420:10-1-5(b)(6)(C)~~ OAC 420:10-1-5(b)(9). These plans must be submitted to the Administration Office by the Class VIII permit holder or applicant proposing to service such facility with product, along with the proper ~~fees~~. A successful on-site inspection must be performed by a Safety Code Enforcement Officer of the LP system prior to final approval and before the introduction of LP Gas and the system placed into service. A \$100 plan review fee must accompany all plans submitted. The final inspection fee is \$100.00. A plan review fee of One Hundred Dollars (\$100.00) must accompany all plans submitted. The fee for inspection is One Hundred Dollars (\$100.00), and it will be assessed for each and every inspection, including, but not limited to, failed inspections, annual re-inspections and any other re-inspection needed to check that identified hazards have been corrected.

(3) **Report of accident.** In case of accident or fire at any location where a liquefied petroleum gas system or equipment is involved, or any accident involving liquefied petroleum gas systems or equipment, the dealer owning, operating or servicing the equipment or installation shall notify the State Liquefied Petroleum Gas Administrator. This notification shall be forwarded as soon as feasibly

possible after the dealer has knowledge of the accident in order that an inspection may be made by the State Liquefied Petroleum Gas Administrator before the site has been disturbed.

(4) **Piping - including pipe, tubing and fittings.**

(A) No person, firm, or corporation shall connect a liquefied petroleum gas tank to any piping without having first determined that such piping complies with the laws of the State of Oklahoma and the rules and regulations of the State Liquefied Petroleum Gas ~~Administrator~~ Board relative to liquefied petroleum gas piping.

(B) All installations, installed after July 1, 2002, of storage containers, with more than 4,000 gallon water capacity, shall have internal valves installed as per NFPA 58.

(C) On installations of stationary or portable storage, with an aggregate of more than 4,000 gallon water capacity, a bulkhead approved by the LP Gas Administrator shall be required on each liquid line of one and one-half (1-1/2) inch or larger and each vapor line of one and one-quarter (1-1/4) inch or larger.

(5) **Vaporizers and housings.**

(A) The minimum capacity of the storage container feeding the vaporizer shall not be less than ten (10) times the hourly capacity of the vaporizer in gallons.

(B) The minimum capacity of a storage container being heated by a direct fired tank heater shall not be less than ten (10) times the hourly vaporizing capacity of the tank heater in gallons.

(6) **Liquid metering systems.** Each bulk retail delivery of liquid LP Gas shall be measured by a suitable LP Gas liquid meter system, except those deliveries of liquid LP Gas in cylinders which are filled by weight, deliveries of LP Gas vapor through vapor meters and a delivery of a full transport load from the terminal to the end-user with a bill of lading, are exempt from the requirements of this paragraph.

(A) LP Gas Liquid meters shall indicate deliveries in terms of gallons and to the nearest tenth of a gallon.

(B) The LP Gas liquid meter shall meet, in addition to the other requirements of this paragraph, the following requirements:

(i) The system shall include a device (such as a differential back-pressure regulator) so designed and installed that the product being measured will remain in a liquid state during passage through the meter.

(ii) No means shall be provided by which any measured liquid can be diverted from the measuring chamber, differential valve equipment or the discharge line therefrom.

(iii) Effective January 1, 1994, in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, all LP Gas Liquid meters used for bulk delivery shall be designed with the necessary equipment for mechanically

printing gallons on a delivery ticket and the customer served thereby shall be given a ticket mechanically imprinted by the printing device. The customer's name and Class I Dealer's name must be included on the metered ticket. Meters used for stationary dispensing of motor fuel will not be required to be equipped with such printing device.

(iv) All bulk metered sales of propane, via bobtail or transport, shall be made by temperature compensated measure. Except, any truck now operating without a temperature compensation meter shall be retrofitted by no later than July 1, 2003.

(C) All meters where product is sold to the public must be proved ~~annually~~ by an approved meter tester/inspector and have written certification on file at permit ~~holders~~ holder's place of business. Meters that are located on vehicles or that are otherwise moveable must be proved at least once every two calendar years; meters that are stationary must be proved at least once every four calendar years. ~~All meters and temperature compensators must be accurate within the manufacturers tolerance not to exceed + or -1% at any time. The LP Gas liquid meter system shall be designed and constructed to provide for applying lead and wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and resealed by a Safety Code Enforcement Officer, an approved meter tester, or a person approved by the Administrator. In addition, the Administrator at his discretion may require proving of metering system to determine the accuracy.~~

(i) All meters and temperature compensators must be accurate within the manufacturer's tolerance, not to exceed + or -1% at any time. The Administrator, at his or her discretion, may require a meter be proved to determine its accuracy at any time, even if such proving would be outside of or in addition to the two-year or four-year schedule established above.

(ii) The LP Gas liquid meter system shall be designed and constructed to provide for applying lead-and-wire seals in such a manner that no modifications or adjustments which would affect the accuracy of deliveries, can be made without mutilating the seal or seals. If a seal is broken, notification must be made to the Administrator and the seal must be resealed by a Safety Code Enforcement Officer, an approved meter tester, or a person approved by the Administrator.

(D) No dealer or firm controlled or affiliated with a dealer may calibrate or certify its own meters. All meters must be tested with a volumetric meter prover.

(7) **Qualified personnel.** Each holder of an LP Gas permit shall be responsible for having qualified personnel operating and installing LP Gas equipment.

(8) **Filling unsafe or unapproved dispensing or storage tanks prohibited.** No person, firm, or corporation shall introduce liquefied petroleum gas into a dispensing or storage tank in the State with knowledge that such dispensing or storage tank or piping is known to be in an unsafe operating condition.

(9) **Standards for containers.**

(A) In accordance with 52 O.S., ~~See Section~~ 420.5, all first sales, rentals, purchases or uses of DOT cylinders and ASME tanks in this State, must have Oklahoma Identification tags attached to such cylinders or tanks. However, all DOT cylinders and ASME tanks in Oklahoma, with a ~~manufacturers~~ manufacturer's date prior to September 1, 1993, are not required to have Oklahoma Identification tags. These Oklahoma Identification tags are not transferable from one cylinder or tank to another.

(B) Any new container sold or installed in Oklahoma for use in this State shall carry a five-year warranty covering workmanship and material. This warranty shall provide that any container not in compliance with this regulation must be repaired or replaced by the fabricator at no expense to the dealer or customer. This provision is to take care of "pin-hole" leaks in the weld that were not detected at the time of fabrication and does not apply to fittings.

(C) Containers shall be filled or used only upon authorization of the fee simple owner. The name of the fee simple owner, if other than the consumer, shall be conspicuously shown on the container.

(D) Any stationary storage container converted from anhydrous ammonia to propane shall be converted as follows:

(i) The container shall be purged of anhydrous ammonia by water flooding, steam or other methods described by the National Propane Gas Association's (NPGA) Recommendation for Prevention of Ammonia Contamination; and

(ii) It shall then be properly purged with propane vapor and tested with the red litmus paper as described in NFPA 58 or by any other test approved by the Board; and

(iii) The test shall be completed by the permit holder that performs the conversion; and

(iv) The results shall be documented and shall contain the container manufacturer, water capacity, serial number, the results of the test, the capacity of the relief valve, the date of the test, and the signature of the permit holder conducting the test. A copy of the results shall be provided to the owner of the container; ~~and~~

(v) Any dealer filling a converted anhydrous ammonia container for the first time shall either be provided a copy of the test or complete the test as described above; and

(vi) The container shall meet all requirements of NFPA 58.

(10) **Underground containers.**

## Permanent Final Adoptions

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- (A) ~~Underground containers before being reinstalled must be inspected by the State Liquefied Petroleum Gas Administrator, and a fee of One Hundred Dollars (\$100.00) paid to the State Liquefied Petroleum Gas Administrator's office, and reinstalled by a licensed LP Gas installer. Underground containers must be installed by an individual who:~~
- (i) ~~Is properly permitted by the LP Gas Administration with a Class X or Class IV permit; and~~
  - (ii) ~~Has completed Board-approved Cathodic Protection training. Documentation of proof of completion of training must be provided upon request.~~
- (B) Underground containers shall be dug up at the expense of the owner at any time at the discretion of the State Liquefied Petroleum Gas Administrator.
- ~~(C) Prior to performing an installation of an underground container, a person must complete Board-approved Cathodic Protection training.~~
- (11) **Minimum storage.** All new Class I permit holders must provide bulk propane storage capacity of not less than an aggregate of 18,000 water gallons. The minimum storage must be maintained and operational, with installation approved by the authority having jurisdiction, and within a fifty (50) mile radius of the corporate office or branch location. The minimum storage shall be considered maintained if the area meets the requirements of NFPA 58, the rules and regulations established by the Board and is kept reasonably clear of long, dry grass, weeds, debris, and any other combustible material. Any exceptions to the minimum storage requirement may be granted by the Board. Current active Class I permit holders, as of September 1, 1994, are not required to meet this minimum storage requirement. After a change of ownership, the new Class I permit holder must secure the minimum storage requirement within one year.
- (12) **Painting.** All bulk storage containers of a capacity 120 gallons water capacity or greater shall be painted a heat reflection color.
- (13) **Lettering bulk storage and dispensers.**
- (A) All bulk storage 2,000 gallons and above shall be lettered with the name of the contents, such as LP Gas, butane, propane, and a "No Smoking" sign in letters not less than six (6) inches high.
  - (B) In addition to subparagraph (A) of this paragraph, all bulk storage used for loading and unloading facilities, and all container filling storages (dispensers) shall include the name of the person, firm, or corporation operating the bulk storage or dispenser and their phone number in letters not less than two (2) inches high. This information shall be placed so as to be readily visible to the public.
  - (C) For all size bulk storage containers, the name of the fee simple owners, if other than the consumer, shall be conspicuously shown on the container.
- (14) **Extinguishers required.** Extinguishers of the dry chemical type, with a B:C or A:B:C rating, are required. Extinguishers shall have a net content of not less than the current NFPA 58 requirements and shall be inspected at least once each year by an authorized inspector such as Fire Departments/Department's or Fire Appliance Company representatives. Current weatherproof inspection tags shall be attached to the extinguisher.
- (15) **Marking cargo vehicles.** Every tank vehicle used for transportation of liquefied petroleum gas shall be marked and placarded according to current DOT requirements. Each tank vehicle must also have the name of the person, firm or corporation on each side of the cargo tank in letters a minimum of two (2) inches in height. This information shall be placed so as to be readily visible to the public. This name shall be the same as permit holder has designated on the Class I or Class II permit.
- (16) **Parking and garaging LP gas tank vehicles.** Any tank vehicle used for transportation of ~~Liquefied~~liquefied petroleum gas shall not be parked beneath or adjacent to any electric transmission line in such position that there is a possibility of a conductor contacting the tank in event of breakage.
- (17) **Filling unapproved truck, trailer or cargo tanks prohibited.**
- (A) An inspection form, when properly completed, and ~~an~~ LPG registration decal (the serial number of which is shown on the inspection form), shall be evidence that the liquefied petroleum gas truck, trailer or cargo tank described on the inspection form by its serial number has been approved by the Liquefied Petroleum Gas Administrator for use in the transportation of liquefied petroleum gas. Such LPG registration decal and inspection form also shall authorize the person, firm or corporation whose name appears on the inspection form or its bona fide employees to operate the truck or trailer tank described on the inspection form, and further shall authorize the filling of such truck, trailer or cargo tank with liquefied petroleum gas.
  - (B) The LPG registration decal shall be displayed at all times in an easily visible location on the left front of the cargo tank, which is on the driver's side. A copy of the inspection form shall be retained, until the expiration date, in the office of the person, firm or corporation whose name appears thereon. It will not be necessary to keep or display a copy of the inspection form on the truck, trailer or cargo tank.
  - (C) No person, firm or corporation shall operate a truck, trailer or cargo tank in the transportation of liquefied petroleum gas in this State unless such person, firm or corporation has been issued ~~an~~ LPG registration decal and an inspection form certifying that such tank has been registered with and approved by the State Liquefied Petroleum Gas Administrator, or unless its operation has been specifically approved by a communication from the State Liquefied Petroleum Gas Administrator.
  - (D) The LPG registration decal and the inspection form required in this paragraph are not transferable by the person, firm or corporation to whom they are

issued or from one truck, trailer or cargo tank to another, and they are not to be used after the expiration date of the fiscal year for which they were issued, or in the event the Class I or Class II permit becomes inactive.

(18) **Vaporizers.** Exhaust gases shall not be used as a direct means of heat supply for the vaporization of fuel.

(19) **Stationary engines in building.**

(A) All engine rooms shall be well ventilated at the floor level.

(B) When engines are installed below grade level, suitable floor level mechanical exhaust ventilation shall be provided and operated continuously, or adequate means shall be provided to purge the room before the engine is started. In any case the mechanical ventilation shall be in operation when the engine is running. Before and during any repairs to the engine the room shall be ventilated.

(C) Automatic fire doors shall be provided at openings in the engine room that open into other sections of the building.

(D) Exhaust gases shall be discharged outside the building in a manner that will not create a fire or any other hazard.

(E) Regulators and pressure relief valves installed in buildings and engine rooms shall be vented to the outside and discharge at least five (5) feet away from any building opening. Such venting will not be required for combination engine fuel vaporizing - fuel reducing - fuel metering devices, ~~providing provided~~ that an acceptable automatic shut-off valve is installed immediately ahead of such devices.

(20) **Storage outside of buildings.** Valves and safety relief devices shall be protected against accumulations of ice and snow. Protective caps shall be deemed adequate.

(21) **Appliances.** Any mobile home, travel trailer, camper or recreational vehicle shall be delivered to the buying public by the permit holder with the system properly installed and free of leaks.

(22) **Maximum vapor pressure and container working pressure.**

(A) The maximum vapor pressure of the product at 100-degree Fahrenheit which may be transferred to a container shall not exceed the design working pressure of the container. Exception: 200 psig ASME working pressure vessels in LP Gas service in Oklahoma prior to January 1, 1994, may be continued in service for commercial propane, provided that they are fitted with relief valves and meet the start-to-leak setting in relation to the design pressure of the container, shall be in accordance with NFPA 58. For the purpose of this exception, "commercial propane" is defined as having a vapor pressure not in excess of 210 psig at 100-degree Fahrenheit. This exception does not apply to LP Gas motor fuel and mobile fuel containers.

(B) Any stationary 200 psig ASME containers brought into Oklahoma from out of state and intended

for stationary LP Gas installation in Oklahoma at any facility requiring submission of plans and specification must be tested by at least two (2) of the following nondestructive test methods recognized by ASME to determine if the container or assembly is safe for LP Gas use in Oklahoma. The following test results must be submitted to the Oklahoma LP Gas Administration for approval.

(i) Hydrostatic ~~Test~~ test;

(ii) Ultrasonic thickness test; and

(iii) Wet particle fluorescent or magnaflux.

(23) **Testing, leakage and visual inspection, and meter calibration.**

(A) Hydrostatic testers operating in Oklahoma that are hydrostatic testing cargo containers for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and shall:

(i) Hold a Federal C.T. number;

(ii) Include in their testing the use of a calibrated pressure chart recorder; and

(iii) Hold a Class IV installer permit.

(B) Leakage and visual inspectors operating in Oklahoma and performing this inspection on cargo containers and their systems for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Inspectors shall hold a Federal C.T. number; and

(ii) If the inspection includes repairs that require the LP Gas system to be re-plumbed, a Class IV permit is required.

(C) Meter calibrators operating in Oklahoma that are calibrating meters for LP Gas use in Oklahoma must be approved by the Oklahoma LP Gas Board and meet the following requirements:

(i) Meters shall be tested in accordance to ~~Oklahoma Rules and Regulations, Section 420:10-1-14(7)~~ with OAC 420:10-1-14(b)(6);

(ii) Meter calibrators shall furnish the meter owner a copy of the calibration showing the correct gear numbers and temperature compensator settings;

(iii) Meter calibration results shall be on a form approved by the LP Gas Administrator and a copy of the completed form shall be furnished to the meter owner;

(iv) Meter calibrators shall hold a Class IV permit; and

(v) Meter calibration testers shall test meters according to National Institute of Standards and Technology (NIST) standards.

(24) **Cylinder exchange stations.**

(A) Cylinder exchange cabinets shall be constructed as per NFPA 58.

(B) The cabinet shall have the following signs affixed to it and readily visible to the public:

## Permanent Final Adoptions

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- (i) "Propane" or "Flammable Gas" and "No Smoking" in letters not less than two (2) inches high;
  - (ii) "Net Weight \_\_\_ lbs." with the net weight of the cylinders to be specified, all of which shall be displayed on the front of the cabinet in letters not less than two (2) inches high;
  - (iii) Name of Class I permit holder who supplies the cylinders; and
  - (iv) 24-hour Emergency telephone number.
- (C) The cabinet shall be located for distance and number of cylinders as per NFPA 58.
- (D) The cylinder storage area shall be kept free of wood, debris and other combustible/flammable material not necessary to the storage for a distance of ten (10) feet, not to include the construction materials of the building itself.
- (E) Protection against vehicle impact shall be provided in accordance with good engineering practice where vehicle traffic normally is expected at the location, as per NFPA 58.
- (F) A fire extinguisher shall be provided, as per NFPA 58.
- (G) A warning sign shall be posted at or near any entrance doorway stating the "LP GAS EXCHANGE CYLINDERS EMPTY OR FULL SHALL NOT BE TAKEN INDOORS FOR ANY REASON."
- (H) The Class I permit holder shall provide safety training materials to the Class VII permit holder. The Class VII permit holder is responsible for providing appropriate safety information to the individual exchanging the cylinder. This documentation of training will be kept by the Class VII permit holder at the Class VII location.
- (I) Automated cylinder exchange cabinets that include an automated vending system for exchanging cylinders shall comply with the following additional requirements:
- (i) Electrical equipment installed in cylinder storage compartments shall comply with the requirements for Class I, Division 2 equipment in accordance with NFPA 70, National Electrical Code;
  - (ii) Cabinets shall be designed such that cylinders can be placed inside only in the upright position;
  - (iii) Door releases for access to stored cylinders shall be permitted to be pneumatic, mechanical or electrically powered;
  - (iv) A manual override control shall be permitted for use by authorized personnel; and
  - (v) The vending system shall not be capable of returning to automatic operation after a manual override until the system has been inspected and reset by authorized personnel.
- (J) A Class I permit shall be required in order to supply exchange cylinders for the cylinder exchange permit holder.

(K) A busy sidewalk and thoroughfare, as referenced in NFPA 58, shall be further defined as not being located on private property. A busy sidewalk is alongside a public road and a thoroughfare is a public road.

(25) **Recreational vehicles.** Installations or repairs on LP Gas systems on recreational vehicles shall be performed as per NFPA 1192, Standard on Recreational Vehicles.

(26) **Minimum installation and performance standards of unattended self-service LP Gas motor fuel dispenser stations.**

(A) Unattended self-service LP Gas motor fuel dispenser stations shall meet the applicable sections of the rules and regulations of the Oklahoma Liquefied Petroleum Gas Board and NFPA 58.

(B) Any unattended self-service LP Gas motor fuel dispenser shall also meet all Alternative Provisions for Installations of ASME containers found in NFPA 58 regardless of tank size. This includes Redundant Fail-Safe Product Control and Low Emission Transfer requirements.

(C) The delivery valve and nozzle combination shall be designed, installed, and operated, so that LP Gas will not be released unless the valve is correctly attached to the filler coupling on the receiving valve of the LP Gas motor fuel container.

(D) To maintain minimum performance standards, the following shall be considered minimum system performance requirements:

(i) Dispensing rate minimum of eight (8) gallons per minute (GPM) per manufacturer's specifications; and

(ii) Vehicle fueling area, ground where vehicle is parked, shall be reasonably level to allow for complete fuel fills.

(E) The dispenser shall have the following signs affixed to the dispenser and readily visible to the public:

(i) Step by step operating instructions, approved in advance by the Administrator;

(ii) A warning sign(s) stating, "WARNING, STATE LAW PROHIBITS FILLING ANY PORTABLE DOT CONTAINERS AT THIS DISPENSER" and "All vehicles refueling at this dispenser must have an appropriate ASME container fitted with an operational OPD valve" in letters not less than two (2) inches high;

(iii) Proper name of LP Gas being dispensed, as specified by federal regulations at CFR-Title 49, in letters not less than two (2) inches high;

(iv) "No Smoking" in letters not less than two (2) inches high;

(v) 24-hour emergency telephone number in letters not less than two (2) inches high; and

(vi) Name of the Class ~~I~~ permit holder that services the dispenser, in letters not less than two (2) inches high.



**420:10-1-16. Training Schools**

(a) **Safety schools for Class I dealers and Class X managers.** It shall be the continuing responsibility of all active Class I holders, including ~~Sole Proprietorships~~ sole proprietorships, and Class X permit holders to attend a ~~Board sanctioned~~ Board-sanctioned management safety seminar at least once every two (2) years. Seminars shall be available at least annually, with biennial attendance a requisite for license renewals.

(b) **Safety school for fuel handling personnel.** Class IV, IV-D, and VI-A permit holders must attend a ~~Board sponsored~~ Board-sponsored or sanctioned safety school at least once a year.

(1) Schools will be held at least annually at such times and places as may be deemed advisable. It shall be the administration policy to make available regional schools for the convenience of the industry.

(2) Such schools in no way relieve the dealer of the responsibility of training new employees adequately through ~~on-the-job~~ on-the-job training.

(3) A fuel handlers card is required for all LP Gas transport drivers to demonstrate their qualifications to transport LP Gas, including, but not limited to, compliance with training requirements in NFPA 58 and Section 177.816 of Title 49 of the Code of Federal Regulations. A Safety Code Enforcement Officer may ask an LP Gas transport driver for documents sufficient to establish his or her identity and qualifications, including, but not limited to, a driver license and fuel handlers card.

(c) **Compliance.** Failure to comply with this section shall be cause for suspension or revocation of the permit under which such person, firm or corporation might be operating.

**420:10-1-18. Insurance requirements**

Insurance pursuant to the provisions of this section shall be maintained in full force and effect during the operation of the business for which the coverage was issued. Except as otherwise provided for in this section, no registration permit shall be issued until said certificate is filed with the Administrator. No insurance coverage shall be canceled or terminated without thirty (30) days prior written notice of cancellation or termination to the Administrator. The following are the minimum insurance requirements for LP Gas permit holders licensed by the State of Oklahoma

(1) **Class I - Dealer Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; \$1,000,000 aggregate.

(B) Motor vehicle insurance must meet State and Federal requirements.

(C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(2) **Class II - Truck Transporter Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; \$1,000,000 aggregate.

(B) Motor vehicle insurance must meet State and Federal requirements.

(C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(3) **Class III - DOT Cylinder Transporter Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; \$1,000,000 aggregate.

(B) Motor vehicle insurance must meet State and Federal requirements.

(C) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(4) **Class IV - Installer Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$500,000 per occurrence; \$500,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(5) **Class IV - D - Driver/Installer Permit.** The Class IV-D permit is only issued in conjunction with the Class I permit; therefore, the insurance coverage of the Class I permit holder will cover the Class IV-D permit holder.

(6) **Class VI - DOT Cylinder &/or LP Gas Motor Fuel Station Operation Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$100,000 per occurrence; \$100,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(7) **Class VI-A - LP Gas Dispensing Permit.** The Class VI-A permit is only issued in conjunction with the Class I, II, III, VI and/or VII permit; therefore, the insurance coverage of the Class I, II, III, VI and/or VII permit holder will cover the Class VI-A permit holder.

(8) **Class VII - Cylinder Exchange Program Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$25,000 per occurrence; \$25,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

(9) **Class VIII - Un-Odorized LPG Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$1,000,000 per occurrence; \$1,000,000 aggregate.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

~~(9)~~ **Class IX - LP Gas Container Sales Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$25,000 per occurrence; \$25,000 aggregate. This insurance coverage is only necessary when the permit

# Permanent Final Adoptions

holder engages in manufacturing and/or installing LP Gas containers.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

~~(11)~~ **Class IX-A - Manufactured Homes and Recreation Sales Permit.**

(A) General liability, Bodily Injury, Property Damage, including products and completed operations liability coverage shall be obtained as follows: \$25,000 per occurrence; \$25,000 aggregate. This insurance coverage is only necessary when the permit holder engages in manufacturing, fabrication or installation of LP Gas systems.

(B) Workers' compensation insurance shall be obtained as required by Oklahoma State statutes.

~~(12)~~ **Class X - Manager's Permit.** The Class X permit is only issued in conjunction with the Class I permit; therefore, the insurance coverage of the Class I permit holder will cover the Class X permit holder.

*[OAR Docket #23-507; filed 6-12-23]*

## TITLE 600. REAL ESTATE APPRAISER BOARD CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS

*[OAR Docket #23-549]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
600:10-1-6. Experience prerequisite [AMENDED]  
600:10-1-12. Inactive status- annual fee payment [AMENDED]

**AUTHORITY:**  
Real Estate Appraiser Board; 59 O.S., § 858-829

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
November 7, 2022

**COMMENT PERIOD:**  
December 1<sup>st</sup>, 2022-January 6, 2023

**PUBLIC HEARING:**  
January 6<sup>th</sup>, 2023

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**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
Adds language waiving the fee for military personnel and their spouses. It also redacts the third-party letter of verification. Adds language for a notification process to the Board if they want their license to be placed in inactive status.

**CONTACT PERSON:**

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

**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:**

**600:10-1-6. Experience prerequisite**

(a) An original certification as a State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser shall not be issued to any person who does not possess the minimum experience criteria set forth by the Appraiser Qualifications Board of the Appraisal Foundation provided any state licensed appraiser who becomes state licensed prior to July 1, 2001, shall not be required to attain the minimum requirements of experience promulgated by the Appraiser Qualifications Board to maintain certification as a state licensed appraiser.

(b) Applications for certification as a State Licensed Appraiser or State Certified Residential Appraiser must be accompanied by a One Hundred Fifty Dollar (\$150.00) non-refundable application fee. Applications for certification as a State Certified General Appraiser must be accompanied by a Two Hundred Twenty Five Dollar (\$225.00) non-refundable application fee.

(c) Pursuant to the provisions of 59 O.S. 4003 A, upon presentation of satisfactory evidence that an applicant for initial licensure or certification is a low-income individual, the Board shall grant a one-time one-year waiver of any fees associated with such licensure or certification. For purposes of the section, "low-income individual" means an individual who is enrolled in a state or federal public assistance program, including, but not limited to, the Temporary Assistance for Needy Families, Medicaid or the Supplemental Nutrition Assistance Program, or whose household adjusted gross income is below one hundred forty percent (140%) of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation.

(d) Pursuant to the provisions of 59 O.S.4100, the application fee will be waived for all active-duty military personnel and their spouse for the first period of issuance of a resident license, reciprocal license or temporary permit.

~~(e)~~ Experience credit shall be allowed in accordance with the guidelines set forth by the Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation.

~~(e)~~ Applicants for the State Licensed, State Certified Residential, or State Certified General classifications shall submit, in addition to the approved application form, properly completed experience log forms according to the basic form approved by the Board. Additionally, applicants for either the State Licensed, State Certified Residential, or State Certified General classifications shall submit the following upon request by the Board;

- (1) A letter of verification from a third party (or parties, i.e., employer, appraiser supervisor, etc.) stating and confirming direct knowledge that the applicant has achieved the stated hours of real estate appraisal experience, and
- (2) Copies of written real estate appraisal work product or work files.

(f) The requirements of USPAP shall not apply to the Board, its agents, committee members, and staff when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.

**600:10-1-12. Inactive status - annual fee payment**

- (a) If an appraiser no longer wishes to pay the annual fee payment and registry fee to retain the license or certification, prior to the expiration date printed on the certificate, the appraiser must ~~surrender his/her license or certification by returning his/her certificate and pocket card to the Oklahoma Real Estate Appraiser Board~~ notify the Board in writing that they wish for their license to be placed in an inactive status.
- (b) If an appraiser wishes to reinstate a ~~an inactive~~ ~~surrendered~~ credential, the appraiser may do so by applying for reinstatement, remitting any required fees, and complying with any applicable continuing education requirements as set forth in 600:10-1-14.

[OAR Docket #23-549; filed 6-15-23]

**TITLE 600. REAL ESTATE APPRAISER BOARD  
CHAPTER 15. DISCIPLINARY PROCEDURES**

[OAR Docket #23-550]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

600:15-1-15. Conditions during suspension [AMENDED]

**AUTHORITY:**

Real Estate Appraiser Board; 59 O.S., § 858-829

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

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n/a

**GIST/ANALYSIS:**

Removed unnecessary rule language pursuant to the Governor's EO2020-03.

**CONTACT PERSON:**

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

**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:**

**600:15-1-15. Conditions during suspension**

(a) When the Board orders the suspension of a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser, the suspended appraiser shall be subject to the following terms and conditions during the suspension period:

- (1) Immediately following the final order of suspension, the suspended appraiser may not be identified as a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser. All reference to certification/licensure must be immediately removed from all letterheads, business cards, appraisal report covers and other printed materials under the reasonable control of the appraiser.
- (2) Promptly following the final order of suspension, the suspended appraiser shall return his/her license or certificate to the Board.
- (3) The term of suspension shall begin on the date the license or certificate and pocket card are received by the Director.

(b) Where the appraiser is identified as a Trainee, State Licensed, State Certified Residential or State Certified General in trade journals, professional directories, telephone books and industry listings, the appraiser shall promptly notify all such publications that he/she is now suspended and request future publications, listings and directories to not identify him/her as a Trainee, State Licensed, State Certified Residential or State Certified General Appraiser during the suspension period. A copy of such notification shall also be provided to the Board.

[OAR Docket #23-550; filed 6-15-23]

**TITLE 600. REAL ESTATE APPRAISER BOARD  
CHAPTER 30. APPRAISAL MANAGEMENT COMPANY REGISTRATION**

[OAR Docket #23-551]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

600:30-1-5. Renewal Process [AMENDED]

600:30-1-8. Background investigations [AMENDED]

**AUTHORITY:**

Real Estate Appraiser Board; 59 O.S., § 858-829

# Permanent Final Adoptions

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

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n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

Updates language to better clarify the application process and to clarify a background check is done on each owner.

## CONTACT PERSON:

Ashley Scott, Government and Community Affairs Director, (405) 521-6616.

**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:**

### 600:30-1-5. Renewal process

- Certificates of Registration may be renewed for a period of one (1) year.
- Applications for ~~renewal~~Renewal of a Certificate of Registration shall be submitted to the Board on forms which shall be prescribed by the Board.
- Registrants applying for renewal of a Certificate of Registration shall apply by submitting an Application for a Certificate of Registration Renewal not later than the expiration of its one-year registration period~~Form, REA AMC 03.~~
- Registrants may renew expired Certificates of Registration up to ninety (90) calendar days following expiration of the Certificate by submitting an Application for Renewal Certificate of Registration Renewal Form, and remitting all required fees plus a late fee.
- After a Certificate of Registration has been expired for a period of time in excess of ninety (90) calendar days, the Certificates of Registration may not be renewed. In order to acquire a Certificate of Registration, an AMC shall reapply as set forth in OAC 600:30-1-4.

### 600:30-1-8. Background investigations

- In order to comply with the provisions of FIRREA and qualify each registrant for inclusion on the national registry, each ~~owner person who owns more than ten percent~~ of an AMC, and each Designated Officer of an AMC shall be of good moral character, as determined by the Board, and shall submit to a background investigation carried out by the Board.

(b) Background investigations shall be accomplished by use of a form approved by the Board.

(c) Background investigations shall be conducted by a vendor selected by the applicant from the list of vendors set forth by the National Association of Insurance Commissioners, shall be conducted at the applicant's expense, and shall be transmitted directly from such vendor to the Board.

[OAR Docket #23-551; filed 6-15-23]

## TITLE 605. OKLAHOMA REAL ESTATE COMMISSION CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #23-536]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
605:10-1-4 [AMENDED]

### AUTHORITY:

Oklahoma Real Estate Commission; 59 O.S., § 858-208.

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

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n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The amendments to Chapter 1 provide the Commission members the authority to remove Contract Form Committee members due to lack of attendance and allow the Commission to award continuing education credit to Contract Form Committee members for time served reviewing, editing, and updating contracts.

## CONTACT PERSON:

Bailey Crotty, Deputy Director, Oklahoma Real Estate Commission  
1915 N Stiles Ave Suite 200, Oklahoma City, OK 73105, 405-522-8561,  
bailey@orec.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

**605:1-1-4. Operational procedures**

(a) **Organization.** The organization of the Commission is declared to be that as enumerated in Sections 858-201 through 858-204 of the heretofore described Code.

(b) **Operational procedures.** The general course and method of operation shall be as hereinafter specified in overall provisions of the rules of this Title.

(c) **Open Records Act.** In conformance with Title 51, Section 24 A.1., et seq, Oklahoma Statutes, 1985, titled "Oklahoma Open Records Act" all open records of the Real Estate Commission may be inspected and copied in accordance with procedures, policies, and fee as required by the Commission. The Commission shall charge the following:

- (1) A fee of \$.25 for each xerographic copy or micro-graphic image.
- (2) A fee of \$1.00 for each copy to be certified.
- (3) A fee of \$10.00 per hour for a record or file search.
- (4) A fee of Forty Dollars (\$40.00) per extract for License Data extract.
- (5) A fee of Fifty Dollars (\$50.00) every three (3) months for an Examinee Data extract.
- (6) A fee of no more than Seven Dollars and Fifty Cents (\$7.50) for a convenience fee for any electronic/on-line transaction.

(d) **Petition for promulgation, amendment or repeal of any rule.** Any person may petition the Commission in writing requesting a promulgation, amendment or repeal of any rule.

(1) The petition must be in writing in business letter form or in the form of petitions used in civil cases in this State, and shall contain an explanation and the implications of the request and shall be:

- (A) Signed by the person filing the petition and be filed with the Secretary-Treasurer of the Commission.
- (B) Submitted to the Commission at least thirty (30) days prior to a regular meeting.
- (C) Considered by the Commission at its first meeting following such thirty (30) days.
- (D) Scheduled for a public hearing before the Commission within sixty (60) days after being considered by the Commission in a regular meeting.

(2) Within sixty (60) days after the public hearing, the Commission shall either grant or deny the petition. If the petition is granted, the Commission shall immediately begin the procedure for the promulgation, amendment or repeal of any rule pursuant to Title 75 O.S. 303.

(3) If the petition is denied the parties retain their rights under 75 O.S. Sec. 318, to proper Judicial Review.

(e) **Petition for declaratory ruling of any rule or order.**

(1) Any person may petition the Commission for a declaratory ruling as authorized by Section 307 of Title 75 of the Oklahoma Statutes as to the applicability of any rule or order of the Commission. Such petition shall:

- (A) be in writing;
- (B) be signed by the person seeking the ruling;
- (C) state the rule or order involved;
- (D) contain a brief statement of facts to which the ruling shall apply; and

(E) if known and available to petitioner, include citations of legal authority in support of such views.

(2) The Commission shall have at least thirty (30) days to review the petition. Following the review period, the Commission shall consider the petition at its next meeting.

(3) The Commission may compel the production of testimony and evidence necessary to make its declaratory ruling.

(4) Declaratory rulings shall be available for review by the public at the Commission office.

(f) **Contract Forms Committee.**

(1) The Contract Forms Committee is required to draft and revise real estate purchase and/or lease contracts and any related addenda for standardization and use by real estate licensees (Title 59 O.S. 858-208 {14}).

(2) The committee shall consist of eleven (11) members. Three (3) members shall be appointed by the Oklahoma Real Estate Commission; three (3) members shall be appointed by the Oklahoma Bar Association; and five (5) members shall be appointed by the Oklahoma Association of Realtors, Incorporated.

(3) The initial members' terms shall begin upon development of the forms and each member shall serve through the effective date of implementation of form(s) plus one (1) year. Thereafter, the Oklahoma Real Estate Commission shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years; the Oklahoma Bar Association shall appoint one (1) member for one (1) year, one (1) member for two (2) years, and one (1) member for three (3) years and; the Oklahoma Association of Realtors, Incorporated shall appoint two (2) members for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, terms shall be for three (3) years and each member shall serve until their term expires and their successor has been appointed. Any vacancy which may occur in the membership of the committee shall be filled by the appropriate appointing entity.

(4) A member can be removed for just cause by the committee or by quorum vote of Commissioners on the Commission.

(5) Each member of the committee shall be entitled to receive travel expenses essential to the performance of the duties of his appointment, as provided in the State Travel Reimbursement Act.

(6) Each member of the committee who satisfies the minimum participation requirements shall be entitled to receive continuing education credit for the following courses:

- (A) Contracts
- (B) Code and Rules

(g) **Oklahoma Education and Recovery Fund.** If a special levy is assessed on licensees as outlined in Title 59 O.S. 858-604 (E), the levy must be paid within sixty (60) days of

# Permanent Final Adoptions

assessment or the license will be placed on inactive status and shall not be placed on active status until the levy is paid.

[OAR Docket #23-536; filed 6-14-23]

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

[OAR Docket #23-537]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Education and Examination Requirements  
605:10-3-4 [AMENDED]  
605:10-3-5 [AMENDED]  
605:10-3-7 [AMENDED]  
Subchapter 7. Licensing Procedures and Options  
605:10-7-2 [AMENDED]  
605:10-7-8.3 [AMENDED]  
605:10-7-8.4 [AMENDED]  
605:10-7-11 [AMENDED]  
Subchapter 9. Broker's Operational Procedures  
605:10-9-3 [AMENDED]  
605:10-9-3.2 [AMENDED]  
605:10-9-5 [AMENDED]  
Subchapter 11. Associate's Licensing Procedures  
605:10-11-2 [AMENDED]  
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline  
605:10-17-4 [AMENDED]  
605:10-17-6 [AMENDED]

**AUTHORITY:**  
Oklahoma Real Estate Commission; 59 O.S., § 858-208.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**  
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n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The amendments to Subchapter 3 clarify the application approval process, provide corrections to updated statutes, clarify the examination process, clarify the process for voided examinations, and extend post-licensure completion from 6 months to one year.

The amendments to Subchapter 7 modify the reinstatement period of a revoked license, remove an unnecessary definition of LLC under a partnership section, remove irrelevant licensure group fees, and modify the process to register payment of commission entities.

The amendments to Subchapter 9 remove unnecessary group rate fees and modifies the trade name registration process, remove unnecessary change of

address fees, and provide clarity regarding team name registration in order to deter misleading advertising through team names.

The amendments to Subchapter 11 clarify the transferring of an associate process and remove unnecessary change of address and group related fees.

The amendments to Subchapter 17 provide clarification that all beneficial and familial disclosures must be made in writing and provides an option for brokerages with a revoked or suspended license to destroy the license certificates instead of only offering for the certificates to be mailed to the Commission.

**CONTACT PERSON:**

Bailey Crotty, Deputy Director, Oklahoma Real Estate Commission  
1915 N Stiles Ave Suite 200, Oklahoma City, OK 73105, 405-522-8561,  
bailey@orec.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 3. EDUCATION AND EXAMINATION REQUIREMENTS

**605:10-3-4. Broker applicant; experience**

(a) No individual shall be licensed as a real estate broker unless in addition to the other requirements in the Code, he or she has served two (2) active years, or its equivalent, as a licensed real estate sales associate and/or broker associate, with and under the instructions and guidance of a licensed real estate broker of this state or any other state at least twenty-four (24) months within the five (5) year period immediately prior to the filing of his or her application for license as a real estate broker in Oklahoma. Additionally, no individual shall be licensed as a real estate broker unless he or she can provide documentation verifying ten real estate transactions as defined in Section ~~858-354~~858-303 of the Code within the past five years, or the equivalent thereof, as determined by the Commission. Such documentation shall be demonstrated on forms developed by the Commission.

(b) An application submitted for the purpose of seeking a license to function as a real estate broker shall not be accepted for filing by the Commission unless such applicant has completed the two (2) year licensure requirement on or before the date such application is submitted.

**605:10-3-5. Examinations**

(a) Applicant must appear in person. When an application for examination has been submitted to the Commission, the applicant shall be required to appear in person, at a time and place to be designated by the Commission, and answer questions based on the required subject matter as prescribed elsewhere in the rules of this Chapter. ~~On and after August 1, 2001, each broker examination fee shall be Seventy five Dollars (\$75.00) and each provisional sales associate/sales associate examination fee shall be Sixty Dollars (\$60.00). All examination fees shall be established by the Commission in conjunction with any examination vendor selected by the~~

Commission. Examination fees shall be published on the Commission website.

(b) **Special Accommodations.** In cases where special accommodations are necessary under the requirements of the Americans with Disabilities Act, applicants must notify the examination supplier in advance by submitting a written request, ~~on a form prescribed by the Commission,~~ describing the disability and necessary accommodations.

(c) **Failure to pass examination.** If an applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of a new examination fee for each examination to be attempted.

(d) **Applicant request to view failed examination.** An applicant who fails the examination has the option of reviewing their missed questions at the end of their examination. An applicant may challenge the validity of any question(s) they identify as incorrectly graded. A challenge to a question that pertains to the Oklahoma law portion of the examination will be sent to the Commission by the examination supplier. A challenge to a question that pertains to the national portion will fall under the review policy of the examination supplier. In either case, both the examination supplier and/or the Commission shall have five (5) business days in which to review and issue a response to the applicant. Applicants will be allowed up to one (1) hour to review their exam and the applicant will not be allowed to test on the same day they review a failed examination. No notes, pencils, or electronic devices will be allowed during a review nor will they be allowed to leave the examination area with the examination questions.

(e) **Application valid for one year.** The original examination application shall be valid for one (1) year from date of filing. After such date, an applicant must complete a new original application form.

(f) **Passing percentile of examination.** A score of seventy-five percent (75%) or more shall be considered a passing grade on the broker examination. A score of seventy percent (70%) or more shall be considered a passing grade on the provisional sales associate/sales associate examination.

(g) **Validity period of examination results.** The results of an examination wherein an applicant scored a passing grade shall be valid for one (1) year from the date of such examination.

(h) **Disciplinary examination fee.** A fee shall be charged for an examination which is directed by Order of the Commission as disciplinary action.

(i) **Examination voided.** A licensee or instructor applicant caught cheating during the course of a real estate examination shall:

- (1) immediately forfeit the examination and receive a failing score,
- ~~(2) be given a failing score,~~
- ~~(3) be disqualified from retaking the examination for one year, and~~
- ~~(4) must re-apply as an original applicant for any future application submitted after the one year ban~~
- ~~(4) be applicants impacted by this section are allowed to file an appeal with the Commission under Rule 605:10-1-3.~~

**605:10-3-7. Provisional sales associate post-license education requirement**

(a) **Purpose.** The purpose of the provisional sales associate post-license education requirement is to provide an educational program through which real estate provisional sales associate licensees can become more competent, knowledgeable and perfect their ability to engage in real estate activities for which they are licensed. Such activities involve facts and concepts which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(b) **Goals.** The goals of the provisional sales associate post-license education requirements are:

- (1) To provide newly licensed individuals with the opportunity to obtain current information and knowledge to enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.
- (2) To assure that licensees are provided with relevant information pertaining to practices which directly relate to real estate business.
- (3) To assure that the provisional sales associate is provided with information regarding new and/or changing laws and regulations which affect the real estate business.
- (4) To assure that the consumers interest is protected from unknowledgeable licensees.

(c) **Objectives.** The objectives of post-license education are to:

- (1) Assist newly licensed individuals by having available a practical educational program wherein the information attained can be put into practice.
- (2) To help licensees expand and enhance their knowledge and expertise so as to continually be effective, competent, and ethical as they practice real estate.
- (3) To encourage licensees to gain additional education for specialization in particular areas of real estate.

(d) **Subject content.** On and after July 1, 1993, a provisional sales associate shall be required to successfully complete prior to the first license expiration date, forty-five (45) clock hours of post-license education or its equivalent as determined by the Commission. Such course of study shall be referred to as the Provisional Post-license Course of Real Estate, Part II of II and shall encompass the following areas of study:

- (1) Real Estate Marketplace
- (2) Marketing Real Estate
- (3) Personal Marketing
- (4) The Qualifying Process
- (5) Prospecting and Negotiating
- (6) Financing Real Estate, Investments and Exchanges
- (7) Financial Documents
- (8) Duty to Account
- (9) Title Search
- (10) Risk Management
- (11) At least three (3) clock hours of Broker Relationships with Parties to a Transaction
- (12) Property Management

# Permanent Final Adoptions

- (13) At least three (3) clock hours of Laws and Regulations Affecting Real Estate Practice, including Code and Rules
- (14) Disciplinary Action
- (15) At least three (3) clock hours of Contracts and Forms.
- (16) At least three (3) clock hours of Professional Conduct and Ethics
- (17) At least three (3) clock hours of Fair Housing.
- (e) **Equivalent course content.** The Commission may approve and/or accept any offering or combination of offerings which consists of forty-five (45) clock hours or more or its equivalent as determined by the Commission provided by an entity which meets the purposes, goals and objectives of the provisional sales associate post-license education requirement.
- (f) **Offerings.**
  - (1) The Commission may accept the following offerings as proof of meeting the post-license education requirement:
    - (A) Any offering which is approved and presented by those entities enumerated in Title 59, O.S., subsection B, of 858-307.2 of the "Code."
    - (B) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.
    - (C) Any offering in real estate, or directly related area, not accepted in paragraphs (A) or (B) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.
  - (2) The Commission has the authority to disapprove any offering which fails to meet the purposes, goals and objectives of this Section.
- (g) **Licensee responsible for notification to Commission.** Each provisional sales associate shall be responsible to furnish evidence to the Commission of having successfully completed a Commission approved forty-five (45) clock hour post-license education course or its equivalent as determined by the Commission. Upon successful completion of the post-license education requirement, evidence must be submitted on or before license expiration and on a form approved by the Commission.
- (h) **Failure to complete post-license education requirement prior to license expiration.** ~~A provisional sales associate who fails to complete the post license education requirement within six (6) months from the date of issuance, shall be placed on inactive status until evidence of successful completion is submitted to the Commission.~~ A provisional sales associate who fails to complete the post-license education requirement prior to the first expiration date of the provisional sales associate license, shall not be entitled to renew such license.
- (i) **Evidence of completion.** As evidence of having completed the education requirement, each provisional sales associate shall present one or more of the following as required by the Commission:

- (1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or
- (2) A certified transcript; however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.
- (j) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements and an examination.
- (k) **Successful completion of materials and examination required for distance education credit.** To complete a distance education offering, a person must successfully complete all course requirements to include all modules and an examination.
- (l) **Course limitations.** The following course limitations shall apply:
  - (1) A provisional sales associate shall only be given credit for courses specifically approved by the Commission.
  - (2) Educational courses taken for disciplinary reasons do not count towards the normal post-license education requirement.
- (m) **Extension of time for completion of post-license course for provisional sales associate that has received orders for active military service.** A provisional sales associate that has received orders for active military service may request an extension of time to complete the post-license education requirement if the request is received in writing prior to the expiration of the license. The request must be accompanied by a copy of the military orders for active military service. The extension of time shall be one (1) year from the date of return from active military service. In conformance with §858-309, a licensee on active military service shall request an inactive status prior to each term for which the license is to be issued. If an extension is approved, a provisional sales associate shall be allowed to renew their license by requesting an inactive status in writing prior to each term for which the license is to be issued.

## SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

### 605:10-7-2. License terms and fees; renewals; reinstatements

- (a) **License term and fees.** Each original license issued under the Code shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate license issued under the Code shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. Fees are non-refundable and are as follows:
  - (1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Eighty Dollars (\$280.00).



- (2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Sixty 40 605:10-7-11. Applicant Criminal History Dollars (\$160.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Sixty Five Dollars (\$165.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
- (3) For an original broker associate license and each subsequent license renewal, the fee shall be Two Hundred and Forty Five Dollars (\$245.00).
- (4) For an inactive original broker associate license and each subsequent inactive license renewal, the fee shall be One Hundred and Fifty Dollars (\$150.00). In order to activate a license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Fifty Five Dollars (\$155.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
- (5) For an active original sales associate license and each subsequent active license renewal the fee shall be Two Hundred Dollars (\$200.00).
- (6) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be One Hundred and Twenty Five Dollars (\$125.00). In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Five Dollars (\$135.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.
- (7) For an original provisional sales associate license that is non-renewable the fee shall be Ninety Five Dollars (\$95.00).
- (8) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Seventy Dollars (\$170.00).
- (9) For each duplicate license or pocket card, where the original is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents (\$7.50) shall be charged.
- (10) The Fifteen Dollar (\$15.00) Education and Recovery Fund fee, shall be added and payable with the license fee for an original license and for each subsequent license renewal. Exceptions to this rule are: 1) a provisional sales associate license fee shall be Five Dollars (\$5.00) for their twelve (12) month license term; and, 2) a branch office shall not pay the fee.
- (b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.
- (c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term. A person who allows their license to expire may be subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.
- (d) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such a case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.
- (e) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of such license upon payment of an Eighty Dollar (\$80.00) reinstatement fee in addition to the license fee(s) for each delinquent license period(s). The following documents and fees must be submitted:
- (1) **Lapsed less than one year.** In the case of a license lapsed less than one year:
    - (A) License fee.
    - (B) Reinstatement fee.
    - (C) Documents as required by the Commission.
  - (2) **Lapsed more than one year but less than three years.** In the case of a license lapsed more than one year but less than three years:
    - (A) License fee.
    - (B) Reinstatement fee.
    - (C) National criminal history check.
    - (D) A completed reinstatement application.
    - (E) Successful completion of the appropriate licensing examination.
    - (F) A statement that the applicant has read a current License Code and Rules.
    - (G) Documents as may be required by the Commission.
  - (3) **Lapsed more than three years.** If an application is submitted more than three (3) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.
- (f) **Reinstatement of a provisional sales associate license wherein post-license education was completed prior to license expiration date.** An applicant who successfully completed the post-license education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (e), (1) through (3).
- (g) **Reinstatement of a provisional sales associate license wherein post-license education was not completed prior to license expiration date.** An applicant who has not successfully completed the post-license education requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.
- (h) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of ~~three (3)~~ five (5) years from the effective date of license revocation, except for an applicant whose license was automatically revoked pursuant to Sections 858-402 or 858-604 of Title 59, Oklahoma Statutes. Upon the passage of the ~~three (3)~~ five

## Permanent Final Adoptions

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(5) year period, the applicant shall be required to comply with the requirements of an original applicant.

(i) **Reinstatement of an automatically revoked license.** An applicant who has had their license automatically revoked, pursuant to Section 858-402 or 858-604 of Title 59 of the Oklahoma Statutes, shall be required to comply with the requirements of (e) of this section. In addition, reinstatement will not be granted until all outstanding amounts due to the Commission have been paid in full.

(j) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled license applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled license applicant whose license term is still current:

- (A) Reinstatement fee.
- (B) Re-issuance fee equal to the transfer of license fee.
- (C) Documents as may be required by the Commission.
- (D) Criminal history background check.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled license applicant whose license term has expired shall be required to comply with the requirements of (e) of this section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

- (A) If a provisional sales associate completed the post-license requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (e), (1) through (2).
- (B) If a provisional sales associate did not complete the post-license requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(k) **Continuing education requirement.** Each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that they have completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. An applicant seeking active reinstatement of a lapsed license must submit evidence that all continuing education requirements have been completed for each term in which an active license is requested.

(l) **License expires after effective date of national criminal history check.**

(1) Any licensee who allows their license to expire for more than one (1) year shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed background check, and fee as stated elsewhere in these rules for the background search. If, the Commission does

not receive a completed application, background check, and fee within thirty (30) days from the date of request by the Commission, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, are received by the Commission.

(2) A provisional sales associate who completes the Provisional Post-License Course prior to their first license expiration date but fails to timely renew the license shall be eligible to apply under the requirement under the preceding paragraph. However, after a period of three (3) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(m) **Issuance of license from provisional sales associate to sales associate.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional Post-license Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the provisional sales associate has submitted evidence of successful completion of the forty-five (45) clock hour post-license course requirement and submitted all form(s) and fee(s) as required by the Commission.

(n) **Active sales associate to inactive broker associate, or sales associate and/or broker associate to inactive broker license - no remaining credit to be given.** In the event an active sales associate, within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker associate license, the Commission shall not credit the difference in license fees. In the event an active sales associate or broker associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not credit the difference in the license fees.

(o) **Licensee on active duty as a member of the Armed Forces of the United States.**

(1) In accordance with Title 59, O.S., Section 4100.6 of the Post-Military Service Occupation, Education and Credentialing Act while a license holder is on active duty the license may be renewed without payment of the license and education and recovery fund fee and meeting the continuing education requirement. Such waiver shall be requested in writing to the Commission prior to license expiration along with evidence of the order for active duty. The license issued pursuant to this rule may be continued as long as the licensee 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. Upon discharge from active duty and a request for license activation, the licensee shall submit to the Commission evidence

of successful completion of the continuing education requirement for the current license renewal term.

(2) If a licensee on active duty does not request such a waiver in writing and the license expires, the applicant may, by written request provide the Commission documentation as required in subparagraph (1) of this subsection; however, no later than one (1) year after discharge from active duty.

(3) In the event a license expires during the events as noted herein, the Commission shall waive the criminal history background check and license examination.

(4) Member of the National Guard or reserve component of the armed forces. In accordance with Title 72, Chapter 1, Section 48.2 Extension and Renewal of Professional Licenses, any licensee whose license expires while on active duty as a member of the National Guard or reserve component of the armed forces shall be extended until no later than one (1) year after the member is discharged from active duty status. Upon the Commission receiving a copy of the official orders calling the member or reservist to active duty and official orders discharging the member or reservist from active duty all licensee fee and continuing education shall be waived for this time period as well as the criminal history background check and license examination.

(p) **Reinstatement for corporation, association or partnership.**

(1) A corporation, association or partnership that has lapsed for less than three (3) years that wishes to reinstate must submit:

- (A) License fee(s).
- (B) Reinstatement fee, forms and documents as required by the Commission.
- (C) If the corporation or association has been lapsed for more than sixty (60) days, a current "Certification of Good Standing."

(2) Any corporation, association or partnership that has lapsed for more than three (3) years must submit an original application to be considered for licensure.

(q) **Reinstatement for branch offices.**

(1) A branch office that is lapsed for less than three (3) years that wishes to reinstate must submit:

- (A) License fee(s).
- (B) Reinstatement fee, forms and documents as required by the Commission

(2) Any branch office that has lapsed for more than three (3) years must submit an original application as a new branch office.

(r) **Specific license fees waived for low-income individuals.** In accordance with Title 59, Section 4003, any applicant who can present satisfactory evidence of being a low-income individual shall receive a one-time one-year waiver of the licensure fees as outlined in 605:10-7-2 (a). Such waiver shall be prorated for a multi-year license so that the applicant shall only receive a waiver for one year of the applicable license fees. For the purposes of this section, "low-income individual" means an individual who is enrolled in a state or federal public

assistance program, or whose household adjusted gross income is below 140% of the federal poverty line or a higher threshold to be set by the executive branch department that oversees business regulation. Satisfactory evidence that the applicant is a low-income individual must be made upon forms provided by the Commission and must be presented upon application for original licensure.

**605:10-7-8.3. Sole Proprietor licensing procedures**

(a) **Sole Proprietor.** A sole proprietor is a broker that is the sole owner of a real estate business/firm. To qualify for a sole proprietorship, the firm shall not conduct business in the name of an entity, i.e., corporation, association (Limited Liability Company) or partnership and the business/firm shall not be owned by any other person or entity. To apply as a sole proprietor one must meet all requirements for a broker license and submit to the Commission the following:

- (1) Completed sole proprietor broker application form(s) and fee(s) as required by the Commission.
- (2) An associate release form if previously associated with a sponsoring broker.

(b) **Death, disability or retirement.** In the event of the death, disability or retirement of the sole proprietor, the sole proprietor firm shall cease business activities.

(c) **Broker responsible.** A sole proprietor broker is responsible for all acts of associates licensed with the firm.

(d) **Ceasing business activities.** When the sole proprietor discontinues a portion of the real estate activities or ceases all real estate activities, the sole proprietor is required to comply with the following:

- (1) Immediately notify the Commission in writing.
- (2) Comply with Section 605:10-13-1 (n).

~~(e) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars (\$750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.~~

**605:10-7-8.4. Corporations or Associations formed for the purpose of receiving compensation**

Within the meaning of subsection 14 of Section 858-312 of the "Code" payment of a commission by a broker to a broker or an associate's corporation or association does not constitute a payment of a fee (commission) to an unlicensed person provided the corporation or association and the broker and/or associate abide by the following requirements:

- (1) The corporation or association shall not perform any act requiring a real estate license and shall not hold itself out as engaged in such activity.
- (2) The licensee requesting registration with the Commission must have an active individual real estate license.
- (3) The managing broker must provide approval to the Commission of the broker or associate's corporation or association.

# Permanent Final Adoptions

- (4) The licensee requesting registration with the Commission must be the majority stockholder and president of the corporation or majority member of the association.
- (5) Ownership of the broker or associate's corporation or association is limited to spouses and blood relatives.
- (6) The corporation or association shall not advertise or receive referral fees or commissions except from the broker.
- (7) The licensee requesting registration with the Commission must pay a ~~forty dollar (\$40.00)~~ fifty dollar (\$50.00) registration fee and make the following declarations to the Commission:
  - (A) A statement that the licensee requesting registration with the Commission is the majority stockholder and president of the corporation or majority member of the association.
  - (B) Names and relations of all officers/members and/or stockholders.
  - (C) Verification that the association or corporation is in good standing with the Oklahoma Secretary of State.
- (8) An individual broker or associate may only register one corporation or association for the purpose of receiving compensation.

## 605:10-7-11. Applicant criminal history

- (a) This section establishes the criteria utilized by the Commission in determining the effect of criminal history on applicant eligibility for real estate licensure and certification. This section applies to:
  - (1) All individuals seeking to obtain a real estate license;
  - (2) All individuals seeking an initial determination of their eligibility to obtain a real estate license.
- (b) The Commission shall maintain a list of ~~felony~~ crimes that disqualify an applicant from obtaining a real estate license ~~within ten (10) years of completion of the criminal sentence, including parole and probation, in compliance with 59 O.S. § 858-301.1.~~ The ~~felony~~ crimes included on the list substantially relate to the practice of real estate and pose a reasonable threat to public safety for the reasons stated below:
  - (1) Real Estate Licensees have unique access to residential homes and commercial buildings.
  - (2) Real Estate Licensees have daily contact with the public and individuals in the occupation.
  - (3) Real Estate Licensees play a vital role in assisting the public with substantial long-term financial obligations.
- (c) The Commission's list of disqualifying ~~felony~~ crimes is available on the Commission's website or upon request by contacting the Commission office.
- (d) Individuals may request an initial determination from the Commission regarding whether the individual's criminal history disqualifies that individual from obtaining a real estate license. Such request must be in writing and directed to the Oklahoma Real Estate Commission. The individual must submit a copy of their criminal history and any related documents and court records that specify the criminal history of the individual. A fifty dollar (\$50.00) fee shall accompany any

request for initial determination. The fee shall be collected by the Commission prior to the determination.

- (e) Individuals may appeal the Commission's initial determination of disqualification by submitting a request in writing of the circumstances the individual would like the Commission to consider. The Commission may discuss the individual appeals at any scheduled meeting of the Commission. ~~The individual may be allowed to address the Commission during public comment by signing in at the beginning of the meeting at which the appeal may be on the agenda.~~

## SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

### 605:10-9-3. Trade names

Each licensed broker or entity must register in writing to the Commission all trade names used in connection with real estate activities prior to the trade name being advertised or displayed in any way. Further, each broker is to notify the Commission in writing of all deleted or unused trade names. The registration of each trade name must be accompanied by a ~~ten dollar (\$10.00)~~ twenty five dollar (\$25.00) registration fee.

### 605:10-9-3.2. Team registration and fees

- (a) The broker shall register each team within the brokerage with the Commission on a form prescribed by the Commission. The fee for each team name registration shall be \$100.00.
- (b) Each team name must be approved by the broker and must be unique and not registered to another real estate team within the State of Oklahoma, and must not be identical to any association, corporation or partnership licensed as a real estate entity by the Commission.
- (c) The broker shall not allow any team name identical to an associate's corporation or association formed for the purpose of receiving compensation.
- (d) Each team name must be registered to the Commission prior to the performance of any licensable activities by the team.
- (e) It shall be prohibited for a broker to register any team name that is not being used by a team within their brokerage.
- (f) The broker shall maintain and keep current a list of teams and their respective members, in writing, within the brokerage. Copies of this list shall be made available immediately to the Commission upon request.
- (g) The broker shall notify the Commission, in writing, of all deleted or unused team names.
- (h) Team members must maintain an active Oklahoma real estate license.
- (i) All registered team names shall contain the word "team" or "group".

### 605:10-9-5. Broker change of address or office telephone number

- (a) **Change of business address or office telephone number.** Any change of business address or office telephone

number of a broker must be filed in the Commission office within ten (10) days of such change. Filed shall mean the date of the United States Postal Service postmark or the date personal delivery is made to the Commission office. ~~The broker shall return his or her certificate to the Commission along with those of all licensees in his or her association with a request for a change of address. Upon any request for a change of address there shall be paid a fee to the Commission of Forty Dollars (\$40.00) for each license to be changed. No fee shall be charged for adding or deleting an office telephone number.~~

~~(b) **Group change of address.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars (\$750.00) on group transactions requesting Licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.~~

~~(e**b**) **Change of home address.** A broker is required to notify the Commission of his or her current home address. Such change shall be filed in the Commission office within ten (10) days of such change.—No fee is required to change the licensee's record; however, a fee of Forty Dollars (\$40.00) will be charged if the change requires a new license to be issued.~~

~~(d**c**) **Associates transfer.** When an affiliated associate leaves a broker for whom the associate is acting, the broker shall make every attempt to notify the associate of the disassociation.~~

~~(e**d**) **Active associate may continually act.** An active associate transferring from one broker to a new broker may continually act if the change is done in a timely manner and in compliance with the ten (10) day notification requirement and other applicable rules of this Chapter.~~

~~(f**e**) **Compensation due a disassociated associate.** A previous broker may pay compensation due a disassociated associate directly to the associate and not be required to make the payment through the associate's new broker. However, any agreements between the associate and prior broker requiring further activities to be performed in connection with the compensation to be received, can only be performed with consent and acknowledgement of the new broker.~~

~~(g**f**) **Change of home address.** An associate is required to notify the Commission office of his or her current home address. The change shall be filed in the Commission office within ten (10) days of change. No fee is required to change the licensee's records; however a fee of Forty Dollars (\$40.00) will be charged if the change requires a new license to be issued.~~

**SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES**

**605:10-11-2. Associate licenses**

(a) **License issuance and change request.** Each associate license shall be issued electronically to each associate through the individual License Portal. Upon an associate leaving the association of the broker, the associate's license shall be updated electronically after receiving a release or transfer executed by the broker. Any change of association from one firm to another, or relocation from one office to another within a firm by an associate must be filed in the Commission office within ten (10) days. The associate's new broker shall be required to provide consent to sponsor the associate with the Commission. An associate requesting an association or office change shall be required to pay a fee of Forty Dollars (\$40.00).

(b) **Broker refusal to release associate.** In the event a broker refuses for any reason to release an associate, the associate shall notify the broker and Commission in writing of the disassociation and furnish the Commission a sworn statement that the notification has been sent to the broker. Upon receipt by the Commission of the aforementioned statement, the Commission will provide one (1) additional email notice to the broker and shall release the licensee within two (2) business days.

~~(e) **Group change requests.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars (\$750.00) on group transactions requesting licenses to be reissued. To qualify, the request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.~~

**SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE**

**605:10-17-4. Prohibited dealings**

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

(1) The making of a brokerage service contract without a date of termination.

(2) Purchasing of property by a licensee for himself or herself or another entity in which the licensee has an interest as defined in 605:10-15-1 (c), if such property is listed with the broker or the broker's firm, without first making full written disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert the licensee's best effort in order to later purchase or acquire the property for themselves or another entity in which they have an interest as defined in 605:10-15-1 (c).

(3) Purchasing of property by a licensee for himself or herself or another entity in which the licensee has an interest as defined in 605:10-15-1(c) without first making a full written disclosure to all parties involved in the transaction.

~~(3**4**) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.~~

~~(4**5**) Procuring the signature(s) and dates of such signature(s) to a purchase offer or contract or to any lease or lease proposal which has no definite maximum purchase~~

## Permanent Final Adoptions

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price or lease rental, or no method of payment, termination date, possession date or property description.

~~(56)~~ The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.

~~(67)~~ Lending a broker's license to an associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of the broker's license to enable an associate licensed with the broker to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of the broker's sponsorship.

~~(78)~~ Failure to make known in writing to any purchaser any interest the licensee has in the property they are selling.

~~(89)~~ Failure of the licensee to inform the buyer and seller in writing at the time the offer is presented that the buyer and seller will be expected to pay certain closing costs, brokerage service costs, and approximate amount of said costs.

~~(910)~~ Failure, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.

~~(1011)~~ Failure to reduce an offer to writing, when a proposed purchaser requests such offer to be submitted.

~~(112)~~ Failure to submit all bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.

~~(1213)~~ Any conduct in a real estate transaction which demonstrates bad faith or incompetency.

~~(1314)~~ Failure to act, in marketing the licensee's own property, with the same good faith as when acting in the capacity of a real estate licensee.

~~(1415)~~ An associate who does not possess the license of a broker or branch office broker as defined in the rules, but is intentionally acting in the capacity of a broker or branch office broker.

~~(1516)~~ Discouraging a party from obtaining an inspection on a property.

~~(1617)~~ Allowing access to, or control of, real property without the owner's authorization.

~~(1718)~~ Knowingly providing false or misleading information to the Commission during the course of an investigation.

~~(1819)~~ Interfering with an investigation by means of persuading, intimidating or threatening any party or witness, or tampering with or withholding evidence relating to the investigation.

~~(1920)~~ Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.

~~(2021)~~ Failing to disclose in writing any known immediate family relationship to a party to the transaction for which the broker is providing brokerage services.

~~(2122)~~ Failure by a broker to ensure all persons performing real estate licensed activities under the broker are properly licensed.

~~(2223)~~ An associate shall not perform licensed activities outside their broker's supervision.

~~(2324)~~ Failing to maintain documents relating to a trust account or real estate transaction for the time period as required by Rule 605:10-13-1.

### **605:10-17-6. Requirements for suspended/revoked licensee**

(a) A suspended/revoked licensee must destroy or return their license certificate and pocket identification card to the Commission office on or before the date the suspension/revocation becomes effective.

(b) When the suspension/revocation period becomes effective, the licensee shall comply with the following requirements:

(1) A suspended/revoked licensee shall not engage in any activity which requires a real estate license, as defined in Section 858-102.

(2) When a broker's license is suspended/revoked, associates under the suspended/revoked broker's supervision will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(3) If the suspended/revoked broker has a branch office, the license for the branch office will be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the branch office will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(4) If a managing corporate broker of a corporation is suspended/revoked for an act which was on behalf of the corporation, the broker license of the corporation will be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the corporation will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(5) If the managing partner(s) of a partnership is suspended/revoked for an act which was ~~in~~ on behalf of the partnership, the broker license of the partnership will be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the partnership will automatically be placed on "inactive" for the duration of the suspension/revocation period and the other broker will be placed "inactive" unless he or she requests his or her license to be transferred out of the partnership.

(6) If a managing broker member of an association is suspended/revoked for an act which was in behalf of the association, the broker license of the association will be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the association will automatically be placed "inactive" for the duration of the

suspension/revocation period unless the licensee requests to be transferred to another broker.

(7) A suspended/revoked licensee shall only receive compensation during the suspension/revocation period for acts which were performed during the period in which the licensee was actively licensed.

(8) Listings must be cancelled by a suspended/revoked broker between the time the Order of suspension/revocation is received and the effective date of suspension/revocation, as listings will be void on the date the suspension/revocation becomes effective.

(9) A suspended/revoked broker shall not assign listings to another broker without the written consent of the owner of the listed property.

(10) A suspended/revoked broker shall not advertise real estate in any manner, and must remove and discontinue all advertising.

(11) The telephone in a suspended/revoked broker's office shall not be answered in any manner to indicate the suspended/revoked broker is currently active in real estate.

(12) All pending contracts, items or monies placed with the suspended/revoked broker must be transferred to another responsible broker as approved by the Commission and in compliance with Section 605:10-13-1 (n.).

(13) A suspended/revoked licensee shall be required to comply with Section 605:10-13-1 (n) and provide the required information to the Commission prior to the effective date of suspension/ revocation.

(14) A representative of the Commission shall visit the office of any suspended/revoked broker prior to the effective date of the suspension/revocation to insure compliance with the requirements of (1) through (13) of this subsection.

[OAR Docket #23-537; filed 6-14-23]

**TITLE 610. STATE REGENTS FOR HIGHER EDUCATION  
CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS**

[OAR Docket #23-509]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 23. Oklahoma Higher Learning Access Program  
610:25-23-2. Eligibility of participants [AMENDED]

**AUTHORITY:**

Oklahoma State Regents for Higher Education; 70 O.S. §§ 2605 and 3206

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

October 31, 2022

**COMMENT PERIOD:**

December 1, 2022, through January 3, 2023

**PUBLIC HEARING:**

None held or requested

**ADOPTION:**

February 9, 2023

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

February 13, 2023

**LEGISLATIVE APPROVAL:**

Approved May 31, 2023 by SJR 22

**FINAL ADOPTION:**

May 31, 2023

**EFFECTIVE:**

August 25, 2023

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

During the 2022 Legislative session, the Oklahoma Legislature passed and the Governor signed into law SB 1673, which modifies the Oklahoma Higher Learning Access Program ("Oklahoma's Promise"). These rules implement the provisions of SB 1673 (70 O.S. § 2605) by modifying the family income limit for students applying for Oklahoma's Promise. Beginning in the 2022-2023 school year, students are eligible to enroll in the program if the federal adjusted gross income of the student's parent(s) does not exceed: \$60,000 per year for parents who have one or two dependent children; \$70,000 per year for parents who have three or four dependent children; or \$80,000 per year for parents who have five or more dependent children. These rule revisions also remove outdated language, update a citation and reorganize a paragraph for increased clarity.

**CONTACT PERSON:**

Chris Turner Jr., Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, 405-225-9289, cturner@osrhe.edu.

**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 25, 2023:**

**SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM**

**610:25-23-2. Eligibility of participants**

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Students enrolled in the eighth, ninth, tenth, or eleventh grade at a public or private school and whose parents' income meets the financial need criteria are eligible to apply to become a program participant. Students educated by other means who are between the ages of thirteen (13) and sixteen (16) are eligible to apply to become a program participant. Eligibility requirements to participate in the program include the following:

- (1) The student must be a resident of the state of Oklahoma or be enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes; and
- (2) The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) ~~To meet the program's financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed \$50,000 per year at the time the student applies for participation in the program. Beginning in 2017-2018, the federal adjusted gross income of the student's parent(s) shall not exceed \$55,000 per year at the time the student~~

~~applies for participation in the program. Beginning in 2021-2022, the federal adjusted gross income of the student's parent(s) shall not exceed \$60,000 per year at the time the student applies for participation in the program. A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall not be subject to the determination of financial qualification at the time the student applies for participation in the program. Beginning in the 2022-2023 school year, the federal adjusted gross income of the student's parent(s) shall not exceed the following amounts at the time the student applies for participation in the program:~~

- ~~(i) \$60,000 per year for parents who have one or two dependent children,~~
- ~~(ii) \$70,000 per year for parents who have three or four dependent children, or~~
- ~~(iii) \$80,000 per year for parents who have five or more dependent children.~~

~~(B) A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall not be subject to the determination of financial qualification at the time the student applies for participation in the program.~~

~~(B)C) Parents of students making application to the program must use one of the following options to establish financial need eligibility:~~

- ~~(i) Documentation of their most recent calendar (tax) year income. Parents of eleventh-grade applicants may use the calendar (tax) year income that coincides with the spring semester of the eleventh grade if the application is submitted by the required deadline; or~~
- ~~(ii) Documentation of current yearly income from an officially approved application for free or reduced price school meals or other state or federal means-tested programs as determined by the State Regents. The State Regents may limit use of this option to pilot projects as determined by the State Regents. If requested by the State Regents, parents may be required to provide additional documentation of income.~~
- ~~(iii) The Oklahoma State Regents for Higher Education shall review the determination of financial need eligibility of the student as set forth in section (2)(A) above if the income from taxable and nontaxable sources of the student's parent(s) includes income received from nontaxable military benefits or income received from the federal Social Security Administration due to the death or disability of the student's parent(s). If the income of the student's parent(s), excluding income~~

received from nontaxable military benefits or income received from the federal Social Security Administration due to the death or disability of the student's parent(s), does not exceed the limitations set forth in section (2)(A) above, the student shall be determined to have met the financial need eligibility [70 O.S. § 2605(D)~~(6)~~(7)]

~~(C)D) For students that are subject to court-ordered joint custody arrangements, the OSRHE shall use guidelines consistent with regulations for federal Title IV student financial aid programs to determine which parent(s) shall meet the financial need criteria.~~

*[OAR Docket #23-509; filed 6-12-23]*

## TITLE 610. STATE REGENTS FOR HIGHER EDUCATION

### CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

*[OAR Docket #23-533]*

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 39. Oklahoma National Guard Educational Assistance Program [NEW]

610:25-39-1. Purpose [NEW]

610:25-39-2. Eligibility and Applications [NEW]

610:25-39-3. Assistance [NEW]

#### AUTHORITY:

Oklahoma State Regents for Higher Education; 70 O.S. §§ 3231 and 3206

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

September 14, 2022

#### COMMENT PERIOD:

October 17, 2022, through November 17, 2022

#### PUBLIC HEARING:

None held or requested

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February 13, 2023

#### LEGISLATIVE APPROVAL:

Approved May 31, 2023 by SJR 22

#### FINAL ADOPTION:

May 31, 2023

#### EFFECTIVE:

August 25, 2023

#### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 39. Oklahoma National Guard Educational Assistance Program [NEW]

610:25-39-1. Purpose [NEW]

610:25-39-2. Eligibility and Applications [NEW]

610:25-39-3. Assistance [NEW]

#### Gubernatorial approval:

October 12, 2022

#### Register publication:

40 Ok Reg 143

#### Docket number:

22-740

#### INCORPORATIONS BY REFERENCE:

n/a



**GIST/ANALYSIS:**

During the 2022 Legislative session, the Oklahoma Legislature passed and the Governor signed into law SB 1418 creating the Oklahoma National Guard Educational Assistance Program (70 O.S. § 3231 et seq.). These rules implement the provisions of SB 1418 by establishing the purpose of the Program, eligibility and application requirements, and assistance amounts and limitations.

Subject to available funding, the Program will provide financial educational assistance to eligible members of the Oklahoma National Guard equivalent to the amount of resident tuition, mandatory fees, and academic service fees at institutions in the Oklahoma State System of Higher Education. Assistance may not exceed a maximum of eighteen (18) credit hours per semester. Assistance for enrollment in an undergraduate program in pursuit of an associate and/or baccalaureate degree shall not exceed a maximum of one hundred twenty (120) credit hours or the completion of the requirements for a baccalaureate degree, whichever comes first. Assistance for enrollment in a graduate program in pursuit of a master's degree shall not exceed a maximum of forty (40) credit hours or completion of the requirements for a master's degree, whichever comes first.

Subject to available funding, assistance shall be paid from the Oklahoma National Guard Educational Assistance Revolving Fund by the Oklahoma State Regents for Higher Education to the educational institution in which the eligible Guard member is enrolled.

**CONTACT PERSON:**

Chris Turner Jr., Associate General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104, 405-225-9289, cturner@osrhe.edu.

**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 25, 2023:**

**SUBCHAPTER 39. OKLAHOMA NATIONAL GUARD EDUCATIONAL ASSISTANCE PROGRAM**

**610:25-39-1. Purpose**

The purpose of the Oklahoma National Guard Educational Assistance Program is to provide postsecondary educational benefits to eligible Oklahoma National Guard members who enroll in an institution of higher education within the Oklahoma State System of Higher Education.

**610:25-39-2. Eligibility and applications**

**(a) Initial Eligibility.** To be eligible for the Oklahoma National Guard Educational Assistance Program (Program) assistance, recipients must:

- (1) Be current members of the Oklahoma National Guard (Guard) in good standing as determined by the Guard;
- (2) Have a high school diploma or have completed the General Educational Development (GED) requirements; and
- (3) Have been admitted to and have enrolled in an institution of higher education within the Oklahoma State System of Higher Education.

**(b) Continuing Eligibility.** To retain eligibility for the Program, the Guard member shall:

- (1) Maintain good academic standing and satisfactory academic progress according to the standards of the institution in which the member is enrolled;
- (2) Maintain the requirements for retention and degree completion as established by the institution in which the member is enrolled;
- (3) Maintain a minimum grade point average of 2.0 on a 4.0 scale; and
- (4) Maintain satisfactory participation in the Guard as determined by the Guard.

**(c) Applications.** An eligible Guard member seeking assistance shall submit to the Educational Service Office of the Military Department prior to the semester for which the assistance is sought. The Guard member's Commander or designee shall confirm the member's standing and eligibility to the educational institution in which the member is enrolled. Applications shall be finalized by the following dates:

- (1) Spring Semester - January 31st;
- (2) Fall Semester - August 31st.

**610:25-39-3. Assistance**

**(a) Assistance amount.** Subject to the availability of funds, the amount of assistance shall be equivalent to the amount of resident tuition, mandatory fees and academic service fees for courses in which the eligible guard member is enrolled. The definitions of "resident tuition," "mandatory fees," and "academic service fees" shall be in accordance with the Oklahoma State Regents for Higher Education policy 4.18.2 "Student Tuition and Fees Policy; Definitions." Provided, for purposes of the Oklahoma National Guard Educational Assistance Program, flight costs and/or flight fees for aviation degree programs will not be considered as "resident tuition," "mandatory fees," or "academic service fees."

**(b) Assistance limitations**

- (1) Assistance may not exceed a maximum of eighteen (18) credit hours per semester;
- (2) Assistance for enrollment in an undergraduate program in pursuit of an associate and/or baccalaureate degree shall not exceed a maximum of one hundred twenty (120) credit hours or the completion of the requirements for a baccalaureate degree, whichever comes first; and
- (3) Assistance for enrollment in a graduate program in pursuit of a master's degree shall not exceed a maximum of forty (40) credit hours or completion of the requirements for a master's degree, whichever comes first.

**(c) Funding of Assistance**

(1) Assistance for an eligible Guard member shall be paid from the Oklahoma National Guard Educational Assistance Revolving Fund (Revolving Fund) by the Oklahoma State Regents for Higher Education (Regents) to the educational institution in which the Guard member is enrolled. By July 1 of each year the Regents shall notify the Adjutant General of the amount of funding in the Revolving Fund.

# Permanent Final Adoptions

(2) Funding for assistance for graduate programs will be provided subject to full funding of assistance to eligible Guard members enrolled in undergraduate programs.

[OAR Docket #23-533; filed 6-12-23]

## TITLE 752. UNIVERSITY HOSPITALS AUTHORITY CHAPTER 11. ACQUISITIONS AND CONSTRUCTION

[OAR Docket #23-534]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

752:11-1-2 [AMENDED]

752:11-1-3 [AMENDED]

752:11-1-4 [AMENDED]

752:11-1-5 [AMENDED]

752:11-1-6 [NEW]

752:11-1-7 [NEW]

Subchapter 3. Purchasing

752:11-3-1. [AMENDED]

752:11-3-2. [AMENDED]

752:11-3-3. [AMENDED]

752:11-3-4 [AMENDED]

752:11-3-8 [AMENDED]

752:11-3-9 [AMENDED]

752:11-3-10 [AMENDED]

752:11-3-11 [AMENDED]

752:11-3-12 [AMENDED]

752:11-3-15 [NEW]

Subchapter 5. Design

752:11-5-2 [AMENDED]

752:11-5-3 [AMENDED]

Subchapter 7. Construction

752:11-7-1 [AMENDED]

752:11-7-2 [AMENDED]

752:11-7-3 [AMENDED]

752:11-7-4 [AMENDED]

752:11-7-5 [AMENDED]

752:11-7-7 [AMENDED]

752:11-7-9 [AMENDED]

752:11-7-13 [AMENDED]

752:11-7-18 [NEW]

Subchapter 9. Construction Management/At Risk

752:11-9-1 [AMENDED]

752:11-9-3 [AMENDED]

752:11-9-4 [AMENDED]

752:11-9-6 [AMENDED]

752:11-9-9 [NEW]

Subchapter 11. Best Value Methodology

752:11-11-1 [AMENDED]

752:11-11-2 [AMENDED]

752:11-11-3 [AMENDED]

752:11-11-4 [AMENDED]

752:11-11-6 [AMENDED]

Subchapter 13. Supplier Protests

752:11-13-5 [AMENDED]

Subchapter 15. Inventory and Surplus Property [NEW]

752:11-15-1 [NEW]

752:11-15-2 [NEW]

752:11-15-3 [NEW]

### AUTHORITY:

University Hospitals Authority Act; 63 O.S. § 3208(A)(1); 63 O.S. § 3208(A)(20); 63 O.S. § 3208(E); 63 O.S. § 3224(E).

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

January 25, 2023

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### PUBLIC HEARING:

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March 30, 2023

### LEGISLATIVE APPROVAL:

Approved May 31, 2023, by SJR 22

### FINAL ADOPTION:

May 31, 2023

### EFFECTIVE:

September 1, 2023

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### GIST/ANALYSIS:

The adopted rules revise the acquisition and construction policies of the University Hospitals Authority ("Authority"). The adopted rules serve to conform the Authority's policies with those enacted by the Legislature in House Bill 4080 (2022) to the Public Competitive Bidding Act of 1974, and in Senate Bill 1422 (2020) to the Central Purchasing Act. The adopted rules include policies related to the Authority's inventory and handling of surplus property. Additionally, in anticipation of receipt of Federal funding for certain projects, the adopted rules account for conforming the Authority's policies to Federal requirements. Additionally, the proposed rules include policies related to inventory and surplus property.

### CONTACT PERSON:

Randy Dowell, Chief Executive Officer, University Hospitals Authority, 1000 NE 13<sup>th</sup> Street, Suite 6900, Oklahoma City, OK 73104, 405-271-4962, randy-dowell@uhat.org.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 752:11-1-2. Definitions

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

**"Acquisition"** means all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which the Authority obtains for its use any materials, supplies, service, or equipment.

**"Alternate bid"** or **"Alternate"** means, for purposes of a construction contract, an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

**"Architect"** means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, 59 O.S. § 46.

**"Architectural Design & Construction Team"** or **"ADC"** means a team assembled within the Authority that

may include an Architect, Project Manager, Superintendent, and/or other applicable member.

**"Authority Having Jurisdiction" or "AHJ"** means the University of Oklahoma employee who works on behalf of the Oklahoma State Fire Marshall, performing all building inspections and code review based on Oklahoma State Fire Marshall guidelines.

**"Award"** means when the Authority, the Chief Executive Officer, or other person authorized to make the acquisition, agrees on a suitable ~~vendor~~supplier for a bid and the successful ~~vendor~~supplier is notified.

**"Base bid"** means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

**"Best value"** means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the Authority, which may not be the lowest bidder.

**"Bid"** means a cost proposal submitted by a ~~vendor~~supplier in response to a request or solicitation for bids from the Authority.

**"Bidder"** means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. Bidder is synonymous with a "supplier" or ~~"vendor"~~ responding to a solicitation.

**"Certified Procurement Officer" or "CPO"** means the Procurement Officer who has been OMES-certified.

**"Chief Executive Officer" or "CEO"** means the highest-ranking administrator of the Authority.

**"Chief Financial Officer" or "CFO"** means the Chief Financial Officer or comparable position who reports to the CEO on matters concerning the budget of the Authority.

**"Chief Facilities Management Officer" or "CFMO"** means the Chief Facilities Management Officer or comparable position who reports to the CEO and manages the day-to-day operations and maintenance of the Authority's facilities.

**"Claim"** means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

**"Code"** means the minimum and applicable building code or codes provided by this rule.

**"Construction"** means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, disposing, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property.

**"Construction Management" or "CM"** means the project delivery method based on an agreement whereby the Authority acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

**"Construction Management/At-Risk"** means the project delivery method whereby the construction entity takes on the financial obligation to carry out construction under a specified cost agreement.

**"Construction Manager"** means a person who acts as an agent of the Authority for a construction project; who coordinates and manages the construction process; who is a member of the ADC; and who utilizes skills and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions; and who provides advice concerning construction, safety, and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost, or as may otherwise be specified in the solicitation issued by the state agency.

**"Consultant"** means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.

**"Contract"** means the solicitation, ~~vendor's~~supplier's response, negotiation document, and/or purchase order verifying an award and encumbering funds.

**"Delivery system"** means the approach used to develop and construct a project.

**"Design-Bid-Build"** means the delivery method used on construction projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. the Authority shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

**"Emergency condition"** means an event or need that was not reasonably foreseeable but that is serious, unexpected, and potentially dangerous, and for which action must be taken before a bid can be prepared or put into action.

**"Engineer"** means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, of Title 59 of the Oklahoma Statutes.

**"Evaluation criteria"** means that written criteria necessary to evaluate a supplier's or bidder's response to a solicitation which may include specialized experience, technical competence, capacity to perform, past performance, and other appropriate factors, as and where appropriate.

**"Facility"** means any building or improvement to real property.

**"Federally funded project"** means any acquisition funded wholly or in part with federal dollars.

**"Fixed fee"** means the type of fee which is expressed as a firm, fixed amount, for the services specified in the scope of work.

**"FTE"** means a full-time equivalent personnel position.

**"Guaranteed Maximum Price" or "GMP"** means the sum of the estimated cost of the work as defined in the contract

## Permanent Final Adoptions

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and includes all of the contractor's fees and agreed upon contingencies.

**"Internet"** means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web.

**"Interview committee"** means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available and when appropriate.

**"Invitation to Bid" or "ITB"** means a type of solicitation in which the Authority or its designee requests suppliers to submit a bid for an acquisition, i.e. suppliers are invited to bid.

**"Minimal value" or "no value"** means surplus property that has less value than the costs that the Authority may incur to sell, trade, or dispose of the property.

**"Non-Collusion Certification"** means a certification submitted by a supplier with any competitive bid or contract executed by the Authority for goods or services in accordance with 74 O.S. § 85.22.

**"Notice to Proceed"** means the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

**"OMES"** means the Office of Management and Enterprise Services.

**"Online bidding"** means an electronic procurement process in which the Authority receives bids from ~~vendors~~suppliers for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event.

**"OSFM"** means the Oklahoma State Fire Marshal.

**"Past performance rating"** means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

**"Percentage fee"** means a fee to be paid which is based upon a negotiated percentage of a resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

**"Pre-Design services"** means a formal planning process to establish function, scope, and cost of a future project.

**"Procurement Officer" or "PO"** means the individual with the authority to make purchases for goods and services on behalf of the Authority, such as the Human Resources and Business Systems Director or comparable position, with such authority and all necessary accompanying documentation clearly marked in the individual's file.

**"Program"** means the detailed description of the work and the scope of design services.

**"Project"** means the scope of services for which competitive proposals are requested from interested construction services ~~vendors~~suppliers.

**"Project capability"** means the ability of a ~~vendor~~supplier to perform the requested services based on understanding of the requirement and mastery of necessary

technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

**"Project" or "Improvement"** means the collective act of design and construction of a new building, facility, or improvement, or the renovation of an existing building, facility, or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy.

**"Request for Proposals" or "RFP"** means a type of solicitation in which the Authority requests submission of proposals from suppliers.

**"Request for Quotation" or "RFQ"** means a simplified written or oral quote that the Authority or its designee requests from suppliers.

**"Risk assessment"** means identification of risks that the ~~vendor~~supplier does not control and the ~~vendor's~~supplier's plan to minimize the risk.

**"Screening committee"** means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available and when appropriate.

**"Selection criteria"** means a listing of the considerations and requirements used to evaluate each prospective consultant.

**"Short list"** means a listing of consultants chosen during the screening process for detailed interview. When possible, this list shall contain at least three (3) consultants for a single project. If the process is selecting for more than one consultant contract, there should be two (2) consultants on the short list for every planned project.

**"Solicitation"** means the formal or informal manner in which the Authority determines the price of an acquisition from various ~~vendors~~suppliers.

**"Supplier"** means "bidder" as defined in this section.

**"Value-added"** means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.

~~"Vendor" means "bidder" as defined in this section.~~

### 752:11-1-3. General provisions

(a) Goods and services shall be acquired by one of the following methods:

(1) Acquisition of products and/or services through organized buying groups such as OMES state-wide contracts or through similar federal contracts.

(2) Direct purchase order for products and/or services to the ~~vendor~~supplier within the authorized dollar amounts and other limitations contained in Subchapter 2 of this Chapter.

(3) Formal or informal competitive solicitation of products and services.

(4) Sole Source acquisitions according to the procedure set forth in Subchapter 2 of this Chapter.

(5) Donation.

(b) Goods and services shall meet the specifications required, and awards shall be based on lowest and best or Best

Value criteria. Determinations shall be documented as specified in this Chapter.

(c) Professional service contracts for personal services rendered by the following professionals are exempt from competitive bidding. [74 O.S. § 85.7 and 18 O.S. § 803]:

- (1) Physician, surgeon or doctor of medicine;
- (2) Osteopathic physician or surgeon;
- (3) Chiropodist-podiatrist;
- (4) Optometrist;
- (5) Architect;
- (6) Attorney;
- (7) Dentist;
- (8) Public Accountant;
- (9) Psychologist;
- (10) Physical Therapist;
- (11) Registered Nurse;
- (12) Professional Engineer;
- (13) Land Surveyor;
- (14) Occupational Therapist;
- (15) Speech pathologist;
- (16) Audiologist;
- (17) Registered Pharmacist;
- (18) Licensed Perfusionist;
- (19) Licensed Professional Counselor;
- (20) Licensed Marital and Family Therapist;
- (21) Dietitian;
- (22) Social Worker;
- (23) Licensed Alcohol and Drug Counselor; ~~and~~
- (24) Licensed Behavioral Practitioner; ~~and~~
- (25) Certified General Real Estate Appraiser.

(d) This list will be automatically amended to include ~~new or~~ delete professional services as amended by the Legislature.

**752:11-1-4. Ethics**

(a) Employees of the Authority shall be subject to rules promulgated by the Oklahoma Ethics Commission concerning gifts from suppliers.

(b) One year limitation for certain contracts. Unless otherwise provided by law, the Authority shall not enter into a sole source or professional services contract or a contract for the services of any person who has terminated employment with or who has been terminated by the Authority for one (1) year after the termination date of the employee from the Authority. [74 O.S. § 85.42]

**752:11-1-5. Online bidding [74 O.S. § 85.45r]**

The Authority has determined that electronic or online bidding is often more advantageous than other procurement methods and thus may use online bidding to obtain bids for the purchase of goods, services, construction, and information services, where and as necessary. The Authority does not provide online bidding for bids and proposals that must be ~~let~~ bid competitively.

**752:11-1-6. Transparency**

The Authority purchases a substantial volume of goods and services while maintaining over 1,500,000 square feet of

hospital, clinical, academic, and office space. These goods and services should be acquired through an open and competitive process, which shall include:

- (1) Acquisitions and all other financial matters related to the Authority are subject to the provisions of the Open Records Act unless otherwise specified in Title 63.
- (2) The Authority will have an annual audit performed by a nationally-recognized auditing firm or the State Auditor and Inspector. Said audit will be provided to the Board, House of Representatives, Senate, Governor, OMES, and State Auditor and Inspector [63 O.S. § 3208(A)(13)].
- (3) Acquisition records shall be maintained for a minimum of seven (7) years following completion and/or termination of the acquisition provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the audit, litigation or action are resolved or until the end of the seven (7) year retention period, whichever is later. Acquisition files shall contain justification for the acquisition supporting documentation, copies of all contracts, if any, evaluations, and written reports if required by contract [74 O.S. § 85.39(C)]. Records relating to acquisitions using federal or restricted funding sources shall comply with retention requirements dictated by those sources if those requirements are in excess of statutory requirements [74 O.S. § 85.39(C)].
- (4) The Authority will provide a copy of its inventory to OMES in accordance with statute.

**752:11-1-7. Statutory increases**

Any monetary acquisition or construction threshold set forth in these Policies and Procedures will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 74 of the Oklahoma Statutes.

**SUBCHAPTER 3. PURCHASING**

**752:11-3-1. Supplier selection and standard requirements**

(a) ~~Vendor bidder list~~ **Supplier List.** Any ~~vendor~~ supplier wishing to do business with the Authority should register on the ~~vendor bidder list~~ **Supplier List** maintained by OMES. The Authority may send solicitations or make acquisitions from ~~vendors~~ suppliers who are not on the ~~vendor bidder list~~ **Supplier List**, but the supplier must be registered with OMES prior to the awarding of a contract.

(b) **State use.** The Authority shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the purchase price. [74 O.S. § 85.12(C); 74 O.S. § 3007]

## Permanent Final Adoptions

(c) **Oklahoma Correctional Industries (OCI).** The Authority may make acquisitions from OCI if an acquisition is not available from the State Use Committee pursuant to 74 O.S. § 3007(A) provided the conditions of 57 O.S. § 549.1 are satisfied.

(ed) **Statewide and Federal contracts.** The Authority may make acquisitions from statewide contracts. The Authority may also make acquisitions through General Service Administration contracts or other Federal contracts if: (a) allowed for under the terms of a federally funded project; (b) the acquisitions are not on a current statewide contract, or (c) if the terms of the Federal contract are more favorable than the terms of a statewide contract for the same products.~~[74 O.S. § 85.12(C)]~~[74 O.S. § 85.12(C); 74 O.S. § 84.12(B)(20)]

(de) **Agreements and cooperative ventures.** The Authority may make acquisitions through agreements and cooperative ventures with other health care providers entered into pursuant to 62 O.S. § 3210(A)(1), the purposes of which are to share services or to provide a benefit to the hospitals.

(ef) **Split purchasing.** Acquisitions shall not be made nor orders split for the purpose of evading competitive bidding requirements. ~~[74 O.S. § 85.7(A)(2)]~~[74 O.S. § 85.7(A)(4)]

(fg) **Non-Collusion Certification.** A Non-Collusion Certification shall be included with any competitive bids and/or contract submitted to the Authority for goods or services. The Certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions. [74 O.S. § 85.22]

(gh) **Taxes.**

(1) Prior to the award of a contract, the Authority shall verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. A copy of a current sales tax permit or confirmation of the permit's status from the Oklahoma Tax Commission must be included in the acquisition file.

(2) The Authority acquisitions are exempt from sales tax and federal excise tax.

(3) ~~Purchases made by suppliers on behalf of the Authority are not exempt from sales or federal taxes.~~

(hi) **Travel expenses.** The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. the Authority shall not pay travel expenses not specified by the successful solicitation response. [74 O.S. § 85.40]

(ij) **Bonds.** The Authority may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid. The bond, where required, will be retained until successful completion of the purpose for which the bond was drawn. ~~An irrevocable letter of credit may be submitted in lieu of any bond specified.~~

(jk) **Insurance.** A successful bidder shall provide proof of all insurance as and where needed and as required by the solicitation prior to contract award (e.g. workers compensation, general liability, etc.).

(kl) **Verification of Registration with the Secretary of State.** Prior to the award of a contract, the Authority will verify that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §§ 1203-04.

### 752:11-3-2. Acquisitions

(a) Only the CEO, CFO, PO, or State Purchasing Director may issue a purchase order for direct acquisitions. Requests for purchase orders shall describe why the acquisition is needed.

(b) All maintenance/construction related requests shall be reviewed and approved by the CFMO or comparable position before submittal to the CEO, CFO, or PO.

(c) When acquisitions will be financed using federal funding sources, the Code of Federal Regulations Title 2, Subtitle II part A § 200.320 will be referenced in conjunction with the following guidance.

(1) **Acquisitions Not Exceeding \$5,000\$25,000 or Other Limit as Permitted for CPOs.** Acquisitions of \$5,000\$25,000 or less, unless the CPO is permitted to make acquisitions of another higher limit, will be made on the open market using a fair and reasonable acquisition process and is conducted pursuant to this Subchapter.

(2) ~~Acquisitions Between \$5,000 or Other Limit as Permitted for CPOs and \$50,000.\$25,000 and \$250,000.~~ Acquisitions between \$5,000 or Other Limit as Permitted for CPOs and \$50,000\$25,000 and \$250,000 require formal or informal competitive solicitation. Where possible, the Authority may solicit suppliers from the Supplier List maintained by OMES, with selection of suppliers rotated whenever there are more suppliers on the list than the necessary number of solicitations. For bids between \$5,000 or Other Limit as Permitted for CPOs and \$25,000,\$25,000 and \$100,000, the Authority will solicit or otherwise obtain a minimum of three solicitations when possible. For bids between \$25,000 and \$50,000,\$100,000 and \$250,000, the Authority will solicit or otherwise obtain a minimum of five solicitations when possible. If the requisite number of solicitations cannot be made, the CEO shall be informed of the reason why with such information documented in the acquisition file.

(3) **Acquisition above \$50,000.\$250,000.** Acquisitions above \$50,000\$250,000 require a formal sealed competitive bidding process as outlined in this Subchapter.

### 752:11-3-3. Formal or Informal Competitive Solicitations (\$5,000 – \$50,000) (\$25,000 - \$250,000)

(a) The Authority shall solicit or otherwise obtain prices and delivery dates by mail, telephone, facsimile, or by electronic commerce and shall prepare written evaluation criteria to be considered in selection of the supplier.

(b) The Authority shall provide the specifications, terms, and conditions for the acquisition to each supplier selected for notification.

(c) The Authority shall solicit bids in a manner that ensures minority businesses, women's business enterprises, and small businesses, and labor surplus are aware of solicitations and utilized when possible.

(ed) All awards shall be based on lowest and best or Best Value criteria [74 O.S. § 85.7(B)]. [74 O.S. § 85.2]. Documentation of prices, delivery dates, and the evaluation shall be placed in the acquisition file.

(de) Based on the complexity of the solicitation, the Authority may require a formal competitive solicitation, up to and including sealed solicitation.

**752:11-3-4. Competitive sealed solicitations (\$50,000+)-(\$250,000+)**

(a) **Solicitations generally.** Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal, or request for quotation. The solicitation shall include, at a minimum:

- (1) any information regarding limitations on contact between suppliers and the Authority personnel during the solicitation process;
- (2) whether the evaluation method will be lowest and best or Best Value;
- (3) specifications or a statement of work;
- (4) the closing date and time for acceptance of bids;
- (5) the location of bid opening;
- (6) general terms and conditions offered by the State Purchasing Director;
- (7) whether preferential scoring will be given to organizations based in the United States of America, and/or small, minority and women business enterprise; and,
- (8) if applicable, identification of federal funding sources.

(b) **Solicitation Amendment.** If the Authority amends a solicitation, it shall notify each supplier sent the original solicitation of the amendment. In the event of an amendment, the supplier must acknowledge receipt of the amendment (1) in the supplier's bid or quotation for submission prior to the closing date and time, or (2) in an acknowledgment of receipt of the amendment sent prior to closing date and time if the supplier has already submitted a bid.

(c) **Preparation.** The bidder shall complete and submit all required forms as specified by the solicitation. ~~Any form requiring a bidder's signature shall have an authorized signature, such signature indicating that the supplier has read and understood the information contained within the solicitation.~~ The solicitation shall specify whether the Authority may award the contract (1) to more than one bidder and/or (2) to more than one bidder by item.

(d) **Evaluation.** Evaluation criteria contained in the solicitation shall be used as a scoring tool in considering submitted bids. Any evaluation scoring tool used shall be consistent with the evaluation criteria contained in the solicitation. Evaluation of the bids shall be documented and filed in the acquisition file. Criteria consistent with lowest and best or best value methodology, consistent with the methodology identified in the solicitation, shall be developed prior to receipt of proposals and consistently applied.

**752:11-3-8. Contract negotiation and award**

(a) **Bid Documents.** Documents submitted by a bidder in response to a solicitation are public records and will be available for review upon request, unless otherwise deemed proprietary or confidential, but only after a supplier is selected and the contract is awarded. If the bidder submits information in a

response to a solicitation that the bidder considers proprietary or confidential, the bidder shall:

- (1) submit such information separately;
- (2) specifically identify what information is proprietary or confidential upon each page containing proprietary or confidential information;
- (3) enumerate the specific reasons based on applicable law which support treatment of the material as exempt from disclosure; and
- (4) conspicuously mark on the bid or bid package that it contains proprietary or confidential information.

(b) The Authority will review the information and may or may not designate a bidder's information as proprietary or confidential. If the Authority does not agree that the information is proprietary or confidential, then the Authority will return and not evaluate that information. the Authority may or may not reject all requests to disclose proprietary or confidential information designated as such. ~~[74 O.S. § 85-10; 51 O.S. § 24A]~~ [74 O.S. § 85.5(J)(9); 51 O.S. § 24A]

(c) The Authority shall make a contract award following bid opening and upon review of the following:

- (1) Bid evaluation and documentation of same;
- (2) Determination of lowest and best or Best Value bidder;
- (3) Verification of the requirements, where applicable, identified at 752:11-3-1.

(d) An evaluation tie will be decided by a coin toss, the procedure for which will be determined by the CEO.

(e) The Authority may negotiate a contract with one or more suppliers.

(f) The Authority shall notify the successful bidder within five (5) business days of the contract award.

(g) The Authority may elect not to award a contract based on a determination that:

- (1) No bid meets the requirements of the solicitation;
- (2) All bids exceed fair market value for the acquisition;
- (3) The bid price exceeds available funds;
- (4) The Authority no longer requires the acquisition either in whole or in the form or manner specified in the solicitation; or
- (5) Not awarding the contract is in the Authority's best interests.

**752:11-3-9. Contract management**

(a) **Contract performance.** A supplier shall deliver acquisitions within time periods specified in the contract. The Authority shall inspect acquisitions within a reasonable time following supplier delivery. Nevertheless, the Authority may reject acquisitions from the supplier that do not meet specifications or other terms or conditions of the contract regardless of the timing of an inspection, and the supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service. Title to goods and services does not pass to the Authority until it has received, inspected, and accepted the goods and services. The Authority will place in the acquisition file the date of delivery, the name and address

## Permanent Final Adoptions

of the supplier, a description of the goods received, and the signature of the receiving agency employee.

(b) **Change orders.** Contracts awarded through formal or informal competitive solicitations pursuant to this Subchapter cannot exceed \$50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of \$50,000. Contracts awarded through competitive sealed solicitation pursuant to this Subchapter may be increased by an amount that does not exceed 10 percent of the total acquisition purchase price. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. ~~[See—74 O.S. § 85.7(A)(2)(b)]~~ [See 74 O.S. § 85.7(A)(1)(b)]

(c) **Advance payment.** The Authority shall not pay for acquisitions a supplier has yet to deliver.

### **752:11-3-10. Acquisitions by facilities management and housekeeping contractor**

(a) The Authority may contract with ~~vendors~~suppliers to provide facilities management and/or housekeeping services. Contracts for these services ~~shall be~~may be cost plus, when applicable, and shall be competitively bid.

(b) Terms of the contracts shall detail purchasing authority and responsibilities of the ~~vendor~~supplier. All acquisitions requiring Authority reimbursement per terms of the contract must be preapproved by the CFMO or comparable position. At a minimum, the ~~vendor~~supplier shall be required to follow ~~752:11-2-2, 752:11-3-2,~~ with the ~~vendor~~supplier permitted to make acquisitions not exceeding ~~\$5,000~~\$25,000 on the open market. The Authority shall manage the acquisition process of any maintenance/construction project over ~~\$50,000~~\$250,000 and shall follow the competitive bidding rules as identified at ~~752:11-3-4, 752:11-3-3.~~ The Authority reserves the right to set internal policies for managing the acquisition process of any maintenance/construction project under \$250,000.

### **752:11-3-11. Professional service contracts**

(a) A standard format for all agreements will be on file and changes will be coordinated with the PO. All professional service contracts must be forwarded to the PO for retention after approval by the CEO. The PO shall retain a central file that will contain:

- (1) Official copy of the contract or purchase order
- (2) Amendments
- (3) Compliance audits or reviews
- (4) Historical ~~vendor~~supplier performance
- (5) The requisition
- (6) Other related documents

(b) The Authority shall administer, monitor, and audit the professional services contract.

(c) The Authority may not enter into a professional service contract with a person who has separated employment from the Authority within one (1) year of the termination date of the individual's employment. [74 O.S. § 85.42(A)]

(d) If the final product of the contract is a written proposal, report, or study, the Authority shall maintain such written documentation in the acquisition file. [See 74 O.S. § 85.41(C)]

(e) Professional service contracts shall include:

(1) An audit clause which provides that all items of the supplier that relate to the services are subject to examination by the Authority, the State Auditor and Inspector, and the State Purchasing Director [74 O.S. § 85.41(E)];

(2) An audit clause which provides that all items of the supplier that relate to the services purchased using federal funding sources are subject to examination by federal awarding agency representatives;

(~~2~~3) A statement certifying that no person who was involved in the development of the contract while employed by the Authority shall be employed to fulfill any of the services provided for under said contract [74 O.S. § 85.42(B)]; and

(~~3~~4) A statement certifying that the supplier has not previously provided another state entity with a final written proposal, report, or study that is a substantial duplication of that which is prepared for the Authority.

### **752:11-3-12. Sole source contracts**

The Authority need not seek competitive bids and may enter into a single or sole source contract for goods and services when Authority personnel seeking the acquisition completes ~~an affidavit~~a certification prepared on a form approved by the PO which gives all the reasons why the specifications merit restriction of the goods or services to one person or business. The ~~affidavit~~certification will then be reviewed by the PO and approved and signed by the CEO with such ~~affidavit~~certification retained in the acquisition file. [~~See 74 O.S. § 85.45j(A)(2)~~ 75 O.S. § 85.44D.1] Falsely executed sole source contracts shall be grounds for discipline up to and including termination.

### **752:11-3-15. Acquisitions requiring CEO approval**

(a) The Board grants authority to sign contractual documents in most instances to the CEO. Some contracts may also require Board member signature. The CEO may delegate such signature authority to appropriate Authority officers and directors. Unless the CEO specifically delegates this authority to an individual, they may not sign any document whatsoever that binds or has the appearance of binding the Authority; documents signed by an individual without signature authority shall be void, and the signatory shall be subject to discipline up to and including termination. Such documents include, but are not limited to, purchase orders, grants, contracts, sub-contracts, licenses, leases, funding documents, applications, extensions and renewals, letters and/or memoranda of understanding, sales orders, assurances, work orders, etc.

(b) Any acquisitions exceeding \$10,000 that are not related to maintenance or construction activities must be preapproved by the CEO.

(c) All invoices must be approved by the CEO and CFO or comparable position before supplier payment. Invoices shall not be submitted to the CEO and CFO for signature unless the requesting staff has verified that the acquisition met the required specifications.



**SUBCHAPTER 5. DESIGN CONSULTANTS**

**752:11-5-2. Selection procedure**

(a) The Authority shall develop a description of the project which shall include:

- (1) A narrative description of the work being planned.
- (2) The estimated cost and time schedule of the project.
- (3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.
- (4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) The Authority shall send a solicitation letter to each consultant on the list of registered consultants maintained by OMES. The solicitation letter will include the description identified at (a) of this Section and shall notify the consultants of the last day their letters may be received to be considered as a ~~vendor~~ supplier for the project.

~~(c) The Authority will request a copy of the information on file for each consultant that indicated interest in being considered for the announced project(s).~~

~~(d)~~ The CFMO in conjunction with the ADC shall, where possible, select the three (3) best qualified consultants based upon ~~the data in the files supplied by OMES~~ internal selection criteria and other information that may be supplied by the consultants. If the selection is for more than one consultant contract, at least two (2) consultants for each project should be included in the short list.

**752:11-5-3. Scheduling and performing interviews**

(a) The CFMO and the ADC will convene an interview committee to interview each consultant based on evaluation criteria developed by the CFMO in consultation with the ADC, including for example the following criteria:

- (1) How will the consultant staff the proposed project?
- (2) What is the consultant's proposed management plan?
- (3) What is his previous experience for this project?
- (4) Where is he located? How will he reduce travel costs if he is not close to the proposed project?
- (5) What are his plans for project control?
- (6) What examples of similar projects has he completed within the last five years?
- (7) Has a judgment been paid by the consultant on his behalf for liability caused by professional errors and/or omissions in the past five years?
- (8) Can the consultant demonstrate financial stability?
- (9) Is the consultant properly insured?
- (10) Does the consultant labor under any conflicts of interest as addressed at 752:11-1-4?
- (11) Any other additional factors?

(b) Within thirty (30) days of the scheduled interviews, each consultant should be notified by letter informing him that he has been selected for an interview. The letter should contain:

(1) Date, time, and place of interview. Interviews should be scheduled individually for each consultant.

(2) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.

(3) A copy of the interview criteria.

(4) The number of the interview committee members.

(c) Consultants will be selected on the basis of qualifications only, and not on the basis of cost. Oklahoma statutes prohibit the release to a third party any information on fees. Any consultant who discloses his fee, or any indication thereof, prior to Negotiation of Contract, 752:11-3-8, shall be removed from consideration.

(d) The interviews are conducted privately with each consultant out of the hearing of other consultants.

(e) At the conclusion of all interviews, the interview committee will rate each, documenting its rationale, and select a consultant. All criteria and procedures used by the committee shall be documented for the record.

**SUBCHAPTER 7. CONSTRUCTION**

**752:11-7-1. Bid solicitations**

(a) ~~Construction projects over \$50,000~~ Construction projects over \$50,000-\$100,000. Construction projects over ~~\$50,000~~ \$100,000 will be advertised in a newspaper of general circulation for two consecutive weekly issues of said newspaper with the first publication at least ~~twenty (20)~~ twenty-one (21) days prior to the day set for bid opening. Notice must also be provided to one in-state trade or construction publication ~~and/or electronic bid platform when ever the estimated cost of construction exceeds \$100,000,~~ with publication of that information left to the discretion of that publication. No work shall be commenced until a written contract is executed and all required bonds and insurances have been provided by the contractor. [61 O.S. § 104]

(b) ~~Construction projects under \$50,000~~ Construction projects under \$50,000 of \$25,000 to \$100,000. Construction projects ~~under \$50,000~~ of \$25,000 to \$100,000 will not usually be advertised. The Authority shall develop a written, clearly defined scope of work with detailed requirements for the project. The Authority will then solicit bids by directly contacting three (3) or more contractors.

(c) **Minor Maintenance or Repair.** The Authority may award small projects below ~~\$5,000~~ \$25,000 to any qualified ~~vendor~~ supplier. A written contract and proof of insurance is required prior to issuing the ~~vendor~~ supplier a notice to proceed.

(d) **Emergency Projects.** When the CEO determines that an emergency situation exists, a contract may be awarded without competitively bidding it to correct the emergency condition.

(e) **Statutory Increases.** Any monetary threshold set forth in these rules will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 61 of the Oklahoma Statutes.

# Permanent Final Adoptions

## 752:11-7-2. Bid documents

- (a) **Solicitation notice.** The solicitation notice will contain:
- (1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.
  - (2) The location where a complete set of bidding documents may be obtained.
  - (3) The date and time for the MANDATORY site visit, if applicable. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.
  - (4) The location and time for the pre-bid conference if applicable. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.
  - (5) The date, time and place of the opening of bids.
  - (6) The name and address to whom competitive, sealed bids must be submitted.
  - (7) If applicable, any pre-qualification requirements pursuant to 61 O.S. § 118.
  - (8) Other information deemed of benefit to the public or prospective bidders.

(b) **Prequalification of Bidders.** In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work does not constitute a license. Prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

(b) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any other source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the ADC to all bidders of record.

## 752:11-7-3. Bid submittal

- (a) **Bid preparation.** Bids must be prepared in accordance with any instructions provided in the solicitation.
- (b) **Competitively-Bid Projects.** Competitive bids cannot be submitted by telephone, ~~email~~, or fax machine. Competitive bids may be delivered in person, electronically, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays, ~~and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled~~

~~bid opening at the time and day specified in the bid documents.~~ Each envelope or electronic submission shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The following information must be placed on the outside of each sealed bid envelope or, if electronically submitted, in the subject line of the submission:

- (1) Company name and address.
  - (2) Description of project.
  - (3) Project number and trade, i.e. 10 HVAC.
  - (4) Closing date and time.
- (c) **Non-Competitively Bid Projects.** For projects under ~~\$50,000~~, between \$25,000 to \$100,000, written bids shall be received as indicated in the solicitation, which may permit the submission of bids electronically. Before a construction contract shall be awarded, the following must be assembled:
- (1) A properly signed requisition form.
  - (2) Three (3) or more original written bids, when possible, including any declined bids, signed by the bidders.
  - (3) Scope of work with detailed requirements.
  - (4) Acceptance letter to award the contract.

## 752:11-7-4. Modifications/withdrawal of bids

Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail, ~~or~~ delivered in person, or sent electronically. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented. A bid to be withdrawn shall not be opened and shall be returned upon request of the bidder at the conclusion of the bid opening.

## 752:11-7-5. Bid openings

The bids are opened by the CFMO or his designee at the date and time specified in the announcement in the following manner and recorded by an assistant. Bid openings are open to the public and to all bidders.

- (1) The bidder's name is announced.
- (2) The bid is checked for completeness and correctness. Any of the following deficiencies may be grounds for disqualifying the bid:
  - (A) The bid must be signed.
  - (B) The Non-Collusion Certification must be present, signed, and properly notarized.
  - (C) If the total bid exceeds ~~\$50,000~~, \$100,000 [61 O.S. § 1], a certified check, cashier's check, or bid bond or bid letter of credit for 5 percent (5%) of the base bid price and the price of all alternate bids must be present.
  - (D) All equipment lists, selected materials, or other information when required by the specifications must be present.

## 752:11-7-7. Contract award

(a) ~~Bids are awarded~~ Contracts shall be awarded to the lowest responsible bidder on a lowest and best or Best Value criteria basis as indicated on the solicitation notice. If an award

is made to other than the lowest bidder, the Authority shall prepare a statement setting forth the reason for its action and place that statement on file ~~or its website~~, open to public inspection. [61 O.S. § 117] The Authority will provide a copy of the contract to the successful bidder who shall be given a specific period of time, as outlined in project specifications, but not to exceed sixty (60) days [61 O.S. § 113(A)], in which to execute the contract and obtain the necessary bonds and insurance.

(b) Projects over ~~\$50,000~~ \$100,000 require three bonds. [61 O.S. § 113(B)] All bonds required by Title 61 of the Oklahoma Statutes shall be provided by insurance carriers, bonding companies, or surety companies that are prequalified by OMES as good and sufficient in accordance with criteria established by OMES. [61 O.S. § 134]

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract ~~and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in the performance of the contract.~~

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Authority against defective workmanship and materials for a period of one (1) year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to ~~ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in performance of the contract,~~ and to protect the Authority against claims or liens from subcontractors or suppliers for services or materials used in the project.

(4) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed, but each letter must be for the total value of the contract. Alternatively, a single irrevocable letter of credit may be substituted for the bonds listed.

(c) If no timely bid is received after bid notices have been published on any proposed public construction contract which does not exceed ~~\$50,000~~ \$100,000, the Authority may negotiate the contract with a prospective contractor. The contract ~~will~~ shall be executed within six (6) months after the date initially set for opening bids, and the work to be performed shall be as specified in the initial bidding documents. [61 O.S. § 119.1]

(d) Public liability and workers' compensation insurance in reasonable amounts shall be required for all projects, regardless of project size. the Authority may require the contractor to name the Authority and its architects or engineers, or both, as an additional insured under the public liability insurance, which requirement, if made, shall be specified in the bid documents. [61 O.S. § 113(B)(4)]

(1) Proof of workers' compensation insurance shall be required for all projects exceeding \$50,000. The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(2) For projects less than \$50,000, a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance.

(3) Additional forms of insurance or increases in the insurance amounts may be required, including builder's risk, for certain projects. Any additions or increases shall be contained in the bid documents.

**752:11-7-9. Construction conference**

(a) A construction conference may be called periodically by, when applicable, the CFMO or his designee or the Design Consultant to discuss:

- (1) Project progress as it relates to schedule.
- (2) Payment requests and their status.
- (3) Change order requests and their status.
- (4) Special problems and remedial action required.
- (5) Results of previous remedial action.
- (6) Other subjects as required.

(b) The meeting shall be chaired by the CFMO or his designee or the Design Consultant. Minutes of the meeting shall be kept by a designee of the CFMO, typed, and distributed to all applicable parties within five (5) working days.

**752:11-7-13. ~~Change orders~~Orders and proposal requests**

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the CFMO or his designee and/or Design Consultant shall issue a Proposal Request to the contractor. The Proposal Request ~~shall be completed by the contractor and~~ shall fully describe the scope of work explaining completely what each proposed Change Order item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials; unit cost, labor, equipment, profit and overhead and shall include any time extension involved; and other expense items. The CFMO, in consultation with the ADC, will consider the ~~completed Proposal Request and issue a Change Order if~~ authorized proposed Change Order and sign if approved. The proposed Change Order then becomes an official Change Order.

(b) ~~When the Proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order. All information required on the form shall be included. The completed Change Order will be signed by the CFMO and/or Design Consultant.~~ Miscellaneous Change Orders that occur during construction including missed items, unforeseen/existing conditions, etc., will be change ordered with the approval of the owner parties mentioned above.

(c) ~~When the change is less than \$10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in (a) of this Section~~

# Permanent Final Adoptions

~~is not required. Change Orders to public construction contracts of \$1,000,000 or less shall not exceed a fifteen percent (15%) cumulative increase in the approved construction budget [61 O.S. § 121].~~

~~(d) Awarded projects that have not been competitively bid cannot exceed \$50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of \$50,000. Cumulative change orders for awarded projects that have been competitively bid cannot exceed 10 percent of the original project bid amount. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total contract price. Change Orders to public construction contracts of over \$1,000,000 shall not exceed the greater of \$150,000 or a ten percent (10%) cumulative increase in the approved construction budget [61 O.S. § 121].~~

## **752:11-7-18. Project reporting for federally funded projects**

Projects that are paid for with federal dollars may be subject to additional incremental reporting requirements. These requirements will be met in accordance with funding award documents and requests from federal awarding agencies.

## **SUBCHAPTER 9. CONSTRUCTION MANAGEMENT/AT RISK**

### **752:11-9-1. Registration of Construction Managers**

All Construction Managers desiring to perform services for the Authority must be registered with OMES. Any Construction Manager not registered with OMES at the time the Authority announces a project may register with OMES and submit a letter of interest to the Authority. All Construction Managers desiring to perform services for Authority that are funded using federal dollars must be registered with SAM.gov, obtain a Unique Entity Identifier, and shall not be on the federal debarred supplier listing.

### **752:11-9-3. Selection procedure**

(a) **Description of the project.** The Authority shall develop a description of the project which shall include:

- (1) A narrative description of the work being planned, including various project components;
- (2) The estimated cost and time schedule of the project; and
- (3) The source of the funding.

(b) **Request list of Construction Management.** The Authority shall submit a written request to OMES for a list of construction management firms currently registered with the Department.

(c) **Announce project.** The Authority will send a Request for Qualifications (RFQ) to each construction management firm on the list provided by OMES which must include the description of the project and the deadline when letters must be received for consideration.

(d) **Special circumstances.** In special circumstances, the Authority may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management firms.

(e) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:

- (1) Procedures for submitting statements of qualification and procedures for making awards;
- (2) Evaluation factors to be considered by the selection committee;
- (3) A statement of work including the description of the project with any other summary information the Authority deems pertinent;
- (4) A schedule for planned commencement and completion of the contract;
- (5) Budget limits for construction of the project for which services are being sought; ~~and~~
- (6) Requirements for construction management firms to have bonds and insurance-;
- (7) If project is funded using federal funding sources;
- (8) Whether preferential scoring will be given to organizations based in the United State of America; and
- (9) Whether additional preferences are designated by federal awarding agencies.

### **752:11-9-4. Selection committee**

(a) **Members.** Whenever a solicitation is issued requiring Best Value Methodology as described at Subchapter 6 of this Chapter to determine the successful bidder, the CFMO or designee will assemble the ADC to serve as a Selection Committee. Individuals may not serve as members of the selection committee if they are deemed to have a conflict of interest with firms submitting qualifications for consideration. Conflicts of interest are generally identified as an ownership interest or a close family member with an ownership interest in a submitting firm. The CEO, CFO, or COO may provide further clarification or determinations related to conflicts of interest.

(b) **Selection Monitor.** The CFMO will designate one member of the Selection Committee to serve as a Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:

- (1) schedule and preside over Committee meetings;
- (2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;
- (3) tabulation of the evaluation scores;
- (4) review the Committee's rating results for dominant information and/or inconsistencies;
- (5) discuss evaluations with Committee members to seek clarifications, if necessary;
- (6) prioritize the final rating ~~score;~~ scores;
- (7) assist the Committee in determining the highest ranked firms for further consideration in interviews;
- (8) assist the Committee in determining the apparent Best Value firm; and
- (9) assisting with the Clarification Period activities.

(c) **Construction management interviews.** The Selection Committee shall select a competitive number of the best qualified construction management firms for interviews. When possible, a minimum of three (3) firms constitute a competitive number.

**752:11-9-6. Fee negotiation and contracts**

(a) Once the highest-ranking construction management firm is selected, the Authority shall request a fee proposal from the firm.

(b) Upon receipt of the written fee proposal, the Authority shall negotiate a contract including fees.

(c) In establishing the construction management fee, the Authority shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services.

(d) In the event the Authority is unable to negotiate a satisfactory contract with the selected firm, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Authority ~~shall~~ may then undertake negotiations with the firm ranked second, beginning with a formal request for a fee proposal from that business. Failing accord with the second firm, the Authority shall formally terminate negotiations with that firm. This process ~~shall~~ may continue, with proposals received from and negotiations held with the next ranked firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.

(e) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.

(f) For Construction Management/At-Risk, there are essentially two phases of the contract:

(1) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the Construction Manager up to the point at which the design is far enough along for the Construction Manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the Construction Manager are the Construction Manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction. The project schedule may also dictate the amount of contingency included in the GMP.

(2) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. The Authority will signal a move into Phase Two through issuance of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the Construction Manager and, if applicable, the Design Consultant. The Construction Manager will work in conjunction with the Design Consultant, if applicable, to perform value engineering and construction coordination reviews and to

develop individual bid packages for issuance to subcontractor trades.

(g) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100 percent performance, payment, and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(h) Non-approval of the GMP allows the Authority to terminate the services of the Construction Manager or to renegotiate, as required.

(i) Application of competitive bidding to subcontractor packages. When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the Construction Manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with Subchapter 3 of this Chapter. Thus, in administering the construction contract, the Construction Manager will adhere to the competitive bidding requirements for advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(j) Self-Performance of subcontractor packages by Construction Manager. Because the Construction Manager is "at risk" for the total contract amount, the Construction Manager is permitted to self-perform portions of the work, provided that the work is competitively bid as a lump sum (each work package) under the same terms and conditions as the other bidders. The Authority must be notified of the Construction Manager's intent to bid a work package during each pre-bid meeting held to discuss outgoing bid packages or otherwise in writing to the CFMO.

(k) When individual work packages are bid as a lump sum, the Construction Manager's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the Construction Manager's contract becomes all lump sum.

(l) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the Construction Manager and the Authority must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Authority may allow an adjustment to the GMP in order to allow the Construction Manager to award all work packages.

**752:11-9-9. Statutory Increases**

Any monetary threshold set forth in these rules will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 61 of the Oklahoma Statutes.

**SUBCHAPTER 11. BEST VALUE  
METHODOLOGY**

# Permanent Final Adoptions

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## 752:11-11-1. Best Value ~~vendor~~supplier selection

The Best Value ~~vendor~~supplier selection and project delivery process consists of three primary phases:

- (1) **Phase 1.** ~~Vendor~~Supplier selection.
- (2) **Phase 2.** Clarification period, which includes but may not be limited to:
  - (A) agreement on scope;
  - (B) description of services using performance measurements, if applicable; and,
  - (C) creation of contract requiring a Risk Report, Risk Management Plan, and all applicable legal terms and conditions.
- (3) **Phase 3.** Management, which requires:
  - (A) the ~~vendor~~supplier to manage and control the project system to make reports to the Authority; and
  - (B) the Authority to perform project quality assurance by ensuring the ~~vendor~~supplier is using a quality control plan and through periodic inspection.

## 752:11-11-2. ~~Vendor~~Supplier selection

Phase 1 uses a series of filters to identify which bidder provides the most value. For Construction Management/At Risk contracts, for example, Subchapters 752:11-9-1 through 752:11-9-5 reflect Phase I ~~vendor~~supplier selection and should be read in tandem with this Subchapter. On or before the date stated in the solicitation, ~~vendors~~suppliers submit documentation requested in the solicitation or bid documents information that will be evaluated, rated, and/or weighted, which may include, but is not limited to:

- (1) **Past performance information.** The ~~vendor~~supplier submits performance information collected from past customers about past projects/services the ~~vendor~~supplier has completed.
- (2) **Project capability.** The ~~vendor~~supplier submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, financial stability, proper insurance, the absence of any conflict of interest as such conflicts are addressed at 752:11-1-4, technical capability, documented performance measurements, ~~vendor's~~supplier's ability to provide additional value, and pricing information as required by the solicitation.
- (3) **Interviews.** The Selection Monitor will schedule interviews with representatives of selected firms as designated by the Selection Committee. The interview provides a forum for the ~~vendor~~supplier to discuss the project and answer questions concerning the ability to deliver the project/service.
- (4) **Prioritization.** After completion of (1) through (3) of this Section, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each ~~vendor~~supplier.
- (5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value ~~vendor~~supplier.

## 752:11-11-3. Clarification period

(a) The identified apparent Best Value ~~vendor~~supplier is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. The clarification period is not a contract negotiation. This period is the final "filter," and the invited firm may still lose the project. Once invited to the clarification period, the ~~vendor~~supplier is responsible for scheduling and management of the related activities. The objective is to:

- (1) ensure the ~~vendor~~supplier understands the project scope;
  - (2) allow the ~~vendor~~supplier to clarify how they will deliver the project/service on time;
  - (3) identify the accountabilities of other parties; and
  - (4) explain how the ~~vendor~~supplier will mitigate and manage any risk the vendor does not control.
- (b) The ~~vendor~~supplier is responsible for understanding the project requirements and expectations.
- (c) To complete the clarification phase, the ~~vendor~~supplier conducts required meetings, identifies specific requirements and provides relevant documents, which may include but is not limited to, the following:

- (1) Executive Summary;
- (2) A critical milestone schedule that includes the clarification period, the award, project/service delivery, and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;
- (3) Identify all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how the Construction Manager will satisfy those concerns;
- (4) Make any additional investigations as warranted;
- (5) Provide a listing of major ~~sub-vendor~~sub-supplier and suppliers. Ensure that any ~~sub-vendor~~sub-suppliers have a complete understanding of the project and have no technical or non-technical questions or concerns;
- (6) Identify activities where the ~~vendor~~supplier will experience situations where there may be a lack of information, where un-foreseen conditions may exist, and activities where the ~~vendor~~supplier has no control over other participants or required activities in the delivery of the service.
- (7) Identify and document in writing any value-added ideas the Authority has accepted or rejected, along with corresponding adjustments to the contract terms;
- (8) A project plan including any final clarification of the proposal and any omitted information and identification of value-added provisions accepted by the Authority;
- (9) Validation that the proposal is accurate and complete prior to submitting the final project scope;
- (10) Develop a Risk Report template to communicate accountabilities and deviations, beginning with the clarification period;
- (11) Develop a Risk Management Plan, which includes any risks the ~~vendor~~supplier does not control and how the ~~vendor~~supplier will mitigate or minimize those risks should they occur;

(12) Identify a performance measurement plan to communicate to the Authority how the ~~vendor~~supplier is performing during the project duration; and

(13) Provide assurances to satisfy any remaining project concerns that the Authority may have, including but not limited to adverse publicity; noncompliance with local, state, or federal law; safety and accident prevention or other risks within the control of the ~~vendor~~supplier that would cause unnecessary time-and-effort transactions by the Authority.

(d) If the bidder determines the proposal contains errors or the proposal is inaccurate, the bidder may withdraw the project proposal, but the bidder shall be prohibited from modifying the proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the CFMO.

(e) The ~~vendor~~supplier must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized, and suitable for attachment to a final negotiated contract.

(1) The final clarification meeting is not a question and answer session.

(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Authority must be conducted prior to the clarification meeting.

(3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.

(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Authority determines progress being made by the invited bidder is unsatisfactory, the Authority may terminate Clarification Phase activities with the invited bidder. The Authority may then commence a new Clarification Phase with the next highest ranked bidder.

**752:11-11-4. Risk minimization and performance**

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality, or project schedule caused by the ~~vendor~~supplier, the Authority, unforeseen conditions, or other parties. The Phase consists of, but is not limited to, a Risk Report detailing information provided by the Construction Manager, which may include:

- (1) all key contact information;
- (2) project milestone schedule;
- (3) risk sheet;
- (4) modification/deviation tracking;
- (5) Risk Management Plan;
- (6) any risks the Authority may require the ~~vendor~~supplier to document that could impact satisfaction; and
- (7) performance measurements.

(b) The Construction Manager shall submit a Risk Report for the project/service weekly throughout the contract, or as otherwise required by the CFMO.

**752:11-11-6. Other requirements for contracts awarded using Best Value methodology**

(a) 752: 11-11-2 and 752: 11-11-5 may apply to any contract awarded by the Authority using Best Value methodology to select the successful ~~vendor~~supplier.

(b) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.

(c) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the CFMO. Components of the plan must, at a minimum, include the following provisions:

- (1) Bid Notices: method of making uniform public notification to interested subcontractors and suppliers;
- (2) Availability of bid documents for inspection or acquisition by interested bidders;
- (3) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.
- (4) Method of evaluation of bid documents to determine final recommended contract awards.
- (5) Method of public access to pricing, scoring, and final award information.

**SUBCHAPTER 13. SUPPLIER PROTESTS**

**752:11-13-5. Administrative procedure**

Administrative hearings shall be conducted in accordance with the following procedures:

(1) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest.

(2) **Burden of proof.** The burden of proof shall be upon the protestant, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.

(3) **Evidence.** The Administrative Law Judge shall give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by Oklahoma law for civil proceedings. Parties may conduct cross examination of witnesses required for a full and true disclosure of facts. Notice may be taken of judicially cognizable facts.

(4) **Representation.** ~~Corporations~~Parties may be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(5) **Proper parties.** In addition to the supplier protesting the contract award, the supplier awarded the contract

# Permanent Final Adoptions

and the Authority may participate in the bid protest proceedings as proper parties.

(6) **Discovery.** Discovery shall be permitted as determined by the Administrative Law Judge.

(7) **Testimony.** All testimony, either at depositions or at a hearing, shall be under oath or affirmation.

(8) **Official record.** The Authority shall employ a certified court reporter, whose transcription of the hearing and any related matters, together with all pleadings, motions, and other documents submitted or considered during the proceedings shall constitute the official record of the protest.

(9) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

- (A) Establish a scheduling order;
- (B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
- (C) Rule on all interlocutory motions;
- (D) Require briefing of any or all issues;
- (E) Conduct hearings;
- (F) Rule on the admissibility of all evidence;
- (G) Question witnesses;
- (H) Make proposed findings of facts, conclusions of law and a proposed order to the Chief Executive Officer; and
- (I) Take other lawful actions necessary and proper in the interests of justice.

## SUBCHAPTER 15. INVENTORY AND SURPLUS PROPERTY

### **752:11-15-1. Authority**

(a) By operation of law, OMES does not have any authority or responsibility for property purchased for or under the management or control of the University Hospitals Authority except as expressly provided by law. [74 O.S. § 63(G)] State property law expressly provides that the Authority must provide an inventory to OMES [74 O.S. § 110.1], but no such express provision appears in the Oklahoma Surplus Property Act. That being so, OMES has no authority over property belonging to the Authority beyond that of serving as a repository for the Authority's inventory. [74 O.S. § 63(G)].

(b) These administrative rules have thus been implemented to fully comply with the spirit of laws applicable to state property [74 O.S. § 110.1] and the Oklahoma Surplus Property Act [74 O.S. § 62.1- 62.9] while reducing the risk of liability to the Authority for the transfer or disposal of surplus hospital property-property unique from other state property. These Policies and Procedures apply to University Hospitals Trust, in turn, which exists for the principal purpose of effectuating the purposes of the University Hospitals Authority as established in the University Hospitals Authority Act.

### **752:11-15-2. Inventory control**

(a) Tangible assets shall be recorded in the Authority inventory system [74 O.S. § 110.1] which shall be maintained by the inventory control officer. In circumstances where unique assets or transactions are identified as not clearly covered by 74 O.S. § 110.1, the appropriate Authority personnel will document internal guidance in accordance with relevant industry and generally accepted accounting principles. Identification of the inventory control officer shall be provided in writing to OMES by January 15 of each year, with any change in identification of the inventory control officer submitted to OMES within thirty (30) days of the change.

(b) Tangible assets that are movable shall be tagged with a unique identifier of durable material in a location ensuring accessibility by an inventory control officer.

(c) If a movable tangible asset is transferred from one location to another, the transferring tenant shall report such movement to the appropriate Authority personnel and the new location shall be recorded in the system.

(d) Assets may be given or sold to the Joint Operator of the University Hospitals per Title 63, which donation in whatever form shall be recorded on the inventory system identified in these rules.

(e) The report generated from the inventory system shall be signed by the CFO, include tangible assets owned as of June 30 of the preceding year, and submitted to OMES by August 15. The report shall include for each asset:

(1) The name of the University Hospitals Authority or University Hospitals Trust, as the case may be;

(2) The tag number;

(3) The model and serial number, if any;

(4) The manufacturer;

(5) The description;

(6) Product name;

(7) Acquisition date and cost;

(8) Whether the asset is on loan;

(9) Whether a tag cannot be affixed to the asset;

(10) If the property was given or sold to the Joint Operator of the University Hospitals per Title 63, a designation of that fact; and

(11) If the property has been disposed of, a designation whether it was traded in, was transferred, reached the end of its useful life, or was otherwise disposed of in accordance with these rules.

(f) Inventory records for motor vehicles shall specifically include:

(1) A detailed description of each vehicle, including its original cost;

(2) The vehicle identification number;

(3) The license tag number;

(4) Mileage; and

(5) The make, model, and year of the vehicle [74 O.S. § 1103].

(g) Supporting documents identifying tangible assets shall be maintained. Such documents shall include acquisition, date, acquisition cost, digital photographs or images, or other documents that provide identification information. If federal funding sources are used in the acquisition of a tangible asset, the



asset shall be identified with a federal source code. Federal awarding agencies may impose additional requirements for asset tracking and disposal. These requirements shall be followed in accordance with funding award documents and the Code of Federal Regulations.

(h) Authority shall maintain a report of any assets that are missing, stolen, or destroyed by vandalism. Any notice reporting a loss to the insuring entity and any report to a law enforcement agency in the event of theft or vandalism shall be included in the report.

(i) For purposes of these rules, a tangible asset is one that meets the federal useful life and cost criteria specified in the Office of Management and Budget Circular A-21, as may be amended or superseded.

**752:11-15-3. Surplus property**

(a) The Authority shall maintain a current list of all surplus property held and disposed of. Such list shall include the location where surplus property

- (1) is maintained;
- (2) purchase price;
- (3) when sold and selling price;
- (4) if transferred, to which entity; and
- (5) if otherwise disposed of, the manner of disposal.
- (6) If any surplus property having minimal or no value or property carrying a risk of liability is disposed of, the list shall reflect that the property had minimal or no value or was otherwise disposed of because of such risk. Inclusion of assets on the surplus property list will coincide with removal of those items from the inventory system.

(b) The Authority may determine that its items, commodities, materials, supplies, equipment, or other like tangible assets are surplus when they:

- (1) are no longer required for the maintenance or operation of Authority facilities;
- (2) are no longer economical to operate, maintain or store, and do not provide a benefit;
- (3) can be converted to more liquid assets for other immediate needs or long-term requirements; or
- (4) have otherwise become excess, obsolete, antiquated, unused, or not needed.

(c) Assets may not be designated as surplus without the prior approval of the inventory control officer.

(d) While the Authority is exempt from the Surplus Property Act, it may nevertheless dispose of property in any manner set forth in the Act and may coordinate with OMES for disposal of surplus property. Other methods of disposal of surplus property are:

- (1) Transfer or sale to other state agencies or the Joint Operator of the University Hospitals.
- (2) Sealed bid. Sealed bids shall be received in accordance with these rules. Records of all surplus property sold through sealed bid shall be maintained and shall include the name of the buyer and the selling price.
- (3) Scrap metal.
- (4) Trade in.
- (5) Sell any property not exceeding \$25,000 with CEO approval. Property exceeding \$25,000 shall follow the

sealed bid procedures outlined in the Authority's administrative rules.

(6) Disposal in an appropriate waste facility, container, or with a waste service.

(e) Donations of Authority property to private individuals or Authority employees is strictly prohibited. The sale of Authority property to its employees must be at announced public sales or auctions and cannot be made through sealed bid.

(f) Payment by state entities shall be within forty-five (45) days of purchase and removal. Payment by other than state entities shall be at the time of purchase and prior to removal of property. Payment by state entities shall be by a state-approved purchase card. Payment by other than state entities may be in the form of certified funds, business check, money order, or cashier's check, except that a business check will not be accepted for an amount in excess of \$2500. A private business shall provide a business tax identification number. Sales tax shall be collected unless a tax-exempt certificate is presented. Not-for-profit, non-governmental entities shall provide a copy of the letter issued by the Internal Revenue Service granting its tax-exempt status. All payments received for the purchase of surplus property are nonrefundable.

(g) All surplus property, vehicles, and equipment are sold "as is" and are nonreturnable.

[OAR Docket #23-534; filed 6-14-23]

**TITLE 753. UNIVERSITY HOSPITALS TRUST  
CHAPTER 11. ACQUISITIONS AND CONSTRUCTION**

[OAR Docket #23-535]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

753:11-1-2 [AMENDED]

753:11-1-3 [AMENDED]

753:11-1-4 [AMENDED]

753:11-1-5 [AMENDED]

753:11-1-6 [NEW]

753:11-1-7 [NEW]

Subchapter 3. Purchasing

753:11-3-1. [AMENDED]

753:11-3-2. [AMENDED]

753:11-3-3. [AMENDED]

753:11-3-4 [AMENDED]

753:11-3-8 [AMENDED]

753:11-3-9 [AMENDED]

753:11-3-10 [AMENDED]

753:11-3-11 [AMENDED]

753:11-3-12 [AMENDED]

753:11-3-15 [NEW]

Subchapter 5. Design

753:11-5-2 [AMENDED]

753:11-5-3 [AMENDED]

Subchapter 7. Construction

753:11-7-1 [AMENDED]

753:11-7-2 [AMENDED]

753:11-7-3 [AMENDED]

753:11-7-4 [AMENDED]

753:11-7-5 [AMENDED]

# Permanent Final Adoptions

753:11-7-7 [AMENDED]  
753:11-7-9 [AMENDED]  
753:11-7-13 [AMENDED]  
753:11-7-18 [NEW]  
Subchapter 9. Construction Management/At Risk  
753:11-9-1 [AMENDED]  
753:11-9-3 [AMENDED]  
753:11-9-4 [AMENDED]  
753:11-9-6 [AMENDED]  
753:11-9-9 [NEW]  
Subchapter 11. Best Value Methodology  
753:11-11-1 [AMENDED]  
753:11-11-2 [AMENDED]  
753:11-11-3 [AMENDED]  
753:11-11-4 [AMENDED]  
753:11-11-6 [AMENDED]  
Subchapter 13. Supplier Protests  
753:11-13-5 [AMENDED]  
Subchapter 15. Inventory and Surplus Property [NEW]  
753:11-15-1 [NEW]  
753:11-15-2 [NEW]  
753:11-15-3 [NEW]

## AUTHORITY:

University Hospitals Authority Act; 63 O.S. § 3208(A)(1); 63 O.S. § 3208(A)(20); 63 O.S. § 3208(E); 63 O.S. § 3224(E).

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## INCORPORATIONS BY REFERENCE:

N/A

## GIST/ANALYSIS:

The adopted rules revise the acquisition and construction policies of the University Hospitals Trust ("Trust"). The adopted rules serve to conform the Trust's policies with those enacted by the Legislature in House Bill 4080 (2022) to the Public Competitive Bidding Act of 1974, and in Senate Bill 1422 (2020) to the Central Purchasing Act. The adopted rules include policies related to the Trust's inventory and handling of surplus property. Additionally, in anticipation of receipt of Federal funding for certain projects, the adopted rules account for conforming the Trust's policies to Federal requirements. Additionally, the proposed rules include policies related to inventory and surplus property.

## 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 1. GENERAL PROVISIONS

### 753:11-1-2. Definitions

The following words or terms shall have the following meaning unless the context clearly indicates otherwise:

**"Acquisition"** means all types of purchases and rentals, whether bought or leased by contract or otherwise, and includes every means by which the Trust obtains for its use any materials, supplies, service, or equipment.

**"Alternate bid"** or **"Alternate"** means, for purposes of a construction contract, an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.

**"Architect"** means a person legally qualified to practice the profession of architecture as defined in the State Architectural Act, 59 O.S. § 46.

**"Architectural Design & Construction Team"** or **"ADC"** means a team assembled within the Trust that may include an Architect, Project Manager, Superintendent, and/or other applicable member.

**"Authority Having Jurisdiction"** or **"AHJ"** means the University of Oklahoma employee who works on behalf of the Oklahoma State Fire Marshall, performing all building inspections and code review based on Oklahoma State Fire Marshall guidelines.

**"Award"** means when the Trust, the Chief Executive Officer, or other person authorized to make the acquisition, agrees on a suitable ~~vendor~~ supplier for a bid and the successful ~~vendor~~ supplier is notified.

**"Base bid"** means the sum stated in the bid for which the bidder offers to perform the work described in the bidding documents as the base. Work may be added or deleted for sums stated in the alternate bids.

**"Best value"** means an optional contract award system which can evaluate and rank submitted competitive performance proposals to identify the proposal with the greatest value to the Trust, which may not be the lowest bidder.

**"Bid"** means a cost proposal submitted by a ~~vendor~~ supplier in response to a request or solicitation for bids from the Trust.

**"Bidder"** means an individual or business entity that submits a bid or proposal in response to an invitation to bid or a request for proposal. Bidder is synonymous with a "supplier" or ~~"vendor"~~ responding to a solicitation.

**"Certified Procurement Officer"** or **"CPO"** means the Procurement Officer who has been OMES-certified.

**"Chief Executive Officer"** or **"CEO"** means the highest-ranking administrator of the Trust.

**"Chief Financial Officer"** or **"CFO"** means the Chief Financial Officer or comparable position who reports to the CEO on matters concerning the budget of the Trust.

**"Chief Facilities Management Officer"** or **"CFMO"** means the Chief Facilities Management Officer or comparable position who reports to the CEO and manages the day-to-day operations and maintenance of the Trust's facilities.

**"Claim"** means a demand or assertion by a contractor seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the contract. The term

"Claim" also includes other disputes and matters in question between the owner and contractor arising out of or relating to the contract.

"**Code**" means the minimum and applicable building code or codes provided by this rule.

"**Construction**" means the process of planning, acquiring, designing, building, equipping, altering, repairing, improving, maintaining, disposing, or demolishing any structure or appurtenance thereto including facilities, utilities, or other improvements to any real property.

"**Construction Management**" or "**CM**" means the project delivery method based on an agreement whereby the Trust acquires from a construction entity a series of services that can include, but are not necessarily limited to: design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration.

"**Construction Management/At-Risk**" means the project delivery method whereby the construction entity takes on the financial obligation to carry out construction under a specified cost agreement.

"**Construction Manager**" means a person who acts as an agent of the Trust for a construction project; who coordinates and manages the construction process; who is a member of the ADC; and who utilizes skills and knowledge of general contracting to assist in the development of schedules, preparation of project construction estimates, study of labor conditions; and who provides advice concerning construction, safety, and other issues related to the project that may surface. Issues may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost, or as may otherwise be specified in the solicitation issued by the state agency.

"**Consultant**" means an individual or legal entity possessing the qualifications to provide licensed architectural, registered engineering, or registered land surveying services or possessing specialized credentials and qualifications as may be needed to plan or design for any construction or public work improvement project.

"**Contract**" means the solicitation, ~~vendor's~~ supplier's response, negotiation document, and/or purchase order verifying an award and encumbering funds.

"**Delivery system**" means the approach used to develop and construct a project.

"**Design-Bid-Build**" means the delivery method used on construction projects whereby a licensed design professional retained based on qualifications, shall develop the project design in its entirety. the Trust shall then solicit bids and award the contract to the general contractor who demonstrates that they can complete construction, as specified in the design, and that they are the lowest responsible bidder.

"**Emergency condition**" means an event or need that was not reasonably foreseeable but that is serious, unexpected, and potentially dangerous, and for which action must be taken before a bid can be prepared or put into action.

"**Engineer**" means a person legally qualified to practice the profession of engineering as defined in Chapter 10, Engineering and Land Surveying, of Title 59 of the Oklahoma Statutes.

"**Evaluation criteria**" means that written criteria necessary to evaluate a supplier's or bidder's response to a solicitation which may include specialized experience, technical competence, capacity to perform, past performance, and other appropriate factors, as and where appropriate.

"**Facility**" means any building or improvement to real property.

"**Federally funded project**" means any acquisition funded wholly or in part with federal dollars.

"**Fixed fee**" means the type of fee which is expressed as a firm, fixed amount, for the services specified in the scope of work.

"**FTE**" means a full-time equivalent personnel position.

"**Guaranteed Maximum Price**" or "**GMP**" shall be the sum of the estimated cost of the work as defined in the contract and includes all of the contractor's fees and agreed upon contingencies.

"**Internet**" means the international computer network of both federal and nonfederal interoperable packet-switched data networks, including the graphical subnetwork called the World Wide Web.

"**Interview committee**" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO to interview consultants for the purpose of selecting a consultant for a planned project. This group should include licensed architects or engineers, if available and when appropriate.

"**Invitation to Bid**" or "**ITB**" means a type of solicitation in which the Trust or its designee requests suppliers to submit a bid for an acquisition, i.e. suppliers are invited to bid.

"**Minimal value**" or "**no value**" means surplus property that has less value than the costs that the Trust may incur to sell, trade, or dispose of the property.

"**Non-Collusion Certification**" means a certification submitted by a supplier with any competitive bid or contract executed by the Trust for goods or services in accordance with 74 O.S. § 85.22.

"**Notice to Proceed**" means the formal written notice, by letter, informing the Construction Manager that the Guaranteed Maximum Price (GMP) is approved and the construction management services advance to the next phase.

"**OMES**" means the Office of Management and Enterprise Services.

"**Online bidding**" means an electronic procurement process in which the Trust receives bids from ~~vendors~~ suppliers for goods, services, construction, or information services over the Internet in a real-time, competitive bidding event.

"**OSFM**" means the Oklahoma State Fire Marshal.

"**Past performance rating**" means a numerical rating on a 1-10 scale mathematically derived from customer satisfaction surveys completed by past clients.

"**Percentage fee**" means a fee to be paid which is based upon a negotiated percentage of a resultant construction contract. For the consultant contract purposes, the construction contract amount is estimated.

"**Pre-Design services**" means a formal planning process to establish function, scope, and cost of a future project.

# Permanent Final Adoptions

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"**Procurement Officer**" or "**PO**" means the individual with the authority to make purchases for goods and services on behalf of the Trust, such as the Human Resources and Business Systems Director or comparable position, with such authority and all necessary accompanying documentation clearly marked in the individual's file.

"**Program**" means the detailed description of the work and the scope of design services.

"**Project**" means the scope of services for which competitive proposals are requested from interested construction services ~~vendors~~suppliers.

"**Project capability**" means the ability of a ~~vendor~~supplier to perform the requested services based on understanding of the requirement and mastery of necessary technical requirements while demonstrating a lack of technical risk as evidenced by measurement or accomplishment.

"**Project**" or "**Improvement**" means the collective act of design and construction of a new building, facility, or improvement, or the renovation of an existing building, facility, or improvement; or the acquisition of a building or facility for the purpose of renovation and occupancy.

"**Request for Proposals**" or "**RFP**" means a type of solicitation in which the Trust requests submission of proposals from suppliers.

"**Request for Quotation**" or "**RFQ**" means a simplified written or oral quote that the Trust or its designee requests from suppliers.

"**Risk assessment**" means identification of risks that the ~~vendor~~supplier does not control and the ~~vendor's~~supplier's plan to minimize the risk.

"**Screening committee**" means a group of individuals designated by the CEO, CFO, CFMO, or other designee of the CEO which reviews the files of interested consultants for the purpose of selecting a short list of consultants to be interviewed. The group should include licensed architects or engineers, if available and when appropriate.

"**Selection criteria**" means a listing of the considerations and requirements used to evaluate each prospective consultant.

"**Short list**" means a listing of consultants chosen during the screening process for detailed interview. When possible, this list shall contain at least three (3) consultants for a single project. If the process is selecting for more than one consultant contract, there should be two (2) consultants on the short list for every planned project.

"**Solicitation**" means the formal or informal manner in which the Trust determines the price of an acquisition from various ~~vendors~~suppliers.

"**Supplier**" means "bidder" as defined in this section.

"**Value-added**" means adjustment to the project requirement and/or benefit offered to the owner that may be proposed by a vendor, stated in terms of impact to the project in return for a deviation in price, schedule or quality.

~~"Vendor" means "bidder" as defined in this section.~~

## 753:11-1-3. General provisions

(a) Goods and services shall be acquired by one of the following methods:

(1) Acquisition of products and/or services through organized buying groups such as OMES state-wide contracts or through similar federal contracts.

(2) Direct purchase order for products and/or services to the ~~vendor~~supplier within the authorized dollar amounts and other limitations contained in Subchapter 2 of this Chapter.

(3) Formal or informal competitive solicitation of products and services.

(4) Sole Source acquisitions according to the procedure set forth in Subchapter 2 of this Chapter.

(5) Donation.

(b) Goods and services shall meet the specifications required, and awards shall be based on lowest and best or Best Value criteria. Determinations shall be documented as specified in this Chapter.

(c) Professional service contracts for personal services rendered by the following professionals are exempt from competitive bidding. [74 O.S. § 85.7 and 18 O.S. § 803]:

(1) Physician, surgeon or doctor of medicine;

(2) Osteopathic physician or surgeon;

(3) Chiropracist-podiatrist;

(4) Optometrist;

(5) Architect;

(6) Attorney;

(7) Dentist;

(8) Public Accountant;

(9) Psychologist;

(10) Physical Therapist;

(11) Registered Nurse;

(12) Professional Engineer;

(13) Land Surveyor;

(14) Occupational Therapist;

(15) Speech pathologist;

(16) Audiologist;

(17) Registered Pharmacist;

(18) Licensed Perfusionist;

(19) Licensed Professional Counselor;

(20) Licensed Marital and Family Therapist;

(21) Dietitian;

(22) Social Worker;

(23) Licensed Alcohol and Drug Counselor; ~~and~~

(24) Licensed Behavioral Practitioner, and

(25) Certified General Real Estate Appraiser.

(d) This list will be automatically amended to include ~~new or delete~~ professional services as amended by the Legislature.

## 753:11-1-4. Ethics

(a) Employees of the Trust shall be subject to rules promulgated by the Oklahoma Ethics Commission concerning gifts from suppliers.

(b) One year limitation for certain contracts. Unless otherwise provided by law, the Trust shall not enter into a sole source or professional services contract or a contract for the services of any person who has terminated employment with or who has been terminated by the Trust for one (1) year after the termination date of the employee from the Trust. [74 O.S. § 85.42]

**753:11-1-5. Online bidding [74 O.S. § 85.45r]**

The Trust has determined that electronic or online bidding is often more advantageous than other procurement methods and thus may use online bidding to obtain bids for the purchase of goods, services, construction, and information services, where and as necessary. The Trust does not provide online bidding for bids and proposals that must be ~~let~~bid competitively.

**753:11-1-6. Transparency**

The Trust purchases a substantial volume of goods and services while maintaining over 1,500,000 square feet of hospital, clinical, academic, and office space. These goods and services should be acquired through an open and competitive process, which shall include:

- (1) Acquisitions and all other financial matters related to the Trust are subject to the provisions of the Open Records Act unless otherwise specified in Title 63.
- (2) The Trust will have an annual audit performed by a nationally-recognized auditing firm or the State Auditor and Inspector. Said audit will be provided to the Board, House of Representatives, Senate, Governor, OMES, and State Auditor and Inspector [63 O.S. § 3208(A)(13)].
- (3) Acquisition records shall be maintained for a minimum of seven (7) years following completion and/or termination of the acquisition provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the audit, litigation or action are resolved or until the end of the seven (7) year retention period, whichever is later. Acquisition files shall contain justification for the acquisition supporting documentation, copies of all contracts, if any, evaluations, and written reports if required by contract [74 O.S. § 85.39(C)]. Records relating to acquisitions using federal or restricted funding sources shall comply with retention requirements dictated by those sources if those requirements are in excess of statutory requirements [74 O.S. § 85.39(C)].
- (4) The Trust will provide a copy of its inventory to OMES in accordance with statute.

**753:11-1-7. Statutory increases**

Any monetary acquisition or construction threshold set forth in these Policies and Procedures will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 74 of the Oklahoma Statutes.

**SUBCHAPTER 3. PURCHASING**

**753:11-3-1. Supplier selection and standard requirements**

- (a) ~~Vendor registration.~~Supplier List. Any ~~vendor~~supplier wishing to do business with the Trust should register on the ~~vendor bidder list~~Supplier List maintained by OMES. The Trust may send solicitations or make acquisitions from ~~vendors~~suppliers who are not on the ~~vendor bidder list~~Supplier List, but the supplier must be registered with OMES prior to the awarding of a contract.
- (b) State use. The Trust shall make acquisitions from suppliers on the State Use Committee procurement schedule regardless of the purchase price. [74 O.S. § 85.12(C); 74 O.S. § 3007]
- (c) Oklahoma Correctional Industries (OCI). The Trust may make acquisitions from OCI if an acquisition is not available from the State Use Committee pursuant to 74 O.S. § 3007(A) provided the conditions of 57 O.S. § 549.1 are satisfied.
- (ed) Statewide and Federal contracts. The Trust may make acquisitions from statewide contracts. The Trust may also make acquisitions through General Service Administration contracts or other Federal contracts if: (a) allowed for under the terms of a federally funded project; (b) the acquisitions are not on a current statewide contract, or (c) if the terms of the Federal contract are more favorable than the terms of a statewide contract for the same products.[74 O.S. § 85.12(C)] [74 O.S. § 85.12(C); 74 O.S. § 84.12(B)(20)]
- (de) Agreements and cooperative ventures. The Trust may make acquisitions through agreements and cooperative ventures with other health care providers entered into pursuant to 62 O.S. § 3210(A)(1), the purposes of which are to share services or to provide a benefit to the hospitals.
- (ef) Split purchasing. Acquisitions shall not be made nor orders split for the purpose of evading competitive bidding requirements. [74 O.S. § 85.7(A)(2)]
- (fg) Non-Collusion Certification. A Non-Collusion Certification shall be included with any competitive bids and/or contract submitted to the Trust for goods or services. The Certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions. [74 O.S. § 85.22]
- (gh) Taxes.
  - (1) Prior to the award of a contract, the Trust shall verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. A copy of a current sales tax permit or confirmation of the permit's status from the Oklahoma Tax Commission must be included in the acquisition file.
  - (2) The Trust acquisitions are exempt from sales tax and federal excise tax.
  - (3) ~~Purchases made by suppliers on behalf of the Trust are not exempt from sales or federal taxes.~~
- (hi) Travel expenses. The price a bidder submits in response to a solicitation shall include travel expenses for the bidder to perform the contract. the Trust shall not pay travel expenses not specified by the successful solicitation response. [74 O.S. § 85.40]

## Permanent Final Adoptions

(~~ij~~) **Bonds.** The Trust may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid. The bond, where required, will be retained until successful completion of the purpose for which the bond was drawn. ~~An irrevocable letter of credit may be submitted in lieu of any bond specified.~~

(~~jk~~) **Insurance.** A successful bidder shall provide proof of all insurance as and where needed and as required by the solicitation prior to contract award (e.g. workers compensation, general liability, etc.).

(~~kl~~) **Verification of Registration with the Secretary of State.** Prior to the award of a contract, the Trust will verify that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §§ 1203-04.

### 753:11-3-2. Acquisitions

(a) Only the CEO, CFO, PO, or State Purchasing Director may issue a purchase order for direct acquisitions. Requests for purchase orders shall describe why the acquisition is needed.

(b) All maintenance/construction related requests shall be reviewed and approved by the CFMO or comparable position before submittal to the CEO, CFO, or PO.

(c) When acquisitions will be financed using federal funding sources, the Code of Federal Regulations Title 2, Subtitle II part A § 200.320 will be referenced in conjunction with the following guidance.

(1) **Acquisitions Not Exceeding ~~\$5,000~~\$25,000 or Other Limit as Permitted for CPOs.** Acquisitions of ~~\$5,000~~\$25,000 or less, unless the CPO is permitted to make acquisitions of another higher limit, will be made on the open market using a fair and reasonable acquisition process and is conducted pursuant to this Subchapter.

(2) **Acquisitions ~~Between \$5,000 or Other Limit as Permitted for CPOs and \$50,000~~\$25,000 and \$250,000.** Acquisitions between ~~\$5,000 or Other Limit as Permitted for CPOs and \$50,000~~\$25,000 and \$250,000 require formal or informal competitive solicitation. Where possible, the Trust may solicit suppliers from the Supplier List maintained by OMES, with selection of suppliers rotated whenever there are more suppliers on the list than the necessary number of solicitations. For bids between ~~\$5,000 or Other Limit as Permitted for CPOs and \$25,000~~\$25,000 and \$100,000, the Trust will solicit or otherwise obtain a minimum of three solicitations when possible. For bids between ~~\$25,000 and \$50,000~~\$100,000 and \$250,000, the Trust will solicit or otherwise obtain a minimum of five solicitations when possible. If the requisite number of solicitations cannot be made, the CEO shall be informed of the reason why with such information documented in the acquisition file.

(3) **Acquisition above ~~\$50,000~~\$250,000.** Acquisitions above ~~\$50,000~~\$250,000 require a formal sealed competitive bidding process as outlined in this Subchapter.

### 753:11-3-3. Formal or Informal Competitive Solicitations ~~(\$5,000 – \$50,000)~~ (\$25,000 - \$250,000)

(a) The Trust shall solicit or otherwise obtain prices and delivery dates by mail, telephone, facsimile, or by electronic commerce and shall prepare written evaluation criteria to be considered in selection of the supplier.

(b) The Trust shall provide the specifications, terms, and conditions for the acquisition to each supplier selected for notification.

(c) The Trust shall solicit bids in a manner that ensures minority businesses, women's business enterprises, and small businesses, and labor surplus are aware of solicitations and utilized when possible.

(~~ed~~) All awards shall be based on lowest and best or Best Value criteria [~~74 O.S. § 85.7(B)~~]-[74 O.S. § 85.2]. Documentation of prices, delivery dates, and the evaluation shall be placed in the acquisition file.

(~~ee~~) Based on the complexity of the solicitation, the Trust may require a formal competitive solicitation, up to and including sealed solicitation.

### 753:11-3-4. Competitive sealed solicitations ~~(\$50,000+)~~ (\$250,000+)

(a) **Solicitations generally.** Competitive sealed solicitations for acquisitions shall be issued by invitation to bid, request for proposal, or request for quotation. The solicitation shall include, at a minimum:

(1) any information regarding limitations on contact between suppliers and the Trust personnel during the solicitation process;

(2) whether the evaluation method will be lowest and best or Best Value;

(3) specifications or a statement of work;

(4) the closing date and time for acceptance of bids;

(5) the location of bid opening;

(6) general terms and conditions offered by the State Purchasing Director;

(7) whether preferential scoring will be given to organizations based in the United States of America, and/or small, minority and women business enterprise; and,

(8) if applicable, identification of federal funding sources.

(b) **Solicitation Amendment.** If the Trust amends a solicitation, it shall notify each supplier sent the original solicitation of the amendment. In the event of an amendment, the supplier must acknowledge receipt of the amendment (1) in the supplier's bid or quotation for submission prior to the closing date and time, or (2) in an acknowledgment of receipt of the amendment sent prior to closing date and time if the supplier has already submitted a bid.

(c) **Preparation.** The bidder shall complete and submit all required forms as specified by the solicitation. ~~Any form requiring a bidder's signature shall have an authorized signature, such signature indicating that the supplier has read and understood the information contained within the solicitation.~~ The solicitation shall specify whether the Trust may award the

contract (1) to more than one bidder and/or (2) to more than one bidder by item.

(d) **Evaluation.** Evaluation criteria contained in the solicitation shall be used as a scoring tool in considering submitted bids. Any evaluation scoring tool used shall be consistent with the evaluation criteria contained in the solicitation. Evaluation of the bids shall be documented and filed in the acquisition file. Criteria consistent with lowest and best or best value methodology, consistent with the methodology identified in the solicitation, shall be developed prior to receipt of proposals and consistently applied.

**753:11-3-8. Contract negotiation and award**

(a) **Bid Documents.** Documents submitted by a bidder in response to a solicitation are public records and will be available for review upon request, unless otherwise deemed proprietary or confidential, but only after a supplier is selected and the contract is awarded. If the bidder submits information in a response to a solicitation that the bidder considers proprietary or confidential, the bidder shall:

- (1) submit such information separately;
- (2) specifically identify what information is proprietary or confidential upon each page containing proprietary or confidential information;
- (3) enumerate the specific reasons based on applicable law which support treatment of the material as exempt from disclosure; and
- (4) conspicuously mark on the bid or bid package that it contains proprietary or confidential information.

(b) The Trust will review the information and may or may not designate a bidder's information as proprietary or confidential. If the Trust does not agree that the information is proprietary or confidential, then the Trust will return and not evaluate that information. the Trust may or may not reject all requests to disclose proprietary or confidential information designated as such. ~~[74 O.S. § 85.10; 51 O.S. § 24A]~~ [74 O.S. § 85.5(J)(9); 51 O.S. § 24A]

(c) The Trust shall make a contract award following bid opening and upon review of the following:

- (1) Bid evaluation and documentation of same;
- (2) Determination of lowest and best or Best Value bidder;
- (3) Verification of the requirements, where applicable, identified at 753:11-3-1.

(d) An evaluation tie will be decided by a coin toss, the procedure for which will be determined by the CEO.

(e) The Trust may negotiate a contract with one or more suppliers.

(f) The Trust shall notify the successful bidder within five (5) business days of the contract award.

(g) The Trust may elect not to award a contract based on a determination that:

- (1) No bid meets the requirements of the solicitation;
- (2) All bids exceed fair market value for the acquisition;
- (3) The bid price exceeds available funds;

(4) The Trust no longer requires the acquisition either in whole or in the form or manner specified in the solicitation; or

(5) Not awarding the contract is in the Trust's best interests.

**753:11-3-9. Contract management**

(a) **Contract performance.** A supplier shall deliver acquisitions within time periods specified in the contract. The Trust shall inspect acquisitions within a reasonable time following supplier delivery. Nevertheless, the Trust may reject acquisitions from the supplier that do not meet specifications or other terms or conditions of the contract regardless of the timing of an inspection, and the supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service. Title to goods and services does not pass to the Trust until it has received, inspected, and accepted the goods and services. The Trust will place in the acquisition file the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

(b) **Change orders.** Contracts awarded through formal or informal competitive solicitations pursuant to this Subchapter cannot exceed \$50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of \$50,000. Contracts awarded through competitive sealed solicitation pursuant to this Subchapter may be increased by an amount that does not exceed 10 percent of the total acquisition purchase price. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total acquisition price. ~~[See 74 O.S. § 85.7(A)(2)(b)]~~ [See 74 O.S. § 85.7(A)(1)(b)]

(c) **Advance payment.** The Trust shall not pay for acquisitions a supplier has yet to deliver.

**753:11-3-10. Acquisitions by facilities management and housekeeping contractor**

(a) The Trust may contract with ~~vendors~~ suppliers to provide facilities management and/or housekeeping services. Contracts for these services ~~shall be~~ may be cost plus, when applicable, and shall be competitively bid.

(b) Terms of the contracts shall detail purchasing authority and responsibilities of the ~~vendor~~ supplier. All acquisitions requiring Trust reimbursement per terms of the contract must be preapproved by the CFMO or comparable position. At a minimum, the ~~vendor~~ supplier shall be required to follow ~~753:11-2-2~~ 753:11-3-2, with the ~~vendor~~ supplier permitted to make acquisitions not exceeding ~~\$5,000~~ \$25,000 on the open market. The Trust shall manage the acquisition process of any maintenance/construction project over ~~\$50,000~~ \$250,000 and shall follow the competitive bidding rules as identified at ~~753:11-3-4~~ 753:11-3-3. The Trust reserves the right to set internal policies for managing the acquisition process of any maintenance/construction project under \$250,000.

# Permanent Final Adoptions

## 753:11-3-11. Professional service contracts

(a) A standard format for all agreements will be on file and changes will be coordinated with the PO. All professional service contracts must be forwarded to the PO for retention after approval by the CEO. The PO shall retain a central file that will contain:

- (1) Official copy of the contract or purchase order
- (2) Amendments
- (3) Compliance audits or reviews
- (4) Historical ~~vendors~~supplier performance
- (5) The requisition
- (6) Other related documents

(b) The Trust shall administer, monitor, and audit the professional services contract.

(c) The Trust may not enter into a professional service contract with a person who has separated employment from the Trust within one (1) year of the termination date of the individual's employment. [74 O.S. § 85.42(A)]

(d) If the final product of the contract is a written proposal, report, or study, the Trust shall maintain such written documentation in the acquisition file. [See 74 O.S. § 85.41(C)]

(e) Professional service contracts shall include:

(1) An audit clause which provides that all items of the supplier that relate to the services are subject to examination by the Trust, the State Auditor and Inspector, and the State Purchasing Director [74 O.S. § 85.41(E)];

(2) An audit clause which provides that all items of the supplier that relate to the services purchased using federal funding sources are subject to examination by federal awarding agency representatives;

~~(3)~~ A statement certifying that no person who was involved in the development of the contract while employed by the Trust shall be employed to fulfill any of the services provided for under said contract [74 O.S. § 85.42(B)]; and

~~(3)~~ A statement certifying that the supplier has not previously provided another state entity with a final written proposal, report, or study that is a substantial duplication of that which is prepared for the Trust.

## 753:11-3-12. Sole source contracts

The Trust need not seek competitive bids and may enter into a single or sole source contract for goods and services when Trust personnel seeking the acquisition completes an ~~affidavit~~ certification prepared on a form approved by the PO which gives all the reasons why the specifications merit restriction of the goods or services to one person or business. The ~~affidavit~~ certification will then be reviewed by the PO and approved and signed by the CEO with such ~~affidavit~~ certification retained in the acquisition file. [See ~~74 O.S. § 85.45(A)(2)~~ 75 O.S. § 85.44D.1] Falsely executed sole source contracts shall be grounds for discipline up to and including termination.

## 753:11-3-15. Acquisitions requiring CEO approval

(a) The Board grants authority to sign contractual documents in most instances to the CEO. Some contracts may also require Board member signature. The CEO may delegate such signature authority to appropriate Trust officers and directors.

Unless the CEO specifically delegates this authority to an individual, they may not sign any document whatsoever that binds or has the appearance of binding the Trust; documents signed by an individual without signature authority shall be void, and the signatory shall be subject to discipline up to and including termination. Such documents include, but are not limited to, purchase orders, grants, contracts, sub-contracts, licenses, leases, funding documents, applications, extensions and renewals, letters and/or memoranda of understanding, sales orders, assurances, work orders, etc.

(b) Any acquisitions exceeding \$10,000 that are not related to maintenance or construction activities must be preapproved by the CEO.

(c) All invoices must be approved by the CEO and CFO or comparable position before supplier payment. Invoices shall not be submitted to the CEO and CFO for signature unless the requesting staff has verified that the acquisition met the required specifications.

## SUBCHAPTER 5. DESIGN CONSULTANTS

### 753:11-5-2. Selection procedure

(a) The Trust shall develop a description of the project which shall include:

- (1) A narrative description of the work being planned.
- (2) The estimated cost and time schedule of the project.
- (3) The source of the funding i.e., appropriated state money, federal funding or other source of funding. Any funds designated for the project which has specific limitation of use, including deadlines for expenditure, shall be clearly defined and explained in the project description.
- (4) Any other pertinent data which would assist a consultant in determining his interest in the project.

(b) The Trust shall send a solicitation letter to each consultant on the list of registered consultants maintained by OMES. The solicitation letter will include the description identified at (a) of this Section and shall notify the consultants of the last day their letters may be received to be considered as a ~~vendorsupplier~~ for the project.

~~(c) The Trust will request a copy of the information on file for each consultant that indicated interest in being considered for the announced project(s).~~

~~(c)~~ The CFMO in conjunction with the ADC shall, where possible, select the three (3) best qualified consultants based upon ~~the data in the files supplied by OMES~~ internal selection criteria and other information that may be supplied by the consultants. If the selection is for more than one consultant contract, at least two (2) consultants for each project should be included in the short list.

### 753:11-5-3. Scheduling and performing interviews

(a) The CFMO and the ADC will convene an interview committee to interview each consultant based on evaluation criteria developed by the CFMO in consultation with the ADC, including for example the following criteria:

- (1) How will the consultant staff the proposed project?



- (2) What is the consultant's proposed management plan?
  - (3) What is his previous experience for this project?
  - (4) Where is he located? How will he reduce travel costs if he is not close to the proposed project?
  - (5) What are his plans for project control?
  - (6) What examples of similar projects has he completed within the last five years?
  - (7) Has a judgment been paid by the consultant on his behalf for liability caused by professional errors and/or omissions in the past five years?
  - (8) Can the consultant demonstrate financial stability?
  - (9) Is the consultant properly insured?
  - (10) Does the consultant labor under any conflicts of interest as addressed at 753:11-1-4?
  - (11) Any other additional factors?
- (b) Within thirty (30) days of the scheduled interviews, each consultant should be notified by letter informing him that he has been selected for an interview. The letter should contain:
- (1) Date, time, and place of interview. Interviews should be scheduled individually for each consultant.
  - (2) Period of time permitted for the interview. Indicate how much time the consultant shall be permitted for his presentation and how much time shall be reserved for questions by the committee.
  - (3) A copy of the interview criteria.
  - (4) The number of the interview committee members.
- (c) Consultants will be selected on the basis of qualifications only, and not on the basis of cost. Oklahoma statutes prohibit the release to a third party any information on fees. Any consultant who discloses his fee, or any indication thereof, prior to Negotiation of Contract, 753:11-3-8, shall be removed from consideration.
- (d) The interviews are conducted privately with each consultant out of the hearing of other consultants.
- (e) At the conclusion of all interviews, the interview committee will rate each, documenting its rationale, and select a consultant. All criteria and procedures used by the committee shall be documented for the record.

**SUBCHAPTER 7. CONSTRUCTION**

**753:11-7-1. Bid solicitations**

- (a) **Construction projects over ~~\$50,000~~ \$100,000.** Construction projects over ~~\$50,000~~ \$100,000 will be advertised in a newspaper of general circulation for two consecutive weekly issues of said newspaper with the first publication at least ~~twenty (20)~~ twenty-one (21) days prior to the day set for bid opening. Notice must also be provided to one in-state trade or construction publication, and/or electronic bid platform whenever the estimated cost of construction exceeds \$100,000, with publication of that information left to the discretion of that publication. No work shall be commenced until a written contract is executed and all required bonds and insurances have been provided by the contractor. [61 O.S. § 104]
- (b) **Construction projects under ~~\$50,000~~ of \$25,000 to \$100,000.** Construction projects under ~~\$50,000~~ of \$25,000

to \$100,000 will not usually be advertised. The Trust shall develop a written, clearly defined scope of work with detailed requirements for the project. The Trust will then solicit bids by directly contacting three (3) or more contractors.

- (c) **Minor Maintenance or Repair.** The Trust may award small projects below ~~\$5,000~~ \$25,000 to any qualified ~~vendor~~ supplier. A written contract and proof of insurance is required prior to issuing the ~~vendor~~ supplier a notice to proceed.
- (d) **Emergency Projects.** When the CEO determines that an emergency situation exists, a contract may be awarded without competitively bidding it to correct the emergency condition.
- (e) **Statutory Increases.** Any monetary threshold set forth in these rules will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 61 of the Oklahoma Statutes.

**753:11-7-2. Bid documents**

- (a) **Solicitation notice.** The solicitation notice will contain:
- (1) Sufficient information concerning the proposed public construction contract to allow a contractor to determine if he may be interested in bidding the project.
  - (2) The location where a complete set of bidding documents may be obtained.
  - (3) The date and time for the MANDATORY site visit, if applicable. As most specifications shall indicate, contractors shall be responsible for visiting the site of a project prior to bidding. Failure to do so shall not excuse a contractor from any requirement of the specifications. Occasionally, a MANDATORY site visit shall be held which shall require the attendance of a contractor at a specific time and place prior to bidding.
  - (4) The location and time for the pre-bid conference if applicable. Some projects may have a MANDATORY pre-bid conference which means that bidders MUST attend to have their bid accepted.
  - (5) The date, time and place of the opening of bids.
  - (6) The name and address to whom competitive, sealed bids must be submitted.
  - (7) If applicable, any pre-qualification requirements pursuant to 61 O.S. § 118.
  - (8) Other information deemed of benefit to the public or prospective bidders.
- (b) **Prequalification of Bidders.** In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work does not constitute a license. Prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

## Permanent Final Adoptions

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(bc) **Bid forms.** Bidders must use the information found in the specifications and drawings to prepare their bids. Verbal information from any other source cannot be used. All supplemental information, when required, shall be in the form of a written addendum provided by the ADC to all bidders of record.

### 753:11-7-3. Bid submittal

(a) **Bid preparation.** Bids must be prepared in accordance with any instructions provided in the solicitation.

(b) **Competitively-Bid Projects.** Competitive bids cannot be submitted by telephone, ~~email~~, or fax machine. Competitive bids may be delivered in person, electronically, by the U.S. Mail, or by any of the express/delivery services available during regular business hours, 8:00 AM to 5:00 PM weekdays, ~~and shall be received during a period which does not exceed 96 hours (excluding weekends or holidays) before the scheduled bid opening at the time and day specified in the bid documents.~~ Each envelope or electronic submission shall contain only one bid. Bids received after the time specified in the bid documents cannot be accepted. The following information must be placed on the outside of each sealed bid envelope or, if electronically submitted, in the subject line of the submission:

- (1) Company name and address.
- (2) Description of project.
- (3) Project number and trade, i.e. 10 HVAC.
- (4) Closing date and time.

(c) **Non-Competitively Bid Projects.** For projects under ~~\$50,000~~, between \$25,000 to \$100,000, written bids shall be received as indicated in the solicitation, which may permit the submission of bids electronically. Before a construction contract shall be awarded, the following must be assembled:

- (1) A properly signed requisition form.
- (2) Three (3) or more original written bids, when possible, including any declined bids, signed by the bidders.
- (3) Scope of work with detailed requirements.
- (4) Acceptance letter to award the contract.

### 753:11-7-4. Modifications/withdrawal of bids

Bids may be modified or withdrawn up to the time set for bid opening. Modification notices or withdrawal instructions may be sent by registered mail, ~~or~~ delivered in person, or sent electronically. Appropriate identification reflecting the authority of the bearer to modify or withdraw a bid must be presented. A bid to be withdrawn shall not be opened and shall be returned upon request of the bidder at the conclusion of the bid opening.

### 753:11-7-5. Bid openings

The bids are opened by the CFMO or his designee at the date and time specified in the announcement in the following manner and recorded by an assistant. Bid openings are open to the public and to all bidders.

- (1) The bidder's name is announced.
- (2) The bid is checked for completeness and correctness. Any of the following deficiencies may be grounds for disqualifying the bid:

(A) The bid must be signed.

(B) The Non-Collusion Certification must be present, signed, and properly notarized.

(C) If the total bid exceeds ~~\$50,000~~, \$100,000 [61 O.S. § 1], a certified check, cashier's check, or bid bond or bid letter of credit for 5 percent (5%) of the base bid price and the price of all alternate bids must be present.

(D) All equipment lists, selected materials, or other information when required by the specifications must be present.

### 753:11-7-7. Contract award

(a) ~~Bids are awarded~~ Contracts shall be awarded to the lowest responsible bidder on a lowest and best or Best Value criteria basis as indicated on the solicitation notice. If an award is made to other than the lowest bidder, the Trust shall prepare a statement setting forth the reason for its action and place that statement on file or its website, open to public inspection. [61 O.S. § 117] The Trust will provide a copy of the contract to the successful bidder who shall be given a specific period of time, as outlined in project specifications, but not to exceed sixty (60) days [61 O.S. § 113(A)], in which to execute the contract and obtain the necessary bonds and insurance.

(b) Projects over ~~\$50,000~~, \$100,000 require three bonds. [61 O.S. § 113(B)] All bonds required by Title 61 of the Oklahoma Statutes shall be provided by insurance carriers, bonding companies, or surety companies that are prequalified by OMES as good and sufficient in accordance with criteria established by OMES. [61 O.S. § 134]

(1) **Performance bond.** A bond with good and sufficient security valued at not less than the total value of the proposed contract which shall ensure the proper and prompt completion of the work in accordance with the contract ~~and shall ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in the performance of the contract.~~

(2) **Defect bond.** A good and sufficient bond in an amount equal to the total value of the contract to protect the Trust against defective workmanship and materials for a period of one (1) year after acceptance of the project.

(3) **Payment bond.** A good and sufficient bond in an amount equal to the total value of the contract to ensure that the contractor shall pay all indebtedness incurred by the contractor and his subcontractors and all suppliers for such labor, material, and repair of and parts for equipment as are used and consumed in performance of the contract, and to protect the Trust against claims or liens from subcontractors or suppliers for services or materials used in the project.

(4) **Letters of credit.** Irrevocable letters of credit may be substituted for the bonds listed, but each letter must be for the total value of the contract. Alternatively, a single irrevocable letter of credit may be substituted for the bonds listed.

(c) If no timely bid is received after bid notices have been published on any proposed public construction contract which does not exceed ~~\$50,000,~~\$100,000, the Trust may negotiate the contract with a prospective contractor. The contract ~~will~~shall be executed within six (6) months after the date initially set for opening bids, and the work to be performed shall be as specified in the initial bidding documents. [61 O.S. § 119.1]

(d) Public liability and workers' compensation insurance in reasonable amounts shall be required for all projects, regardless of project size. the Trust may require the contractor to name the Trust and its architects or engineers, or both, as an additional insured under the public liability insurance, which requirement, if made, shall be specified in the bid documents. [61 O.S. § 113(B)(4)]

(1) Proof of workers' compensation insurance shall be required for all projects exceeding \$50,000. The minimum level of coverage shall be the statutory requirement specified by Oklahoma law.

(2) For projects less than \$50,000, a sworn affidavit certifying an exemption to the requirement of workers' compensation insurance coverage may be accepted in lieu of proof of workers' compensation insurance.

(3) Additional forms of insurance or increases in the insurance amounts may be required, including builder's risk, for certain projects. Any additions or increases shall be contained in the bid documents.

**753:11-7-9. Construction conference**

(a) A construction conference may be called periodically by, when applicable, the CFMO or his designee or the Design Consultant to discuss:

- (1) Project progress as it relates to schedule.
- (2) Payment requests and their status.
- (3) Change order requests and their status.
- (4) Special problems and remedial action required.
- (5) Results of previous remedial action.
- (6) Other subjects as required.

(b) The meeting shall be chaired by the CFMO or his designee or the Design Consultant. Minutes of the meeting shall be kept by a designee of the CFMO, typed, and distributed to all applicable parties within five (5) working days.

**753:11-7-13. ~~Change orders~~Orders and proposal requests**

(a) When it has been determined that a change is needed in the work and prior to the issuance of any change order, the CFMO or his designee and/or Design Consultant shall issue a Proposal Request to the contractor. The Proposal Request ~~shall be completed by the contractor and~~ shall fully describe the scope of work explaining completely what each proposed Change Order item entails and the cost, credit, and time extension involved. The contractor shall provide a detailed breakdown of cost, showing quantities and sizes of materials; unit cost, labor, equipment, profit and overhead and shall include any time extension involved; and other expense items. The CFMO, in consultation with the ADC, will consider the ~~completed Proposal Request and issue a Change Order if~~

~~authorized-proposed~~ Change Order and sign if approved. The proposed Change Order then becomes an official Change Order.

(b) ~~When the Proposal Request(s) are approved by all parties, the contractor shall prepare a Change Order. All information required on the form shall be included. The completed Change Order will be signed by the CFMO and/or Design Consultant.~~Miscellaneous Change Orders that occur during construction including missed items, unforeseen//existing conditions, etc., will be change ordered with the approval of the owner parties mentioned above.

(c) ~~When the change is less than \$10,000, and the work involved can be costed by using a negotiated unit or lump sum price, the Proposal Request as discussed in (a) of this Section is not required.~~Change Orders to public construction contracts of \$1,000,000 or less shall not exceed a fifteen percent (15%) cumulative increase in the approved construction budget [61 O.S. § 121].

(d) ~~Awarded projects that have not been competitively bid cannot exceed \$50,000 with cumulative change orders without advertising for bids on that part of the contract which is in excess of \$50,000. Cumulative change orders for awarded projects that have been competitively bid cannot exceed 10 percent of the original project bid amount. In determining the 10 percent dollar amount, the cumulative value of all change orders shall be compared to the original total contract price.~~Change Orders to public construction contracts of over \$1,000,000 shall not exceed the greater of \$150,000 or a ten percent (10%) cumulative increase in the approved construction budget [61 O.S. § 121].

**753:11-7-18. Project reporting for federally funded projects**

Projects that are paid for with federal dollars may be subject to additional incremental reporting requirements. These requirements will be met in accordance with funding award documents and requests from federal awarding agencies.

**SUBCHAPTER 9. CONSTRUCTION MANAGEMENT/AT RISK**

**753:11-9-1. Registration of Construction Managers**

All Construction Managers desiring to perform services for the Trust must be registered with OMES. Any Construction Manager not registered with OMES at the time the Trust announces a project may register with OMES and submit a letter of interest to the Trust. All Construction Managers desiring to perform services for the Trust that are funded using federal dollars must be registered with SAM.gov, obtain a Unique Entity Identifier, and shall not be on the federal debarred supplier listing.

**753:11-9-3. Selection procedure**

(a) **Description of the project.** The Trust shall develop a description of the project which shall include:

## Permanent Final Adoptions

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- (1) A narrative description of the work being planned, including various project components;
  - (2) The estimated cost and time schedule of the project; and
  - (3) The source of the funding.
- (b) **Request list of Construction Management.** The Trust shall submit a written request to OMES for a list of construction management firms currently registered with the Department.
- (c) **Announce project.** The Trust will send a Request for Qualifications (RFQ) to each construction management firm on the list provided by OMES which must include the description of the project and the deadline when letters must be received for consideration.
- (d) **Special circumstances.** In special circumstances, the Trust may choose to precede the RFQ with a request for Letters of Interest (LOI) from the registered construction management firms.
- (e) **RFQ Contents.** An RFQ must contain, at a minimum, the following elements:
- (1) Procedures for submitting statements of qualification and procedures for making awards;
  - (2) Evaluation factors to be considered by the selection committee;
  - (3) A statement of work including the description of the project with any other summary information the Trust deems pertinent;
  - (4) A schedule for planned commencement and completion of the contract;
  - (5) Budget limits for construction of the project for which services are being sought; ~~and~~
  - (6) Requirements for construction management firms to have bonds and insurance-;
  - (7) If project is funded using federal funding sources;
  - (8) Whether preferential scoring will be given to organizations based in the United State of America; and
  - (9) Whether additional preferences are designated by federal awarding agencies.

### 753:11-9-4. Selection committee

- (a) **Members.** Whenever a solicitation is issued requiring Best Value Methodology as described at Subchapter 6 of this Chapter to determine the successful bidder, the CFMO or designee will assemble the ADC to serve as a Selection Committee. Individuals may not serve as members of the selection committee if they are deemed to have a conflict of interest with firms submitting qualifications for consideration. Conflicts of interest are generally identified as an ownership interest or a close family member with an ownership interest in a submitting firm. The CEO, CFO, or COO may provide further clarification or determinations related to conflicts of interest.
- (b) **Selection Monitor.** The CFMO will designate one member of the Selection Committee to serve as a Selection Monitor. The Selection Monitor is a non-voting member and presides over the Selection Committee. Duties of the Selection Monitor may include:
- (1) schedule and preside over Committee meetings;

- (2) provide instructions to Committee members on the Best Value methodology for evaluation and rating of bid submittals;
  - (3) tabulation of the evaluation scores;
  - (4) review the Committee's rating results for dominant information and/or inconsistencies;
  - (5) discuss evaluations with Committee members to seek clarifications, if necessary;
  - (6) prioritize the final rating ~~score;~~ scores;
  - (7) assist the Committee in determining the highest ranked firms for further consideration in interviews;
  - (8) assist the Committee in determining the apparent Best Value firm; and
  - (9) assisting with the Clarification Period activities.
- (c) **Construction management interviews.** The Selection Committee shall select a competitive number of the best qualified construction management firms for interviews. When possible, a minimum of three (3) firms constitute a competitive number.

### 753:11-9-6. Fee negotiation and contracts

- (a) Once the highest-ranking construction management firm is selected, the Trust shall request a fee proposal from the firm.
- (b) Upon receipt of the written fee proposal, the Trust shall negotiate a contract including fees.
- (c) In establishing the construction management fee, the Trust shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services.
- (d) In the event the Trust is unable to negotiate a satisfactory contract with the selected firm, at a price determined to be fair and reasonable, negotiations with that firm shall be formally terminated. The Trust ~~shall~~ may then undertake negotiations with the firm ranked second, beginning with a formal request for a fee proposal from that business. Failing accord with the second firm, the Trust shall formally terminate negotiations with that firm. This process ~~shall~~ may continue, with proposals received from and negotiations held with the next ranked firm, until such time as a contract is signed with a qualified firm or the procurement process is terminated and a new request for qualifications is initiated.
- (e) In general, pre-construction services are required on all types of construction management contracts. The fee for these services should be negotiated as a lump sum amount and should be based on the scope and duration of services.
- (f) For Construction Management/At-Risk, there are essentially two phases of the contract:
- (1) Phase One commences following completion of fee negotiations for pre-construction services. Pre-construction services include all activities by the Construction Manager up to the point at which the design is far enough along for the Construction Manager to establish a Guaranteed Maximum Price (GMP). The point in time when the GMP can be established will vary from one type of project to another. Included in the GMP quoted by the Construction Manager are the Construction Manager's fees for administering the construction contract (project fee) and the fee to cover the General Conditions for construction.

The project schedule may also dictate the amount of contingency included in the GMP.

(2) Approval of the GMP advances the project from Phase One of construction management services to Phase Two. The Trust will signal a move into Phase Two through issuance of a Notice to Proceed. Once the GMP is established, it will remain in effect through the development of the construction documents by the Construction Manager and, if applicable, the Design Consultant. The Construction Manager will work in conjunction with the Design Consultant, if applicable, to perform value engineering and construction coordination reviews and to develop individual bid packages for issuance to subcontractor trades.

(g) Upon receiving the Notice to Proceed, the Construction Manager/At-Risk will be required to furnish 100 percent performance, payment, and defect bonds, in an amount equal to the GMP or lump sum. Worker's Compensation, All Risk, Property and General Liability insurance shall be required.

(h) Non-approval of the GMP allows the Trust to terminate the services of the Construction Manager or to renegotiate, as required.

(i) Application of competitive bidding to subcontractor packages. When the design is complete and bid documents have been prepared for issuance of work packages to subcontractor trades, the Construction Manager becomes essentially a general contractor for the project, responsible for issuing and awarding individual work packages to subcontractor trades in accordance with Subchapter 3 of this Chapter. Thus, in administering the construction contract, the Construction Manager will adhere to the competitive bidding requirements for advertising and award of various work packages for a project. The estimated value of a work package will be published with the advertisement to bid.

(j) Self-Performance of subcontractor packages by Construction Manager. Because the Construction Manager is "at risk" for the total contract amount, the Construction Manager is permitted to self-perform portions of the work, provided that the work is competitively bid as a lump sum (each work package) under the same terms and conditions as the other bidders. The Trust must be notified of the Construction Manager's intent to bid a work package during each pre-bid meeting held to discuss outgoing bid packages or otherwise in writing to the CFMO.

(k) When individual work packages are bid as a lump sum, the Construction Manager's contract for that portion of the work converts from a GMP to a lump sum. Once all work packages have been bid, the Construction Manager's contract becomes all lump sum.

(l) In the event that the GMP is exceeded after all bids are received from subcontractor trades, the Construction Manager and the Trust must determine whether individual work packages need to be revised and then rebid in order to reduce cost. As an alternative, the Trust may allow an adjustment to the GMP in order to allow the Construction Manager to award all work packages.

**753:11-9-9. Statutory Increases**

Any monetary threshold set forth in these rules will automatically be updated and incorporated herein consistent with any later act of the Legislature that increases the monetary thresholds set forth in Title 61 of the Oklahoma Statutes.

**SUBCHAPTER 11. BEST VALUE METHODOLOGY**

**753:11-11-1. Best Value ~~vendor~~supplier selection**

The Best Value ~~vendor~~supplier selection and project delivery process consists of three primary phases:

- (1) **Phase 1. ~~Vendor~~Supplier selection.**
- (2) **Phase 2.** Clarification period, which includes but may not be limited to:
  - (A) agreement on scope;
  - (B) description of services using performance measurements, if applicable; and,
  - (C) creation of contract requiring a Risk Report, Risk Management Plan, and all applicable legal terms and conditions.
- (3) **Phase 3.** Management, which requires:
  - (A) the ~~vendor~~supplier to manage and control the project system to make reports to the Trust; and
  - (B) the Trust to perform project quality assurance by ensuring the ~~vendor~~supplier is using a quality control plan and through periodic inspection.

**753:11-11-2. ~~Vendor~~Supplier selection**

Phase 1 uses a series of filters to identify which bidder provides the most value. For Construction Management/At Risk contracts, for example, Subchapters 753:11-9-1 through 753:11-9-5 reflect Phase I ~~vendor~~supplier selection and should be read in tandem with this Subchapter. On or before the date stated in the solicitation, ~~vendors~~suppliers submit documentation requested in the solicitation or bid documents information that will be evaluated, rated, and/or weighted, which may include, but is not limited to:

- (1) **Past performance information.** The ~~vendor~~supplier submits performance information collected from past customers about past projects/services the ~~vendor~~supplier has completed.
- (2) **Project capability.** The ~~vendor~~supplier submits proof of their ability to perform the requirements of the proposed project/service specified in the solicitation, which includes but is not limited to risk assessment and mitigation, financial stability, proper insurance, the absence of any conflict of interest as such conflicts are addressed at 753:11-1-4, technical capability, documented performance measurements, ~~vendor's~~—~~supplier's~~ ability to provide additional value, and pricing information as required by the solicitation.
- (3) **Interviews.** The Selection Monitor will schedule interviews with representatives of selected firms as designated by the Selection Committee. The interview provides a forum for the ~~vendor~~supplier to discuss the project and

## Permanent Final Adoptions

answer questions concerning the ability to deliver the project/service.

(4) **Prioritization.** After completion of (1) through (3) of this Section, the Selection Monitor prioritizes bidders from the highest performing to least performing based upon past performance scores and the committee ratings and evaluation of the information provided by each ~~vendor~~supplier.

(5) **Dominance check.** The Selection Monitor reviews the prioritization and scoring of the bidders to identify the apparent Best Value ~~vendor~~supplier.

### 753:11-11-3. Clarification period

(a) The identified apparent Best Value ~~vendor~~supplier is invited to participate in the Clarification Phase. Only one firm at a time may be invited to participate. The clarification period is not a contract negotiation. This period is the final "filter," and the invited firm may still lose the project. Once invited to the clarification period, the ~~vendor~~supplier is responsible for scheduling and management of the related activities. The objective is to:

- (1) ensure the ~~vendor~~supplier understands the project scope;
- (2) allow the ~~vendor~~supplier to clarify how they will deliver the project/service on time;
- (3) identify the accountabilities of other parties; and
- (4) explain how the ~~vendor~~supplier will mitigate and manage any risk the vendor does not control.

(b) The ~~vendor~~supplier is responsible for understanding the project requirements and expectations.

(c) To complete the clarification phase, the ~~vendor~~supplier conducts required meetings, identifies specific requirements and provides relevant documents, which may include but is not limited to, the following:

- (1) Executive Summary;
- (2) A critical milestone schedule that includes the clarification period, the award, project/service delivery, and the project completion, including requirements for information or actions by other parties necessary to meet the schedule;
- (3) Identify all technical concerns the customer may have or issues or risks identified by the customer and provide an explanation of how the Construction Manager will satisfy those concerns;
- (4) Make any additional investigations as warranted;
- (5) Provide a listing of major ~~sub-vendor~~sub-supplier and suppliers. Ensure that any ~~sub-vendor~~sub-suppliers have a complete understanding of the project and have no technical or non-technical questions or concerns;
- (6) Identify activities where the ~~vendor~~supplier will experience situations where there may be a lack of information, where un-foreseen conditions may exist, and activities where the ~~vendor~~supplier has no control over other participants or required activities in the delivery of the service.
- (7) Identify and document in writing any value-added ideas the Trust has accepted or rejected, along with corresponding adjustments to the contract terms;

(8) A project plan including any final clarification of the proposal and any omitted information and identification of value-added provisions accepted by the Trust;

(9) Validation that the proposal is accurate and complete prior to submitting the final project scope;

(10) Develop a Risk Report template to communicate accountabilities and deviations, beginning with the clarification period;

(11) Develop a Risk Management Plan, which includes any risks the ~~vendor~~supplier does not control and how the ~~vendor~~supplier will mitigate or minimize those risks should they occur;

(12) Identify a performance measurement plan to communicate to the Trust how the ~~vendor~~supplier is performing during the project duration; and

(13) Provide assurances to satisfy any remaining project concerns that the Trust may have, including but not limited to adverse publicity; noncompliance with local, state, or federal law; safety and accident prevention or other risks within the control of the ~~vendor~~supplier that would cause unnecessary time-and-effort transactions by the Trust.

(d) If the bidder determines the proposal contains errors or the proposal is inaccurate, the bidder may withdraw the project proposal, but the bidder shall be prohibited from modifying the proposal cost, duration, or project team, unless there is dominant information justifying such action as determined by the CFMO.

(e) The ~~vendor~~supplier must schedule a final Clarification Meeting at the end of the clarification period to present a summary of the project items developed. The clarification documents must be concise, organized, and suitable for attachment to a final negotiated contract.

(1) The final clarification meeting is not a question and answer session.

(2) The bidder must not wait for the meeting to ask questions. All coordination and planning with the Trust must be conducted prior to the clarification meeting.

(3) The bidder makes a clarification meeting presentation, which details completion of the project from start to finish and summarizes all coordination/planning completed during the Clarification Phase.

(f) The Clarification Phase is the final selection filter. If at any time during the Clarification Phase, the Trust determines progress being made by the invited bidder is unsatisfactory, the Trust may terminate Clarification Phase activities with the invited bidder. The Trust may then commence a new Clarification Phase with the next highest ranked bidder.

### 753:11-11-4. Risk minimization and performance

(a) The Risk Minimization and Performance Measurement phase begins upon award of the project contract. Risk includes anything that impacts project cost, quality, or project schedule caused by the ~~vendor~~supplier, the Trust, unforeseen conditions, or other parties. The Phase consists of, but is not limited to, a Risk Report detailing information provided by the Construction Manager, which may include:

- (1) all key contact information;
- (2) project milestone schedule;

- (3) risk sheet;
- (4) modification/deviation tracking;
- (5) Risk Management Plan;
- (6) any risks the Trust may require the ~~vendor~~ supplier to document that could impact satisfaction; and
- (7) performance measurements.

(b) The Construction Manager shall submit a Risk Report for the project/service weekly throughout the contract, or as otherwise required by the CFMO.

**753:11-11-6. Other requirements for contracts awarded using Best Value methodology**

(a) 753:11-11-2 and 753:11-11-5 may apply to any contract awarded by the Trust using Best Value methodology to select the successful ~~vendor~~ supplier.

(b) Construction service solicitations and contracts shall comply with the requirements of the Public Competitive Bidding Act of 1974 with respect to performance bonds, payment bonds, defect bonds and change order limits.

(c) Construction Manager/At-Risk may use Best Value methodology to select subcontractors only in accordance with a plan authorized by the CFMO. Components of the plan must, at a minimum, include the following provisions:

- (1) Bid Notices: method of making uniform public notification to interested subcontractors and suppliers;
- (2) Availability of bid documents for inspection or acquisition by interested bidders;
- (3) Bidding and bid submittal requirements, including contents of submittals and the place and time that bids are due.
- (4) Method of evaluation of bid documents to determine final recommended contract awards.
- (5) Method of public access to pricing, scoring, and final award information.

**SUBCHAPTER 13. SUPPLIER PROTESTS**

**753:11-13-5. Administrative procedure**

Administrative hearings shall be conducted in accordance with the following procedures:

- (1) **Prehearing conference.** A prehearing conference shall be scheduled to determine the legal or factual issues which shall be limited to those brought by the supplier in its initial protest.
- (2) **Burden of proof.** The burden of proof shall be upon the protestant, which must prove its case by a preponderance of the evidence. A preponderance of the evidence is that evidence which, in light of the record as a whole, leads the Administrative Law Judge to believe a fact is more probably true than not true.
- (3) **Evidence.** The Administrative Law Judge shall give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The Administrative Law Judge shall give effect to the rules of privilege recognized by Oklahoma law for civil proceedings. Parties

may conduct cross examination of witnesses required for a full and true disclosure of facts. Notice may be taken of judicially cognizable facts.

(4) **Representation.** ~~Corporations~~ Parties may be represented by legal counsel in accordance with Oklahoma law. Legal counsel must be licensed or registered pursuant to the Rules Creating and Controlling the Oklahoma Bar Association.

(5) **Proper parties.** In addition to the supplier protesting the contract award, the supplier awarded the contract and the Trust may participate in the bid protest proceedings as proper parties.

(6) **Discovery.** Discovery shall be permitted as determined by the Administrative Law Judge.

(7) **Testimony.** All testimony, either at depositions or at a hearing, shall be under oath or affirmation.

(8) **Official record.** The Trust shall employ a certified court reporter, whose transcription of the hearing and any related matters, together with all pleadings, motions, and other documents submitted or considered during the proceedings shall constitute the official record of the protest.

(9) **Authority of the Administrative Law Judge.** The Administrative Law Judge may:

- (A) Establish a scheduling order;
- (B) Establish reasonable procedures such as authorizing pleadings to be filed by facsimile or electronic mail;
- (C) Rule on all interlocutory motions;
- (D) Require briefing of any or all issues;
- (E) Conduct hearings;
- (F) Rule on the admissibility of all evidence;
- (G) Question witnesses;
- (H) Make proposed findings of facts, conclusions of law and a proposed order to the Chief Executive Officer; and
- (I) Take other lawful actions necessary and proper in the interests of justice.

**SUBCHAPTER 15. INVENTORY AND SURPLUS PROPERTY**

**753:11-15-1. Authority**

(a) By operation of law, OMES does not have any authority or responsibility for property purchased for or under the management or control of the University Hospitals Authority except as expressly provided by law. [74 O.S. § 63(G)] State property law expressly provides that the Trust must provide an inventory to OMES [74 O.S. § 110.1], but no such express provision appears in the Oklahoma Surplus Property Act. That being so, OMES has no authority over property belonging to the Trust beyond that of serving as a repository for the Trust's inventory. [74 O.S. § 63(G)].

(b) These administrative rules have thus been implemented to fully comply with the spirit of laws applicable to state property [74 O.S. § 110.1] and the Oklahoma Surplus Property Act [74 O.S. § 62.1- 62.9] while reducing the risk of liability to

## Permanent Final Adoptions

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the Trust for the transfer or disposal of surplus hospital property-property unique from other state property. These Policies and Procedures apply to University Hospitals Trust, in turn, which exists for the principal purpose of effectuating the purposes of the University Hospitals Authority as established in the University Hospitals Authority Act.

### **753:11-15-2. Inventory control**

(a) Tangible assets shall be recorded in the Trust inventory system [74 O.S. § 110.1] which shall be maintained by the inventory control officer. In circumstances where unique assets or transactions are identified as not clearly covered by 74 O.S. § 110.1, the appropriate Trust personnel will document internal guidance in accordance with relevant industry and generally accepted accounting principles. Identification of the inventory control officer shall be provided in writing to OMES by January 15 of each year, with any change in identification of the inventory control officer submitted to OMES within thirty (30) days of the change.

(b) Tangible assets that are movable shall be tagged with a unique identifier of durable material in a location ensuring accessibility by an inventory control officer.

(c) If a movable tangible asset is transferred from one location to another, the transferring tenant shall report such movement to the appropriate Trust personnel and the new location shall be recorded in the system.

(d) Assets may be given or sold to the Joint Operator of the University Hospitals per Title 63, which donation in whatever form shall be recorded on the inventory system identified in these rules.

(e) The report generated from the inventory system shall be signed by the CFO, include tangible assets owned as of June 30 of the preceding year, and submitted to OMES by August 15. The report shall include for each asset:

- (1) The name of the University Hospitals Authority or University Hospitals Trust, as the case may be;
- (2) The tag number;
- (3) The model and serial number, if any;
- (4) The manufacturer;
- (5) The description;
- (6) Product name;
- (7) Acquisition date and cost;
- (8) Whether the asset is on loan;
- (9) Whether a tag cannot be affixed to the asset;
- (10) If the property was given or sold to the Joint Operator of the University Hospitals per Title 63, a designation of that fact; and
- (11) If the property has been disposed of, a designation whether it was traded in, was transferred, reached the end of its useful life, or was otherwise disposed of in accordance with these rules.

(f) Inventory records for motor vehicles shall specifically include:

- (1) A detailed description of each vehicle, including its original cost;
- (2) The vehicle identification number;
- (3) The license tag number;
- (4) Mileage; and

(5) The make, model, and year of the vehicle [74 O.S. § 1103].

(g) Supporting documents identifying tangible assets shall be maintained. Such documents shall include acquisition, date, acquisition cost, digital photographs or images, or other documents that provide identification information. If federal funding sources are used in the acquisition of a tangible asset, the asset shall be identified with a federal source code. Federal awarding agencies may impose additional requirements for asset tracking and disposal. These requirements shall be followed in accordance with funding award documents and the Code of Federal Regulations.

(h) Trust shall maintain a report of any assets that are missing, stolen, or destroyed by vandalism. Any notice reporting a loss to the insuring entity and any report to a law enforcement agency in the event of theft or vandalism shall be included in the report.

(i) For purposes of these rules, a tangible asset is one that meets the federal useful life and cost criteria specified in the Office of Management and Budget Circular A-21, as may be amended or superseded.

### **753:11-15-3. Surplus property**

(a) The Trust shall maintain a current list of all surplus property held and disposed of. Such list shall include the location where surplus property

- (1) is maintained;
- (2) purchase price;
- (3) when sold and selling price;
- (4) if transferred, to which entity; and
- (5) if otherwise disposed of, the manner of disposal.
- (6) If any surplus property having minimal or no value or property carrying a risk of liability is disposed of, the list shall reflect that the property had minimal or no value or was otherwise disposed of because of such risk. Inclusion of assets on the surplus property list will coincide with removal of those items from the inventory system.

(b) The Trust may determine that its items, commodities, materials, supplies, equipment, or other like tangible assets are surplus when they:

- (1) are no longer required for the maintenance or operation of Trust facilities;
- (2) are no longer economical to operate, maintain or store, and do not provide a benefit;
- (3) can be converted to more liquid assets for other immediate needs or long-term requirements; or
- (4) have otherwise become excess, obsolete, antiquated, unused, or not needed.

(c) Assets may not be designated as surplus without the prior approval of the inventory control officer.

(d) While the Trust is exempt from the Surplus Property Act, it may nevertheless dispose of property in any manner set forth in the Act and may coordinate with OMES for disposal of surplus property. Other methods of disposal of surplus property are:

- (1) Transfer or sale to other state agencies or the Joint Operator of the University Hospitals.



- (2) Sealed bid. Sealed bids shall be received in accordance with these rules. Records of all surplus property sold through sealed bid shall be maintained and shall include the name of the buyer and the selling price.
- (3) Scrap metal.
- (4) Trade in.
- (5) Sell any property not exceeding \$25,000 with CEO approval. Property exceeding \$25,000 shall follow the sealed bid procedures outlined in the Trust's administrative rules.
- (6) Disposal in an appropriate waste facility, container, or with a waste service.
- (e) Donations of Trust property to private individuals or Trust employees is strictly prohibited. The sale of Trust property to its employees must be at announced public sales or auctions and cannot be made through sealed bid.
- (f) Payment by state entities shall be within forty-five (45) days of purchase and removal. Payment by other than state entities shall be at the time of purchase and prior to removal of property. Payment by state entities shall be by a state-approved purchase card. Payment by other than state entities may be in the form of certified funds, business check, money order, or cashier's check, except that a business check will not be accepted for an amount in excess of \$2500. A private business shall provide a business tax identification number. Sales tax shall be collected unless a tax-exempt certificate is presented. Not-for-profit, non-governmental entities shall provide a copy of the letter issued by the Internal Revenue Service granting its tax-exempt status. All payments received for the purchase of surplus property are nonrefundable.
- (g) All surplus property, vehicles, and equipment are sold "as is" and are nonreturnable.

[OAR Docket #23-535; filed 6-14-23]

**TITLE 765. OKLAHOMA USED  
MOTOR VEHICLE, DISMANTLER, AND  
MANUFACTURED HOUSING COMMISSION  
CHAPTER 1. ORGANIZATION AND  
METHOD OF OPERATIONS**

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PERMANENT final adoption  
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765:1-1-6 [AMENDED]

**AUTHORITY:**  
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47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND  
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**COMMENT PERIOD:**  
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**Superseded rules:**

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**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses.

**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 25, 2023:**

**765:1-1-2. Description of Commission**

(a) **Creation.** The Oklahoma Used Motor Vehicle, Dismantler, and ~~Parts~~ Manufactured Housing Commission (hereinafter "Commission") is created by 47 O.S. Section 581 et seq. Applicable definitions and the powers and the duties of the Commission are set forth in 47 O.S. Section 581 et seq. and 47 O.S. Section 591.1 et seq.

(b) **Members.** The Commission shall consist of ten (10) members, one from each of the congressional districts of the state, a chair and all other members selected from the state at large.

(c) **Quorum.** Six (6) members of the Commission shall constitute a quorum and may transact any business or hold any hearing by a simple majority vote of the quorum. If a quorum is not present, the Chairman may postpone or cancel the meeting for lack of a quorum.

**765:1-1-6. Official seal**

(a) The official seal of the Oklahoma Used Motor Vehicle, Dismantler, and ~~Parts~~ Manufactured Housing Commission shall be as follows: The official Star of the State of Oklahoma bordered by the inscription, "Oklahoma Used Motor Vehicle, Dismantler, and ~~Parts~~ Manufactured Housing Commission."

(b) The Executive Director shall be the custodian of the official seal and shall affix the imprint or the facsimile thereof to all license certificates issued by the Oklahoma Used Motor

# Permanent Final Adoptions

Vehicle, Dismantler, and ~~Parts~~—Manufactured Housing Commission.

[OAR Docket #23-488; filed 6-9-23]

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

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765:2-3-13 [AMENDED]

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Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et.seq

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n/a

#### GIST/ANALYSIS:

The Rules modify the agency name to include and clarify the industries the agency regulates and licenses, adds statutory reference on rulings and modifies the appeal process.

#### CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle, Dismantler, and Manufactured Housing Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

## SUBCHAPTER 3. FORMAL PROCEDURES

### 765:2-3-1. Parties to proceeding

(a) The Executive Director or the Commission's legal counsel shall file a sworn complaint for every individual proceeding. The style of the complaint shall be: STATE OF OKLAHOMA, ex rel. THE OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND PARTS—MANUFACTURED HOUSING COMMISSION vs. PARTY'S NAME.

(b) A Respondent in an individual proceeding shall be the legal entity holding a license. A person that is a stockholder, member of a limited liability company, or stockholder in the legal entity conducting business, may also be named as a party Respondent. Any sanction which may be imposed against a licensee may be imposed against the individual Respondent where the acts giving rise to the imposition of the sanction were committed by or are legally attributable to the individual Respondent.

### 765:2-3-6. Hearing

(a) **Presiding officer.** The hearing shall be conducted by the Chairman of the Commission or his designate.

(b) **Order of procedure.** Each individual proceeding shall proceed as follows:

(1) Any party shall at all times have the right to counsel. Counsel must be licensed to practice law by the Oklahoma Supreme Court.

(2) All parties shall be afforded the opportunity to present witnesses, evidence, and argument on all issues involved.

(3) A party may cross-examine witnesses.

(4) The Commission or hearing officer may ask questions of all parties.

(c) **Objections and motions.** The Chairman or hearing officer shall rule on the admissibility of evidence and objections to evidence, and shall rule on motions or objections raised in the course of the hearing. In the exercise of this function, the Commission or officer may rely on the advice of counsel present and serving in an advisory capacity. In making a ruling on evidence, the Chairman or hearing officer shall not be required to follow Rules of Evidence, but may use his/her own judgment whether the evidence should be admitted. Any party may object to a ruling which the party considers erroneous, and an exception to such ruling shall be noted of record. Failure to timely object to any alleged error or irregularity shall be deemed as a waiver of such objection.

(d) **Burden and standard of proof.** The burden of proving the allegations contained in its Complaint shall be upon the Movant. The standard of proof required to sustain the imposition of any sanction against a Respondent shall be by clear and convincing evidence.

(e) **Ruling.**

(1) The Commission or Hearing Officer shall prepare Findings of Fact and Conclusions of Law. The Commission or Hearing Officer may request the parties to submit proposed Findings and Conclusions before making a final ruling. Any party may file proposed Findings and Conclusions. Disposition of any individual proceeding may be by stipulation, agreed settlement, consent order, default or majority vote.

(2) The Commission by majority vote, may deny, suspend, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 581 et seq. The Commission, by majority vote, may deny, suspend, cancel, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 591.1 et seq. and 47 O.S. Section 592 et. seq.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rule amendments address felony convictions from another state or federal court.

**CONTACT PERSON:**

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

**765:2-3-13. Appeal**

The licensee may appeal the decision of the Commission within thirty (30) days from the date thereof. Such appeal shall be done in the manner provided in 47 O.S. Section 581 et seq., and the Administrative Procedures Act. ~~If the issues involved were first presented to the Commission by a complaint filed with the Commission, the complainant shall have the same right to appeal.~~

*[OAR Docket #23-489; filed 6-9-23]*

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION  
CHAPTER 4. GENERAL LICENSING PROVISIONS**

*[OAR Docket #23-490]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

765:4-1-4 [AMENDED]

**AUTHORITY:**

Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

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

December 21, 2022

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**ADOPTION:**

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

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May 31st, 2023

**EFFECTIVE:**

August 25th, 2023

**765:4-1-4. OSBICriminal Record Report**

Every applicant for a license to be issued by the Commission shall be required to submit a current report from the Oklahoma State Bureau of Investigation (OSBI Report) which indicates whether the applicant has been charged or convicted of a felony. The report shall include information showing whether any of the charges or convictions were violent or sex offender felonies. An applicant who has a felony conviction in another state or in federal court within the last twenty (20) years shall submit a copy of the Judgement and Sentence for such conviction.

*[OAR Docket #23-490; filed 6-9-23]*

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION  
CHAPTER 10. USED MOTOR VEHICLE DEALERS**

*[OAR Docket #23-491]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Licensing Qualifications, Procedures and Fees  
765:10-1-6 [AMENDED]  
765:10-1-6.1 [AMENDED]  
Subchapter 3 Operation  
765:10-3-1 [AMENDED]

**AUTHORITY:**

Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

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

December 21, 2022

**COMMENT PERIOD:**

January 17th, 2023 through February 17th, 2023

**PUBLIC HEARING:**

March 14, 2023

**ADOPTION:**

March 14, 2023

# Permanent Final Adoptions

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

March 16, 2023

## LEGISLATIVE APPROVAL:

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May 31st, 2023

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August 25th, 2023

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed rule amendments remove the term "shall" and change the number of digits of license numbers.

## CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

## SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

### 765:10-1-6. Issuance of license

(a) **Name.** A used motor vehicle dealer's license will be issued in the legal name of the individual proprietorship, partnership, corporation, limited liability company or other legal entity, as identified on the application for dealer license. A license shall not be issued in a name which does not reflect the nature of the licensee's business nor any name which is misleading or confusing to those with whom the licensee deals. For example, a dealer shall not use the term "leasing" in his name if the dealer's business does not include that activity.

(b) **Certificate.** A used motor vehicle dealer's license ~~shall consist~~ consists of a signed certificate bearing the official seal of the Commission and ~~shall specify~~ specifying the name and location of the place of business and assigned dealer number, ~~which shall be~~ is to be posted in a conspicuous place in the dealer's place or places of business. The used motor vehicle dealer's license number will be prefixed with UD, followed by a ~~four~~ five digit number and then the current year of license (~~UD-0000-90~~ UD-00000-00).

(c) **Titles.** The valid used motor vehicle dealer's license permits the dealer to transfer and assign titles and purchase and sell used motor vehicles without paying excise tax.

(d) **Card.** The dealer or designated managing officer will receive a gratis salesman's identification card which shall be carried upon his person at all times while acting as a used motor vehicle dealer.

(e) **Beginning business.** No applicant for a used motor vehicle dealer's license ~~shall~~ can conduct business until such time as the Commission has issued him a license.

### 765:10-1-6.1. Used motor vehicle dealer plates

(a) The issuance of used motor vehicle dealer plates by the Oklahoma Tax Commission shall be subject to the verification by this Commission that the applicant is licensed as a used motor vehicle dealer and that the number of plates requested is appropriate for the size and nature of the licensee's business.

(b) A metal dealer's plates may be used for demonstrating, transporting or any other normal business of a dealer. Normal business of a dealer ~~shall include~~ includes use of the dealer plate on a vehicle regularly driven by the dealer or the dealer's spouse or any licensed salesperson, provided the title to the vehicle driven is in the name of the dealer's licensed used motor vehicle dealership on the front of the title or by assignment.

## SUBCHAPTER 3. OPERATION

### 765:10-3-1. Forms required

(a) **Retail Sales Forms.** The following forms shall be required in the sale of a used motor vehicle by a used motor vehicle dealer to anyone other than a licensed dealer:

- (1) Sales contract or bill of sale,
- (2) Odometer statement,
- (3) Federal Trade Commission Buyer's Guide conforming to FTC and state standards,
- (4) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer,
- (5) Used motor vehicle dealer's temporary tag,
- (6) Condition of sale:
  - (A) warranty, or
  - (B) vehicle service contract, or
  - (C) warranty disclaimer,
- (7) Finance or security agreement, if applicable, and
- (8) Consignment agreement, if applicable,
- (9) Spot delivery form, if applicable,
- (10) 'We Owe' form, if applicable,
- (11) Any other form which affects the rights of either party.

(b) **Dealer to dealer forms.** The following forms shall be required in dealer to dealer transactions:

- (1) Bill of sale, and
- (2) Odometer statement, if required.

(c) **Approval.** All forms must be approved by the Commission. The content and forms to be used shall be filed thirty (30) days prior to use, and if not rejected in thirty (30) days from the filing date, the forms will be conditionally approved.

(d) **Standards.** The forms required shall contain substantially the following information:

- (1) **Sales contract or bill of sale.**
  - (A) The sales contract or bill of sale shall state the names of the parties, the make, model, tag number and vehicle identification number (VIN) of the vehicle subject to the transaction, a statement of the selling amount, a description of the vehicle traded in, if any, and the consideration given therefore, and the statement referring to the FTC Buyer's Guide as

required by federal law or rule, and proper signatures of the parties.

(B) Said form shall also contain or have attached a statement of any terms that create any contingencies in the completion of the contract, including contingencies relating to financing, whether by the dealer or a third party, and any limitations to which the contingencies may be subject.

(C) Said form shall also state, in clearly understandable terms, the type of title the purchaser shall receive, whether it be an "original" green title; an insurance loss dated title; a title with a theft or flood damage notation; or a rebuilt, salvage or junk title, or any other disclosures or discrepancies noted on the face of the title, including special notations regarding mileage or odometer readings, but shall not include a "repossessed" or "repo" title, together with some form of written acknowledgment by the purchaser that the purchaser is aware of the type of title to be received. Failure to make said disclosure shall create a presumption that the type of title to be received shall be an "original" green title without discrepancies of any sort.

(D) Said form shall not contain statements such as "trade in value does not reflect actual cash value of trade in" or any language that suggests the amounts stated are not the true value agreed upon by the parties.

(2) **Odometer statement.** The odometer statement must conform to the requirements of federal and state law.

(3) **Federal Trade Commission Buyer's Guide.**

(A) From and after May 9, 1985, in all sales to consumers, as defined in Title 16 Code of Federal Regulations Section 455.1(4), it shall be required that dealers display and complete the "Buyer's Guide" form required by the Federal Trade Commission. Display and completion of the "Buyer's Guide" as required by Federal Trade Commission Used Motor Vehicle Trade Regulation Rule shall be deemed compliance with this rule.

(B) The "Buyer's Guide" required herein shall not be used in lieu of warranty disclaimer forms to disclaim warranties, actual or implied. In order to disclaim any warranties, a separate warranty disclaimer form must be used.

(C) From and after May 9, 1985, conditions of sale forms must include the following language, conspicuously written on that form: "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale." Condition of sale contracts which do not contain this language shall not be approved by this Commission. Nothing in this rule shall be construed to make any additional informational or substantive requirements as to warranties, implied warranties or service contracts beyond that presently required by the Used Motor Vehicle Trade Regulation Rules or state law.

(4) **Title, tax stamp and tax transfer notice requirement.** It ~~is~~ shall be the duty of every person licensed to sell new or used motor vehicles to advise each purchaser in writing about his title requirements and payment of any taxes due. It ~~shall be~~ is the duty of the selling dealer to affix the applicable used motor vehicle dealer's tax stamp in the appropriate place on the assignment or re-assignment area of the certificate of title. Dealers failing to comply with provisions of this section ~~shall be~~ is responsible for all taxes due on such sales or on such vehicles.

(5) **Deposit.** If a prospective purchaser makes a deposit of anything of value to obtain the option to complete a purchase (of a used motor vehicle) in the future, the dealer shall acknowledge the deposit in writing, the time period for which the option to purchase is valid, whether the deposit is refundable in whole or in part, and the conditions, if any under which the deposit may be refunded. The deposit shall be deemed refundable unless it is clearly stated in writing that the deposit or a portion thereof is non-refundable.

(e) **Used motor vehicle dealer's temporary tags.** Misuse of the used motor vehicle dealer's temporary tag may be grounds for the assessment of a fine or, suspension or revocation of the used motor vehicle dealer's license.

[OAR Docket #23-491; filed 6-9-23]

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION  
CHAPTER 11. USED MOTOR VEHICLE REBUILDERS**

[OAR Docket #23-492]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Licensing Qualifications, Procedures and Fees

765:11-1-2 [AMENDED]

Subchapter 3. Authority

765:11-3-3 [AMENDED]

**AUTHORITY:**

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et.seq

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

December 21, 2022

**COMMENT PERIOD:**

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Approved May 31, 2023 by SJR 22

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May 31st, 2023

# Permanent Final Adoptions

## EFFECTIVE:

August 25th, 2023

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded Rules:

Subchapter 1. Licensing Qualifications, Procedures and Fees

765:11-1-2 [AMENDED]

Subchapter 3. Authority

765:11-3-3 [AMENDED]

### Gubernatorial approval:

October 28, 2022

### Register publication:

40 Ok Reg 386

### Docket number:

22-821

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rules modify the agency name from Oklahoma Used Motor Vehicle and Parts Commission to Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission, and removes "shall" from definitions and replaces it with "means".

### CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

## SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

### 765:11-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning:

**"Rebuilder"** ~~shall be defined as set forth in 47 O.S. Section 581, as amended~~ means a used motor vehicle dealer who is engaged in the business of rebuilding repairable motor vehicles and who has paid the fee for and has been issued a rebuilder certificate as provided in 47 O.S. Section 591.5 et seq.

**"Rebuilder's certificate"** ~~shall be~~ means the license granted by the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission to a qualified rebuilder.

**"Rebuilding"** ~~shall be defined as~~ means the process of reconstructing and repairing a repairable motor vehicle to roadworthy condition, including the completion of cosmetic or aesthetic repairs.

**"Repairable motor vehicle"** ~~shall include~~ means damaged vehicles with an original or salvage certificate of title, but ~~shall not include~~ vehicles for which a junked title has been issued; or which meet the statutory definition of a junked vehicle; or which is sold without a certificate of title; or is sold on a bill of sale or Affidavit of Ownership; or other document which indicates the vehicle is being sold for the sole purpose of dismantling the vehicle or for parts only.

## SUBCHAPTER 3. AUTHORITY

### 765:11-3-3. Authority to dispose of parts

A rebuilder ~~shall be~~ authorized to dispose of the parts not used from a repairable motor vehicle in the rebuilding of the vehicle by selling said parts to a licensed automotive dismantler or selling said parts to a metal processor or crusher for scraps in accordance with applicable state laws. Any other disposition of said parts ~~shall require~~ requires a rebuilder to first be licensed as an automotive dismantler.

[OAR Docket #23-492; filed 6-9-23]

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 12. SALVAGE POOLS AND DISPOSAL SALES

[OAR Docket #23-493]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 6. Titling [NEW]

765:12-6-1 [NEW]

### AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et seq

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

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August 25th, 2023

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rules add new language addressing salvage and junk titles.

### CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

**SUBCHAPTER 6. TITLING**

**765:12-6-1. Titles**

Prior to the sale of any motor vehicle at salvage pool or salvage disposal sales, as salvage title or junked title shall be issued for any salvage or junked vehicle as defined in 47 O. S. Section 1105. The salvage pool or salvage disposal sale shall be responsible for determining whether a vehicle to be sold at its sale has the appropriate type of title, when the owner authorizes the salvage pool or salvage disposal sale to obtain the appropriate type of title, or the vehicle is owned by the salvage pool or salvage disposal sale. Provided further, that no penalty may be assessed unless it is proven the salvage pool or salvage disposal sale failed to act in good faith.

*[OAR Docket #23-493; filed 6-9-23]*

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION  
CHAPTER 13. TEMPORARY LICENSE PLATES**

*[OAR Docket #23-494]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Application  
765:13-1-1 [AMENDED]

**AUTHORITY:**

Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

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

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**Superseded Rules:**

Subchapter 1. Application  
765:13-1-1 [AMENDED]

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October 28, 2022

**Register publication:**

40 Ok Reg 387

**Docket number:**

22-822

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules modify the agency name from Oklahoma Used Motor Vehicle and Parts Commission to Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission.

**CONTACT PERSON:**

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

**SUBCHAPTER 1. APPLICATION**

**765:13-1-1. Application**

The rules enacted herein regarding temporary license plates shall apply only to dealers regulated by the Oklahoma Used Motor Vehicle, Dismantler, and Parts ~~Manufactured Housing~~ Commission and shall not apply to dealers in non-motorized vehicles or trailers regulated by another agency.

*[OAR Docket #23-494; filed 6-9-23]*

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION  
CHAPTER 15. USED MOTOR VEHICLE SALESPERSONS**

*[OAR Docket #23-495]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Certificate of Registration and Qualifications, Procedures and Fees  
765:15-1-5 [AMENDED]  
765:15-1-6 [AMENDED]

**AUTHORITY:**

Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

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# Permanent Final Adoptions

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed rules clarify temporary certificate of registration issuance except in the case of applicant has been convicted of a crime that relates to the occupation of a used motor vehicle dealer and pose a reasonable threat to public safety.

## CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

### SUBCHAPTER 1. CERTIFICATE OF REGISTRATION QUALIFICATIONS, PROCEDURES AND FEES

#### 765:15-1-5. Issuance of certificate of registration

(a) **Prerequisite.** A certificate of registration for a used motor vehicle salesperson will not be issued, renewed, or endorsed until the employing dealer is licensed and has certified that the applicant for said certificate is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are registered. The dealer shall be required to pay for certificates of registration for its salespersons but may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All salespersons certificates of registration will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain certificates of registration have done so.

#### (b) **Temporary certificate of registration.**

(1) A temporary salesperson's certificate of registration, salesperson's renewal, or reissue of a salesperson's certificate shall be deemed to have been issued when the appropriate application and fee have been properly addressed and mailed to the Commission, except as follows:

- (A) in the case of incomplete application,
- (B) in the case of proper fee not being submitted,
- (C) in the case of applicant's having been previously denied a license or certificate of registration with this Commission, or
- (D) in the case of applicant's having been convicted of a crime ~~involving moral turpitude (act or behavior that gravely violates accepted moral standards of community)~~, that substantially relates to the occupation of a used motor vehicle dealer and poses a reasonable threat to public safety, committed any unlawful act which resulted in revocation of similar license in another state, or committed a fraudulent act in selling or purchasing motor vehicles in such a manner as to cause injury to the public.

(2) All temporary salesperson certificate of registration applications shall be submitted for approval to issue a permanent certificate of registration at the first monthly Commission meeting following receipt of a completed application.

(c) **Permanent certificate of registration.** A permanent salesperson's certificate shall be issued after approval of the applicant by the Commission. A salesperson's certificate shall consist of an identification card bearing the name, name of employer, address, signature of the Executive Director, and the dealer's license number ~~prefixed with UD (UD-0000)~~. The card shall be carried upon his person at all times when acting as a used motor vehicle salesperson.

#### 765:15-1-6. Renewal of certificate of registration

All certificates shall expire on the 31st day of December of each odd numbered year following the date of issue and shall be nontransferable.

[OAR Docket #23-495; filed 6-9-23]

### TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 16. ADVERTISING

[OAR Docket #23-496]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. General Provisions

765:16-1-1 [AMENDED]

765:16-1-2 [AMENDED]

Subchapter 3. Specific Advertising Regulations

765:16-3-6 [AMENDED]

Subchapter 5. Finding of Violation

765:16-5-1 [AMENDED]

765:16-5-2 [AMENDED]

#### AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et.seq

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

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#### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded Rules:

Subchapter 1. General Provisions



765:16-1-1 [AMENDED]  
765:16-1-2 [AMENDED]  
Subchapter 5. Finding of Violation  
765:16-5-1 [AMENDED]  
765:16-5-2 [AMENDED]

**Gubernatorial approval:**

October 28, 2022

**Register publication:**

40 Ok Reg 387

**Docket number:**

22-823

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed rules modify the agency name from Oklahoma Used Motor Vehicle and Parts Commission to Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission and clarifies dealer price advertising.

**CONTACT PERSON:**

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**765:16-1-1. Purpose**

The purpose of this Chapter is to implement the intent of the legislature as declared in the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission Law by regulating the advertising of the Commission licensees by requiring truthful and accurate advertising practices for the benefit of the citizens of this State. These rules apply to all licensees engaging in business under any of the industries regulated by this Commission, unless the rule is directed toward a specific industry or practice only engaged in by that specific industry licensee.

**765:16-1-2. Definitions**

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

**"Advertisement"** means an oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio or on television or on the Internet.

**"Bait advertisement"** means an alluring but insincere offer to sell a product but which has as its primary purpose of obtaining leads of persons interested in buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

**"Clear and conspicuous"** means that the statement, representation, or disclosure is of such size, color, contrast,

and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. This standard shall be met by the following:

- (1) In print advertisement:
  - (A) The type size of 5 ½ caps or larger shall be used in all disclosures.
  - (B) Disclosures shall be located adjacent to the price or in an area clearly marked with reference symbols. All reference symbol marks, such as asterisks, must be type size 5 ½ caps or larger.
- (2) In an audio advertisement:
  - (A) The disclosure shall be clear and understandable in pace and volume; and,
  - (B) The disclosure shall be placed at the end of the advertisement.
- (3) In a television advertisement:
  - (A) The disclosure shall be in visual form so that the average viewer may easily read and understand it.
  - (B) The disclosure size shall be at least twenty (20) scan lines and each disclosure shall appear continuously on the screen for at least ten (10) seconds.

**"Demonstrator"** means those vehicles that are of the current or previous model year which have not been sold, titled, or registered to any type of purchaser and are used by dealership personnel for demonstration purposes. Service vehicles, courtesy cars, daily rentals, loners, driver education and factory executive cars shall not be described as "demonstrator" vehicles. Demonstrators may be advertised for sale, as such, only by a franchised dealer of the same line-make of vehicle.

**"Disclosure"** means required information that is clear, conspicuous, and accurate.

**"Factory Executive/Official Vehicle"** means a new motor vehicle with an original Manufacturer's Statement of Origin or used motor vehicle with a Certificate of Title, that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries. The advertiser shall state clearly whether the vehicle is a new or used vehicle.

**"Licensee"** means any person required to obtain a license from the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission.

**"Program vehicle"** means a vehicle that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is a current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

**"Rebate or cash back"** means a sum of money refunded to a purchaser or for the benefit of the purchaser. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for his or her benefit.

**SUBCHAPTER 3. SPECIFIC ADVERTISING REGULATIONS**

# Permanent Final Adoptions

## 765:16-3-6. Dealer price advertising

(a) **Selling price.** The most conspicuous price of a used motor vehicle, when advertised by a dealer, must be the full and total selling price for which the dealer will sell the vehicle. An advertisement may not list only a down payment price in lieu of the full price of the vehicle, manufactured home or installation of manufactured home. The only charges that may be excluded from the advertised price are:

- (1) state and local taxes,
- (2) license,
- (3) title, ~~and~~
- (4) processing fee, and
- (5) delivery and installation cost on the sale of a manufactured home.

(b) **Qualification.** A qualification may not be used when advertising the cash price of a vehicle such as "with trade", "with acceptable credit", "with dealer-arranged financing", or "with down payment".

(c) **Rebate or savings claim.** If a price advertisement discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

## SUBCHAPTER 5. FINDING OF VIOLATION

### 765:16-5-1. Violation

The violation of an advertising rule shall be considered by the Commission as a violation of the Oklahoma Used Motor Vehicle, Dismantler, and PartsManufactured Housing Commission Law, created by Title 47 of Oklahoma State Statute. In addition to the specific advertising regulations, referenced in Subchapter 3, any other advertising or advertising practices found by the Commission to be false or misleading shall be deemed violations of the law, and shall also be considered violations of the general prohibition.

### 765:16-5-2. ~~Hearing~~Penalty

No licensee shall be held to be in violation of the foregoing rules of this Chapter ~~including the general prohibition in OAC 765:16-3-1~~, except upon a finding thereof made by the Commission ~~after notice and hearing~~ as provided in the Oklahoma Used Motor Vehicle, Dismantler, and PartsManufactured Housing Commission Law.

[OAR Docket #23-496; filed 6-9-23]

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 20. WHOLESALE MOTOR VEHICLE DEALERS

[OAR Docket #23-497]

RULEMAKING ACTION:  
PERMANENT final adoption

## RULES:

Subchapter 3. Operation  
765:20-3-3 [NEW]

## AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 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 rule clarifies who may advertise directly to the public.

## CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvmhc.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 25, 2023:**

## SUBCHAPTER 3. OPERATION

### 765:20-3-3. Advertising

A wholesale used motor vehicle dealer may not advertise in any medium which advertisement may have the effect of causing any person to believe the wholesale dealer's vehicle may be purchased by anyone other than a licensed used motor vehicle dealer.

[OAR Docket #23-497; filed 6-9-23]

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #23-498]

RULEMAKING ACTION:  
PERMANENT final adoption

**RULES:**

Subchapter 1. Licensing Qualifications, Procedures and Fees  
765:25-1-4 [AMENDED]  
765:25-1-5 [AMENDED]  
Subchapter 3. Operation  
765:25-3-2 [AMENDED]

**AUTHORITY:**

Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

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**SUPERSEDED EMERGENCY ACTIONS:**

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Subchapter 1. Licensing Qualifications, Procedures and Fees  
765:25-1-4 [AMENDED]  
Subchapter 3. Operation  
765:25-3-2 [AMENDED]

**Gubernatorial approval:**

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40 Ok Reg 389

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**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The rule amendments change the present rules to conform to HB 3271, modifying the agency name to Oklahoma Used Motor, Dismantler, and Manufactured Housing Commission, and changing licensee numbers from a four-digit number to five-digit number.

**CONTACT PERSON:**

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

**SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES**

**765:25-1-4. Applicant**

Every person, firm or corporation desiring to apply for an original license for the purpose of engaging in the business of an automotive dismantler and parts recycler shall apply

in writing on a form to be prescribed by the Oklahoma Used Motor Vehicle, Dismantler, and Parts–Manufactured Housing Commission, which form shall include:

- (1) the name of the applicant,
- (2) the business name of the proposed business,
- (3) the street address of the applicant's principal place of business,
- (4) the type of business organization of the applicant whether a sole proprietorship, partnership, or corporation,
- (5) the applicant and/or business organization's financial standing,
- (6) the legal description of the proposed place of business, together with written verification from the appropriate local authorities that the place of business meets the licensing and zoning requirements of the municipality or county where located,
- (7) sales tax permit number issued by the Oklahoma Tax Commission,
- (8) authorization by the applicant for the Commission or its agent to inspect the register of purchases and sales of motor vehicles or parts thereof required to be kept by the applicant and authorization to inspect all vehicles or parts thereof on the register of purchases and sales wherever located and all vehicles or parts thereof located on applicant's property,
- (9) storm water multi-sector general permit from the Department of Environmental Quality,
- (10) National Motor Vehicle Title Information System number, and
- (11) such additional information as may be required by the Commission.

**765:25-1-5. Issuance of license**

- (a) **Name.** An automotive dismantler's license will be issued in the legal name of the individual proprietorship, partnership, or corporation as identified on the application for dismantler license.
- (b) **Certificate.** An automotive dismantler's license shall consist of a signed certificate bearing the official seal of the Commission, the name and address of the business, and shall bear a unique dismantler license number. Said license shall be posted in a conspicuous place in the dismantler's place or places of business. The automotive dismantler's license number will be prefixed with "AD", followed by a ~~four~~five digit number, then the current license year (~~AD-0000-00~~AD-00000-00).

**SUBCHAPTER 3. OPERATION**

**765:25-3-2. Records**

Every automotive dismantler and parts recycler shall keep a register of all purchases and sales of motor vehicles for three (3) years from the date of purchase or sale, showing the make, model, year, style, vehicle identification number, and name and address of the purchaser or seller of the motor vehicle. Such registers shall be made available for inspection by properly identified agents or employees of the Oklahoma

# Permanent Final Adoptions

Used Motor Vehicle, Dismantler, and ~~Parts—Manufactured Housing~~ Commission or identified law enforcement officers of the state, county and/or municipality where the business of the automotive dismantler and parts recycler is located, during reasonable business hours on business days. The inspection authority shall include the right to inspect any motor vehicle or parts thereof owned by or stored at the automotive dismantler and parts recycler's place of business. For purposes of inspection, place of business shall include the location of all vehicles used in the business of dismantling, disassembling, storing and selling of salvage motor vehicles or parts thereof, whether or not said vehicles are located on the property which legal description is contained on the automotive dismantler's application for license. If it is determined that a licensee has knowingly provided false or misleading information when requested to provide records, the licensee may be subject to any appropriate sanction authorized by rule or statute.

[OAR Docket #23-498; filed 6-9-23]

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #23-499]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Licensing Qualifications, Procedures and Fees

765:35-3-1 [AMENDED]

765:35-3-2 [AMENDED]

765:35-3-3 [AMENDED]

765:35-3-5 [AMENDED]

Subchapter 5. Operation

765:35-5-1 [AMENDED]

765:35-5-2 [AMENDED]

### AUTHORITY:

Oklahoma Used Motor Vehicle and Parts Commission

47 O.S. Section 582(E)(1)

75 O.S. Section 583 B.3.

75 O.S. Section 302 et.seq

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n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments remove the term "shall", change the number of digits of license numbers, adds an existing form as a required form for the sale of a manufactured home and corrects language errors.

### CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

## SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

### 765:35-3-1. Fees

The fees ~~required~~ for an initial application, renewal, and additional location for a manufactured home dealer's license are recited in 47 O.S. Section 583. A fee will be returned to the applicant in the event the license applied for is denied.

### 765:35-3-2. Place of business

(a) An applicant must have an established place of business. An established place of business means a location which includes at a minimum:

- (1) a display area for manufactured home(s) that is easily accessible,
- (2) sufficient parking for the public,
- (3) an office for conducting business where the books, records and files are kept,
- (4) an office which is a building or is a separate room within a building on the premises that is considered a permanent structure with access to a restroom for the public. Such place of business ~~shall~~ does not include the use of vacant lots, tents, temporary stands, or other temporary office facilities.
- (5) ~~it shall be~~ separate ~~and~~ apart from any other manufactured home ~~dealers~~ dealer's location,
- (6) place of business ~~shall that meet~~ meets all zoning, occupancy, and other requirements of the appropriate local government, and ~~shall be~~ regularly occupied by a person, firm, or corporation engaged in the business of selling manufactured homes,
- (7) a sign, reflecting the name of the business, visible from the roadway nearest to the entrance of the place of business, and
- (8) a listed and usable telephone at the place of business.

### 765:35-3-3. Applicant information; applications

(a) **Information ~~required~~ needed.** An applicant ~~shall will~~ provide sufficient information on the application or otherwise

to enable the Commission to determine whether the applicant should be granted a license. The information ~~shall~~will include:

- (1) Information relating to the applicant's financial standing,
- (2) Information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history,
- (3) Whether the applicant will be engaged in the pursuit, avocation, or business for which a license is applied,
- (4) Whether the applicant will devote full or part time to the business,
- (5) Whether the applicant is able to properly conduct the business for which the license is applied,
- (6) A valid franchise letter as proof of authorization to sell any new manufactured home, and
- (7) Any other pertinent information consistent with the safeguarding of the public interest and welfare.

(b) ~~Application required.~~ Applications for license ~~shall~~are to be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications ~~shall~~will contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license.

**765:35-3-5. Issuance of license**

- (a) **Name.** A manufactured home dealer's license will be issued in the legal name of the individual proprietorship, partnership, or corporation as identified on the application for dealer license.
- (b) **Certificate.** A manufactured home dealer's license shall consist of a signed certificate bearing the official seal of the Commission and shall specify the name and location of the place of business and assigned dealer number, which shall be posted in a conspicuous place in the dealer's place or places of business. The manufactured home dealer's license number will be prefixed with MH, followed by a ~~four~~five digit number and then the current year of license (~~MH-0000-92-MH-00000-00~~).
- (c) **Titles.** The valid manufactured home dealer's license permits the dealer to transfer, assign and reassign titles and purchase and sell manufactured homes without paying excise tax.
- (d) **Beginning business.** No applicant for a manufactured home dealer's license shall conduct business until such time as the Commission has issued him a license.

**SUBCHAPTER 5. OPERATION**

**765:35-5-1. Forms required**

- (a) **Forms.** The following forms shall be required in the sale of a manufactured home by a manufactured home dealer:
  - (1) Sales contract, bill of sale or buyer's order,
  - (2) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer,
  - (3) Condition of sale:

- (A) warranty, or
- (B) service contract, or
- (C) warranty disclaimer,
- (4) Finance or security agreement, if applicable, and
- (5) Consignment agreement, if applicable.
- (6) A completed copy of the I-Form from the installer who installed the manufactured home
- (b) **Approval.** All forms must be approved by the Commission. The content and forms to be used shall be filed ten (10) days prior to use, and if not rejected in ten (10) days from the filing date, the forms will be conditionally approved.
- (c) **Standards.** The forms required shall contain substantially the following information:
  - (1) Sales contract, bill of sale, or buyer's order. The sales contract, bill of sale, or buyer's order shall state the names of the parties, the make, model, tag number and serial number of the manufactured home subject to the transaction, if available, a statement of the selling amount, a description of the manufactured home traded in, if any, and the consideration given therefore, and
  - (2) Title and tax transfer notice requirement. It shall be the duty of every person licensed to sell manufactured homes to advise each purchaser in writing about his title requirements and payment of any taxes due.
  - (3) If a prospective purchaser makes a deposit of anything of value to obtain the option to complete a purchase (of a manufactured home) in the future, the dealer shall acknowledge the deposit in writing, the time period for which the option to purchase is valid, whether the deposit is refundable in whole or in part, and the conditions, if any under which the deposit may be refunded. The deposit shall be deemed refundable unless it is clearly stated in writing that the deposit or a portion thereof is non-refundable.

**765:35-5-2. Consignment sales**

- (a) **Consignment.** A manufactured home dealer, whether acting as principal or agent, or by power of attorney, shall be responsible for complying with 765:35-3-1 et seq. with regard to all manufactured homes purchased, sold, or transferred by the dealer whether or not any other party has any interest in the ~~vehicle~~manufactured home being purchased, sold, or transferred. The certificate of title of a manufactured home owned by an individual consigned to a manufactured home dealer for sale by that dealer need not be assigned by the individual to the dealer provided a consignment form approved by this Commission is used in the consignment transaction, and all other state and federal forms required are properly executed at the time of sale by the dealer as agent for the consignor. The consignee shall not be responsible for the truthfulness of the information provided to him by the consignor unless consignee willfully, knowingly, or negligently with reckless disregard of the true facts, misrepresents or misstates the information on the forms and/or certificate of title.
- (b) **Title.**
  - (1) The certificate of title of a manufactured home consigned to a dealer to be sold from the consignee's (agent-dealer's) location licensed by this Commission

# Permanent Final Adoptions

may be assigned directly from the consigning owner to the purchaser. Transfer of certificates of title in every instance must comply with the provisions of 47 O.S. Sections 1105 and 1107. However, it shall be the responsibility of the consignee (agent-dealer) to ~~insure~~ ensure that all forms and state and federal laws and regulations are complied with in the transaction.

(2) The certificate of title of a manufactured home must be in the name of the dealer (whether by record of title, assignment, or re-assignment) who is offering the manufactured home to a prospective buyer if that dealer has the sole discretion in determining the selling price and in determining the amount of profit he will receive from the sale, whether or not any other party has any interest in the manufactured home.

[OAR Docket #23-499; filed 6-9-23]

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #23-500]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 3. Licensing Qualifications, Procedures and Fees  
765:36-3-7 [AMENDED]
- Subchapter 5. Operation  
765:36-5-2 [AMENDED]
- Subchapter 6. Manufactured Home Inspection Fees  
765:36-6-1 [AMENDED]
- Subchapter 7. Assessment of Fine or Denial, Suspension, or Revocation of License  
765:36-7-2 [AMENDED]

### AUTHORITY:

- Oklahoma Used Motor Vehicle and Parts Commission
- 47 O.S. Section 582(E)(1)
- 75 O.S. Section 583 B.3.
- 75 O.S. Section 302 et.seq

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#### Superseded Rules:

- Subchapter 6. Manufactured Home Inspection Fees  
765:36-6-1 [AMENDED]

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### Register publication:

40 Ok Reg 390

### Docket number:

22-825

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

The proposed rule amendments clarify the process of change of condition requirements, adds report of manufactured homes shipped or sited in the State of Oklahoma, address the sale of manufactured home sells to unlicensed individuals, parks, or other entities, and modifies the agency name from Oklahoma Used Motor Vehicle and Parts Commission to Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission.

### CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:

## SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

### 765:36-3-7. Changes

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The manufacturer must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license. ~~The Commission may endorse changes on the license without charge.~~

## SUBCHAPTER 5. OPERATION

### 765:36-5-2. Reports and Records

(a) Each manufacturer will send to the Commission a monthly report of the manufactured homes to be shipped into or sited in the State of Oklahoma with the appropriate fees. A manufacturer who is aware that an out of state dealer or distributor has sold or will sell a new manufactured home to be shipped into or sited in Oklahoma shall file a supplemental monthly report for those homes with the appropriate fees.

(b) Each manufacturer shall keep for a period of five (5) years from the date of sale (or as required by any other federal,

state, or local regulations), a record of the manufacture and sale of each manufactured home it shipped into this state, which shall show the name of the buyer and a complete description of the manufactured home purchased or sold, and such other information as the Commission may prescribe. The records shall be available upon request to authorized agents or employees of the Commission or any law enforcement officer of the State of Oklahoma.

**SUBCHAPTER 6. MANUFACTURED HOME INSPECTION FEES**

**765:36-6-1. Manufacturer's Fees**

- (a) Any manufactured home manufacturer who sells a new manufactured home to be shipped into or sited in the State of Oklahoma shall pay an installation inspection fee to The Commission of Seventy-Five Dollars (\$75.00) for each new single wide manufactured home and One Hundred Twenty Five Dollars (\$125.00) for each new multi floor manufactured home.
(b) The fees to be paid by a manufactured home manufacturer shall be due on the fifteenth (15th) day of the month subsequent to the month in which a home is shipped to a manufactured home dealer, or sited in, the State of Oklahoma, whichever comes first.
(c) The fees paid shall be used for the purpose of inspecting installations of new manufactured homes. The inspection may be conducted by a representative of the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufacturer's Commission or its designee. The decision to inspect an installation shall be made by Commission staff. The decision to inspect an installation may be made by random selection, pursuant to a complaint as part of an audit or review of a particular installer or as part of an investigation.
(d) A manufactured home manufacturer, dealer, or installer shall co-operate with the Commission's employee or designee as needed to conduct an inspection of an installation for which the manufacturer, dealer, or installer may bear some responsibility for assuring that the installation was properly performed.
(e) Any fees not used for inspection of installations may be used for any other purposes of the Commission, but primarily for the education of manufactured home dealers and installers, investigation of manufactured home complaints and administration of the regulatory laws relating to the manufactured home industry.
(f) The Commission may assess a fine not to exceed One Thousand Dollars (\$1,000.00) per violation for violations of this section.

**SUBCHAPTER 7. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

**765:36-7-2. Prohibition**

- (a) A manufacturer may not sell a new manufactured home directly or indirectly to an unlicensed individual, park or other entity. A manufacturer shall be deemed to be selling a new home to an unlicensed individual, park or other entity if the manufacturer directly or through a third party solicits the purchase of a new home by any medium or method that indicates that the home may be purchased from the manufacturer directly or through a wholly or partially owned subsidiary, even if that subsidiary is licensed as a retailer of manufactured homes. An offer by the manufacturer to finance the purchase of the home if the purchaser buys the manufactured home from the manufacturer or its subsidiary is prima facie evidence that the sale was made by the manufacturer.
(b) A person whose license has been revoked shall not have a financial interest of any kind in a manufactured home manufacturing business, nor shall that person participate in any way, including in an advisory position, in the operation of a manufactured home manufacturer's business.

[OAR Docket #23-500; filed 6-9-23]

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS**

[OAR Docket #23-501]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Licensing Qualifications, Procedures and Fees
765:37-3-4 [AMENDED]
765:37-3-5 [AMENDED]
Subchapter 5. Operation
765:37-5-2 [AMENDED]
765:37-5-5 [AMENDED]
765:37-5-6 [AMENDED]
Subchapter 7. Installation Standards
765:37-7-1 [AMENDED]
Subchapter 9. Assessment of Fine or Denial, Suspension, or Revocation of License
765:37-9-3 [AMENDED]

**AUTHORITY:**

- Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 583 B.3.
75 O.S. Section 302 et.seq

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

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# Permanent Final Adoptions

## FINAL ADOPTION:

May 31st, 2023

## EFFECTIVE:

August 25, 2023

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded Rules:

Subchapter 5. Operations

765:37-5-6 [AMENDED]

Subchapter 7. Installation Standards

765:37-7-1 [AMENDED]

### Gubernatorial approval:

October 28, 2022

### Register publication:

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## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

The proposed rule amendments modify the agency name from Oklahoma Used Motor Vehicle and Parts Commission to Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission, changes the license number to a five-digit number, removes outdated language, adds additional placement for installation label, updates record requirements and corrects a grammatical error.

## CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

## SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

### 765:37-3-4. Issuance of license

(a) **Name.** A manufactured home installer's license will be issued in the legal name of the individual proprietorship, partnership, or legal entity as identified on the application for installer's license.

(b) **Certificate.** A manufactured home installer's license shall consist of a signed certificate bearing the official seal of the Commission and shall specify the name and location of the place of business and assigned installer number, which shall be posted in a conspicuous place in the installer's place or places of business. The manufactured home installer's license number will be prefixed with I, followed by a ~~four~~ five digit number and then the current year of license (~~I-0000-00~~ I-00000-00).

(c) **Identification card.** The Commission may issue to the licensee an identification card which shall be carried upon the person of the licensee.

(d) **Beginning business.** No applicant for a manufactured home installer's license shall conduct business in the State of Oklahoma until such time as the Commission has issued it a license.

### 765:37-3-5. Education requirements

(a) The installer principal, general manager or person with ultimate supervisory authority over the installation business shall attend a qualified Education Program before beginning operation of the business and being licensed by the Commission.

(b) The education program shall be of such duration and content as to prepare the installer for installation of a manufactured home. Applicants who have attended a qualified education program within twenty-four (24) months preceding application shall be deemed to have met the education requirement. ~~Applicants prior to the effective date of these rules, shall have until November 1, 2001, to obtain the requisite education requirement.~~

(c) A licensee shall attend an education program of such duration and content as to keep the licensee informed of changing standards or procedures as continuing education at least every three (3) years from the licensee's initial licensing.

(d) A licensee shall meet or have in its employment at least one (1) individual who has met the above education requirements and who will have actual authority over any employees involved in the installation of manufactured homes. Failure to maintain this requirement shall be grounds for suspension or revocation of the installer's license until such requirements is met.

## SUBCHAPTER 5. OPERATION

### 765:37-5-2. Installation label

Upon completion of the installation of a manufactured home by a licensed installer, the installer shall place an installation label containing the installer's name, license number and date of installation in a position on or around the breaker box for the home and/or on the outside of the home by the HUD label for the home. The label shall be of a size of at least two inches by three inches (2" x 3") and shall have on one side an adhesive which will allow the label to be permanently placed in the aforesaid position.

### 765:37-5-5. Submission of set-up inspection forms

The set-up inspection form for new manufactured home installations shall be submitted within thirty (30) days of the completion of the installation and shall be approved by a certified installation inspector, local authority having jurisdiction (LAHJ) or licensed engineer. The form shall also be submitted to the manufactured home dealer selling the home, which copy the dealer is to keep with its records of the sale of the home.

### 765:37-5-6. Installer's Fees

(a) A used manufactured home inspection fee of Seventy-Five Dollars (\$75.00) shall be paid by the installer at or before the time of installation of any used manufactured home sited and installed in the State of Oklahoma, but no later than that fifteenth (15th) day of the month subsequent to the month in which the installation is performed.



- (b) The fees paid shall be used for the purpose of inspecting installations of used manufactured homes. The inspection may be conducted by a representative of the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission or its designee. The decision to inspect an installation shall be made by Commission staff. The decision to inspect an installation may be made by random selection, pursuant to a complaint as part of an audit or review of a particular installer or as part of an investigation.
- (c) A manufactured home dealer or installer shall co-operate with the Commission's employee or designee as needed to conduct an inspection of an installation for which the dealer or installer may bear some responsibility for assuring that the installation was properly performed.
- (d) Any fees not used for inspection of installations may be used for any other purposes of the Commission but primarily for the education of manufactured home dealers and installers, investigation of manufactured home complaints and administration of the regulatory laws relating to the manufactured home industry.
- (e) The Commission may assess a fine not to exceed One Thousand Dollars (\$1,000.00) per violation for violation of this section.

**SUBCHAPTER 7. INSTALLATION STANDARDS**

**765:37-7-1. Acceptable procedure**

- (a) Any new manufactured home stored at any location or in the possession of any entity (retailer, installer, distributor or manufacturer) for more than thirty (30) days must be temporarily supported in accordance with the manufacturer's installation instructions.
- (b) All new manufactured homes to be installed in the State of Oklahoma shall be installed, including site preparation, according to HUD's Manufactured Home Model Installation Standards (24 CFR Part 3285) or DAPIA approved manufacturer installation instructions.
- (c) Any previously occupied manufactured home to be installed in the state of Oklahoma may be installed according to the installation standards set forth in the manufacturer's installation manual or according to the installation standards set forth hereinafter (generic set) or an approved plan by a professional engineer or registered architect.
- (d) Use of an installer not licensed at the time of the installation by the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission for the installation of any new or previously occupied manufactured home shall be deemed an unacceptable procedure and shall subject any dealer contracting with said unlicensed installer to any liabilities and penalties attributable to such unlicensed activity.
- (e) In determining the applicable frost line for permanently installed manufactured homes, the installer shall refer to the manufacturer's installation instructions, or the local authority having jurisdiction (LAHJ).

- (e) In determining the applicable frost line for permanently installed manufactured homes, the installer shall use the ANSI 225.1 map. A frost line of three inches (3") is presumed in McCurtain County. A frost line of three to six inches (3-6") is presumed in Bryan, Choctaw, Atoka, Pushmataha, Latimer, LeFlore, Haskell and Sequoyah Counties. A frost line of ten to fifteen inches (10-15") is presumed in Woods, Major, Garfield, Alfalfa and Grant Counties. A frost line of six to ten inches (6-10") is presumed in all the remaining counties of the state. An installer may rely on verifiable local standards in determining the frost line in any specific location. When the frost line depth is not available from the local authority having jurisdiction, a registered professional engineer, registered architect or registered geologist must be consulted to determine the required frost line depth.

**SUBCHAPTER 9. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

**765:37-9-3. Enforcement and Inspections for Enforcement of Standard**

- (a) The Commission shall administer and enforce these provisions. Any person, agent, or organization approved and authorized by the Commission may inspect any installation system and equipment to ~~insure~~ ensure compliance with these rules.
- (b) In the event an inspection is required to enforce these provisions, inspections may be made by an approved Third Party Inspector in accordance with Design Approval Primary Inspection Agency (DAPIA) approved manufacturer's installation instructions, engineer design or HUD's Model Manufactured Home Installation Standards (24 CFR Part 3285) for new manufactured homes. An approved third party inspector includes the following: An employee of a participating jurisdiction, individual, employee of a private firm, home inspector having demonstrated proficiency in manufactured homes, or a professional licensed engineer or architect all of whom have been approved by the Commission to perform installation inspections. The Commission shall adopt a standard installation authorization form to be used statewide by the Commission and Certified Inspectors, a standard inspection form, and established minimum inspection requirements. The inspection referred to in this subsection pertains only to the first-time installation of a manufactured home. A copy of the Inspection record shall be maintained by the qualified third party, installer and retailer for a minimum of five (5) years and shall be available for review and inspection by the Commission.

*[OAR Docket #23-501; filed 6-9-23]*

# Permanent Final Adoptions

## TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 38. MANUFACTURED HOME SALESPERSON

[OAR Docket #23-502]

**RULEMAKING ACTION:**  
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**RULES:**  
Subchapter 1. Registration Qualifications, Procedures and Fees  
765:38-1-4 [AMENDED]  
765:38-1-5 [AMENDED]  
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of Certificate of Registration  
765:38-5-1 [AMENDED]

**AUTHORITY:**  
Oklahoma Used Motor Vehicle and Parts Commission  
47 O.S. Section 582(E)(1)  
75 O.S. Section 583 B.3.  
75 O.S. Section 302 et.seq

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

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n/a

**INCORPORATIONS BY REFERENCE:**  
n/a

**GIST/ANALYSIS:**  
The proposed rule amendments correct certificate of registration expiration date, updates grounds for denial of applicants with a felony conviction and removing unnecessary language.

**CONTACT PERSON:**  
John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:**

### SUBCHAPTER 1. REGISTRATION QUALIFICATIONS, PROCEDURES AND FEES

#### **765:38-1-4. Issuance of certificate of registration**

(a) **Prerequisite.** A certificate of registration for a manufactured home salesperson will not be issued, renewed, or

endorsed until the employing dealer is licensed and has certified that the applicant for said certificate is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are registered. The dealer shall pay for the certificate of registration, but may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All salesperson's certificates of registration will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain certificates have done so.

(b) **Permanent certificate of registration.** A permanent salesperson's certificate of registration shall be issued after approval of the applicant by the Commission. A salesperson's certificate shall consist of an identification card bearing the name, name of employer, address, signature of the Executive Director, the dealer's license number ~~prefixed with MH, (MH-0000)~~. The card shall be carried upon his person at all times when acting as a manufactured home salesperson at licensee location.

#### **765:38-1-5. Renewal of certificate of registration**

All certificates shall expire on the 31st day of December, of each odd numbered year following the date of issue and shall be nontransferable.

### SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE OF REGISTRATION

#### **765:38-5-1. Grounds**

(a) The Commission may deny an application for certificate of registration, or suspend or revoke a certificate after it has been granted for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a manufactured home; or if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right and;

(b) On satisfactory proof of unfitness of the applicant or the holder of the certificate of registration under the standards established under Title 47 Oklahoma Statutes § 581 et seq. or the Rules of the Commission,

(c) For fraudulent or material misstatements made by the applicant in any application for license or certificate of registration,

(d) For any willful failure to comply with, or continued or flagrant violation of, any provision of Title 47 Oklahoma Statutes § 581 et. seq. or with any rule promulgated by the Commission.

(e) A change of condition after a certificate issued resulting in failure to maintain the qualifications for license,

(f) Conviction of ~~a crime involving moral turpitude~~ or any felony which in the opinion of the Commission may have a direct bearing on the ability of the applicant or holder to act as ~~a used motor vehicle~~ manufactured home salesperson without endangering those with whom the applicant or holder may

deal in the conducting of the duties of a manufactured home salesperson.

(g) Committing any act within the preceding ten (10) years, which resulted in the revocation of a similar license in another state,

(h) Engaging in business under a past or present license or certificate of registration in such a manner as to cause injury to the public or those with whom the holder is dealing, or;

(i) For violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a manufactured home; or if it is determined that the certificate is being or has been issued for the benefit of a person who would not or could not qualify for the certificate in his or her own right.

(j) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

[OAR Docket #23-502; filed 6-9-23]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE, DISMANTLER, AND MANUFACTURED HOUSING COMMISSION CHAPTER 39. RESTRICTED MANUFACTURED HOME PARK DEALERS

[OAR Docket #23-503]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [NEW]
765:39-1-1 [NEW]
765:39-1-2 [NEW]
Subchapter 3. Licensing Qualifications, Procedures and Fees [NEW]
765:39-3-1 [NEW]
765:39-3-2 [NEW]
765:39-3-3 [NEW]
765:39-3-4 [NEW]
765:39-3-5 [NEW]
765:39-3-6 [NEW]
765:39-3-7 [NEW]
Subchapter 5. Operation [NEW]
765:39-5-1 [NEW]
765:39-5-2 [NEW]
765:39-5-3 [NEW]
Subchapter 7. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:39-7-1 [NEW]
765:39-7-2 [NEW]

AUTHORITY:

- Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 583 B.3.
75 O.S. Section 302 et.seq

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INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rules establish general provisions, definitions, licensing qualifications, procedures, applicant information, operation guidelines, and grounds for fines, denial, suspension, or revocation of license.

CONTACT PERSON:

John W. Maile, Executive Director, Used Motor Vehicle and Parts Commission, 421 N.W. 13th Street, Suite 330, Oklahoma City, OK 73103, 405-521-3600, John.W.Maile@oumvdhmc.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 25, 2023:

SUBCHAPTER 1. GENERAL PROVISIONS

765:39-1-1. Purpose

The rules of this chapter have been adopted for the purpose of complying with the Administrative Procedures Act, 75 O. S. Section 250 et. seq. and 47 O. S. Section 582 E. This Chapter will provide a description of the qualifications for obtaining a restricted manufactured home park dealer's license, operation under the license and the grounds and procedures for denial, suspension, revocation of a manufactured home park dealer's license, and/or the assessment of fines.

765:39-1-2. Definitions

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

"Manufactured home park" means any parcel or parcels of land under single or common ownership or control that contains, or is designed, laid out, infrastructure in place or adopted to accommodate, more than three manufactured homes with water sewer, or septic and electrical services, used as a commercial enterprise.

"Ready for Occupancy" means all mobile and manufactured homes located in a mobile, restricted manufactured home park or community offered for sale or lease-purchase must be ready for occupancy. "Ready for Occupancy" requires that the home must be installed and anchored at the site properly and all utilities are connected to service.

"Restricted manufactured home park" means the manufactured home park to Be used, or used, as the site for the restricted manufactured home park dealer's license.

# Permanent Final Adoptions

## **SUBCHAPTER 3. LICENSING QUALIFICATIONS, PROCEDURES AND FEES**

### **765:39-3-1. Fees**

The fees required for an initial application, renewal, and additional location for a restricted manufactured home park dealer's license are recited in 47 O. S. Section 583. A fee will be returned to the applicant in the event the license applied for is denied.

### **765:39-3-2. Place of business**

An applicant must have an established place of business. An established place of business means a location which includes at a minimum:

- (1) More than three manufactured home sites to be used by occupants of the manufactured home park.
- (2) sufficient parking for the public,
- (3) an office for conducting business where the books, records, and files are kept.
- (4) an office which is a building or is a separate room within a building on the premises that is considered a permanent structure with access to a restroom for the public. Such place of business shall not include the use of vacant lots, tents, temporary stands, or other temporary office facilities. Provided, however, if an applicant's location does not have office on the proposed location because the manufactured home park was previously developed without an office, but the applicant has a suitable office at another location which is used primarily for restricted manufactured home park dealer business within the state of Oklahoma where office personnel are employed and the books, records and files of the business are kept, the applicant may provide information of said remote office, which may be used as the applicant's office if in the sole discretion of the Commission, the remote office meets the qualifications for approval as an office.
- (5) it shall be separate and apart from any other restricted manufactured home park dealer or manufactured home dealer location.
- (6) meets all zoning, occupancy, and other requirements of the appropriate local government, and shall be occupied by a person, firm, corporation, or LLC, engaged in the business of a restricted manufactured home park dealer.
- (7) a sign, reflecting the name of the business, visible from the roadway nearest to the entrance of the place of business, and
- (8) a listed and usable telephone at or for the place of business.

### **765:39-3-3. Applicant information; applications**

(a) **Information.** An applicant will provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license. The information will include:

- (1) Information relating to the applicant's financial standing.
- (2) Information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history.
- (3) Whether the applicant will be engaged in the pursuit, avocation, or business for which a license is applied.
- (4) Whether the applicant will devote full or part time to the business.
- (5) Whether the applicant is able to properly conduct the business for which the license is applied.
- (6) Any other pertinent information consistent with the safeguarding of the public interest and welfare.

(b) **Application.** Applications for license are to be verified by the oath or affirmation of the applicant and on forms prescribed by the Commission and furnished to such applicants. The applications will contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license.

### **765:39-3-4. Bond and insurance**

(a) **Dealer bond.** Each applicant for a restricted manufactured home park dealer's license will procure and file with the Commission a good and sufficient bond in the amount of Thirty Thousand Dollars (\$30,000). Said bond will be filed on a form approved by the State Attorney General and provided by the Commission. The conditions of the bond are that the applicant not practice fraud, make any fraudulent representations, or violate any of the provisions of the Commission's enabling act while conducting the business for which he is licensed. The bonds as required by this section are to be maintained throughout the period of licensure. Should the bond be cancelled for any reason, the license shall be revoked as of the date of cancellation unless a new bond is furnished prior to such date.

(b) **Liability insurance.** Each applicant for a restricted manufactured home park dealer's license will furnish and in the event a license is issued, keep in force, a minimum of One Hundred Thousand Dollars (\$100,000) single limit garage liability and completed operations insurance coverage on all manufactured homes offered for sale or transported utilizing the streets and roadways of Oklahoma in accordance with the financial responsibility laws of the State of Oklahoma. The insurance as required by this section shall be maintained throughout the period of licensure. Should the insurance be cancelled or expire for any reason, the license shall be revoked as of the date of cancellation or expiration unless new insurance is furnished prior to such date.

### **765:39-3-5. Issuance of license**

(a) **Name.** A restricted manufactured home park dealer's license will be issued in the legal name of the individual proprietorship, partnership, corporation, or LLC as identified on the application for dealer license.

(b) **Certificate.** A restricted manufactured home park dealer's license shall consist of a signed certificate bearing the official seal of the Commission and shall specify the name and location of the place of business and assigned dealer number.

which will be posted in a conspicuous place in the dealer's place or places of business. The restricted manufactured home park dealer's license number will be prefixed with MHP, followed by a five digit number and then the current year of license (MHP-00000-00).

(c) **Titles.** The valid restricted manufactured home park dealer's license permits the dealer to transfer, assign and reassign titles and purchase and sell manufactured homes without paying excise tax. All occupied manufactured homes must have an Oklahoma Title.

(d) **Beginning business.** No applicant for a restricted manufactured home park dealer's license may conduct business until such time as the Commission has issued him a license.

(e) **Manager.** A community manager shall be licensed as an owner or salesperson at the time the license is issued.

**765:39-3-6. Renewal of license**

All bonds and licenses issued under the provisions of the Commission's enabling legislation expire on the 31st day of December of each odd numbered year, following the date of issue and are nontransferable. All applications for renewal should be submitted by the 1st day of November of each odd numbered year, and licenses will be issued by January 10th of each even numbered year. If application has not been made for renewal of license, such license expires on December 31st of the odd numbered year, and it shall be illegal for any person to represent himself and act as a dealer thereafter. Provided, if the restricted manufactured home park dealer has offered to sell with an option to purchase, which option has not expired, the restricted manufactured home park dealer shall be required to maintain its license unless and until all options to purchase have been extinguished.

**765:39-3-7. Changes**

(a) **Ownership.** A change of ownership, including a change in a primary stockholder in the case of a corporation, or membership in the case of a limited liability company, shall require a new application and approval by the Commission before the business may begin operation.

(b) **Notification.** A change of ownership or any other change, such as change of name or address, which makes Commission records no longer accurate must be reported to the Commission immediately in writing on forms prescribed by the Commission for approval by the Commission. The dealership must meet all the requirements as prescribed for licensing. The Commission may revoke or suspend a license after it has been granted for change of condition resulting in failure to maintain the qualifications for license.

**SUBCHAPTER 5. OPERATION**

**765:39-5-1. Forms required**

(a) **Forms.** The following forms are required in the sale of a manufactured home by a restricted manufactured home park dealer:

- (1) Sales contract, bill of sale or buyer's order,

(2) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer.

(3) Condition of sale:

- (A) warranty, or
- (B) service contract, or
- (C) warranty disclaimer.

(4) Finance or security agreement, if applicable.

(5) Consignment agreement, if applicable, and

(6) A completed copy of the I-Form from the installer who installed the manufactured home, showing the lot location of the home.

(b) **Approval.** All forms must be approved by the Commission. The content and forms to be used are to be filed ten (10) days prior to use, and if not rejected in ten (10) days from the filing date, the forms will be conditionally approved.

(c) **Standards.** Approved forms will contain substantially the following information:

(1) Sales contract, bill of sale, or buyer's order. The sales contract, bill of sale, or buyer's order states the names of the parties, the make, model, tag number and serial number of the manufactured home subject to the transaction, if available, a statement of the selling amount, a description of the manufactured home traded in, if any, and the consideration given therefore, and

(2) Title and tax transfer notice requirement. It is the duty of every person licensed to sell manufactured homes to advise each purchaser in writing about his title requirements and payment of any taxes due.

(3) If a prospective purchaser makes a deposit of anything of value to obtain the option to complete a purchase (of a manufactured home) in the future, the restricted manufactured home park dealer shall acknowledge the deposit in writing, the time period for which the option to purchase is valid, whether the deposit is refundable in whole or in part, and the conditions, if any under which the deposit may be refunded. The deposit is deemed refundable unless it is clearly stated in writing that the deposit or a portion thereof is non-refundable.

**765:39-5-2. Consignment sales**

(a) **Consignment.** A restricted manufactured home park dealer, whether acting as principal or agent, or by power of attorney, is responsible for complying with 765:39-3-1 et seq. with regard to all manufactured homes purchased, sold, or transferred by the dealer whether or not any other party has any interest in the manufactured home being purchased, sold, or transferred. The certificate of title of a manufactured home owned by an individual consigned to a restricted manufactured home park dealer for sale by that dealer need not be assigned by the individual to the dealer provided a consignment form approved by this Commission is used in the consignment transaction, and all other state and federal forms required are properly executed at the time of sale by the dealer as agent for the consignor. The consignee is responsible for the truthfulness of the information provided to him by the consignor unless consignee willfully, knowingly, or negligently with

## Permanent Final Adoptions

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reckless disregard of the true facts, misrepresents or misstates the information on the forms and/or certificate of title.

**(b) Title.**

(1) The certificate of title of a manufactured home consigned to a dealer to be sold from the consignee's (agent-dealer's) location licensed by this Commission may be assigned directly from the consigning owner to the purchaser. Transfer of certificates of title in every instance must comply with the provisions of 47 O.S. Sections 1105 and 1107. However, it is the responsibility of the consignee (agent-dealer) to ensure that all forms and state and federal laws and regulations are complied with in the transaction.

(2) The certificate of title of a manufactured home must be in the name of the restricted manufactured home park dealer (whether by record of title, assignment, or re-assignment) who is offering the manufactured home to a prospective buyer if that dealer has the sole discretion in determining the selling price and in determining the amount of profit he will receive from the sale, whether or not any other party has any interest in the manufactured home.

(3) Any manufactured home which the restricted manufactured home park dealer is selling and providing financing on and/or leasing with a possibility of ownership must convey a clear Oklahoma title to the purchaser subject only to the financing entity's lien.

**765:39-5-3. Records**

(a) Each restricted manufactured home park dealer shall keep for a period of five (5) years from the date of sale (or as required by any other federal, state, or local regulations), a record of the purchase and sale of each manufactured home he buys or sells, which shows the name of the seller or buyer as the case may be, and a complete description of the manufactured home purchased or sold, and such other information as the Commission may prescribe. The records and title of manufactured homes shall be available upon request to authorized agents or employees of the Commission or any law enforcement officer of the State of Oklahoma. If it

is determined that a licensee has knowingly provided false or misleading information when requested to provide records, the licensee may be subject to any appropriate sanction authorized by rule or statute.

(b) In addition to copies of all forms used in a sales transaction, the dealers shall keep a copy of the completely assigned manufacturer's statement of origin or equivalent document, certificate of title, as the case may be.

(c) If a dealer contracts for the installation of a manufactured home as a part of the sales contract, the dealer shall include in its records a copy of the written contract or copy of paid invoice with the installer if the installer is a third party, which copy includes the license number of the installer.

### **SUBCHAPTER 7. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

**765:39-7-1. Grounds**

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (A)(1) through (6), (8), or (B) or for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a manufactured home.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

**765:39-7-2. Prohibition**

A person whose license has been revoked shall not have a financial interest of any kind in a manufactured home business, nor shall that person participate in any way, including in an advisory position, in the operation of a manufactured home business.

*[OAR Docket #23-503; filed 6-9-23]*

# 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

1:2023-20.

### EXECUTIVE ORDER 2023-20

The 19<sup>th</sup> Amendment guaranteed women across the country the right to vote one hundred and three years ago this month. Fifty-one years ago this summer, a Democratic Congress passed and a Republican President signed, the groundbreaking law popularly known as Title IX to promote opportunities for women in education programs and activities funded by the federal government. Fifty years ago this month, President Nixon proclaimed August 26<sup>th</sup> to be Women's Equality Day, celebrating women's suffrage and the vital contributions women make to our economy and our nation. Each of these events, championed by leaders from both political parties, made great strides for the dignity and equality of women in America.

Today, radical gender ideologues threaten the hard-fought progress won by women and girls in our society, and the federal government is surrendering to their demands. In Oklahoma, we have led the pushback in restoring reality to discourse surrounding gender, not least through last year's enactment of the Save Women's Sports Act. But more remains to be done to counter the regression of women's rights in this country. There are definitional, practical, and material differences between the sexes that have implications for our law in Oklahoma. To settle the unfounded confusion surrounding such basic questions as "What is a woman?", this Order is intended to provide clarity, certainty, and uniformity to administrative actions and rules.

Therefore, 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, and to the fullest extent permitted by law, hereby order as follows:

1. In the promulgation of administrative rules, enforcement of administrative decisions, and the adjudication of disputes by administrative agencies, boards, and commissions, all state agencies, boards, and commissions when using the following words shall, to the fullest extent permitted by law, define them as follows:

a. "female" when used in reference to a natural person shall be defined as such a person whose biological reproductive system is designed to produce ova.

b. "male" when used in reference to a natural person shall be defined as such a person whose biological reproductive system is designed to fertilize the ova of a female.

c. "woman" and "girl" shall refer to natural persons who are female.

d. "man" and "boy" shall refer to natural persons who are male.

e. "mother" shall be defined as a female parent of a child or children as defined in 25 O.S. § 7.

f. "father" shall be defined as a male parent of a child or children as defined in 25 O.S. § 7.

g. "sex" when used in reference to a natural person shall be defined as that natural person's biological sex, either male or female at birth.

h. "natural person" shall be defined as only those "persons" defined in 25 O.S. § 16 who are human beings, to the exclusion of bodies politic or corporate.

2. Any public school, public school district, and any other agency, department, or subdivision of the State, that collects vital statistics for the purpose of complying with anti-discrimination laws or for the purpose of gathering accurate public health, crime, economic, or other data shall, to the fullest extent allowed by law, identify each natural person who is part of the collected data set as either male or female as defined in this Order. Compliance with this Order shall not prevent provision of other data points as well.

3. When otherwise allowed by law, agencies are authorized, where practical, to provide governmental services in single-sex environments where biology, privacy, and personal dignity are implicated. As illustrative, non-exhaustive examples, prisons and other correctional facilities are directed to provide dedicated facilities for men and women respectively. Likewise, schools are directed to provide dedicated restrooms and locker room facilities for boys and girls, respectively.

This Executive Order shall be distributed to all members of the Governor's Executive Cabinet and the administrative heads and chief executives of all state agencies, who shall cause the provisions of this Order to be implemented as herein directed.

## Executive Orders

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IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this first day of August 2023.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

J. Kevin Stitt

ATTEST:  
Brian Bingman  
Secretary of State

*[OAR Docket #23-713; filed 8-1-23]*

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