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Gubernatorial Approvals

Upon notification of approval by the Governor of an agency's proposed PERMANENT rulemaking action, the agency must submit a notice of such gubernatorial approval for publication in the *Register.*

For additional information on gubernatorial approvals, see 75 O.S., Section 303.2.

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #10-993]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-21. Definitions [AMENDED]
377:3-1-23. Job duties [AMENDED]
377:3-1-25. Abuse, neglect, and caretaker misconduct of a child in OJA custody and placed in a secure facility or other facility operated by or through contract with OJA [AMENDED]
377:3-1-26. Advocate General procedures during an abuse, neglect, or caretaker misconduct investigation for other than OJA secure institution [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2010

[OAR Docket #10-993; filed 6-9-10]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #10-994]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 3. Administrative Services [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2010

[OAR Docket #10-994; filed 6-9-10]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITUTIONAL SERVICES

[OAR Docket #10-995]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
377:35-1-2. Definitions [REVOKED]
Subchapter 3. Security and Control
377:35-3-7. Contraband and facility prohibited items [REVOKED]
377:35-3-8. Searches and control of contraband/evidence [REVOKED]
GUBERNATORIAL APPROVAL:
May 10, 2010

[OAR Docket #10-995; filed 6-9-10]

TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS CHAPTER 15. EXAMINATION/LICENSURE

[OAR Docket #10-948]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 15. Examination/Licensure
545:15-1-2. Examination [AMENDED]
GUBERNATORIAL APPROVAL:
May 10, 2010

[OAR Docket #10-948; filed 5-28-10]

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., Section 308.

TITLE 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE

[OAR Docket #10-991]

RULEMAKING ACTION:

Legislative disapproval of permanent rules

RULES:

165:5-3-1 [AMENDED]

LEGISLATIVE DISAPPROVAL:

This rule was disapproved by the Legislature in HJR 1087, effective May 25, 2010

[OAR Docket #10-991; filed 6-9-10]

Permanent Final Adoptions

An agency may promulgate rules on a permanent basis upon "final adoption" of the proposed new, amended, or revoked rules. "Final adoption" occurs upon approval by the Governor and the Legislature, or upon enactment of a joint resolution of approval by the Legislature. Before proposed permanent rules can be reviewed and approved/disapproved by the Governor and the Legislature, the agency must provide the public an opportunity for input by publishing a Notice of Rulemaking Intent in the *Register.*

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 references the *Register* publication of the permanent action.

For additional information on the permanent rulemaking process, see 75 O.S., Sections 303, 303.1, 303.2, 308 and 308.1.

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL CHAPTER 10. FLEXIBLE BENEFITS PLAN

[OAR Docket #10-985]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 24. Health Savings Account [NEW]
87:10-24-1. Health Savings Account [NEW]
87:10-24-2. Definitions [NEW]
87:10-24-3. Requirements for eligibility [NEW]
87:10-24-4. Amount of benefits available [NEW]
87:10-24-5. Internal Revenue Code and regulations [NEW]
87:10-24-6. Mid-year changes of benefits [NEW]
87:10-24-7. Health Savings Account option [NEW]
87:10-24-8. Claims for reimbursement [NEW]
87:10-24-9. Forfeiture of unused benefits [NEW]
87:10-24-10. Other governing provisions [NEW]
87:10-24-11. Benefit changes [NEW]
87:10-24-12. Report to participants [NEW]
AUTHORITY:
Oklahoma State Employees Benefits Council; 74 O.S.2001 §1366(B)
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March 19, 2010
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March 31, 2010
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March 31, 2010
Submitted to Senate:
March 31, 2010
Gubernatorial approval:
May 10, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010
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May 26, 2010
Effective:
July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 24. Health Savings Account [NEW]
87:10-24-1. Health Savings Account [NEW]
87:10-24-2. Definitions [NEW]
87:10-24-3. Requirements for eligibility [NEW]
87:10-24-4. Amount of benefits available [NEW]
87:10-24-5. Internal Revenue Code and regulations [NEW]
87:10-24-6. Mid-year changes of benefits [NEW]
87:10-24-7. Health Savings Account option [NEW]
87:10-24-8. Claims for reimbursement [NEW]
87:10-24-9. Forfeiture of unused benefits [NEW]
87:10-24-10. Other governing provisions [NEW]
87:10-24-11. Benefit changes [NEW]
87:10-24-12. Report to participants [NEW]
Gubernatorial approval:
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Register publication:
27 Ok Reg 490
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ANALYSIS:
These permanent administrative rules are identical to and supersede emergency administrative rules approved by Governor Henry December 18, 2009, which added a new Subchapter, twenty-four (24), to Chapter 10 of Title 87 of the Oklahoma Administrate Code. Chapter 10 serves as the "Plan Document" for the administration of the flexible benefits plan for active Oklahoma state employees. This new Subchapter defines important terms, rules, guidelines, and procedures necessary for the effective administration of a new, optional benefit, offered to active state employees beginning in Plan Year 2010 (January 1, 2010, through December 31, 2010), that enables employees participating in Health Savings Accounts to make contributions to the same on a pre-tax basis.
CONTACT PERSON:
Craig A. Cates, Executive Manager, Agency & Regulatory Affairs, Oklahoma State Employees Benefits Council, 120 North Robinson Avenue, Suite 1100, Oklahoma City, Oklahoma 73102, 405-609-3440

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 24. HEALTH SAVINGS ACCOUNT

87:10-24-1. Health Savings Account

(a) This is an optional benefit within the State Employees Flexible Benefits Plan. This option is qualified under Section 223 of the Internal Revenue Code(IRC) and is, therefore, included as part of the cafeteria plan described in OAC 87:10-1-1.

(b) The Plan Administrator shall, at all times, administer this option in a manner consistent with the terms and provisions hereof in a uniform and nondiscriminatory manner and in accordance with the prevailing Internal Revenue Codes and applicable regulations promulgated thereunder.

87:10-24-2. Definitions

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

"Dependent" means an individual who qualifies as a dependent under Section 125 of the Internal Revenue Code, taking into account Section 105(b) of the Internal Revenue Code.

"Health Savings Account(HSA)" means the bookkeeping account maintained by the HSA Administrator/Trustee/Custodian used for crediting contributions and accounting for benefit payments.

"HSA Administrator/Trustee/Custodian" Insured banks and credit unions are automatically qualified to handle HSAs. Any bank, credit union or any other entity that currently meets the IRS standards for being a trustee or custodian for an IRA or Archer Medical Savings Account (MSA) can be an HSA trustee or custodian. The law also allows insurance companies to be HSA trustees or custodians.

87:10-24-3. Requirements for eligibility

(a) Upon submission of the election through an authorized procedure as prescribed by the Plan Administrator, an employee eligible to participate under the Flexible Benefits Plan who has elected a qualified high deductable health care option shall be eligible to participate in the Health Savings Account option, provided they have not attained the age of 65 years and become Medicare eligible.

(b) Additionally, an employee enrolled in a high deductable health plan may not enroll in a Health Reimbursement account.

87:10-24-4. Amount of benefits available

(a) Subject to the limitations imposed by federal law, the maximum benefit which a participant may receive in any Plan Year for a health savings account shall be subject to the annual maximums set by the IRC 223. The maximum is indexed and is set each year. Individuals age 55 and older can also make additional "catch-up" contributions. An employee may also elect catch up benefits as directed by IRC 223 and the catch up provision is also indexed annually.

(b) The monthly or biweekly amount taken on this pre tax method will be based on the following deduction schedule as directed by the IRC Notice 2004-2. The maximum annual contribution to an HSA is the sum of the limits determined separately for each month, based on status, eligibility and health plan coverage as of the first day of the month. This will be calculated as the maximum annual limit plus catch up, if applicable, divided by 12 then multiplied by the number of monthly periods remaining in the Plan Year. If biweekly, this will be calculated as the maximum annual limit plus catch up, if applicable, divided by 26 then multiplied by the number of biweekly periods remaining in the Plan Year.

(c) Contributions to the HSA may be made pre-tax under a Section 125 Cafeteria Plan. Individual contributions are deducted pre-tax via payroll deduction. The employee, the employer, or both may make contributions to the HSA account.

(d) The non-discrimination rules applicable to a Cafeteria Plan are applicable to HSA contributions made under a Cafeteria Plan. This includes both employer and employee contributions. The following Cafeteria Plan rules do not apply to HSAs:

(1) The prohibition against a benefit that defers compensation by permitting employees to carry over unused elective contributions or plan benefits from one Plan Year to another (the Use-It-Or-Lose-It rule).

(2) The mandatory 12-month period of coverage.

(3) Change-in-status rules.

87:10-24-5. Internal Revenue Code and regulations

The health savings account option, the benefits provided thereunder, or contributions made pursuant to it, shall be in compliance with all provisions of this Plan and all applicable Internal Revenue Codes.

87:10-24-6. Mid-year changes of benefits

Section 125 plans (also known as "salary reduction" or "cafeteria" plans) must meet a different set of rules. Under these plans, contributions (both from employer and/or employee) must meet "non-discrimination" rules. These rules require the employer to ensure that contributions do not favor higher compensated employees. The Plan Administrator shall reduce amounts of benefits payable to a participant to assure that the health savings account option is nondiscriminatory and in compliance with any provision of the Internal Revenue Code or other applicable law or regulation. Any such reduction of benefits shall be made by the Plan Administrator on a reasonable and nondiscriminatory basis. Enrollees may change their salary reduction amounts, prospectively, on a monthly basis. An ineligible participant will be allowed to revoke their election, prospectively.

87:10-24-7. Health Savings Account option

The Plan Administrator shall establish for each participant a health savings account for each period of coverage. Each health savings account shall initially contain zero dollars ($0.00). A participant's health savings account for a period of coverage shall be increased by the portion of the participant's salary adjustment dollars that may be accrued from month to month for that period of coverage that he or she has elected to apply toward medical care expenses. A participant's health savings account for a period of coverage shall be reduced by the amount of any health savings account transferred to the HSA Custodian per the employees signed enrollment form. The HSA Custodian will provide the employee all annual statements except for W2. The Custodian also will account for prior year payments and properly account for catch up contributions and any distributions to the employee. The Employees Benefits Council expressly disclaims any fiduciary obligation to manage the member's HSA funds or accounts. HSA account information concerning contributions, IRS determinations, withdrawals, or any matters regarding the HSA is the sole responsibility of the HSA Trustee/Custodian chosen by the member.

87:10-24-8. Claims for reimbursement

A participant who has elected to participate in the health savings account option shall make application to their respective HSA Custodian for reimbursement of health care expenses incurred by the participant during the Plan Year. The Employees Benefits Council expressly disclaims any fiduciary obligation to manage the member's HSA funds or accounts. HSA account information concerning contributions, IRS determinations, withdrawals, or any matters regarding the HSA is the sole responsibility of the HSA Trustee/Custodian chosen by the member

87:10-24-9. Forfeiture of unused benefits

The Employees Benefits Council will forward all contributions to the designated HSA Custodian on a monthly basis as determined by the Council. No Contributions will remain with the Employees Benefits Council and, as such, there cannot be any forfeiture (See 87:10-24-8).

87:10-24-10. Other governing provisions

The health savings account option shall be administered under the terms of this subchapter and Title.

87:10-24-11. Benefit changes

(a) A participant shall be entitled to modify the health savings account election after a period of coverage has commenced for which the election applies or make a new election, subject to acceptance by the Plan Administrator, with respect to the remainder of the current period of coverage, if the modification or new election is on account of and corresponds with a permitted elections as provided in IRC 223.

(b) The participant shall furnish the Plan Administrator with information and documentation relative to a request for a change in enrollment. The Plan Administrator shall determine whether a change in benefit election meets the criteria thereunder and is permitted by the Internal Revenue Code and regulations promulgated thereunder and is allowed by the Plan.

(c) The employee must provide a request to make a change via the authorized submission procedure as defined by the Plan Administrator.

87:10-24-12. Report to participants

Statements reflecting account balances will be accessible to participants via the Employees Benefits Council, Benefits Administration System (BAS) and shall satisfy the notification requirement reflecting contributions and transmittals to Custodians during such periods. The State will also accumulate and report on the annual W-2 statement all IRC Section 223 deductions based on the tax year the deduction was made.

[OAR Docket #10-985; filed 6-9-10]

TITLE 87. OKLAHOMA STATE EMPLOYEES BENEFITS COUNCIL
CHAPTER 10. FLEXIBLE BENEFITS PLAN

[OAR Docket #10-984]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 28. Early Medical Alert Optional Benefit [NEW]
87:10-28-1. Early medical alert optional benefit [NEW]
87:10-28-2. Definitions [NEW]
87:10-28-3. Requirements for participation [NEW]
87:10-28-4. Internal Revenue Code and regulations [NEW]
87:10-28-5. Period of coverage - enrollment [NEW]
87:10-28-6. Enrollment [NEW]
87:10-28-7. Early medical alert account option [NEW]
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Subchapter 28. Early Medical Alert Optional Benefit [NEW]
87:10-28-1. Early medical alert optional benefit [NEW]
87:10-28-2. Definitions [NEW]
87:10-28-3. Requirements for participation [NEW]
87:10-28-4. Internal Revenue Code and regulations [NEW]
87:10-28-5. Period of coverage - enrollment [NEW]
87:10-28-6. Enrollment [NEW]
87:10-28-7. Early medical alert account option [NEW]
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These permanent administrative rules are identical to and supersede emergency administrative rules approved by Governor Henry August 18, 2009, which added a new Subchapter, twenty-eight (28), to Chapter 10 of Title 87 of the Oklahoma Administrate Code. Chapter 10 serves as the "Plan Document" for the administration of the flexible benefits plan for active Oklahoma state employees. This new Subchapter defines important terms, rules, guidelines, and procedures necessary for the effective administration of a new, optional benefit known as Early Medical Alert, offered to active state employees beginning in Plan Year 2010 (January 1, 2010, through December 31, 2010). This program provides state employees, and their families, who enroll in this benefit and receive emergency medical care with a safe, simple, and inexpensive way to ensure emergency health care providers correctly identify the patient, have vital information about the patient's health

history, known allergies, current health status and medications being taken, and the ability to instantly notify emergency contacts pre-designated by the patient. The key that unlocks this vital, online information for emergency health care providers is located on a sticker affixed to the back of a driver's license or a key fob that can be attached to keys, backpacks, diaper bags, etc. This is invaluable when a patient is unconscious or otherwise unable to effectively communicate with emergency health care providers as they are able to more quickly and accurately diagnose the problem at hand, apply the most appropriate treatment, and avoid the unintended misapplication of inappropriate medications/treatment options that could cause harm or even death.

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., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 28. EARLY MEDICAL ALERT OPTIONAL BENEFIT

87:10-28-1. Early medical alert optional benefit

(a) This option is a qualified benefit under Section 125 of the Internal Revenue Code. This benefit is an optional benefit within the State Employees Flexible Benefits Plan and is included as part of the cafeteria plan described in Subchapter 1 of this Chapter.

(b) The Plan Administrator shall at all times administer this option in a manner consistent with the terms and provisions hereof, in a uniform and nondiscriminatory manner, and in accordance with the Internal Revenue Code and applicable regulations promulgated thereunder.

87:10-28-2. Definitions

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

"Period of Coverage" The period of coverage for this benefit runs from January 1 through December 31 of a given Plan Year. For new hires electing this benefit, the period of coverage begins on the first day of the month following date of hire through December 31.

87:10-28-3. Requirements for participation

Upon submission of the election through an authorized procedure prescribed by the Plan Administrator, any employee eligible to participate under the State Employees Flexible Benefits Plan shall be eligible to participate in the early medical alert optional benefit.

87:10-28-4. Internal Revenue Code and regulations

The early medical alert optional benefit, the benefits provided pursuant to it, and contributions made pursuant to it shall be in compliance with all applicable Internal Revenue Code provisions and regulations promulgated thereunder.

87:10-28-5. Period of coverage - enrollment

The period of coverage will be on a calendar year basis beginning January 1 and ending December 31 of a given Plan Year. For new hires electing this benefit, the period of coverage begins on the first day of the month following date of hire through December 31. Midyear enrollees must pay the annual cost regardless of entry date. Pro-rated premiums are not available. Participation requires re-enrollment on an annual basis. Members wishing to participate for successive Plan Years must make a positive enrollment election during Option Period for every Plan Year.

87:10-28-6. Enrollment

(a) Employees may elect to enroll in this benefit during the Option Period prior to each Plan Year.

(b) New Hires may elect to participate in this optional benefit when completing the new hire benefits election form within thirty (30) days following date of hire.

(c) Requests for enrollment must be made in a manner and on forms prescribed by the Plan Administrator.

87:10-28-7. Early medical alert account option

The Plan Administrator shall establish for each employee an early medical alert account for each Plan Year. An employee's early medical alert account for a period of coverage shall be credited with the portion of the employee's early medical alert account dollars that may be deducted from payroll through a single payroll deduction. An employee's early medical alert account for a Plan Year shall be reduced by the amount of any early medical alert dollars paid on behalf of the employee.

[OAR Docket #10-984; filed 6-9-10]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 1. PROCEDURES OF THE OKLAHOMA CONSTRUCTION INDUSTRIES BOARD

[OAR Docket #10-978]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. General Operation and Procedures

158:1-3-9.Fees for plan review and project review for code conformance [NEW]

AUTHORITY:

Construction Industries Board; 59 O.S. § 1000.1

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ANALYSIS:
158:1-3-9 establishes the Construction Industries Board guidelines and fee structure for permitting and formal project review.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. GENERAL OPERATION AND PROCEDURES

158:1-3-9. Fees for plan review and project review for code conformance

(a) **Plan review fee.** For formal review of project plans pursuant to 59 O.S. §§ 1002.1, 1681.1 and 1850.3a, the Construction Industries Board shall charge a fee of $ 75.00 per hour per review, one hour minimum, not to exceed $200 for any single review.

(b) **Project review inspection fee.** For inspection services related to a project review for code conformance pursuant to 59 O.S. § 1000.5(A)(2), the Construction Industries Board shall charge a fee of $ 75.00 per hour, per inspection, one hour minimum, not to exceed $200 for any single inspection.

(c) **Limitations on inspection fees.** The fee required in subsection (b) herein only applies in localities where the Construction Industries Board is the authority having jurisdiction for code enforcement purposes and the inspection services are performed at the request of a contractor or property owner. The Construction Industries Board shall not charge a fee for inspections related to licensing or licensee investigations.

(d) **Each code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein based on the trade (plumbing, electrical or mechanical) work inspected for code conformance by the Construction Industries Board .

(e) **Subsequent code inspection requires separate fee.** A separate fee shall be charged pursuant to subsection (b) herein for each subsequent inspection of work for conformance to a code, including scheduled progress inspections performed at different intervals during the stages of construction.

[OAR Docket #10-978; filed 6-9-10]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 30. PLUMBING INDUSTRY REGULATIONS

[OAR Docket #10-979]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses
158:30-9-1. Examination procedures [AMENDED]
158:30-9-2. Fee schedule for contractors, journeymen, and apprentices [AMENDED]
158:30-9-3. Duration of licenses [AMENDED]
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ANALYSIS:
158:30-9-1 rule raises the minimum examination score for an individual to obtain a plumbing license and also clarifies that recognized experience to obtain a plumbing license is limited to experience obtained while employed by a licensed plumbing contractor. 158:30-9-2 corrects the current version by setting forth the actual fees required in accordance with the statutory amounts indicated at 59 O.S. § 1000.5. 158:30-9-3 removes the one year deadline to renew an expired license.
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.,

SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 9. EXAMINATION PROCEDURES, LICENSE AND REGISTRATION FEES AND DURATION OF LICENSES

158:30-9-1. Examination procedures

(a) The plumbing standards for the plumbing examination shall be the International Plumbing Code as adopted in 158:30-1-4.

(b) Any previously certified examination may be used to meet an examination requirement.

(c) Examination for a plumber's license shall include, but not be limited to, written questions and drawings and/or charts.

(d) The maximum grade value of each part of the plumbing examination shall be 100 points. An examinee must make ~~70%~~ 75% or more on each part, above, to pass the examination.

(e) Attendance at an approved technical school with specialization in the plumbing skills may be substituted for experience or employment on an equal time basis. Substitution of education for experience shall be limited to a maximum of one half the experience requirement. Applicants must present to the Administrator for approval records of schools attended, grades and/or certificates of completion if education is to be substituted for experience.

(f) Applicants for the plumbing contractor examination must be capable of reading English without assistance. A person who cannot meet this requirement may request a hearing before the Committee to request reasonable accommodations.

(g) Except as authorized by the Plumbing Examining Committee, no person, other than examinees, shall be permitted in the examination area.

(h) An examinee who is caught cheating during the course of an examination shall be deemed to have failed the examination.

(i) Applicants for the journeyman examination must be eighteen (18) years of age or older and have either

(1) three (3) years experience in the plumbing trade ~~or~~ while employed by a licensed Plumbing contractor.

(2) a verifiable out-of-state plumbing license that must be:

(A) current, and

(B) in good standing.

(j) Applicants for the contractors examination must be eighteen (18) years of age or older and have four(4) years experience in the plumbing trade while employed by a licensed Plumbing contractor.

(k) The fees for ~~both examination and~~ a license must be on deposit with the Administrator in advance of the examination.

(l) If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

~~(m) Applicants failing to appear for their examination on the date scheduled shall forfeit the examination fee unless notification is received by the Administrator at least 24 hours prior to examination date.~~

158:30-9-2. Fee schedule for contractors, journeymen, and apprentices

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section 158:30-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S.§1000.5 (A)(2). Documentation confirming the contractual fee shall be available upon request

(b) Licensing, registration and application fee schedule for contractors, journeyman, and apprentices. The licensure, application, and registration fees shall be annually as follows:

(1) contractors application - $30.00

(2) initial contractor license - $300.00

(3) renewal contractor license - ~~$250.00~~$200.00

(4) renewal contractor late fee - ~~$300.00~~ $100.00

(5) journeyman application - $25.00

(6) initial journeyman license - $50.00

(7) renewal journeyman license - $75.00

(8) renewal journeyman late fee - ~~$100.00~~$25.00

(9) apprentice application - $5.00

(10) apprentice registration - $20.00

158:30-9-3. Duration of licenses

(a) All licenses shall have a duration of no longer than one year, and shall expire on the last day of the birth month of the licensee each year.

(b) Any license issued by examination may be renewed by submitting the license fee for the next year by a check or money order and be mailed on or before the birth month expiration date.

(c) An expired license issued by examination may be reinstated if: The license fee if submitted ~~within one (1) year~~ after the license expired, and is accompanied by a late fee.

(d) A licensee who, during an investigation of the licensee by the Construction Industries Board, surrenders their license shall be treated as if the license had been revoked for one year from the day of surrender.

(e) A license cannot be renewed until the licensee has paid any and all outstanding fines due and owing to any department of the Construction Industries Board.

[OAR Docket #10-979; filed 6-9-10]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 40. ELECTRICAL INDUSTRY REGULATIONS

[OAR Docket #10-980]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Licensing Requirements, Display of License, and Firm Name, and Bond Requirements
158:40-5-1. Apprentice requirements [AMENDED]
158:40-5-2. Journeyman requirements [AMENDED]
158:40-5-3. Contractor requirements [AMENDED]
Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals
158:40-9-3. License and registration fees and renewals. [AMENDED]
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ANALYSIS:
158:40-5-1, 40-5-2 and 40-5-3 revise the national criminal history record check requirements and procedure to obtain regulatory consistency between the different categories of licenses and registrations. 158:40-9-3 corrects the current version by setting forth the actual fees required in accordance with the statutory amounts indicated at 59 O.S. § 1000.5. 158:40-9-4 amends the requirements for continuing education instructors by requiring the instructors to have experience as a licensed electrician.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 5. LICENSING REQUIREMENTS, DISPLAY OF LICENSE, AND FIRM NAME, AND BOND REQUIREMENTS

158:40-5-1. Apprentice requirements

(a) Apprentice electricians shall be registered with the Construction Industries Board and must be under the direct "on-the-job" supervision of a licensed journeyman or contractor when engaged in the work of an apprentice.

(b) No more than two (2) apprentice electricians shall work under the supervision of a single journeyman or contractor.

(c) Apprentice electricians shall work only under a licensed electrician who shall be responsible for the direct supervision of no more than two electrical apprentices.

(d) Apprenticeship registration is effective upon the posting of the application and evidence of such posting shall be a copy of the executed application form with proof of tender of the proper fee which may serve as evidence of registration for a period not to exceed thirty (30) days.

(e) Prior to engaging in any activity ~~regulated by the Alarm and Locksmith Industry Act~~ described in subsection (f) herein, a licensed electrical apprentice shall obtain an alarm endorsement registration from the Construction Industries Board. Such alarm endorsement registration may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical endorsement registration shall require an additional fee in accordance with 158:40-9-3. To obtain an electrical endorsement registration, a registered apprentice electrician shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(f) A registered apprentice electrician shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the registered apprentice electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (h) herein.

(g) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (h) herein.

(h) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

(5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

(6) Kidnapping;

(7) Robbery;

(8) Burglary;

(9) Possession of stolen property;

(10) Aggravated assault;

(11) Aggravated battery;

(12) Arson;

(13) Any felony punishable by death or life imprisonment;

(14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the inflection of physical harm on another person committed while unlawfully present on the property of another.

(15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or

(16) A disqualifying five year crime as set forth in subsection (i) herein.

(i) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for alarm endorsement registration by any state or the United States of any of the following:

(1) Felony theft or grand theft;

(2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;

(3) A felony involving a controlled substance;

(4) A felony involving a firearm;

(5) Forgery or counterfeiting;

(6) Forgery of or fraudulent use of a credit card;

(7) A felony involving the theft of the identity of another;

(8) A felony involving fraud or embezzlement;

(9) Insurance or public assistance fraud;

(10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.

(11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;

(12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(j) An individual who has been convicted of a disqualifying crime as set forth in subsection (h) shall be denied an alarm endorsement registration. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an alarm endorsement registration to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

(k) Every apprentice electrician requiring an alarm endorsement registration on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement registration. A person applying for said alarm endorsement registration within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.

158:40-5-2. Journeyman requirements

(a) Each journeyman must be licensed and employed by a licensed contractor before engaging in the work of a journeyman electrician.

(b) No journeyman shall contract to furnish labor or labor and materials.

(c) Prior to engaging in any activity ~~regulated by the Alarm and Locksmith Industry Act~~ described in subsection (d) herein, a licensed electrical journeyman shall obtain an electrical license alarm endorsement from the Construction Industries Board. Such alarm endorsement may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical license alarm endorsement shall require an additional fee in accordance with 158:40-9-3. To obtain an electrical license alarm endorsement, a licensed electrical journeyman shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(d) A licensed journeyman electrician shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the ~~registered~~ licensed journeyman electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (f) herein.

(e) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (f) herein.

(f) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

(5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

(6) Kidnapping;

(7) Robbery;

(8) Burglary;

(9) Possession of stolen property;

(10) Aggravated assault;

(11) Aggravated battery;

(12) Arson;

(13) Any felony punishable by death or life imprisonment;

(14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the inflection of physical harm on another person committed while unlawfully present on the property of another.

(15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or

(16) A disqualifying five year crime as set forth in subsection (g) herein.

(g) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for electrical license alarm endorsement by any state or the United States of any of the following:

(1) Felony theft or grand theft;

(2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;

(3) A felony involving a controlled substance;

(4) A felony involving a firearm;

(5) Forgery or counterfeiting;

(6) Forgery of or fraudulent use of a credit card;

(7) A felony involving the theft of the identity of another;

(8) A felony involving fraud or embezzlement;

(9) Insurance or public assistance fraud;

(10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.

(11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;

(12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(h) An individual who has been convicted of a disqualifying crime as set forth in subsection (f) shall be denied an electrical license alarm endorsement. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an electrical license alarm endorsement to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

(i) Every journeyman electrician requiring an electrical license alarm endorsement on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement. A person applying for said alarm endorsement within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.

158:40-5-3. Contractor requirements

(a) Each electrical firm must have a person who is currently licensed as an electrical contractor employed full time, and who shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Act and these Rules. Such contractor shall be an officer, partner or owner of that electrical firm, and shall be responsible for the work of and licensed on behalf of that electrical firm.

(b) An electrical contractor may choose to place his license on inactive status and not be required to provide a bond and insurance. An inactive electrical contractor is a person who, because of the nature of his business, does not offer himself to the public as an electrical contractor. The inactive electrical contractor's license may be used to perform work as a journeyman electrician.

(c) Each electrical contractor shall advise the Electrical License Unit by mail within thirty (30) days of any change in address or business relationship, structure or affiliation. Failure to so notify shall be cause for administrative sanction.

(d) An electrical contractor shall only be permitted to represent one electrical firm.

(e) When two or more electrical firms desire to associate on a job or project as electrical contractors, each person or electrical firm shall have an electrical contractor licensed by the Board, and each shall register with the city or town in whose jurisdiction they intend to operate.

(f) All active electrical contractors must show proof of compliance with the Nonresident Contracting Act, Title 68 Oklahoma Statutes, Sections 1701 through 1707, by indicating on initial and annual renewal applications the following:

(1) address of business;

(2) Phone number of business;

(3) Number of employees;

(4) Federal Tax Number;

(5) Employer's Social Security Numbers;

(6) Employer's account number assigned by the Employment Security commission; and

(7) Nonresident electrical contractor bond on file with the Oklahoma Tax Commission, if applicable.

(g) Each active electrical contractor shall document the hours worked by each apprentice electrician and the hours worked in commercial, industrial and residential electrical work.

(h) Prior to engaging in any activity ~~regulated by the Alarm and Locksmith Industry Act~~ described in subsection (i) herein, a licensed electrical contractor shall obtain an electrical license alarm endorsement from the Construction Industries Board. Such alarm endorsement may only be issued to an applicant upon the completion of a satisfactory national criminal history record check. An application for an electrical license alarm endorsement shall require an additional fee in accordance with

158:40-9-3. To obtain an electrical license alarm endorsement, a licensed electrical contractor shall provide the following:

(1) A recent passport style and quality photograph;

(2) Two classifiable sets of fingerprints taken by a local, state or federal law enforcement agency;

(3) A disclosure of convictions of all crimes of applicant, both felony and misdemeanor; and,

(4) Other such information as required by 74 O.S. §150.9 for a national criminal history record check.

(i) A licensed electrical contractor shall not sell, install, service, or repair alarm or security systems or electronic security devices such as residential or commercial burglar alarms or security systems, electronic access control, closed circuit television, nurse call systems and the like when the licensed contractor electrician has disclosed or a national criminal history record check reveals a conviction of applicant for a disqualifying crime, as described in subsection (k) herein.

(j) A satisfactory "national criminal history record check" means a national criminal history record check which reveals no disqualifying crime, as described in subsection (k) herein.

(k) "Disqualifying crime" includes any conviction by any state or the United States of any of the following:

(1) Murder in any degree;

(2) Voluntary manslaughter;

(3) Rape;

(4) Lewd conduct with a minor;

(5) Sexual abuse or exploitation of a child, including offenses involving child pornography;

(6) Kidnapping;

(7) Robbery;

(8) Burglary;

(9) Possession of stolen property;

(10) Aggravated assault;

(11) Aggravated battery;

(12) Arson;

(13) Any felony punishable by death or life imprisonment;

(14) Any felony determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property or the inflection of physical harm on another person committed while unlawfully present on the property of another.

(15) Attempt, conspiracy or accessory after the fact or aiding and abetting to commit any disqualifying crime; or

(16) A disqualifying five year crime as set forth in subsection (l) herein.

(l) A "disqualifying five year crime" shall mean a conviction within five years of the date of application for electrical license alarm endorsement by any state or the United States of any of the following:

(1) Felony theft or grand theft;

(2) Felony passing of a bogus, stolen, fraudulent or counterfeit check;

(3) A felony involving a controlled substance;

(4) A felony involving a firearm;

(5) Forgery or counterfeiting;

(6) Forgery of or fraudulent use of a credit card;

(7) A felony involving the theft of the identity of another;

(8) A felony involving fraud or embezzlement;

(9) Insurance or public assistance fraud;

(10) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the theft, damage or destruction of property of another.

(11) Any felony other than a "disqualifying crime" determined by the Construction Industries Board Administrator to be an offense which constitutes the infliction of physical harm on another person;

(12) Attempt, conspiracy, accessory after the fact or aiding and abetting to commit any disqualifying five-year crime.

(m) An individual who has been convicted of a disqualifying crime as set forth in subsection (k) shall be denied an electrical license alarm endorsement. Written notice of said denial shall be issued by the Construction Industries Board Administrator after completion and review of the individual's national criminal history record check. An individual has ten (10) business days after receipt of the denial to appeal said denial in writing to the Construction Industries Board Administrator. The Construction Industries Board Administrator shall issue a written decision to said appeal within ten (10) business days after receiving same. The Administrator's decision may be appealed to the Electrical Hearing Board within ten (10) business days after receipt of the Administrator's written decision. An appeal of a denial of an electrical license alarm endorsement to the Electrical Hearing Board shall be governed by Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

(n) Every electrical contractor requiring an electrical license alarm endorsement on the effective date of this rule shall have ninety (90) days from the effective date of this rule in which to apply to the Construction Industries Board to obtain said alarm endorsement. A person applying for said alarm endorsement within this ninety-day period may continue business pending a final determination by the Construction Industries Board Administrator of the person's application. Additional time beyond the ninety-day period may be granted by the administrator.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS AND LICENSE AND REGISTRATION FEES AND RENEWALS

158:40-9-3. License and registration fees and renewals

(a) Examination fees for contractors and journeyman. The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section 158:40-9-2 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be

informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S.§ 1000.5 (A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) Licensing, registration and application fee schedule for contractors, journeyman, and apprentices. The licensure, application, and registration fees shall be annually as follows:

(1) contractors application - $30.00
(2) initial contractor license - $300.00
(3) renewal contractor license - ~~$250.00~~$200.00
(4) renewal contractor late fee - ~~$300.00~~ $100.00
(5) journeyman application - $25.00
(6) initial journeyman license - $50.00
(7) renewal journeyman license - $75.00
(8) renewal journeyman late fee - ~~$100.00~~$25.00
(9) apprentice application - $5.00
(10) apprentice registration - $20.00
(11) arm endorsement issuance - $75.00
(12) alarm endorsement renewal - $25.00

(c) **License renewal penalties.** Penalty for late license renewal for contractors and journeyman (30 days after expiration date), as provided in the Act is listed above., and upon meeting continuing education requirements listed in 158: 40-9-4.

(d) **Outstanding fines.** A license cannot be issued until the applicant has paid any and all outstanding fines due and owing to any department of the Construction Industries Board.

(e) **Duration of licenses.** All licenses shall have a duration of no longer than one year, and shall expire on the last day of the birth month of the licensee each year.

[OAR Docket #10-980; filed 6-9-10]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 50. MECHANICAL INDUSTRY REGULATIONS

[OAR Docket #10-981]

RULEMAKING ACTION:
Notice of proposed PERMANENT adoption
RULES:
Subchapter 1. General Provisions
158:50-1-2. Definitions [AMENDED]
Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration
158:50-9-1. Qualifications for mechanical licensure [AMENDED]
158:50-9-2. License and registration fees and renewals [AMENDED]
158:50-9-3. Duration of licenses [AMENDED]
158:50-9-4. Mechanical license application [REVOKED]
158:50-9-7. Continuing Education [AMENDED]
Subchapter 13. Procedures of the Variance and Appeals Board, Plan Review Applications and Fees, Code Variance Applications and Fee, Code Interpretation Appeals
158:50-13-2. Procedures of the Variance and Appeals Board [AMENDED]
AUTHORITY:
Construction Industries Board; 59 O.S. § 1689.
DATES:
Comment period:
February 16, 2010 through March 18, 2010
Public Hearing:
March 23, 2010
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May 3,2010
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SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
158:50-1-2 revises the current definition of "Sheet metal" for purposes of regulatory clarification and removing redundancies. 158:50-9-1 reduces the minimum number of hours required in accepting a mechanical Vo Tech diploma as a substitute for necessary experience and allows ground source piping and petroleum refinery journeyman licensees to be certified by an alternative examination in lieu of an exam administered by the CIB. 158:50-9-2 corrects the current version by setting forth the actual fees required in accordance with the statutory amounts indicated at 59 O.S. § 1000.5. 158:50-9-3 strikes the term "examination" so that the CIB may recognize certification examinations in limited circumstances. 158:50-9-4 is obsolete and is stricken entirely. 158:50-9-7recognizes trade related education as an appropriate topic for continuing education and removes the CEU requirements for the license of petroleum refinery journeyman. 158:50-13-2 strikes the specific years of adopted codes so that the rule always follows the currently adopted code.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

158:50-1-2. Definitions

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

"Act" means Mechanical Licensing Act as found at 59 O.S. § 1850.1 et seq.

"Administrator" means the Administrator of the Board as described in the Construction Industries Board Act found at 59 O.S. § 1000.1 et seq.

"Applicant" means any person applying for an examination, for a license or registration, for review of plans and specifications or for a mechanical code variance from the ICC International Mechanical Code or the International Fuel Gas Code and the International Residential Code (Chapters 12

through 24) by the Construction Industries Board under the Act.

"Associated with and responsible for" means the relationship between a mechanical contractor and mechanical firm based on the mechanical contractor being a permanent employee, owner, partner, or officer in a corporate firm, and whereby the mechanical contractor shall give full time to the supervision and control of operations necessary to secure full compliance with the provisions of the Mechanical Licensing Act and this Chapter.

"Board" means the Oklahoma Construction Industries Board.

"Bonds and Insurance Unit" means the consolidated unit that processes bonds, insurance, and citations under the direction of the Construction Industries Board.

"Cheating" means any unapproved deviation from any official instruction given before, during or after a license examination, for the purpose of affecting or influencing the examination results or otherwise providing an undue advantage to any examinee.

"Committee" means the Committee of Mechanical Examiners.

"Direct supervision" means the on-the-job presence by the supervisor who must be a licensed mechanical contractor or mechanical journeyman.

"Gas piping" means and includes all natural gas piping within or adjacent to any building, structure, or conveyance, on the premises up to the connection with a natural gas meter, regulator, or other source of supply.

"Ground source piping" means piping buried below the earth's surface or submerged in a water well, lake or pond and used in conjunction with a heat pump to provide heating, ventilation and/or air conditioning to a structure.

"Humidification", when applied to air conditioning, means and includes an increase or decrease in moisture content of the air being conditioned and supplied to the space for human occupancy by means of that integral part of the entire air conditioning system, equipment, and control devices; when applied to refrigeration, means and includes an increase or decrease in the moisture content of the air or product being conditioned for a food preservation measure or manufacturing process by means of the integral part of the entire refrigeration system, equipment, and control devices.

"HVAC" or "heating, ventilation and air conditioning" means the process of treating air by controlling its temperature, humidity, and cleanliness and of supplying such air to spaces for human occupancy by means of an integrated system of air conditioning and ventilation equipment, accessories and control devices.

"ICC" means the International Code Council.

"Limited residential journeyman" means a type and category of mechanical license that is restricted to new installations in detached one or two family dwellings and multiple single family dwellings (townhouses) not more than three stories in height with a separate means of egress as regulated by this chapter.

"Mechanical License Unit" means the staff and administrative support unit to the Committee of Mechanical Examiners and the Mechanical Hearing Board.

"Mechanical work" means the installation, maintenance, repair, or renovation, in whole or in part, of any heating system, cooling system, mechanical refrigeration system or ventilation system or any equipment or piping carrying chilled water, air for ventilation purposes, or natural gas, or the installation, maintenance, repair, or renovation of process piping used to carry any liquid, substance, or material, including steam and hot water used for space heating purposes not under the jurisdiction of the Department of Labor, provided that minor maintenance and repairs are excluded.

"Minor repairs and maintenance" means minor repairs or maintenance prescribed in the manufacturer's operating instructions to be performed by the equipment owner or his authorized agent, and shall not include replacement and repairs of any nature on natural gas piping, natural gas controls, the low voltage manufacturer installed controls, the vent system of fuel burning appliances or any repair or maintenance which would violate the safe operation of the equipment.

"Petroleum refinery" means an industrial plant which processes petroleum for purposes of creating products derived from petroleum and includes industrial plants which produce and/or refine alternative fuels or petroleum additives. "Petroleum refinery" shall not mean gas processing plant or gas gathering pipeline operations.

"Petroleum refinery journeyman" means a type and category of mechanical license that is restricted to petroleum refinery process piping.

"Petroleum refinery process piping work" means the lay out, assembly, installation, and maintenance of pipe systems used in the petroleum refining process or product refining systems of a petroleum refinery.

"Process" means a series of operations performed in the making or treatment of a product.

"Process piping" means lay out, assembly, installation, and maintenance of pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating and fire sprinklers, not subject to regulation pursuant to the Alarm Industry Act, and industrial production and processing systems.

"Reciprocity" means an agreement whereby a person holding a mechanical license or registration who is licensed in other states with substantially similar or greater licensure requirements may be licensed in this State after payment of a fee for licensing by reciprocity.

"Refrigeration system" means a system employing fluid which normally is vaporized and liquefied in an air conditioning system, food preservation measure or manufacturing process.

~~**"Sheet metal"** means the ferrous and non-ferrous ductwork and components which house and ventilates air conditioning systems, both assembled and custom fabricated.~~

"Variance" means the use of an alternative material or method of construction from that prescribed in the ICC International Mechanical Code or the International Fuel Gas Code or the International Residential Code (Chapters 12 through

24) for use at a particular location or project specified in the variance application; and

"Variance and Appeals Board" means the Oklahoma State Mechanical Installation Code Variance and Appeals.

SUBCHAPTER 9. QUALIFICATIONS FOR MECHANICAL LICENSURE, LICENSE AND REGISTRATION FEES, DURATION OF LICENSE, MECHANICAL LICENSE APPLICATION, AND APPRENTICE REGISTRATION

158:50-9-1. Qualifications for mechanical licensure

(a) **Application.** A person desiring to be licensed under this Chapter shall file an application with the application fee, examination fee, and the initial License fee to the Administrator. The fees must be received no less than three (3) working days before the examination date. If the applicant fails to meet the minimum qualifications to take the examination, the application fee will be forfeited.

(b) **Experience.** All persons applying for a license must provide proof of experience in the mechanical trade.

(1) Applicants for a journeyman license must be at least eighteen (18) years of age and have:

(A) either three (3) years of verifiable experience in the mechanical trade in the category for which he is applying or

(B) have an associates degree or Vo Tech diploma certifying completion of an educational program consisting of 1000 hours or more from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for and one (1) year of verifiable experience in the mechanical trade or

(C) have a VoTech diploma certifying completion of an educational program consisting of ~~600~~ 500 or more hours ~~or less~~ from a school, approved by the Committee, which exhibits knowledge of the trade in the category of license applied for and two (2) years of verifiable experience in the mechanical trade, or

(D) have a verifiable out-of-state license in the mechanical classification for which the applicant is applying. The license must be:

(i) current, and

(ii) in good standing.

(2) Applicants for a contractor license must meet the same requirements as a journeyman with an additional one (1) year experience.

(c) **Examination.** A license cannot be issued until the applicant has passed the appropriate examination for the license type and category. Examinations and the passing score for each examination shall be approved by the Committee. Applicants for the Ground Source Piping category shall provide proof of being certified by examination in the proper installation of ground source piping by an organization approved by the Committee. Applicants for the Petroleum Refinery journeyman category shall provide proof of being certified by examination in the area of industrial pipefitter by an organization approved by the Committee.

(1) If the applicant does not pass the exam, the applicant may reapply for the exam and pay an additional retesting fee. However, no person will be allowed to retake an exam within 30 days of the first failed exam nor within 90 days of the second or subsequent failed exam.

(2) Any person suspected of cheating during an examination shall be immediately notified of the suspicion and shall not be allowed to finish the examination. He shall be called before the Committee during the next scheduled meeting for discussion of the incident. If the Committee determines that the person did in fact cheat, the examinee's application for licensure shall be denied and the Committee shall determine when the applicant can next apply for an examination.

(3) No person shall be allowed any assistance in reading the contractor's examination, nor shall any persons other than the examinees or the Committee members be allowed in the examination area. However, an applicant may request that the Committee make reasonable accommodations for any disability.

(d) Outstanding fines. A license cannot be issued until the applicant has paid any and all outstanding fines due and owing to any department of the Construction Industries Board.

158:50-9-2. License and registration fees and renewals

(a) **Examination fees for contractors and journeyman.** The Construction Industries Board, or its designated representative, may collect for the actual cost of any examination provided by these rules. The cost for each such examination referenced in section 158:50-9-1 shall be posted in plain view at the testing site that provides and administers the examination. Every person whose application for examination is approved shall be informed of the specific fee prior to setting for the examination. The unit testing fee shall be the amount negotiated by the administrator in accordance with the provisions of the Oklahoma Central Purchasing Act, but cannot exceed the maximum allowable fee provided in 59 O.S.§ 1000.5 (A)(2). Documentation confirming the contractual fee shall be available upon request.

(b) **Licensing, registration and application fee schedule for contractors, journeyman, and apprentices.** The licensure, application, and registration fees shall be annually as follows:

(1) contractors application - $30.00
(2) initial contractor license - $300.00
(3) renewal contractor license - ~~$250.00~~$200.00
(4) renewal contractor late fee - ~~$300.00~~ $100.00
(5) journeyman application - $25.00
(6) initial journeyman license - $50.00
(7) renewal journeyman license - $75.00
(8) renewal journeyman late fee - ~~$100.00~~$25.00
(9) apprentice application - $5.00
(10) apprentice registration - $20.00

158:50-9-3. Duration of licenses

(a) All licenses shall have a duration of no more than one year, and shall expire on the last day of the birth month of the licensee each year.

(b) Any license issued ~~by examination~~ may be renewed by submitting the license fee for the next year by a check or money order and be mailed on or before the birth month expiration date.

(c) A license renewed under the provision of 158:9-3 (b) is effective when notice of such renewal is issued by the Construction Industries Board.

(d) An expired license may be reinstated if: The license fee is submitted within one (1) year after the license expired, and is accompanied by a late fee, plus any applicable continuing education, and insurance and bonding requirements.

(e) A licensee who, during an investigation of the licensee by the Construction Industries Board, surrenders their license shall be treated as if the license had been revoked for one year from the day of surrender.

(f) A license cannot be renewed until the licensee has paid any and all outstanding fines due and owing to any department of the Construction Industries Board.

158:50-9-4. Mechanical license application [REVOKED]

~~Applicants may obtain an application form for a mechanical license from the Mechanical License Unit.~~

~~(1) The completed application, along with the examination fee, the appropriate fees listed in 158:50-3-3(B)(4),and the experience verification must be returned to the Administrator at least three (3) working days before the date of examination.~~

~~(2) The applicant shall be notified of the time and date of the exam, and shall appear for the exam at that time. An applicant who fails to appear on date scheduled or fails to notify the Administrator at least three (3) working days prior to the date of exam of an inability to attend shall forfeit the examination fee.~~

~~(3) The examination will be graded by the Committee.~~

~~(4) If the examination is passed, the committee will make recommendation that the applicant be licensed.~~

158:50-9-7. Continuing Education

(a) **Continuing Education Requirements:**

(1) Within one year from the date of adoption of the appropriate code, and thereafter, no license will be renewed unless the licensee has completed 6 hours of continuing education. Continuing education shall consist of 6 hours training in the International Mechanical Code, International Fuel Gas Code and/or International Residential Code(as applicable pursuant to Mechanical Industry Regulations promulgated under this chapter) emphasizing revisions of the code or 4 hours training emphasizing revisions of the codes and 2 hours of ~~manufacturer provided training in the installation of equipment and parts~~ trade related instruction.

(2) Credit will be given for CE programs approved by the Mechanical Examining Committee, or its designee.

(3) Except as provided herein, these rules shall apply to every licensed mechanical journeyman or contractor. ~~licensed by the Construction Industries Board.~~

(4) A licensee is exempt from the education requirements of these rules for the code year during which the licensee first passed an exam testing over the code.

(b) **Standards.** The following standards will govern the approval of continuing education programs by the Mechanical Examining Committee.

(1) The program provider shall submit evidence that the provider and instructional staff are qualified by reason of education, experience or training. The training provider and instructors will be of good reputation and of good moral character.

(2)Any written material that is distributed during the session shall be readable, of high qua lity and shall be made available to all attendees.

(3) The program shall be presented in a comfortable location such as hotel/motel conference room, corporate meeting room, or regular classroom.

(4) The training session shall be presented outside the regular workplace or after regular working hours. An onsite conference room, that meets standards imposed by number 3 above, shall be considered outside the regular workplace.

(5) Sixty minutes shall constitute one instructional hour.

(6) CE courses shall be presented in one of the following formats.

(A) Six instructional hours presented in one day.

(B) Two sessions of three instructional hours each presented within a seven day period.

(C) One session of two instructional hours ~~for the purpose of presenting a manufacturer's installation course~~ of trade related instruction.

(D) An approved correspondence course.

(E) Another format approved by the Committee.

(7) Verification of Credit.

(A) The Course Provider shall verify the total number of continuing education hours completed by each attendee.

(B) Continuing education providers shall require attendees to present a photo I.D. prior to the attendee signing the sign-in sheet provided by the Construction Industries Board. Sign-in sheets shall include the name and license number of each licensee in attendance.

(C) Each attendee shall complete a course evaluation on a form provided by the Construction Industries Board.

(D) As soon as practicable but in any event on or before seven (7) days following an approved continuing education program, the provider shall furnish the original sign-in sheets and evaluations from the course to the Examining Unit of the Construction Industries Board.

(E) Providers shall maintain copies of all sign-in sheets and evaluations for a period of two (2) years following the conclusion of the course.

(8) Course providers or instructors may not advertise or promote the sale of any goods, products or services between the opening and closing of any Continuing Education Course.

(c) **Application Procedures.**

(1) A completed application form, with all supporting documentation, shall be submitted to the Construction Industries Board at least 30 days prior to the scheduled start date.

(A) Supporting documents shall include the following.

(i) A resume or brief summary of qualifications of all course developers and instructors.

(ii) A course agenda designating the beginning and ending of actual instruction times, sign-in times, breaks, lunches and evaluation time.

(iii) A course curriculum indicating the subject or code areas to be taught with sufficient detail to determine which code revisions are to be addressed or the ~~product for which the installation is~~ trade related instruction being provided.

(2) An application is to be submitted for each date, or dates, that constitute a single course.

(3) Each course must be included on a separate application.

(d) **Mechanical Examining Committee Acceptance.**

(1) The Committee, or its designee, will review each application for completeness of form and supporting documentation, as well as course content.

(2) The approval of any course will be made by a majority vote of the Committee at the regularly scheduled meeting of the Mechanical Examining Committee.

(3) The Committee's designee may approve additional dates and locations after the course has been approved by Committee vote. Substantive change to course content must be brought before the Committee.

(4) The applicant will be notified in writing whether the program is approved or disapproved, detailing the basis of the decision if disapproved.

(e) **Committee Rejection and Reevaluation of a Course.**

(1) The Committee, or its designee, may refuse to accept any application for approval if the supporting documentation is insufficient or incomplete. The Committee may deny or revoke approval of an application for any of the following reasons.

(A) Failure to comply with the continuing education provisions.

(B) Inadequate application or supporting documentation.

(C) Failure to instruct on topic approved.

(D)I nadequate experience of program developer or instructor.

(E) Unsatisfactory evaluation of the course instructor or materials from previous classes.

(2) The Committee may, at any time, re-evaluate and grant or revoke approval of application or course.

(A) The Committee may, at any time, review courses for quality of instruction. The Committee may also investigate complaints regarding approved courses. The Committee may then take appropriate action, up to and including revocation of authority to provide CE courses.

(B) A provider's failure to comply with any continuing education rule constitutes grounds for disciplinary action, up to and including revocation of authority to provide CE, against the provider or for denial of future applications for course work.

(3) The Committee, or its designee, will notify the provider, in writing, of any changes in approval status.

(f) **Appeals.**

(1) Applicants denied approval of a course may appeal such a decision by submitting a written letter of appeal to the committee within fifteen days of the receipt of the notice.

(2) All appeals will be heard by the Committee at its next regularly scheduled meeting.

(g) **Course Presentation.**

(1) The program, including the named advertised participants, shall be conducted as approved by the committee, subject to emergency withdrawals and minor alterations.

(2) Changes including but not limited to location, date, instructors, or cancellations must be requested from the Committee, or its designee, in writing prior to start of class. All requests for change must include the course ID number.

(h) **Course Advertisement.**

(1) All advertising must include the course ID number.

(2) Approved program courses may be advertised.

(3) The provider of an approved continuing education program may announce or indicate as follows: Course # has been approved by the Construction Industries Board Mechanical Examining Committee for hours of CE credit.

(i) **Correspondence and Online Courses.**

(1) Applications, approvals and rejections, and appeals of all correspondence and online courses shall be the same as for classroom-based courses.

(2) Correspondence courses shall be required to comply with all requirements of continuous education courses, except sign-in sheets.

(3) Providers of an on-line course shall submit verification of six (6) hours of real time on-line instruction.

(4) Course providers shall provide a student with a document of completion which certifies completion of approved correspondence course.

(j) **Alternate Credit Method.** Credit may be earned through teaching an approved continuing education course. The Committee may award up to six hours of CE credit, not to exceed the number of approved hours for that CE course.

(k) **Continuing Education Not Required for Petroleum Refinery Journeymen.** Provisions (a) - (j) herein shall not apply to the license category of Petroleum Refinery Journeyman.

The Petroleum Refinery Journeyman license may be renewed without continuing education.

SUBCHAPTER 13. PROCEDURES OF THE VARIANCE AND APPEALS BOARD, PLAN REVIEW APPLICATIONS AND FEES, CODE VARIANCE APPLICATIONS AND FEE, CODE INTERPRETATION APPEALS

158:50-13-2. Procedures of the Variance and Appeals Board

The Administrator shall call a meeting of the Variance and Appeals Board after the Administrator receives proper application for a variance accompanied by the fifty dollar ($50.00) filing fee or receives proper notice of an appeal of the Department's interpretation of the ICC International Mechanical Code~~/2006~~ currently adopted or the International Fuel Gas Code~~/2006~~ currently adopted and the International Residential Code~~/2006~~ currently adopted (Chapters 12 through 24) as applied to a particular installation. Variance and Appeals Board meetings are held at the principal offices of the Construction Industries Board referenced at 158:1-3-1, or at another location named by the Administrator. The Variance and Appeals Board shall comply with the Oklahoma Open Meetings Act.

[OAR Docket #10-981; filed 6-9-10]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 60. INSPECTORS REGULATIONS

[OAR Docket #10-982]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, Certification and Continuing Education for Inspectors, and Continuing Education Courses
158:60-5-1. Categories and classifications of inspector licenses [AMENDED]
158:60-5-2. Qualifications for inspector licensure[AMENDED]
AUTHORITY:
Construction Industries Board; O.S. Title 59. O.S. Sections 1031 through 1044; O.S. §1032. Rules - Promulgation by Construction Industries Board.
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SUPERSEDED EMERGENCY ACTIONS:
"n/a"
INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
158:60-5-1 adds license categories and classifications for energy code inspectors. 158:60-5-2 revises references to other rule provisions pertaining to qualifications of inspectors which are currently obsolete or non-existent.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 5. CATEGORIES AND CLASSIFICATIONS OF INSPECTOR LICENSES, QUALIFICATIONS FOR INSPECTOR LICENSURE, LICENSE REQUIREMENTS FOR INSPECTORS, FEES, CERTIFICATION AND CONTINUING EDUCATION FOR INSPECTORS, AND CONTINUING EDUCATION COURSES

158:60-5-1. Categories and classifications of inspector licenses

(a) Licenses shall be issued for the following categories and classifications:
(1) Electrical inspector:
(A) Unlimited.
(B) Residential.
(2) Mechanical inspector:
(A) Unlimited.
(B) Residential.
(3) Plumbing inspector:
(A) Unlimited.
(B) Residential.
(4) Building inspector:
(A) Unlimited.
(B) Residential.
(5) Energy Code Inspector:
(A) Unlimited.
(B) Residential.

(b) In addition to the above categories, a person may also be classified as:
(1) a circuit rider inspector if the person is employed by more than one political subdivision,
(2) a provisional inspector if the Administrator determines that a license should be issued even though the examination requirement has not yet been met,

(3) an inactive inspector if the person is not currently employed as a building and construction inspector.

158:60-5-2. Qualifications for inspector licensure

(a) Initial application must be made on the form provided by the Administrator.

(b) The proper fees must accompany any application, including the late fee if application for renewal is made within one year after expiration of the initial license.

(c) The applicant must submit as soon as is practicable after application is made:

(1) proof of certification by a national code organization recognized by the Committee, such as ICC, IAPMO;

(2) proof of certification by the Committee that the person has passed the Oklahoma Inspector Examination; or

(3) proof that the required C.E.U.'s have been completed.

(d) Section ~~158:60-3-4~~ 158:60-5-4 sets forth the licensing qualifications for the license categories and classifications provided in 158:60-5-1 ~~158:60-3-1~~. The fees and licensing qualifications for the license category and classifications for Energy Code Inspector shall be the same as the other categories and classifications set forth in Section 158:60-5-4, provided that additional certifications or exams may be recognized by approval of the Committee and the Construction Industries Board on a case by case basis. However, no person shall be required to meet the continuing education requirements for the licensing year the certification requirements of ~~158:60-3-2~~ 158:60-5-2(c)1 or 2 are met

(e) A provisional license is issued to allow a person to work as an inspector even though all the license qualifications have not been met. This provisional license will provide the licensee with adequate time and motivation to become educated and meet all licensure requirements within two years after being issued the provisional license. No person shall be issued more than one provisional license at a time, nor shall a provisional license be issued twice for the same category. The initial fee for the provisional license shall be $35.00.

(f) The Administrator shall maintain a list of inactive inspectors, said list shall be made available on request to any political subdivision who may need the services of a licensed inspector.

[OAR Docket #10-982; filed 6-9-10]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD
CHAPTER 70. HOME INSPECTORS ACT

[OAR Docket #10-983]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
158:70-1-3. Standards of Workmanship and Practice [AMENDED]

AUTHORITY:
Construction Industries Board Act, 59 O.S. §§ 1000.2 and 1000.4; Home Inspection Licensing Act, 59 O.S. §§ 858-622, 858-624, 858-626, 858-627, 858-629, 858-630, 858-631, 858-633 and 858-634.

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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
"n/a"

ANALYSIS:
158:70-1-3 changes the home inspection requirements as they pertain to the standards of workmanship and practice to comport with current national and industry practice and standards.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

158:70-1-3. Standards of workmanship and practice

(a) **General requirements.**

(1) These standards of practice are the minimum levels of inspection practice required of inspectors for the components and systems identified in these rules. Home inspections performed in accordance with these standards of practice are intended to provide the client with information regarding the condition of the systems and components at the time of the inspection.

(2) The inspector shall be governed by the following general requirements:

(A) The inspector shall inspect all readily accessible installed systems and components listed in these standards of practice.

(B) The inspector shall complete a written inspection report in accordance with these standards and submit the report to the client within an agreed upon time frame.

(C) The inspector shall identify in any written report the client, the inspector who performed the inspection by name and license number and the address of the inspected property.

(D) The inspector shall report:

(i) those systems and components inspected, which in the professional opinion of the inspector, are in normal working order;

(ii) those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order and the reason, if not self evident;

(iii) those systems and components inspected which, in the professional opinion of the inspector, could impair the safety of the occupants or client and the reason, if not self evident;

(iv) the inspector's recommendations to have corrected, further evaluated or monitored any reported condition or defect; and,

(v) any systems and components designated for inspection in these standards, which were present at the time of the Home Inspection but were not inspected and the reason they were not inspected.

(3) These standards of practice are not intended to limit inspectors from:

(A) including other inspection services or inspecting other systems or components in addition to those required by these Standards;

(B) providing a higher level of inspection performance than required by these Standards;

(C) reporting other observations or conditions in addition to those required by these Standards; or,

(D) excluding systems and components from the inspection, if requested by the client in writing.

(4) Beginning July 1, 2006 all home inspectors shall maintain a log or record of all home inspections performed, for a minimum period of five years from the date of inspection. The log or record shall include the name of the client, the address of the property, and the date of the inspection. The home inspector shall maintain a copy of all home inspections completed within the past 36 months. The log or record and inspection reports may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon request of an authorized representative of the Construction Industries Board.

(5) A home inspector who visually examines any portion of a residential unit that is part of a real property consisting of more than four (4) dwelling units, shall advise, in writing, the person requesting the visual examination that the visual examination being conducted by the home inspector is not governed by the Act and these rules.

(b) **General limitations and exclusions.**

(1) The inspector is not required to perform any action or make any determination not specifically stated in these Standards of Practice.

(2) Inspections performed in accordance with these standards are not required to be technically exhaustive, will not identify concealed conditions or latent defects and are only applicable to buildings with four or fewer dwelling units and their garages, both attached and detached, or carports.

(3) The inspector is not required to:

(A) perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority;

(B) determine the condition of systems or components which are not readily accessible;

(C) determine the remaining life of any system or component;

(D) determine the strength, adequacy, effectiveness, efficiency or insurability of any system or component;

(E) determine the causes of any condition or defect;

(F) determine the methods or materials for repair or correction of any defect;

(G) determine future conditions including, but not limited to, failure of systems and components;

(H) determine the suitability of the property for any specialized use or compliance with any regulatory requirements other than this Chapter;

(I) determine the presence of potentially hazardous plants or animals including, but not limited to, wood destroying organisms, mold, mildew, fungi, or diseases harmful to humans;

(J) determine the presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, and contaminants in soil, water, or air;

(K) determine the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances;

(L) determine the operating costs of any system or component;

(M) determine the acoustical properties of any system or component;

(N) perform engineering or architectural services or perform work in any trade or professional service other than home inspections;

(O) provide warranties or guarantees of any kind;

(P) operate any system or component which is shut down or otherwise inoperable or turn on any utility services;

(Q) operate any system or component which does not respond to normal operating controls, or shut-off valves;

(R) enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or may damage the property or its systems or components;

(S) enter the under-floor crawl spaces, attics or any area which, in the opinion of the inspector, is not readily accessible;

(T) inspect or determine the integrity of underground systems or components, including, but not limited to, main drain lines connecting to sewers, water lines, gas lines, electrical lines and underground storage tanks or other underground indications of their presence whether abandoned or active;

(U) inspect systems or components which are not installed, decorative items, systems or components

located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements and areas in multi-unit housing, such as condominium properties or cooperative housing;

(V) move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris;

(W) dismantle any system or component, except as explicitly required by these rules; or,

(X) light any standing gas pilot light that does not have a spark-ignitor, including but not limited to heating systems, water heaters and fireplaces; or,

(Y) determine the cost to correct any defect or provide cost estimates.

(4) The inspector shall not:

(A) offer or perform any act or service contrary to law;

(B) determine or report on the market value of the property or its marketability;

(C) report on the advisability of the purchase of the property; or,

(D) advertise or solicit to perform repair services on the inspected home for a period of one (1) year from the date of the inspection.

(c) **Structural system inspection requirements.**

(1) The inspector shall inspect:

(A) the foundation structure including slabs, piers, columns, posts, stem walls;

(B) the floor structure including beams, girders, joists, trusses, sill plates, blocking, bracing, drilling, notching and sub floors;

(C) the wall structure;

(D) the roof structure including rafters, trusses, sheathing, blocking, bracing, drilling, notching and fire stops;

(E) the ceiling structure including joists, trusses, blocking, bracing, drilling, notching and fire stops at ceiling penetrations; and,

(F) the crawlspace, basement and attic moisture conditions and indicators of harmful water penetration or condensation on structural components.

(2) The inspector is required to:

(A) describe the foundation, floor structure, roof structure, ceiling structure and wall structure;

(B) describe indicators of foundation or structural movement;

(C) enter the crawlspace and attic to determine the general condition of the components;

(D) report the method used to observe the crawlspace and attic if the inspector did not enter; and,

(E) probe structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required where no deterioration is visible.

(3) The inspector is not required to:

(A) enter a crawlspace or any foundation area where the headroom is less than 18 inches, the access opening is less than 18 inches by 24 inches, where the area is excessively wet, or where the inspector reasonably determines the conditions or materials are hazardous to the safety of the inspector;

(B) enter an attic space where head room is less than 30 inches, the access opening is less than 18 inches wide by 24 inches long, or where the inspector reasonably determines conditions or materials are hazardous to the safety of the inspector; or

(C) perform any invasive or destructive inspection.

(d) **Exterior inspection requirements.**

(1) The inspector shall inspect:

(A) the exterior wall covering, trim, flashings, caulking and protective coatings;

(B) all exterior doors and locking devices;

(C) overhead garage doors and garage door openers including safety mechanisms;

(D) storm windows and doors;

(E) attached decks/patios, balconies, stoops, steps, porches, and their associated railings;

(F) eaves, soffits and fascias;

(G) driveways and walkways leading to dwelling entrances;

(H) vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to have an adverse affect on the structure; and,

(I) the primary garage or carport.

(2) The inspector shall describe:

(A) the exterior wall covering;

(B) attached decks/patios and balconies;

(C) driveways; and,

(D) walkways.

(3) The inspector is not required to inspect:

(A) screening, shutters, awnings, and similar seasonal accessories;

(B) fences;

(C) geotechnical or hydrological conditions;

(D) recreational facilities;

(E) detached structures except the primary garage or carport;

(F) seawalls, break-walls, and docks; or,

(G) erosion control and earth stabilization measures.

(e) **Roof system inspection requirements.**

(1) The inspector shall inspect the:

(A) roof covering;

(B) roof drainage systems;

(C) flashings;

(D) skylights;

(E) chimneys;

(F) attic ventilation covers; and,

(G) other roof penetrations.

(2) The inspector shall describe:

(A) the roof covering;

(B) The inspector shall report;

(C) the number of layers of roof covering;

(D) asphalt/composition shingles over wood shingles; and,

(E) the methods used to inspect the roof.

(3) The inspector is not required to inspect:

(A) the interiors of flues or chimneys;

(B) antennae; or,

(C) other installed accessories.

(f) **Plumbing system inspection requirements.**

(1) The inspector shall inspect:

(A) the interior water supply and distribution systems and components;

(B) the connections, flow and drainage of fixtures, and fittings at bathtubs, showers, sinks, toilets and the exterior hose bibs immediately adjacent to the structure;

(C) the clothes washing machine faucets and drains, unless a washing machine is in place;

(D) drain, waste and vent systems and components;

(E) the shower and bathtub enclosure surfaces;

(F) the water heating equipment, safety devices/valves, clearances, vent systems, flues and chimneys, gas supply piping and gas shut off valves;

(G) the fuel storage and/or fuel distribution systems; and,

(H) the drainage sumps, sump pumps and related piping.

(2) The Inspector shall describe:

(A) water supply piping materials;

(B) drain, waste, and vent piping materials;

(C) the water heating equipment and the energy sources; and,

(D) the location of the main water shut-off, main fuel shut-off and the house sewer cleanout.

(3) The inspector is not required to:

(A) inspect the interiors of flues or chimneys, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems,

(B) determine the quantity or quality of the water supply;

(C) determine whether water supply and waste disposal are public or private;

(D) operate safety valves, shut-off valves or washing machine hose connections, if installed appliances are present; or,

(E) use technically exhaustive techniques to determine the water tightness or integrity of shower pans or enclosures.

(g) **Electrical system inspection requirements.**

(1) Except as provided in 158:70-1-3(b), the Inspector shall inspect:

(A) The service drop;

(B) the service entrance conductors, cables, and raceways;

(C) the service equipment and main disconnects;

(D) the service grounding;

(E) the interior components of service panels and sub panels by removing the panel dead front covers;

(F) the branch circuit conductors, over current protection devices and the compatibility of the conductors with the device;

(G) conduit, wiring and splicing including the basement, crawl space and attic;

(H) interior and exterior installed lighting fixtures, switches and ceiling fans;

(I) receptacles including polarity and grounding, ground fault circuit interrupters and arc fault circuit interrupters; and,

(J) exterior electrical components that provide service to a qualifying garage or carport.

(2) The Inspector shall describe:

(A) the amperage and voltage rating of the service;

(B) the wiring methods;

(C) the location of main disconnect(s), distribution panels and sub panels;

(D) the presence of solid conductor aluminum branch circuit wiring; and,

(E) the absence of smoke detectors.

(3) The inspector is not required to:

(A) inspect remote control devices unless the device is the only control device, alarm systems and components, low voltage wiring systems and components or ancillary wiring systems and components not a part of the primary electrical power distribution system;

(B) measure amperage, voltage/voltage drop, or impedance;

(C) insert any tool, probe or testing device inside panels or dismantle any electrical device or control other than to remove the dead front covers of the main and sub panels; or,

(D) test or operate any over current protection device except ground fault and arc fault circuit interrupters.

(h) **Heating, Air conditioning and distribution system inspection requirements.**

(1) **Heating systems.**

(A) The inspector shall open readily openable access panels

(B) The inspector shall inspect:

(i) the installed heating equipment including backup heating devices;

(ii) controls;

(iii) heating operation;

(iv) burners and burner chambers in fuel fired heating systems;

(v) combustion air provisions;

(vi) gas supply piping and shut off valve;

(vii) electrical supply provisions and disconnects;

(viii) clearances;

(ix) vent systems, flues, and chimneys; and,

(x) bathroom supplemental heating appliances.

(C) The inspector shall describe the heating methods by their distinguishing characteristics and the energy sources.

(D) The inspector is not required to:

(i) inspect the interiors of flues or chimneys, humidifiers or dehumidifiers, solar space heating systems, and heat exchangers;

(ii) measure amperage of electric heating elements.

(2) **Air conditioning systems.**

(A) The inspector shall open readily openable access panels.

(B) The inspector shall inspect:

(i) installed cooling equipment;

(ii) cooling operation;

(iii) condensate disposal provisions;

(iv) the electrical supply provisions and disconnect; and,

(v) the refrigerant lines.

(C) The inspector shall describe the cooling methods by their distinguishing characteristics and the energy sources.

(D) The inspector is not required to:

(i) verify sizing or component matching; or,

(ii) operate equipment when outdoor temperatures may cause damage to the equipment.

(3) **Heat and air conditioning distribution systems.**

(A) The inspector shall inspect:

(i) plenums and ducts with associated supports, insulation, supply registers and return grills;

(ii) radiators and piping;

(iii) filters; and,

(iv) main air handlers fans and blowers.

(B) The inspector shall describe the type of conditioned air distribution system.

(C) The inspector is not required to:

(i) inspect electronic air filters, heat reclamation equipment or dampers;

(ii) determine duct leakage or calculate duct sizing; or,

(iii) determine the uniformity, adequacy, or distribution balance of the heat or cooling supply to habitable rooms.

(i) **Interior inspection requirements.**

(1) The inspector shall inspect:

(A) walls, ceilings and floors of the dwelling and garage;

(B) steps, stairways, balconies and railings;

(C) doors and windows including operation, glazing and thermal pane seals;

(D) installed cabinets and countertops; and,

(E) indicators of harmful water penetration or condensation on interior and structural components.

(2) The inspector shall describe the walls, ceilings and floors.

(3) The inspector is not required to inspect:

(A) paint, wallpaper, and other finish treatments;

(B) carpeting and other floor coverings;

(C) window treatments;

(D) the operation of interior door locks, latches and devices; or,

(E) recreational facilities.

(j) **Insulation and ventilation inspection requirements.**

(1) The inspector shall inspect:

(A) insulation and vapor retarders/barriers in unfinished spaces,

(B) ventilation of attics and foundation areas,

(C) mechanical ventilation systems

(D) the clothes dryer exhaust system.

(2) The inspector shall describe:

(A) the insulation and vapor retarders or barriers in unfinished spaces; and,

(B) the absence of insulation in unfinished spaces at conditioned surfaces.

(3) The inspector is not required to:

(A) disturb insulation or vapor retarders or barriers;

(B) operate powered attic vents; or,

(C) determine indoor air quality.

(k) **Appliance inspection requirements.**

(1) The inspector shall inspect the:

(A) Food waste disposal;

(B) range/stove, regardless of whether it is an installed or free standing appliance;

(C) cook top;

(D) oven(s);

(E) dishwasher;

(F) ventilation equipment or range hoods;

(G) installed microwave;

(H) trash compactor; and,

(I) gas appliance connectors and shut off valves.

(2) The inspector shall describe the range/stove, cook top and oven(s) by the energy source.

(3) The inspector is not required to:

(A) operate appliances in all modes or self cleaning cycles; or,

(B) inspect clocks, timers, thermostats or household appliances not listed in these standards.

(l) **Fireplaces and solid fuel burning appliances inspection requirements.**

(1) The inspector shall inspect the:

(A) hearth and hearth extension;

(B) damper;

(C) gas supply; and,

(D) the firebox, vent systems, flues and chimneys.

(2) The inspector shall describe:

(A) the fireplaces;

(B) solid fuel burning appliances; and,

(C) chimneys.

(3) The inspector is not required to:

(A) inspect the interiors of flues or chimneys, the fire screens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, the heat distribution assists whether gravity controlled or fan assisted or free standing solid fuel burning appliances;

(B) ignite or extinguish fires;
(C) determine draft characteristics; and,
(D) move fireplace inserts, stoves or firebox contents.

[OAR Docket #10-983; filed 6-9-10]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #10-992]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 5. Rules of Practice [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
17 Okla. Stat. §§ 151, *et seq.*,
17 O.S. Section 52
27A O.S. Section 1-3-101
47 O.S. Section 162
52 O.S. Section 139
68 O.S. Section 1001
DATES:
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May 10, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010.
Final adoption:
May 26, 2010
Effective:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The need for the adopted rules is to enable the more efficient processing of cases before the Commission. Some of the rules correct typographical errors and clarify the meaning of rules. Some rules are necessary to accommodate changes made to other Chapters of the Commission rules or to remove rules that have expired. OAC 165:5-3-2 is amended to increase the fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket. OAC 165:5-7-6 and OAC 165:5-7-9 are amended to refine procedures for causes involving horizontal wells and directionally drilled wells.
CONTACT PERSON:
Michele Craig, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-2259.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-3. Definitions

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

"Administrative Law Judge" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"Applicant" means ~~a~~any person commencing a proceeding~~ either in the form of an application or a complaint, and includes the terms "plaintiff", "complainant", and "petitioner". "Applicant" also means an officer or employee of the Commission who commences a proceeding~~.

"Application" means ~~a petition or~~ any written request by an applicant commencing a proceeding for ~~authority, approval, determination, permission, or other~~ Commission action or relief.

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

"Commission" means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

"Commissioner" means a member of the Commission.

"Complaint" means the written document that opens a cause and seeks ~~every form of request for~~ enforcement of an order, rule, or regulation of the Commission or ~~for~~ relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

"Document" means ~~a pleading, an answer, written testimony, or~~ any ~~other~~ written matter filed in a cause. A "document" includes any attached appendices.

"Intervenor" means ~~a~~any party of record who is~~ person~~ not an applicant or named respondent~~ who obtains permission to enter the proceeding. An intervenor opposing an application will be deemed a party of record~~.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

"Order" means that which is required or ~~ordered~~commanded to be done, or not to be done, and

shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

"Party of record" means a person who makes formal appearance either in person or by an attorney at any stage of a cause whether or not seeking affirmative relief.

"Person" means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

"Protestant" means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

"Record" of any proceeding shall consist of the following:

(A) Preliminary exhibits, including ~~pertinent~~pleadings, motions, notices, and proof of publication~~.~~;

(B) Transcript of proceedings at all hearings~~.~~;

(C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters~~.~~;

(D) Exhibits, together with attachments, appendices, and amendments thereto~~.~~;

(E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any~~.~~;

(F) ~~Appeals~~Exceptions and motions subsequent to the hearing~~.~~;

(G) Orders or rules of the Commission~~.~~; and

(H) Any other document or matter relevant to the issues ordered to be included by the Commission.

"Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

"Regular mail" means first class ~~mail~~United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(m), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

"Restricted mail" means mailing by certified mail, return receipt requested, within the ~~continental~~ United States and its territories and mailing by registered mail outside the ~~continental~~ United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

"Secretary" means the Secretary of the Commission.

"Staff counsel" means the General Counsel or other attorney on the staff of the General Counsel's Office when acting as counsel for the Commission.

165:5-1-4. Office location; office hours; records

(a) **Principal office.** The principal office of the Oklahoma Corporation Commission is in the Jim Thorpe Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. The mailing address is P. O. Box 52000, Oklahoma City, Oklahoma, 73152-2000.

(b) **Regional service areas.** The Commission has two regional service areas described as the Eastern Regional Service Area and the Western Regional Service Area. The Eastern Regional Service Area shall consist of the land east of Oklahoma State Highway 99. The Western Regional Service Area shall consist of the land west of that highway. The establishment of these regional service areas shall not limit the services available from either regional service office.

(c) **Eastern regional service office.** In the Eastern Regional Service Area, the Commission maintains a regional service office located at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127.

(d) **Western regional service office.** In the western regional service area, the Commission's principal office serves as the regional service office.

(e) **Telephonic communication service.** The Office of Administrative Proceedings shall develop and maintain a system for providing telephonic communication service for all hearings.

(f) **Office hours.** For each regional service office or other office described in (a) through (d) of this Section, office hours shall be from 8:00 a.m. to 4:30 p.m., each day except Saturday, Sunday, and any legal holiday proclaimed by the Governor or official agency closing. Public records may be viewed during regular office hours. Copies of public records may be obtained from 8:00 a.m. to 4:00 p.m.

(g) **Exercise of Commission authority.** The Commission, or any person exercising its authority, may meet and exercise its official powers and functions at any location in the State of Oklahoma.

(h) **Oil and gas filings.** Applications for oil and gas development, administrative applications, and any other related oil and gas matters may be filed in any regional service office.

(i) **Central records.** The central record of all filings with all regional service offices shall be maintained in the regional service office of the Corporation Commission located in Oklahoma City.

(j) **Court Clerk.** ~~Every document submitted for filing shall be addressed to the Court Clerk at a regional service office, unless the Commission directs otherwise~~Every oil-and-gas-related document or order tendered to the Court Clerk shall be deposited with or mailed to the Court Clerk at a regional service office unless the Commission directs otherwise. All documents related to other matters shall be deposited with or mailed to the Court Clerk at the Commission's principal office unless the Commission directs otherwise. All persons mailing or presenting documents, including orders, to the Court Clerk or Office of Administrative Proceedings shall enclose a self-addressed postage paid envelope large enough for the return of a ~~filed~~file-stamped or processed copy, provided that a document other than a proposed order may be hand-delivered to the Court Clerk during normal business hours without

such an envelope so long as a file-stamped copy of the document is immediately obtained by the presenter. Failure to enclose a self-addressed postage paid envelope will result in a ~~filed~~file-stamped or processed document not being returned. No document will be mailed to anyone who obtains an immediate filed-stamped copy.~~Every oil and gas related document tendered for filing shall be deposited with or mailed to the Court Clerk at a regional service office. All documents related to other matters shall be deposited with or mailed to the Court Clerk at the western regional service office.~~ All documents shall be deemed received upon the date file-stamped by ~~that office~~the Court Clerk, subject to the provisions of 165:5-1-5(f). Filing of any document shall not be complete except upon payment of all applicable fees required by law or by the rules of this Chapter. Filing of any document with the Court Clerk shall be deemed filing with the Secretary.

165:5-1-4.1. Open records requests

(a) Records available to the public pursuant to the Oklahoma Open Records Act, 51 O.S. § 24A.1 et seq., may be obtained by directing written requests for records to the respective division directors or their designated appointees. This Section does not apply to records specifically required by the Commission to be kept confidential, including records subject to proprietary agreements, confidentiality orders and sealed exhibits. Charges for copies and research of such records shall be in accordance with OAC 165:5-3-1 and the Open Records Act, 51 O.S. § 24A.5(3).

(b) Any records, reports or information obtained pursuant to the Oklahoma Storage Tank Regulation Act and/or OAC 165:15, 165:16, 165:25, 165:26, 165:27, ~~and~~ 165:28 and 165:29 shall be available to the public unless a showing satisfactory to the Commission by any person that the records, reports or information, or a particular part thereof, if made public would divulge production of sales figures, methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such record, report or information or particular portion thereof.

165:5-1-5. Filing of documents

(a) **Document form.** Documents filed with the Court Clerk may be printed, typewritten or reproduced by any legible method. Documents shall be on ~~either 8 1/2" x 14" or~~ 8 1/2" x 11" paper. Exceptions to the required document size may be allowed by the Court Clerk for exhibits or other filed information that cannot be created on the required size paper. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and document type, e.g., application, motion, response, or brief. The original application shall include all this information, except the docket number, on each page.

(b) **Filing refused.** The Court Clerk is authorized to refuse to accept for filing any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such refusal, upon request, the document shall be presented to the Commission for ruling on acceptability for filing.

(c) **Signed original; copies.** A signed original of every document requiring an attorney's signature shall be filed for use of the Commission, with additional copies as may be required by the Court Clerk. The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, facsimile number and electronic mail address, if any. All documents, except notices of hearing, signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

(d) **Requirement conflicts.** Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.

(e) **Informal communications.** Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.

(f) **Facsimile transfers.** The Court Clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of appropriate filing fee and submission of a proper original and requisite copies within five (5) calendar days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a). New applications must be transferred and completed prior to 4:00 p.m. of each business day. A facsimile shall be deemed filed on date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within five (5) calendar days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will be destroyed and the original documents will not be deemed timely filed. If the original is not received within four (4) days of receipt of the facsimile, the Office of Administrative Proceedings will attempt to contact the person submitting the facsimile.

165:5-1-10. ~~Exemption from the Registration of~~ Out of State Attorneys ~~Act~~

~~(a) Attorneys practicing before the Oklahoma Corporation Commission shall be deemed exempt from the requirements of "Registration of Out-of-State Attorneys Act", 5 O.S. 2004 § 1.1, *et seq.*, when appearing before the Commission.~~

~~(b)~~ An attorney who is not a member of the Oklahoma Bar Association shall comply with the requirements of Chapter 1, Appendix 1, Article II, Section 5 of Title 5 of the Oklahoma Statutes, prior to appearing before the Oklahoma Corporation Commission.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-2. Fees for the Petroleum Storage Tank Division

(a) **General.**

(1) For each initial application filed on the Petroleum Storage Tank docket, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma. Filing fees shall not apply to any emergency application, subsequent pleading or amended application.

(2) Any fee assessed by this Section is either due and payable at the time of filing or due and payable at the time the service is requested. Neither service shall be rendered before payment of the prescribed fee nor shall the Court Clerk's Office or any division of the Commission accept any application subject to a filing fee until the required fee is paid. All fees are nonrefundable.

(3) The fees listed in this section may be paid by check, personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds. The check or money order should be made payable to the "Oklahoma Corporation Commission - Petroleum Storage Tank Division" and will be deposited to the Oklahoma Petroleum Storage Tank Revolving Fund.

(b) **Fees.**

(1) **Application fee.** The amount of fee to file an application on the Petroleum Storage Tank/Indemnity Fund docket is $~~35.00~~$100.00.

(2) **Annual fee.** An annual storage tank permit fee shall be charged to all owners of regulated petroleum storage tanks for each storage tank currently in use as follows:

(A) For petroleum storage tanks - $25.00 per tank.

(B) A facility which has both petroleum and hazardous substance will be considered as one facility.

(C) For noncommercial agricultural underground storage tanks containing petroleum products - $10.00 per tank.

(D) For any facility installed or permanently abandoned during a calendar year, the full yearly fee shall be assessed.

(E) Billings will be mailed out approximately 60 days in advance of the due date as noted on the billing.

(3) **UST Installer licensing fee.** Any individual who is to be licensed as an underground storage tank installer shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(4) **Remediation Consultant License.** Any individual who qualifies as a Remediation Consultant shall pay the following fees:

(A) Application fee - $25.00
(B) Examination/re-exam fee - $25.00
(C) License fee (2-year license) - $50.00
(D) License renewal fee (2-year license) $50.00
(E) If licensed for six months or less - $25.00

(5) **UST Remover licensing fee.** Any individual who is to be licensed as an underground storage tank remover shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(6) **AST Installer licensing fee.** Any individual who is to be licensed as an aboveground storage tank installer shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(7) **Vapor Monitoring Well Technician licensing fee.** Any individual who is to be licensed as a monitoring technician shall pay the following fees:

(A) Application fee - $25.00
(B) Examination fee/re-exam fee - $25.00
(C) License fee (2-Year license) - $50.00
(D) License renewal fee (2-year license) - $50.00
(E) If licensed for six months or less - $25.00

(8) **Miscellaneous fees.**

(A) **Certified copies.** A fee of $1.00 is charged for each certified copy of an order or other document on file with the Commission, in addition to the fees specified in this Section.

(B) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall be refundable:

(i) Batch reproduction on continuing basis (per page) - $0.25

(ii) Copy of any document prepared in OCC offices (per page) - $0.25

(C) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.

(D) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $7.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(E) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per

page including the cover page when not submitted for filing with the Court Clerk's Office.

(9) **Failure to pay fee.** Failure to pay by the designated due date, insufficient payments or returned payment of any fee within this subsection will result in the Corporation Commission being authorized to assess payment of any outstanding fee, plus:

(A) Assess payment of a penalty of 50% of the computed total fee of that application or facility; and/or

(B) Suspend tank operation until payment of any fee or penalty assessed under this subsection.

PART 3. PUBLIC UTILITY ASSESSMENT FEES

165:5-3-24. Payment of assessments

(a) Each public utility shall pay an assessment in equal amounts on a quarterly basis. For each fiscal year, the first quarterly payment shall be due no later than thirty (30) days from the mailing date of the notice provided by 165:5-3-22(c). Subsequent payments will be due as follows:

(1) Second quarterly payment due no later than October 1.

(2) Third quarterly payment due no later than January 1.

(3) Fourth quarterly payment due no later than April 1.

(b) A public utility may, at its discretion, pay its annual assessment prior to the due date of the quarterly payments.

~~(c) For the fiscal year beginning July 1, 1993, the first two (2) quarterly payments as determined under 165:5-3-22 shall be paid within fifteen (15) days of the mailing date of the notice provided by 165:5-3-22(c).~~

PART 4. ASSESSMENTS ON UNREGULATED ENTITIES

165:5-3-32. Commission determination of assessment

(a) In causes initiated on the Public Utility Docket by an unregulated entity seeking affirmative relief, fees may be assessed to the applicant unregulated entity upon a motion of the Staff of the Public Utility Division made within ninety (90) days after the application has been filed, after notice and hearing; provided, however, should the applicant make a material change in its application or add a separate cause after 90 days, the Commission may make an additional assessment.

(b) In considering whether or not to assess fees to the applicant unregulated entity, the Commission shall consider, although not be limited to, the following factors:

(1) The benefit(s) to the applicant if the requested relief is granted.

(2) The benefit(s) to the State of Oklahoma if the requested relief is granted.

(3) The public interest.

(4) Compliance with any other state or federal law under which this Commission has jurisdiction.

(5) Whether the applicant is a consumer group filing a case on behalf of themselves as consumer/members and the composition of the consumer group.

(c) The Commission shall make a determination of the estimated costs which will be incurred by the Commission for Commission resources and/or consulting services, that are required to process an application.

(d) In the event the actual costs of the Commission are less than the assessed amount, the difference will be refunded to the unregulated entity applicant.

(e) The Commission shall issue an order which shall include the following:

(1) Whether or not the unregulated entity will be assessed a fee.

(2) The amount of the fee to be assessed, which shall be no greater than the estimated amount, and which shall not be subject to modification, regardless of the cause being delayed or ~~appealed~~to which exceptions are filed, except as provided in 165:5-3-32(a).

(3) The date the payment shall be paid.

(f) All unregulated entity applicants who in their capacity as customers of a regulated utility file a complaint with the Commission seeking compliance with existing Commission rules and regulations and/or Commission approved tariffs shall not be assessed fees beyond the filing fee set forth in 165:5-3-1.

SUBCHAPTER 5. DOCKETS

165:5-5-1. Dockets; identifying initials

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:

(1) General docket (GD)

(2) Motor carrier docket (MC)

(3) Conservation docket (CD)

(4) Pollution docket (PD)

(5) Natural Gas Policy Act docket (US)

(6) Rulemaking docket (RM)

(7) Enforcement docket (EN)

(8) Transportation docket (TD)

(9) Public Utility docket (PUD)

(10) Petroleum Storage Tank docket (PSD)

(11) State fund plugging docket (SF)

(12) Consumer Services docket (CS)

(13) Oil and Gas Citation docket (OGC)

(14) Petroleum Storage Tank Division Citation docket (PSC)

(15) "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, US, SF and OGC.

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

(1) File-stamp each document received with the date of receipt.

(2) Record every document filed in the cause.

(3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission, an Administrative Law Judge, or the Court Clerk determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket. The Office of Administrative Proceedings shall send the order transferring the application to the proper docket to the applicant, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, and the Oil and Gas Conservation Division at OAC 165:5-7-27 (injection and disposal wells), the provisions of this Section shall govern the commencement of a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

(1) An application.

(2) A complaint.

(3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

(1) The heading, "Before the Corporation Commission of Oklahoma".

(2) The applicant.

(3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.

(4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.

(5) The title of the document.

(6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

(1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.

(2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.

(3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.

(4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the mailing address, ~~and~~ telephone number, facsimile number, electronic mail address and bar identification number of the person so signing it, as applicable. The person signing the application shall be deemed, on signing same, to be certifying that:

(1) He has read the application.

(2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.

(3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) ~~**Manner of service.** A document may be served on a party of record by regular mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service, which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail shall be complete on the date of mailing except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.~~**Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing, if required, in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application.

(g) ~~**Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing in~~

~~which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application. Thereafter, every document shall be served by the person filing it by regular mail upon all parties of record or, where the record has not been opened, upon the applicant and all named respondents.~~**Manner of service.** All documents subsequent to the application in a cause may be served on a party of record by regular mail, facsimile, electronic mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service, which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. Service outside the United States and its territories shall be by any means provided by Federal Rule of Civil Procedure 4(f). For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail, facsimile or electronic mail shall be complete on the date and time of transmittal except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, transmitted by facsimile, mailed electronically or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures.

(l) **Content of notice.** The notice shall specify:

(1) The time, date, and place of hearing.

(2) Briefly the general nature of the order, rule, regulation or other relief sought.

(3) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.

(4) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

(1) When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.

(4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-6. Drilling and spacing unit establishment or modification

(a) Notice of hearing relating to drilling and spacing units shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which lands embraced in the application are located.

(b) When an applicant proposes to establish, vacate, alter, modify, amend, or extend a drilling and spacing unit, the application and notice shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the proposed drilling and spacing unit or the existing drilling and spacing unit.

(c) A plat or plats shall be attached to each application for an order to establish a drilling and spacing unit or units or to extend existing spacing within a common source or sources of supply, which plat shall show the spacing units requested together with any spacing units abutting or overlapping the area to be spaced, and any abutting spacing units in all spaced formations. An amended plat shall be provided at the time of

the hearing in the event drilling and spacing units have been established after the application was filed and prior to the hearing to reflect the status of the spacing at the time of the hearing.

(d) An application to extend spacing from an adjacent drilling and spacing unit shall state in the body of the application the most recent order number that created the spacing in the adjacent unit that applies to the common sources of supply which are sought to be extended by the application. Such request to extend spacing and citation to the most recent order number shall be placed in the special relief paragraph of the notice of hearing.

(e) Where a well has not been commenced to or completed in the common source of supply sought to be spaced, notice of hearing for an order to vacate, alter, amend, extend, or change a prior spacing order shall be served and published as required in (a) of this Section. Such request to vacate, alter, amend, extend, or change a prior spacing order shall be placed in the special relief paragraph of the notice of hearing.

(f) Where two or more orders have issued spacing a common source of supply and such spacing orders have resulted in there being a conflict either as to the size of the unit or as to a common source of supply or a conflict as to the nomenclature of the common source of supply, then the applicant seeking to vacate, alter, amend, or change one of the prior spacing orders shall either file an application to construe and modify the conflicting orders or may amend a relevant application to accomplish the same result. Notice of hearing shall be served and published as required upon the commencement of a proceeding.

(g) The Commission may issue an order establishing horizontal well units for a common source of supply. ~~The order shall be in effect for a period of twelve (12) months from the date of issuance and shall automatically expire at the end of the twelve (12) month period unless:~~

~~(1) Operations for a horizontal well are being conducted, in which case the order shall expire thirty (30) days after completion of operations.~~

~~(2) Form 1002A has been filed with the Commission.~~

~~(3) The order has been previously voided by written request of the applicant.~~

~~(4) A request seeking an extension of time has been submitted.~~

(h) No order of the Commission authorizing a horizontal well unit ~~which includes~~that overlies any existing well or portion of any existing drilling and spacing unit producing from the same common source of supply will become effective until at least fifty percent (50%) of the ownership having a right to drill in each ~~of~~ such well and/or drilling and spacing unit consents in writing to the horizontal well unit by filing such written consent with the Court Clerk of the Commission in ~~each~~ such cause. In addition, if the boundaries of the horizontal well unit do not encompass such existing drilling and spacing unit in its entirety, then the application and notice for the horizontal well unit shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to participate in production from the existing drilling and spacing unit.

(i) ~~The~~Any written consent to the order required under subsection (h) of this Section shall not be a waiver of, nor commitment of, any rights of such owners in either the existing production or the proposed horizontal well unit. If the required percentage of consent cannot be obtained, the applicant may make application to the Commission for a waiver of the consent requirement, and upon a showing of good cause by the applicant, the Commission may waive the consent requirement.

165:5-7-9. Well location exception

(a) Notice of hearing for an order authorizing a well to be drilled for oil or gas into any common source of supply at a requested location therein other than that prescribed by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which the well location is proposed to be moved and the same notice also shall be required if the requested well location would be closer to the wells producing from those adjoining or cornering tracts of land or drilling and spacing units than would be permitted at a legal location. Provided, however, if the applicant, or any entity to be named operator of the requested well location, is the operator of any of the wells in an adjoining or cornering tract of land or drilling and spacing unit, identified herein above, then the applicant shall serve each working interest owner in such well by regular mail. All applications and notices for location exception shall specify the surface location of the well~~, and if the well is to be directionally drilled, then the application and notice shall also include the intended bottom hole location and the location of the well's entry into and the location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be drilled. Provided that, at the time of hearing, the well's surface location, the location of the well's entry into the common source of supply, the location of the well's exit from the common source of supply, and/or the bottom hole location, as set out in the notice of hearing, may be changed to another location which is not closer to the offsetting well or to the drilling and spacing unit or tract boundary described in the notice of hearing~~.

(b) ~~If at the time of the hearing, the applicant does not have the results of the well survey required by 165:10-3-27, then the Administrative Law Judge shall hear the cause and recommend the issuance of an order granting or denying the application and, if granting the application, assess any penalties based on the potential locations of the common sources of supply for which the order is sought. All potential locations shall be considered in the order.~~ For a directionally drilled well, the application and notice shall also include the proposed location of the well's entry into and the proposed location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling

and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be drilled. Provided that, at the time of hearing, the well's surface location may be changed and the location of the well's entry into the common source of supply and/or the location of the well's exit from the common source of supply, as set out in the notice of hearing, may be changed to another subsurface location which is not closer to the offsetting well or to the drilling and spacing unit boundaries or the tract boundaries described in the notice of hearing.

(c) ~~In the event a well is directionally drilled as described by 165:10-3-27 at an off-pattern surface location, according to 165:10-1-21 and 165:10-1-24 for well locations for spaced and unspaced common sources of supply, with the intended location of the well's entry into and exit from the common source of supply being a legal location, the operator shall comply with 165:10-3-27 regarding the well survey. If the well survey indicates the bottom-hole location of the well, upon its completion, is off-pattern, then the applicant shall file an application for location exception and provide notice in compliance with this Section.~~ For a horizontal well, the application and notice shall also include the proposed location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet of each end point of the completion interval from the two (2) nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two (2) nearest boundaries of the mineral estate(s) upon which the well will be drilled. In addition, a tolerance distance shall be expressed in terms of feet from the proposed completion interval. If the applicant does not intend to drill between the two end points of the completion interval on a straight line in the horizontal plane, the application shall contain a pre-plat depicting the proposed location of the entire completion interval within the unit or tract.

(d) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an administrative review by the Commission's Technical Services Department of the following documents, which must be filed with the Court Clerk for the record: the directional survey, a final plat showing the actual location of the lateral, and the well completion report. The applicant must also submit a proposed final order to the Commission's Technical Services Department regarding causes remanded for administrative review. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the cause setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(e~~d~~) Notice of hearing for an order authorizing a well to be drilled for oil or gas at a location other than that prescribed by a rule or order of the Commission shall be published pursuant to 165:5-7-1(n)(2).

165:5-7-12. Applications; determination of allowables

(a) **Scope.** Any applicant seeking relief under 165:10-13-5, 165:10-13-8, 165:10-15-1(g), 165:10-15-1(h), 165:10-15-16, and 165:10-15-18 shall have the option to proceed under either (b) through (i) of this Section or 165:5-7-1 and other applicable rules of practice.

(b) **Application.** The application shall be submitted on Form 1030 to the Technical Department of the Oil and Gas Conservation Division of the Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105-4993 for filing with the Commission.

(c) **Exhibits.** The applicants shall submit at the time of filing of the application all exhibits and data.

(d) **Notice of application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of application to substantially comply with the example shown in Appendix H to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application upon:

(A) The operator of the well subject to the application if the applicant is not the operator of the subject well.

(B) All operators of wells offsetting the well for which the relief is requested.

(C) All working interest owners of all offset wells operated by the applicant, if the applicant is the operator of the subject well.

(4) **Publication of notice.** The applicant shall have the notice of application published pursuant to 165:5-7-1(n)(2).

(5) **Proof of notice.** The applicant shall submit a certificate of mailing and an affidavit of publication to show compliance with the requirements of this Section.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk of the Commission its protest which shall be entitled "Protest" and which shall contain the following information:

(A) Caption from application.

(B) Title - Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The Protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) **Protest periods.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period, which shall run for fifteen (15) days from the date of the latest of the following events:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date on which the last publication was made.

(D) The date of completion of service of process on all respondents in the cause.

(2) **Additional protest period.** After expiration of the protest period, an additional fifteen (15) day protest shall run if:

(A) The applicant amends the application to change the location or nature of the requested relief; or

(B) The applicant files amended applications in order to re-notice original parties, or initially notice new parties to the application.

(C) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.

(g) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or ~~appeal~~file exceptions to the report pursuant to 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) **Protested applications.**

(1) **Hearing required.**

(A) A hearing shall be required on each timely protested application except as provided in (h) of this Section.

(B) A hearing may also be requested by the subject operator upon denial of the administrative application by the Technical Department of the Oil and Gas Conservation Division of the Commission.

(2) **Notice of hearing.** The applicant shall obtain a hearing date from the Office of Administrative Proceedings. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix I to this Chapter.

165:5-7-25. Vacuum at the wellhead [REVOKED]

~~(a) Each application for approval to impose a vacuum on a well, pursuant to 165:10-3-31, shall be filed on Form 1022A and shall be verified. The following shall be filed with the application:~~

~~(1) A plat, color coded as to producing zone, showing the locations of all producing wells within one-half (1/2) mile of the well location.~~

~~(2) An electric well log of the subject well, if available; otherwise a drillers log.~~

~~(b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. An affidavit of notice shall be filed within five (5) days of filing of the application.~~

~~(c) No notice is required to be published.~~

~~(d) If a written objection to the application is filed within fifteen (15) days after the application is mailed or if hearing is required by the Commission, then the application shall be set for hearing and notice thereof shall be given by the applicant in the same manner as required in OAC 165:5-7-1. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or a designee who shall file a report and make recommendations.~~

~~(e) All exhibits which shall be relied upon by the applicant at the hearing on the merits, if required, shall be filed with the Court Clerk and provided by the applicant to the Director of Oil and Gas Conservation not less than ten (10) days prior to hearing.~~

165:5-7-27. Enhancement or addition of injection and disposal wells

(a) Each application for the approval of a newly drilled or newly converted injection well or disposal well shall be filed ~~at~~with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

(1) Plat.

(A) Noncommercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface

owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing leasehold within one-quarter (1/4) mile of each enhanced recovery injection or disposal well.

(B) Commercial ~~disposal well~~. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing leasehold within one-half (1/2) mile of each disposal well.

(2) If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.

(B) The depth of the injection or disposal interval indicating both the top and bottom.

(C) The geological name of the injection or disposal zone.

(D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission sworn evidence and data in support of such findings. The Commission, when issuing a permit approving fluid injection, shall consider the following:

(i) Maximum injection rate.

(ii) Maximum surface injection pressure.

(iii) Injection fluid.

(iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) Proposed operating data:

(A) Daily injection rates and pressures.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to the owner of the surface of the land on which the injection or disposal well is to be located and to each operator of a producing leasehold within one-half (1/2) mile of the well location.

(d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma ~~City~~County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:

(1) PD or tracking number.

(2) Name and address of applicant.

(3) Location of proposed well to nearest 10 acre tract.

(4) Well name.

(5) The geological name of the injection formation.

(6) The top and bottom of the injection interval.

(7) Maximum injection pressures.

(8) Maximum B/D or MCF/D injection rate.

(9) The type of well (injection, disposal, commercial).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter may be approved administratively by the Manager of Underground Injection Control.

(f) Optionally, the operator can file a Unit-wide Application for Injection (Form 1015U) that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit-wide permit that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit-wide criteria, the UIC permit can be issued immediately without additional area of review, notice, or protest period.

165:5-7-28. Procedure for aquifer exemption

(a) Each application for an order designating a USDW as an exempted aquifer shall comply with the requirements of OAC 165:5-7-1.

(b) Within two (2) days after filing an application, the applicant shall file with the Court Clerk and submit to the Director of Underground Injection Control (UIC) for the Conservation Division the following:

(1) Plat of the governmental section(s) underlain by the aquifer with the production for the area designated thereon.

(2) Copies of completions records (1002A) for the oil and gas disposal and injection well(s) in the aquifer or a tabulation of the wells indicating the following information, if available, from public records:

(A) Dates the wells were drilled.

(B) The present status of the wells.

(3) Analysis of total dissolved solids for the waters produced from the aquifer to be exempted.

(4) An affidavit stating that the aquifer does not currently serve as a source of drinking water.

(5) Prefiled testimony, as provided in 165:5-13-3(j), by sworn statement, that the aquifer cannot now or has no reasonable future prospect of serving as a source of drinking water because:

(A) It is mineral, hydrocarbon or geothermal energy producing.

(B) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical.

(C) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) Prefiled testimony, as provided in 165:5-13-3(j), by sworn statement, as to the hydrological connection of the aquifer to any other aquifer or portion thereof with a TDS content of 5,000 ppm or less.

(7) The requirements of (4) and (5) of this subsection may be waived by the Director of UIC (Underground Injection Control) if the applicant intends to present the information by testimony at the time of hearing.

(8) Any order issued pursuant to this Section granting an application shall set forth the legal description of the lands underlain by the exempted aquifer and describing the exempted aquifer by approximate depth.

(c) Notice of public hearing shall be made by publication in the county(ies) where the aquifer is located and in Oklahoma County not less than thirty (30) days prior to the hearing date. The notice shall substantially conform to Appendix A to this Chapter. In addition, the notice shall contain a statement that supporting exhibits are available from the Court Clerk for review or copying, under the cause number.

(d) Notice of Hearing, together with a copy of the application, shall be served by the applicant by regular mail, no less than thirty (30) days prior to the hearing, upon the chief executive officer of each incorporated town or municipality, chairman of any rural water district in the area covered by the application, the Oklahoma Water Resources Board, and the Oklahoma State Department of Health, Water Supply Branch.

(e) Objection to granting the application or notice of interest in the cause must be filed no less than five (5) days prior to hearing.

(f) The Commission upon the filing of an application under this Section, shall designate a panel to serve as Administrative Law Judges in the matter, with a designated chairman, pursuant to the rules of the Commission. The panel shall be composed of three (3) members, one with each of the following qualifications:

(1) An attorney experienced in oil and gas matters.

(2) A geologist.

(3) An engineer.

(g) The panel shall make its recommendation to the Commission based upon the record in the cause.

(h) All ~~appeals~~exceptions to the recommendation of the panel shall be directly to the Commission en banc.

165:5-7-30. Amending existing orders authorizing injection for enhanced recovery, saltwater disposal, or LPG storage wells

(a) Each application for an amendment to an existing order shall be filed on Form ~~1015A~~1015 and comply with the requirements of OAC 165:5-7-27(a) and (b).

(b) The application shall also include a statement of facts explaining in detail the nature of and the reason for the amendment, and shall be signed by a duly authorized agent of the operator.

(c) Notice of the application relating to the nature of the amendment shall be published pursuant to OAC 165:5-7-1(n)(2). The notice shall include:

(1) ~~PD~~UIC tracking number.

(2) Name and address of applicant.

(3) Location of proposed well to nearest 10-acre tract.

(4) Well name.

(5) The geological name of the injection formation.

(6) The top and bottom of the injection interval.

(7) Maximum injection pressures.

(8) Maximum B/D or MCF/D injection rate.

(9) The type of well (injection, disposal, commercial, LPG storage).

(d) If a written objection to the application is filed with the Commission within fifteen (15) days after notice of the application is published or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required ~~for the filing of the application~~in OAC 165:5-7-1. If no objection is filed and if the Commission does not require a hearing, the ~~matter shall be presented~~application may be approved administratively ~~to~~by the Manager of Underground Injection Control~~ who shall file his report and make his recommendations~~.

165:5-7-33. Extension of time for closure of a noncommercial pit

(a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-7-16 to extend time for closure of a pit.

(b) **Application form.** The applicant shall prepare the application in a form which complies with OAC 165:5-7-1.

(c) **Affidavit.** The applicant shall attach to the application an affidavit explaining the applicant's reasons for the extension.

(d) **Site inspection.** The applicant shall be responsible for obtaining a site inspection by representative of the Conservation Division.

(e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.

(f) **Dismissal for noncompliance.** Failure to complete the application, submit the affidavit and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.

(g) **Notice of the Application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix B to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Soil Conservation District.

(B) Each surface owner and surface lessee of the tract on which the pit is located.

(4) **Publication.** Publication of the notice of the application is required.

(5) **Proof of notice.** The applicant shall submit a certificate of service.

(h) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The Protestant shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.

(B) Title: protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) **Protest period.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date of completion of service of process on all respondents in the cause.

(D) Site inspection of the facility.

(j) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or ~~appeal~~file exceptions to the report as under 165:5-13-5.

(k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(l) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix C to this Chapter.

165:5-7-34. Waiver of pit closure requirements

(a) **Section applicability.** The provisions of this Section shall apply to each application under 165:10-7-16(e)(7) to exempt an operator from responsibility for closure of a pit and transfer to the surface owner responsibility for maintenance and closure of the pit.

(b) **Names required.** Each application under this Section shall be filed in the name of the well operator and the surface owner of the land on which the pit is located.

(c) **Surface owner signature.** The application shall not be approved without the signature of the surface owner on the application.

(d) **Application form.** The applicants shall prepare the application in a format which complies with Appendix D to this Chapter.

(e) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data required by 165:10-7-16.

(f) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice and perform the site inspection within sixty (60) days after the date of filing of the application shall be grounds for dismissal of the application.

(g) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The data and time for a site inspection to be made by the applicant, a Commission representative, and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix D to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Soil Conservation District.

(B) Each adjacent surface owner and surface lessee.

(4) **Proof of notice.** The applicant shall submit a certificate of service.

(h) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall contain the following information:

(A) Caption from application.

(B) Title: Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(i) **Protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for fifteen (15) days from the last of the following events to occur:

(1) Filing of the application.

(2) Filing of all required exhibits.

(3) The date of completion of service of process on all respondents in the cause.

(4) Site inspection of the facility.

(j) **Unprotested applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicants may move for a hearing de novo or ~~appeal~~file exceptions to the report as under 165:5-13-5.

(k) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(l) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (k) of this Section.

(2) **Notice of hearing.** The applicants shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Field Operations. The applicants shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix E to this Chapter.

165:5-7-35. Operation of commercial pit, ~~and/or~~ commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application for authority to operate a commercial pit under 165:10-9-1, ~~and/or~~ a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 shall comply with the application requirements of OAC 165:5-7-1(a) through (e). The Commission will not accept an application for an emergency order approving a commercial ~~disposal~~ facility that requires a permit under OAC 165:10-9-1, ~~or~~ OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Exhibits.** ~~The~~At the time of the filing of the application, the applicant shall submit ~~at the time of filing of the application~~ all exhibits and data.

(c) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice, and perform the site inspection within sixty (60) days after the date of filing of the application may be grounds for dismissal of the application.

(d) **Notice of the application.**

(1) **Contents.** The notice of the application shall contain the following information:

(A) A brief description of the relief sought.

(B) The terms of the protest period.

(C) The date and time for a site inspection to be made by the applicant, a Commission representative and any interested person.

(D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix F to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

(A) The Oklahoma Conservation Commission, 2800 North Lincoln, Suite 160, Oklahoma City, Oklahoma 73105.

(B) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the site of the proposed facility.

(4) **Newspaper publications.** The applicant shall publish the notice of the application:

(A) Two times in a newspaper of general circulation in Oklahoma County, Oklahoma.

(B) Two times in a newspaper of general circulation in each county where the proposed facility will be located.

(5) **Proof of notice.** The applicant shall submit a certificate of service and affidavits of publication.

(e) **Protests.**

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

(A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.

(B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall be entitled protest and which shall contain the following information:

(A) Caption from application.

(B) Title: Protest.

(C) Name, address, and telephone number of protesting parties.

(D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) **Protest periods.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for thirty (30) days from the last of the following events to occur:

(A) Filing of the application.

(B) Filing of all required exhibits.

(C) The date on which the last publication was made.

(D) The date of completion of service of process on all respondents in the cause.

(E) Site inspection of the proposed facility.

(2) **Additional protest period.**

(A) After expiration of the protest period, an additional ten (10) day protest shall run:

(i) If the applicant amends the application to change the location of the facility or increase its size; or

(ii) If the applicant files amended exhibits changing the design of the facility.

(B) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.

(g) **Unprotested Applications.**

(1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.

(2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or ~~appeal~~file exceptions to the report as under 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) **Protested applications.**

(1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (h) of this Section.

(2) **Notice of hearing.** The applicant shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Pollution Abatement. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.

(3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.

(4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix G to this Chapter.

165:5-7-38. License for pulling pipe and plugging wells

(a) The application for a license for pulling pipe and plugging wells shall state:

(1) The name of the applicant.

(2) The names and addresses of all partners, chief officers, and directors.

(3) The experience of applicant.

(4) Evidence of financial responsibility of the applicant.

(5) The counties in which the applicant will operate.

(b) Notice that an application has been filed shall be published by the applicant in a newspaper of general circulation in Oklahoma ~~City~~County, Oklahoma, and in a newspaper of general circulation published in the county where the applicant's principal place of business is located. The notice shall include:

(1) The name of the applicant.

(2) Generally what operations the applicant intends to conduct.

(3) That applicant is financially responsible.

(4) The counties in which applicant will operate.

(c) If a written objection to the application is filed within fifteen (15) days after the application is published or if a hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Manager of Field Operations who shall file a report and make recommendations to the Commission.

(d) A license may be suspended or revoked for good cause upon application, after notice and hearing.

PART 5. PUBLIC UTILITIES

165:5-7-60. Reciprocity of final orders between states - electric

When any rural electric distribution cooperative serves the lesser of ten percent (10%) or five hundred (500) of its members within the State of Oklahoma, the rates, charges, and terms and conditions of service within the ~~oklahoma~~Oklahoma portion of such service territory shall be those prescribed by the regulatory agency of the adjacent state within which the central office of the rural electric distribution cooperative is located; provided that:

(1) The rural electric cooperative shall file all pleadings with this Commission within ten (10) days subsequent to filing the pleadings with the adjacent state where such central office or offices are located, or within ten (10) days of the effective date of this Section.

(2) The rural electric distribution cooperative shall publish notice for the customers located within Oklahoma stating that the customer may contact the Commission regarding any objection to the proposed rate increase.

(3) The consumers shall be individually notified of the date when the thirty-day time period will lapse and that any protest must be entered prior to that date with the Director of Public Utilities, Oklahoma Corporation Commission, Jim Thorpe Office Building, Oklahoma City, Oklahoma 73105.

(4) The rural electric distribution cooperatives shall comply with all rules and regulations prescribed by the Commission or in the absence of that compliance shall clearly indicate by footnoting on the filed tariffs and/or terms and conditions of service, any and all departures from the Commission's Rules and Regulations Governing Electric Utilities, OAC 165:35, which are currently in effect.

(5) Such rates and charges prescribed by an order of the Regulatory Agency of such adjacent state, after hearing on the merits have been held in such adjacent state, shall be filed with the Corporation Commission of the State of Oklahoma.

(6) Unless this Commission, within thirty (30) days after filing of the rates and charges approved by the adjacent state, determines that additional hearings are required to either accept or reject such rates and charges, then such rates and charges shall be lawfully effective for the next regular billing for the Oklahoma customers served by the rural electric distribution cooperative.

165:5-7-61. Procedures for causes filed pursuant to OAC 165:70

(a) **Purpose.** The purpose of this Section is to establish procedures regarding rate change causes filed on the Public Utility Docket pursuant to OAC 165:70 which will allow the Oklahoma Corporation Commission to fulfill its responsibility to process rate changes within the time prescribed by Title 17 O.S. (Supp. 1993) § 152 et seq.

(1) This Section shall apply to all parties to the proceeding, including the utility, the Commission Staff, the Attorney General and any intervening party of record.

(2) To the extent this Section conflicts with other Sections of the Commission's Rules of Practice, OAC 165:5, the procedures established in this Section shall control.

(b) **Definitions.** The definitions set forth in OAC 165:70-1-2 shall be deemed applicable to this Section.

(c) **Intervening party requirement.**

(1) The Commission Staff, the Attorney General and any intervening party of record shall conform their testimony and exhibits to the format set forth in OAC 165:70-5-4. A waiver of any requirements of Chapter 70 shall be obtained as outlined in OAC 165:70-3-6.

(2) Any interested person seeking to intervene pursuant to OAC 165:5-9-4 shall request permission to intervene no later than ninety (90) days following the filing date of the application for a general rate change. The filing or granting of any Motion to Intervene shall not be grounds to delay, continue or extend any hearing date, deadline or time limit set or to be set in a proceeding.

(3) If the Commission does not rule on a motion to intervene within twenty (20) days from the date the motion to intervene is filed, the motion to intervene shall be deemed to have been granted.

(d) **Data requests/responses.** Any party, including but not limited to the utility, the Commission Staff, the Attorney General and any other intervening party of record, shall answer, within ten (10) business days from the date of receipt, all data requests issued, unless an objection is filed or the parties agree in writing to a different response time. Any data requests received after 3:00 p.m. shall be deemed received the next regular business day.

(1) Data requests submitted by any party prior to the date of filing the application package shall be deemed received the date the application package is filed pursuant to OAC 165:70-3-1.

(2) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(3) The party served with the data request shall notify the issuing party within five (5) business days of receipt of the requests that the ten (10) business day requirement or otherwise agreed-upon response time cannot be met and provide an explanation for the delay. The party served with the data request shall commit, at the time of such notification, to a response date.

(~~3~~4) Any objection(s) relating to a data request or the date a response is to be provided shall be presented by the objecting party within five (5) business days of receipt of the data request. If the parties are unable to reach a resolution regarding the dispute within three (3) business days of the date of the objection, the objecting party shall file a written objection and a hearing on all such objections shall be set on the next Public Utility Motion Docket. It shall be the responsibility of the objecting party to notify the Commission or the Administrative Law Judge that the matter will appear on the Docket.

(e) **General instructions regarding testimony and exhibits.** The following instructions are applicable to all classes of utilities, the Commission Staff, the Attorney General and any intervening party of record who filed testimony and exhibits regarding a general rate change filed pursuant to OAC 165:70:

(1) All schedules and exhibits shall be mathematically correct and properly cross-referenced.

(2) All schedules and exhibits shall be designated as provided in 165:70-5-4.

(3) Headings on all schedules and exhibits shall clearly indicate the party's name, the nature and content of the schedule, the test period covered and the cause number.

(4) All schedules and exhibits shall be typed and/or clearly legible.

(f) **Filing of responsive and rebuttal testimony, notice of major issues to be raised and oral surrebuttal.**

(1) The Commission Staff, the Attorney General and any intervening party of record seeking to present evidence shall file responsive testimony and exhibits no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. Any party seeking only to cross-examine witnesses shall file a statement of position no later than the one hundred twentieth (120th) day subsequent to the filing date of the application for a general rate change. At the time of filing testimony the Commission Staff, the Attorney General and any intervening party of record shall, upon request, provide a copy of the workpapers which support the recommendations contained in their testimony to the requesting party of record. The workpapers shall be organized and presented in the same format as required of the utility by Part 5 of OAC 165:70-5.

(2) The Commission Staff, the Attorney General and any intervening party of record shall provide to the utility, thirty (30) days prior to filing responsive testimony, a list of any major issues the party anticipates to raise in connection with the utility's application for a general rate change. Said list of anticipated major issues shall be updated, as necessary, up to five (5) days prior to filing responsive testimony.

(3) If the utility elects to present rebuttal testimony, the rebuttal testimony shall be filed by the one hundred fortieth (140) day subsequent to the filing date of the application for a general rate change.

(4) A hearing on the merits shall commence no later than the one hundred fiftieth (150th) day subsequent to the date the application for a general rate change was filed pursuant to OAC 165:70-3-1.

(5) Parties filing direct testimony pursuant to this subsection (f) may present oral rebuttal testimony to any issue raised for the first time during the hearing. Parties filing responsive testimony pursuant to this subsection (f) may present oral surrebuttal.

(6) Nothing in this Section shall preclude the trier of fact from permitting parties who filed testimony to present oral surrebuttal regarding issues raised for the first time in oral testimony presented during the hearing, if deemed appropriate.

(g) **Staff's schedule of auditing and investigation dates.**

(1) The Director, within thirty (30) days following the receipt of the filing of the Notice of Intent, shall advise the utility of the approximate date on which the Commission Staff will conduct its field review of that portion of the supplemental package, if required, which is impractical to produce, voluminous and/or confidential, to assess compliance with the Minimum Filing Requirements.

(2) The Director, within thirty (30) days following the receipt of the filing of the Notice of Intent, shall advise the utility of the approximate date(s) on which the Commission Staff will conduct its field investigation and audit of the rate request.

(h) **Hearings regarding intervention, waiver of requirements, deficiencies, the confidentiality agreement and/or protective order.** Any hearings regarding motions to intervene disputes related to the Waiver of Requirements contained in OAC 165:70, Deficiencies, the Confidentiality Agreement and/or the need for a protective order shall be set before the Commission en banc, since time is of the essence in resolving these disputes.

(i) **Amending an application.**

(1) A utility may not significantly amend an application for a general rate change filed pursuant to OAC 165:70 after it has been docketed by the OCC Court Clerk, except as provided in this subsection.

(2) An amendment may be accommodated by withdrawing the initial filing and substituting a new, amended filing in place of the original cause, which will establish a new filing date. An amended filing must conform to the requirements of OAC 165:70-5-1 and will be subject to the sanctions in OAC 165:70-5-2.

(3) For purposes of this Section, an amendment shall be deemed "significant" if it changes the test year, or if it requests more than a five percent (5%) increase in the previously requested revenue requirement, unless such changes are the result of arithmetical error or are mandated by law.

(4) A utility may incorporate a significant change without refiling an entirely new case by agreeing to restart the 180-day period. The new period would begin when the amended application is filed.

(j) **Limitations on active applications for a general rate change.**

(1) A utility may not have more than one active general rate change application pending before the Commission at any one time, unless the Commission has failed to issue a final order upon the first application within two hundred seventy (270) days of that application's filing date. This shall not prohibit the utility from filing a new application for a general rate change if the utility can show its financial integrity or service reliability is materially impacted during the period from the closing of the record to the time in which the Commission makes a final determination on an active rate application.

(2) A cause which has been remanded to the Commission by the Oklahoma Supreme Court after appellate review shall not be deemed an active general rate change application pursuant to this Section.

PART 7. MOTOR CARRIERS

165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses

~~(a) Notice of an application relating to intrastate motor carrier of household goods authority shall be published prior to hearing once each week for two (2) consecutive weeks as follows:~~

~~(1) For original or sub-certificate or permit as an intrastate motor carrier of household goods in a newspaper of general circulation published in the county seat or the largest city of the county of the applicant's principal place of business; or,~~

~~(2) For transfer of intrastate certificate or permit of household goods in a newspaper of general circulation published in the county seat or the largest city in the county in which is located the principal place of business of the transferor and transferee.~~

~~(b) Notice of an application for a rate or tariff change requiring a hearing shall be published prior to hearing once each week for two (2) consecutive weeks in a newspaper of general circulation published in Oklahoma and Tulsa Counties.~~

~~(c) Any non-resident of Oklahoma shall be deemed to have its place of business in Oklahoma County for the purpose of this Section.~~

~~(d) All other types of authority applications relating to intrastate motor carriers of household goods shall be published in the Commission's Transportation Docket.~~

~~(e)~~ Applications for an intrastate for-hire motor carrier license or intrastate private carrier license, renewal of an intrastate for-hire motor carrier license or renewal of an intrastate private motor carrier license and a household goods certificate or a renewal of a household goods certificate shall be processed administratively unless a protest is filed with the Court Clerk's office or the staff of the Transportation Division requests the application be set for hearing.

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-1. Response to initial pleading

(a) **Scope.** Except where otherwise specifically provided in this Chapter, including the Petroleum Storage Tank Division at OAC 165:5-21-5 and OAC 165:5-21-6, the provisions of this Section govern pleadings filed after a cause has been commenced by an application.

(b) **Form.** Every document in opposition to an application shall be styled a "Response" and shall contain:

(1) **Caption.** The response shall contain the same caption as in the application.

(2) **Body.** The response shall contain four numbered paragraphs, as follows:

(A) **Parties.** The respondent shall be identified, including:

(i) Name, address, and telephone number of his attorney or designated representative.

(ii) Nature of his interest in the subject matter of the cause.

(B) **Allegations of fact.** Response to the allegations of fact shall include:

(i) Admissions of all allegations of fact admitted by the respondent.

(ii) Specific denial of any allegations of fact respondent alleges and expects to prove to be untrue.

(iii) Allegations of all other facts necessary or appropriate to support respondent's position. Failure to deny specifically any allegation of fact will not relieve the person making the allegation of the burden of proving it.

(C) **Legal authority.** Citations of statutes, rules, orders, and decided cases in support of the response or in opposition to the granting of the relief sought in the application.

(D) **Relief sought.** A brief statement of the relief sought by respondent, including any affirmative relief sought which is not set out in the application.

(c) **Subscription.** The response shall be signed by the respondent, or an authorized agent of the respondent, or by the attorney for the respondent, and shall set out the mailing address, ~~and~~ telephone number, facsimile number, electronic mail address and bar identification number, of the person so signing it, as applicable.

(d) **Time for filing.** Response to an application may be filed at or before the date of the hearing. Any person appearing at the hearing, as the Commission or Administrative Law Judge may deem appropriate, may be heard and permitted to offer evidence whether or not he has filed a written response or other pleading, except as provided in OAC 165:5-19-1.

(e) **Default.** Any named respondent who fails to file response within the time specified shall be deemed in default, and the Commission or Administrative Law Judge may proceed to hear the cause without further notice to a person in default. Except as provided in OAC 165:5-19-1, no applicant will by default of an adverse respondent be relieved from the burden of proving the material allegations of fact upon which his claim for relief is based.

165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service by regular mail, facsimile, electronic mail or in person as provided in this subsection, stating in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a cause has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given by the movant by serving at least five (5) days prior to the date set for hearing by regular mail, facsimile, electronic mail or in person a copy of the motion and notice on each respondent.

(B) After the record in the cause has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given by the movant by serving, at least five (5) days prior to the date set for hearing, by regular mail, facsimile, electronic mail or in person a copy of the motion and notice to all parties of record.

(2) Exceptions to ~~Such~~such motions may be ~~appealed~~lodged in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the cause has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a cause shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

(c) **Response/objection to motions.** Any person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Such dismissal shall not dismiss the cause as to affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has failed to receive notice of the dismissal or who has requested affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened at the hearing on the merits in a cause, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a cause, the cause may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a cause where a motion to dismiss has

been filed, notice shall be served on each respondent in the cause.

(3) Upon five (5) days notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

(A) Failure to prosecute.

(B) Unnecessary duplication of proceedings or res judicata.

(C) Withdrawal.

(D) Moot question or obsolete applications.

(E) Lack of jurisdiction.

(F) Failure to submit a proposed order in a timely manner.

(G) For other good cause shown.

(4) Upon posting by the Office of Administrative Proceedings fifteen (15) days notice on a disposition docket, and mailing notice to all parties of record to a cause, the Commission may dismiss causes for any of the following reasons:

(A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.

(B) Failure to set a cause on a day certain.

165:5-9-3. Emergency applications

(a) **Filing.** After an application for emergency relief is filed with the Court Clerk, it may be placed on the Commission's Emergency Docket. The requisite number of file-stamped copies of the application shall be submitted to the Commission on or before 2:00 P.M. of the day preceding the hearing. No application for emergency relief shall be accepted for filing by the Court Clerk without a base application being previously filed. No base application shall be dismissed without hearing subsequent to the issuance of an emergency order in the same cause. A motion to dismiss shall be filed. Emergency applications for motor carrier causes shall be set for hearing in accordance with the provisions of the Commission rules and regulations governing motor carriers, OAC 165:20. The Commission will not accept an application for an emergency order approving a commercial ~~disposal~~ facility that requires a permit under OAC 165:10-5-5, OAC 165:10-9-1, ~~or~~ OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Notice.** Notice of hearing on an emergency application shall be served on all parties otherwise entitled to notice under the base application not less than five (5) days prior to the date of the emergency hearing; provided that, if the applicant has received written approval from all parties of record and respondents, the provisions of this Section shall not apply. Notice of hearing on motor carrier emergency applications shall be set on the Commission docket as prescribed by law.

(c) **Exception.** In order to protect the public health and safety, the Commission may issue an emergency order without notice and hearing and without the filing of a base application.

165:5-9-4. Intervention and parties of record

(a) Any person, not subject to subsection d of this Section, interested in the subject matter of a cause may become a party of record by filing a motion for intervention, which shall be accompanied by a notice of hearing and set for hearing on the next motion docket or as agreed to by the parties of record and the Commission or Administrative Law Judge. The Commission or an Administrative Law Judge shall prescribe terms and conditions upon which intervention shall be allowed.

(b) An intervention shall follow the form provided elsewhere in this Chapter for an application or a response. An intervention may seek affirmative relief.

(c) Each motion to intervene, accompanied by the notice of hearing, shall be served to all parties of record.

(d) ~~A person named as a respondent, a person entitled to individual notice in a cause, a person seeking to intervene with the agreement of the applicant, all parties of record, and the Commission or Administrative Law Judge, or the Attorney General's Office shall become a party of record by filing an entry of appearance or orally stating an entry of appearance at any proceeding regarding the cause.~~The following persons shall become a party of record by filing an entry of appearance or orally stating an entry of appearance at any proceeding regarding the cause:

(1) A person named as a respondent,

(2) A person entitled to individual notice in a cause,

(3) A person seeking to intervene with the agreement of the applicant, all parties of record, and the Commission or Administrative Law Judge, or

(4) The Attorney General.

165:5-9-5. Joinder and consolidation of parties and proceedings

(a) An application may join two or more separate requests for relief or Commission action, or may request two or more types of action or relief in the alternative. An application relating to oil and gas conservation or pollution shall seek only one type of relief.

(b) A complaint may join two or more grounds of complaint, whether or not arising out of the same transaction, but each separate action complained of shall be separately stated and numbered.

(c) Two or more complainants may join in one complaint if their respective complaints are against the same person or persons and involve substantially the same subject matter and grounds.

(d) The Commission or Administrative Law Judge may consolidate two or more causes for hearing where such action would be just.

(e) Upon motion of a person, or upon its own motion, with or without notice, the Commission may order a person to be joined as a party of record and to appear in a proceeding. The movant shall cause a copy of such order to be served by regular mail, facsimile, electronic mail or in person upon such party of record.

(f) Upon motion of a person, or upon its own motion with or without notice, the Commission may order a proceeding dismissed as to one or more parties of record.

165:5-9-6. Continuances

(a) **General.** The Commission or Administrative Law Judge before whom a cause is set may continue or adjourn a hearing at any time for any period, with or without notice or motion. Continuances may be granted for good cause shown, or by agreement of all parties of record at the hearing. A stipulation of a continuance among all parties of record ordinarily will be approved, unless the Commission determines that the public interest requires otherwise. A continuance in a cause may be granted in advance of the date for hearing of the cause in the following ways:

(1) As provided in OAC 165:5-9-2(b)(1); or

(2) The applicant in a cause may request a continuance at least five (5) days in advance of a hearing date from the Docket Clerk or, if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Upon approval of a continuance date, the applicant shall send a notice of continuance stating the continuance date to the Docket Clerk and if the cause has been assigned for hearing, the Commission or assigned Administrative Law Judge. Notice of the continuance date shall be served on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record. The notice of continuance must be sent by regular mail, facsimile, electronic mail or in person at least five (5) days prior to the date of the hearing. Such cause shall be continued on the docket without the necessity of the appearance of the applicant at the time of hearing.

(b) **Contested motion for continuance.** A contested motion for continuance on the day set for hearing of the cause shall be heard by the Commission or Administrative Law Judge. Such decision may be noted as part of the order of the Commission or Initial Report of the Administrative Law Judge if requested by a party of record.

(c) **More than two continuances.** In those cases where two (2) continuances have previously been granted, upon the granting of each additional continuance, written notice of such continuance shall be served by regular mail, facsimile, electronic mail or in person by the person requesting such continuance on all respondents or, if a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued in the cause, notice of the continuance date shall be served on all parties of record at least five (5) days prior to the date the continued cause is set for hearing. The movant shall provide proof of ~~mailing~~service of such notice at the time of hearing. This subsection shall not apply to matters assigned to before the Commission or an Administrative Law Judge unless the Commission or Administrative Law Judge deems or orders otherwise.

(d) **Day certain.** Every continuance shall be to a day certain. If an applicant has failed to set a continued cause on a day certain for a period more than thirty (30) days after last recorded hearing date as shown from the Commission's docket records, the Director of the Office of Administrative Proceedings or an Administrative Law Judge may recommend dismissal of the cause to the Commission, pursuant to OAC 165:5-9-2(e)(4); and the Commission may dismiss the cause without prejudice by an Order Dismissing Cause.

SUBCHAPTER 11. PREHEARING PROCEDURES

165:5-11-1. Deposition and discovery

(a) **Depositions.**

(1) Deposition of a witness for use at a hearing may be taken only when ordered upon motion by the Commission or of a person. The order may direct that the deposition of a witness be taken inside or outside the State of Oklahoma.

(2) The order shall state the time and place the deposition shall be taken, and the person taking the deposition shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date scheduled for taking the deposition.

(3) The manner of taking depositions shall otherwise be governed by the laws relating to taking of depositions for use in the District Courts of Oklahoma. Attendance of a witness for taking of his deposition shall be governed by OAC 165:5-11-3, except that the attendance of a witness for deposition shall be required only in the county of his residence.

(4) A deposition may be offered in evidence at the hearing by any person.

(b) **Production of documents.**

(1) Upon motion, the Commission may make an order requiring a person to produce designated documents or tangible objects for inspection by respondents or parties of record to the cause, or for copying at the expense of the applicant, or to be offered into evidence. The order shall direct production thereof at the hearing or at a prehearing conference, and production shall be at the principal office of the Commission unless some other place is stated in the order. An order hereunder may be directed to a person not yet a party of record, conditioned that if such person appears at the hearing, the order thereupon will be complied with.

(2) The person applying therefore shall serve a copy of the order by regular mail on each party of record at least five (5) days prior to the date upon which production is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which production is required unless otherwise agreed by the applicant, respondent and intervenors.

(3) An order pursuant to this subsection may require production of any document not privileged which constitutes or contains evidence relevant to the subject matter of the cause, or may reasonably lead to such evidence. Business records shall not be deemed privileged as such; but confidential business records and information will be protected from disclosure except where directly relevant to the issues in the cause.

(4) The order shall identify the documents or object to be produced individually or by categories, with sufficient particularity to permit easy identification thereof by the person ordered to make production.

(5) An exact photographic copy of a document may be substituted for the original, at the expense of the person producing the instrument.

(c) **Interrogatories.**

(1) Upon motion of the Commission or of a person, an order may be entered requiring a person to answer in writing under oath certain written interrogatories attached to the order. The answers shall be submitted at the hearing or at a prehearing conference.

(2) The person applying for the order shall serve a copy thereof, with interrogatories attached, by regular mail, upon each respondent at least ten (10) days prior to the date upon which answer is required. In proceedings on the PUD docket, service of an order shall be made at least ten (10) business days prior to the date upon which answer is required unless otherwise agreed by the applicant, respondent and intervenors.

(d) **Protective orders.**

(1) The Commission, upon motion, may make such orders relating to discovery as may be necessary or appropriate for the protection of and to prevent hardship to and excessive burden upon a person. Such orders may, among other subjects, limit the scope of depositions, prohibit questions or subjects of inquiry, require or excuse answers to questions on deposition, limit or excuse, in whole or in part, production of documents or answers to interrogatories, and shorten or extend the time within which any act shall be performed.

(2) The Commission may make appropriate orders, including dismissal of a proceeding or denial of relief, as may be warranted for failure or refusal to comply with an order issued pursuant to this subsection.

(e) **Discovery in proceedings on the PUD docket.**

(1) In proceedings on the PUD docket, the applicant, respondent, and intervenors may also obtain discovery by document request, data request or interrogatory without applying for an order of the Commission. When discovery is sought without a prior order, the provisions of (b) (3), (4) and (5) of this Section shall apply, and the references to orders therein shall be deemed to mean requests for discovery.

(2) In a proceeding subject to 17 O.S. § 152(B), 17 O.S. § 137, or 18 O.S. § 438.31 et seq., discovery by document request, data request or interrogatory shall be subject to OAC 165:5-7-61. In any other proceeding on the PUD docket, responses to any document request, data request or interrogatory shall be due twenty (20) days after receipt of the same, unless:

(A) An objection is filed within ten (10) business days and a ruling is made establishing a different response time. The attorney filing such objection must attest that the objection is not frivolous or for the purpose of delay. The applicant, respondent and intervenors are not required to respond until an objection is ruled upon. The ruling shall state the time in which to respond; or,

(B) The applicant, respondent and intervenors agree in writing to a different response time.

(3) The Commission may allow a shorter or longer time for response for good cause shown, but in no event may the Commission order a response to be served in less than ten (10) business days, except as otherwise agreed by the applicant, respondent and intervenors.

(4) Any document request, data request, or interrogatory received after 3:00 p.m. shall be deemed received the next regular business day.

(5) A copy of all data requests and/or answers to data requests shall be submitted to all counsel of record by regular mail, facsimile, electronic mail or in person at the same time they are issued or answered.

(6) Objections to a document request, data request, interrogatory, or the time in which to respond may be presented to the Administrative Law Judge unless otherwise ordered by the Commission en banc. Any ruling by the Administrative Law Judge on an objection may be orally ~~appealed~~referred to the Commission en banc in accordance with the provisions of OAC 165:5-13-5(a)(1).

(~~6~~7) Any objection(s) relating to a discovery request or the time in which to respond shall be set on the next PUD motion docket unless the Administrative Law Judge, applicant, respondent and intervenors agree to a different date and time.

(~~7~~8) The responding applicant, respondent and intervenors shall promptly supplement any prior discovery response or deposition answer by disclosing to the requesting applicant, respondent and intervenors any known information the existence of which materially affects the accuracy or completeness of the response previously provided. The duty of disclosure extends beyond any discovery deadline unless otherwise ordered.

(f) This Section shall not be interpreted to limit the Commission's authority pursuant to Article IX, Sections 18, 19, and 28 of the Oklahoma Constitution.

(g) Pursuant to 17 O.S. § 330, discovery for proceedings on the Petroleum Storage Tank docket shall be conducted under the provisions of the Oklahoma Discovery Code, 12 O.S. §§ 3224 through 3237. See also OAC 165:5-21-7.

165:5-11-2. Prehearing conference

(a) **Objective.** The Commission, with or without request of any party of record, may order the parties of record or their attorneys to appear at a designated time for a prehearing conference. The conference shall be attended by the parties of record or their attorneys who have full knowledge of the cause and who have authority to bind their clients by stipulations. The conference shall meet to consider:

(1) Simplification of the issues and amendments to documents.

(2) Presentation of issues of law, adjudication of which may simplify or eliminate issues of fact.

(3) Admissions and stipulations of fact which will avoid unnecessary evidence and testimony. No stipulation, settlement or agreement between the parties of record, their attorneys, or representatives, with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the

parties of record or the representatives authorized by these rules to appear for them, and thereafter made a part of the record or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This Section shall not limit a party of record's ability to waive, modify or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Identification of documents to be offered at the hearing.

(5) Identification of and numerical limit upon experts and other witnesses.

(6) Discovery and production of documents, records, data and other information.

(7) Audit, investigation and visitation by the Commission or its representatives.

(8) Other matters as may aid in trial of the cause.

(b) **Notice.** Notice of the time and place of a prehearing conference shall be as prescribed by order of the Commission and shall be served by regular mail, facsimile, electronic mail or in person upon all parties of record by the person requesting the prehearing conference or by the Commission.

(c) **Preliminary order.** Actions taken at the prehearing conference may be embodied in a preliminary order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record, whether or not present, unless modified to prevent manifest injustice.

165:5-11-2.1. Initial Screening Conference ("ISC")

(a) The following public utility causes may be set before the Commission for screening to determine if the Commission will retain that cause or refer the cause to an Administrative Law Judge for hearing. The Initial Screening Conference may apply to the following public utility causes:

(1) Applications for general rate change.

(2) Applications involving utility restructuring and/or competitive issues.

(3) Other causes as may be decided by the Commission.

(b) The conference will be conducted as an on-the-record proceeding, open to the public and will convene to consider:

(1) Whether the ~~ultimate outcome of a~~ cause is judicial or legislative in nature.

(2) Identification of preliminary issues of law and fact including any policy issues.

(3) Discussion of the Public Utility Division ~~staff's~~Staff's participation in the cause and designation of advisory/deliberating counsel and counsel assigned to represent the Public Utility Staff.

(4) Whether the cause will be heard by the Commission, ~~or~~the Commission with a Public Utility Referee, or referred to an Administrative Law Judge for hearing.

(5) Any procedural matters including notice requirements.

(6) Any other matters that may assist in the disposition of the cause.

(c) Deliberating counsel shall give notice of the time and place of the Initial Screening Conference to the Public Utility Division Director, the Attorney General, all parties of record, and any respondents named in the application not less than five (5) days prior to the Initial Screening Conference.

(d) Actions taken at the Initial Screening Conference may be embodied in a preliminary procedural order, which order shall control subsequent proceedings in the cause and shall be binding on all parties of record unless otherwise ordered by the Commission.

~~(e) The application for causes identified in subsection (a) of this Section, which are filed by Wednesday 4 p.m., will be set on the next regularly scheduled Initial Screening Conference, unless otherwise directed by the Commission.~~

165:5-11-3. Commission subpoena

(a) **Subpoena.** The Commission, upon motion of a person or upon motion of ~~such~~the Commission, may order the Secretary to issue a subpoena in the name of the Commission in any pending cause requiring attendance of a witness from any place in the State to the place of hearing. Praecipe for subpoena shall be filed with the Court Clerk and the order of the Commission endorsed thereon.

(b) **Subpoena Duces Tecum.** A subpoena may require the witness to produce at the hearing books, records, accounts, papers and other documents and tangible objects, which shall be described with reasonable particularity in the subpoena. A subpoena duces tecum directed to a person not an individual may direct that the records be produced by an officer or employee responsible therefor.

(c) **Service of subpoena.** A subpoena may be served by a law enforcement officer, by an attorney, or by any other person competent to make an oath; and the person serving the same shall attach his affidavit of the person served, and the time and manner of service. Service also may be made in any other manner provided by law. A person may be served by leaving a copy thereof at the principal place of business of the person, with the person or an employee who customarily serves as the secretary or receptionist of the person. A subpoena shall be served on a witness not less than five (5) days prior to hearing.

(d) **Return.** The original subpoena, with affidavit of service thereon, shall be filed with the Court Clerk. The attendance of a witness shall not be enforced unless the original subpoena is on file at the time of the hearing.

(e) **Fees.** The attendance of a witness will not be enforced unless the person causing subpoena to be issued tenders the witness fee provided by law for a witness subpoenaed to testify in the district courts of Oklahoma. Attendance of a witness shall not be enforced at the second or subsequent day of hearing unless the person causing the subpoena to be issued tenders additional mileage to and from the place of hearing. The payment of fees shall not be required when a subpoena is issued on behalf of the Commission.

(f) **Testimony.** A witness present at a hearing pursuant to subpoena may be called to testify by the Commission or Administrative Law Judge or by any party of record.

(g) **Protective orders and orders quashing subpoenas.** The Commission may make any orders with respect to subpoena and attendance of a witness as may be appropriate for the protection of persons, including an order quashing subpoena,

excusing attendance of witnesses, or limiting documents to be produced.

(h) **Subpoenas regarding the Petroleum Storage Tank docket.** Pursuant to 17 O.S. § 330, subpoenas may be issued in proceedings on the Petroleum Storage Tank docket pursuant to the provisions of 12 O.S. § 2004.1. See also OAC 165:5-21-8.

SUBCHAPTER 13. INITIAL AND ~~APPELLATE~~SUBSEQUENT PROCEEDINGS

165:5-13-1. Sessions and hearings

(a) **Open to public.** All official sessions and public hearings of the Commission or any Administrative Law Judge will be open to the public and will be held in its official courtrooms at the principal office in Oklahoma City, Oklahoma, the regional service office in Tulsa, Oklahoma, or at such other place as provided by law or designated by the Commission.

(b) **Time.** All hearings shall commence at the time designated in the notice of hearing or by order of the Commission.

(c) **Courtroom conduct.** Conduct of attorneys before the Commission shall be governed by the applicable rules of the Supreme Court of Oklahoma. All parties, witnesses, and observers will at all times maintain decorum, and will conduct themselves in such manner as to reflect respect for the authority and dignity of the Commission and its Administrative Law Judges. Upon violation of this provision, any person, witness, attorney, or other representative may be subject to punishment for contempt.

(d) ~~**Smoking.** Smoking is prohibited in the courtrooms at all times. An Administrative Law Judge may relax this requirement for hearings held at places other than Commission courtrooms.~~

~~(e)~~ **Record of hearing.** A stenographic and electronic record will be made of all proceedings before the Commission or an Administrative Law Judge. A transcript of proceedings will be made by a court reporter at the request and expense of the person ordering it; or at the request of the Commission, in which case a copy will be made for any person requesting it, at that person's expense.

165:5-13-2. Setting of causes

(a) **General.** All hearings on the merits shall be set before an Administrative Law Judge, unless otherwise ordered by the Commission.

(b) **Specially set.** By a motion, the applicant or any party of record or respondent may, at any time up to commencement of a hearing, request of the Commission that a cause be specially set before the Commission for hearing. The Commission may advance any cause by sua sponte order at any time.

(c) ~~**Appeals**~~**Exceptions.** For purposes of OAC 165:5-13-5, all ~~appeals from~~exceptions to reports on hearings on the merits in matters on the CD, PD, EN, SF, PSD and US dockets shall be heard by the Commission en banc unless referred to an Oil and Gas Appellate Referee. Hearing dates for ~~appeals~~exceptions are to be secured from a docket clerk at the time of filing. The ~~appeal~~exceptions will be heard on that date or as soon thereafter as may meet the convenience of the Commission. ~~Appeals~~Exceptions in all other matters shall be set before the Commission en banc.

(d) **Authority of Administrative Law Judge.** An Administrative Law Judge shall exercise all of the powers of the Commission in the conduct of a cause. An Administrative Law Judge shall rule upon admission of evidence, and objections thereto, and upon any other motion or objection arising during the pendency of the cause until the issuance of the report of the Administrative Law Judge. Review of a ruling of an Administrative Law Judge shall be by ~~appeal~~exceptions pursuant to OAC 165:5-13-5, and any objection to a ruling or other action of such Administrative Law Judge not included in such ~~appeal~~exceptions and amendments thereto, shall be deemed to have been waived.

(e) **Hearings on the PUD docket.** All hearings in causes filed pursuant to OAC 165:70 or 18 O.S. §438.31 et seq. shall be given priority status on the PUD docket in order to comply with 17 O.S. §152, 17 O.S. §137 (I) and 18 O.S. §438.31 et seq.

(f) **Hearings on the Petroleum Storage Tank docket.** All hearings regarding the exercise of the Commission's adjudicative authority pursuant to the Oklahoma Storage Tank Regulation Act, 17 O.S. §§301 through 317 and the Oklahoma Petroleum Storage Tank Release Indemnity Program, 17 O.S. §§ 350 through 358, shall be given priority status on the Petroleum Storage Tank docket ("PSD") in order to comply with 17 O.S. § 330 for the Commission to hear each case within one hundred eighty (180) days from the date of filing. See also OAC 165:5-21-9.

165:5-13-2.1. Appointment of Public Utility Referee

(a) In Public Utility cases, the Commission may determine that a cause is of such public interest that the Commission may sua sponte appoint a Public Utility Referee to serve as the ~~Hearing Officer~~Administrative Law Judge with and/or for the Commission conducting the hearing process in the cause.

(b) The Public Utility Referee shall confer with and assist the Commissioners on all matters regarding the pending cause.

(c) The Public Utility Referee may assist the Commission in conducting the hearing of the cause in accordance with all other provisions of this Chapter; except that all provisions of this Chapter providing for ~~appeals~~exceptions of any nature are not applicable.

(d) Upon conclusion of the hearing of the cause, the Commissioners may seek the assistance of the Public Utility Referee in reaching a determination in the cause.

165:5-13-3. Hearings

(a) **Conduct of hearing.** Every hearing shall be conducted by the Commission, ~~or~~ by an Administrative Law Judge or as provided at OAC 165:5-13-2.1. The Commission or Administrative Law Judge shall call the cause for hearing, after which proceedings shall be had as provided in this Section.

(b) **Scope of hearings.** The Commission, ~~or~~ Administrative Law Judge or Public Utility Referee may state the purpose and scope of the hearing, or the issues upon which evidence will be heard.

(c) **Appearances.** Every person appearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record, unless specified otherwise. An individual may appear on his own behalf. A corporation may appear only by its attorney; provided, that a representative other than an attorney may appear on behalf of a corporation for the sole purpose of making a statement or indicting corporate policy. Such a representative may not assume an advocate's role or introduce evidence or examine witnesses in the proceeding.

(d) **Preliminary matters.** The following shall be addressed prior to receiving evidence:

(1) The applicant, or staff counsel, may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

(2) Ruling may be made on any pending motions, including requests pertaining to discovery.

(3) Stipulations of fact and stipulated exhibits shall be received. No stipulation, settlement, or agreement between the parties of record, their attorneys, or representatives with regard to any matter involved in any cause shall be enforced unless it shall have been reduced to writing and signed by the parties of record or the representatives authorized by the rules of this Chapter to appear for them and thereafter made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This Section does not limit a party of record's ability to waive, modify, or stipulate any right or privilege afforded by the rules of this Chapter, unless precluded by law.

(4) Parties of record may, in the discretion of the Commission or Administrative Law Judge, make opening statements where appropriate.

(5) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

(e) **Rules of evidence.** The Commission and Administrative Law Judges shall follow the rules of evidence applied in the district courts of Oklahoma, except that such rules may be relaxed where the Commission or the Administrative Law Judge deems it in the public interest to do so. The Commission or Administrative Law Judge may exclude evidence upon objection made thereto, or the evidence may be received subject to final ruling by the Commission. An exception will be deemed to be preserved by a party of record objecting to evidence upon an adverse ruling thereon. The Commission or Administrative Law Judge may exclude inadmissible evidence on his own motion and may direct cumulative evidence be discontinued.

(f) **Order of proof.** The applicant or complainant who institutes a cause shall open and close the proof. Staff counsel shall open and close a cause instituted by the Commission or a staff member. Intervenors shall be heard immediately following parties of record with whom allied in interest. In all cases, the Commission or Administrative Law Judge shall designate the order of proof.

(g) **Examination of witnesses.** Every witness shall be examined and cross-examined orally and under oath by not more than one attorney for each party of record. The Commission or Administrative Law Judge shall designate the order of examination and may limit the scope of examination and cross-examination.

(h) **Adverse party.** A party of record may call and adverse person or an officer or employee of an adverse person, in which case the witness may be impeached and otherwise cross-examined.

(i) **Record.** All testimony shall be taken on the record.

(j) **Prepared testimony.** Written testimony of a witness in form of questions and answers, or a narrative statement may be received in lieu of direct examination upon authentication by the witness under oath. In order to be received and relied upon at the hearing, such testimony and exhibits shall be filed and served upon all parties of record not less than five (5) days prior to the hearing, unless otherwise ordered by the Commission for good cause shown. The witness shall be subject to cross-examination. A written or oral statement by or a communication from any person, or a statement or resolution of a political subdivision, trade association, civic organization, or other organization may be received without cross-examination, but will be considered only as argument and not as proof of any recitation of facts contained therein.

(k) **Documents.**

(1) A photographic copy of a document which is on file as part of the official records of the Commission will be received without further authentication.

(2) A photographic copy of a public record certified by the official custodian thereof will be received without further authentication. A written statement by such custodian of records that no record or entry of described character is found in his records shall be received as proof of absence of such record.

(3) A photographic copy of a document may be substituted for the original at the time the original is offered in evidence.

(4) A document may not be incorporated in the record by reference except by permission of the Commission or Administrative Law Judge. Any document so received must be precisely identified.

(5) The Commission or Administrative Law Judge may require that documents such as rate compilations, statistical or technical data, and tabulated material be filed at a designated time prior to the hearing.

(6) The Commission or Administrative Law Judge may require that additional copies of exhibits be furnished for use by the Commission, staff counsel, and other parties of record.

(7) When evidence is offered which is contained in a book or document containing material not offered, the person offering the same shall extract or clearly identify the portion offered.

(8) The Commission or Administrative Law Judge may permit a party of record to offer a document as part of the record within a designated time after conclusion of the hearing.

(l) **Exhibits.** All exhibits shall be identified by docket and cause number prior to submitting to the Commission.

(m) **Summary exhibits.** An exhibit consisting of a compilation or summary of evidence, records, data, statistics, or other similar information may be received in evidence in addition to or in lieu of the evidence summarized, provided:

(1) The evidence summarized has been admitted in evidence, or is admissible; and

(2) If the evidence summarized has not been admitted, the person offering the summary exhibit has made the evidence summarized available for inspection by all other parties of record, or the information is published in a generally recognized publication which is available to all parties of record. It shall be the responsibility of a person offering a summary exhibit to comply with this subsection in advance of the hearing, and failure to make the evidence summarized available for inspection shall be grounds for refusal to admit the exhibit.

(n) **Closing the record.** The record shall be closed when all parties of record have had an opportunity to be heard and to present evidence, and the Commission or Administrative Law Judge announces that the record of testimony and exhibits is closed. Unless a decision is then announced, the matter will be taken under advisement for later decision.

(o) **Briefs.** The Commission or Administrative Law Judge may require or allow the filing of briefs by the parties of record, and may designate the order and time for filing briefs and reply briefs.

(p) **Reopening the record.** Any person may file and serve, by regular mail, on all parties of record a motion to reopen the record for further hearing or to offer additional evidence. The Commission, at any time prior to final order in the cause, may, upon such motion or upon the motion of the Commission, order the record to be reopened for the purpose of taking testimony and receiving evidence which was not or could not have been available at the time of the hearing on the merits or for the purpose of examining its jurisdiction. A motion to reopen shall be filed and served in the same manner as provided in OAC 165:5-9-1(b). The motion and notice shall include a statement that if the Administrative Law Judge grants the motion, the record may be reopened the same day or on some other day as the Commission may determine.

(q) **Corrections to transcript.** In all proceedings, an official reporter shall make a stenographic and electronic record of the hearing. Errors claimed to be in a transcription of either a contested or uncontested hearing shall be noted in writing and suggested corrections may be offered to the Commission or Administrative Law Judge who presided at such hearing within ten (10) days after the transcript is filed, unless the Commission or Administrative Law Judge shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the Commission or Administrative Law Judge. If not objected to within twelve (12) days after being offered, the Commission or Administrative Law Judge shall direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the Commission or Administrative Law Judge, with the aid of argument and testimony from the parties of record, shall then determine the manner in which the record shall be changed, if at all.

(r) **Preparation of report or order.** The Commission or Administrative Law Judge may permit or direct any party or parties of record to prepare a proposed report or order in any protested cause. In unprotested causes, the applicant shall prepare and submit a proposed Commission order.

165:5-13-3.1. Optional procedure for spacing related applications

(a) If no protest to a spacing related application is announced at docket call, an applicant for spacing, despacing, increased well density, or location exception may elect for consideration of the merits of the cause without a full evidentiary hearing. Such review of the cause shall be referred to as the optional procedure.

(b) After electing the optional procedure, the applicant shall provide the Administrative Law Judge with a proposed order and documentation supporting the application. With respect to documentation, any written testimony shall be presented in the form of a sworn, notarized affidavit which shall be marked as exhibits and entered into the record.

(c) The Administrative Law Judge shall prescribe the time period for completing the record and may request additional evidence as deemed appropriate.

(d) After closing the record, the Administrative Law Judge shall have seven (7) business days in which to make a recommendation to the Commission concerning disposition of the application.

(e) If the Administrative Law Judge's recommendation is unfavorable, the matter will be automatically set for a full evidentiary hearing before the same administrative law judge. Any ~~appeal~~exceptions from the report issuing after the full evidentiary hearing will ~~be~~ proceed pursuant to OAC 165:5-13-5.

165:5-13-4. Report of Administrative Law Judge

(a) At the conclusion of a hearing before an Administrative Law Judge, such officer shall, at the earliest practicable date, file a written report in the proceeding. The report shall contain the following:

(1) Names of parties of record and their attorneys.

(2) Brief statement of facts establishing jurisdiction of the cause.

(3) Brief summary of the evidence of each party of record who offered evidence.

(4) The pertinent facts as found by the officer upon consideration of all evidence offered.

(5) Recommended conclusions of law and recommendations as to action to be taken or relief to be granted or denied.

(6) In oil and gas conservation causes and pollution causes, such report shall be prepared only when a party of record in the hearing before the Administrative Law Judge has formally, either orally or in writing, protested the granting of the application, or, in the judgment of the Administrative Law Judge, the issuance of a report is required.

(b) The Administrative Law Judge shall send a copy of the report by regular mail, facsimile, electronic mail or in person to each party of record.

(c) At the expiration of ten (10) days after the report is filed, if no ~~appeal~~exceptions are ~~is~~ filed, the Commission shall enter such order as shall be deemed appropriate upon consideration of the report.

(d) In any conservation or pollution cause in which the Administrative Law Judge has recommended that an order issue, but the approval of staff counsel or technical staff is withheld after all efforts have been exhausted to resolve technical or legal problems with the applicant and Administrative Law Judge, the Administrative Law Judge shall issue a report in accordance with this Section, allowing any person time to file ~~an appeal~~exceptions.

(e) Upon request by a Commissioner, an Administrative Law Judge shall appear at any scheduled signing agenda, Commission hearing or public deliberation to respond to questions from the Commissioners concerning the proposed order or report of the Administrative Law Judge.

165:5-13-5. ~~Appeal from~~Exceptions to Report of Administrative Law Judge

(a) **Reviewability.** Except as provided in OAC 165:5-9-6(c) for rulings on continuances, any report from Administrative Law Judges shall be subject to review in the manner prescribed in this Section. Oral argument before the Commission en banc in an oil and gas related matter is not a matter of right. The Commission en banc may deny a motion to entertain oral argument on ~~an~~any oil and gas related ~~appeal~~exceptions without a response being filed or hearing oral presentation on said motion.

(1) **Oral ~~appeals for~~exceptions regarding motions and emergency matters.** Any person adversely affected by a decision of an Administrative Law Judge on the motion/emergency docket shall have no more than five (5) days in which to advise the Administrative Law Judge, other parties of record, and the Office of General Counsel of his or her intent to ~~appeal~~lodge exceptions and any request for oral arguments on the ~~appeal~~exceptions before the Commission en banc. ~~Neither a written appeal nor written~~Written exceptions shall not be required. Oral ~~appeals on oil and gas matters~~exceptions shall be set for hearing before the Corporation Commission sitting en banc unless referred to an Oil and Gas Appellate Referee. Oral ~~appeals~~exceptions in all other matters shall be set for hearing before the Commission sitting en banc. Oral ~~appeals~~exceptions will be set on the next regularly scheduled day for such matters unless:

(A) The parties agree to another date; or

(B) The Commission specifies otherwise.

(2) **~~Appeals~~Exceptions to the report from the hearing on the merits.** Any person adversely affected by a report of an Administrative Law Judge from the hearing on the merits shall have ten (10) days in which to ~~appeal~~ file exceptions to the report ~~to~~before the Commission en banc. To perfect ~~an appeal~~exceptions, ~~a~~ written ~~appeal or~~ exceptions must be filed within ten (10) days after filing of the Report of the Administrative Law Judge. The ~~appellant~~person filing exceptions shall serve copies of the ~~appeal~~exceptions and notice of hearing for the ~~appeal~~ exceptions ~~to~~on all parties of record and the Administrative Law Judge below. Such service shall be made not later than five (5) days after the expiration of the ten (10) day period for filing the ~~appeal~~exceptions. In ~~appeals~~exceptions before the Commission en banc arising from the Petroleum Storage Tank and/or Indemnity Fund, an additional ten (10) days shall be allowed for the filing of ~~a~~ cross ~~appeal~~ exceptions. OAC 165:5-13-2 shall govern the setting of the ~~appeal~~exceptions. If a party desires the Commission en banc to hear oral arguments on ~~an~~any ~~oil and gas appeal~~exceptions, a motion for oral argument of ~~appeal~~exceptions before the Commission en banc must be filed with the ~~appeal~~exceptions.

(b) **Contents of the ~~appeal~~exceptions.** For purposes of (a)(2) of this Section, the written ~~appeal~~exceptions shall specifically state the findings or portions of the report to which the person takes exception, and in what respect the person alleges the findings and report to be in error. A person may be permitted to amend his ~~appeal~~exceptions, or to present at the initial hearing on ~~appeal~~exceptions thereon additional grounds for ~~appeal~~exceptions from the report. A person taking ~~appeal~~exception from any part of the summary of the evidence stated in the report of the Administrative Law Judge, shall attach to his ~~appeal~~exceptions a transcript or what he deems a correct summary of the pertinent evidence, provided that if the transcript is unavailable at the time of filing of the ~~appeal~~exceptions, then any ~~appellant~~person filing exceptions desiring to use a transcript instead of a summary of evidence shall, at the discretion of the Commission en banc or the Oil and Gas Appellate Referee ~~for appeals~~to whom the exceptions have been referred ~~to the referee~~, submit the transcript as soon as it is available. In the absence of such a transcript or summary of the evidence, the ~~appeal~~exceptions shall be considered based on the summary of evidence in the appealed report.

(c) **Responses to written ~~appeals~~exceptions.** For purposes of ~~appeals~~exceptions under (a)(2) of this Section, any other person may file written response to the ~~appeal~~ exceptions within five (5) days after service thereof, and may attach thereto a transcript or his own summary of the pertinent evidence, provided that if a transcript is unavailable at the time of the filing of the ~~appeal~~exceptions, the party desiring to use the transcript instead of a summary of evidence shall, at the discretion of the Commission en banc or the Oil and Gas Appellate Referee, ~~for appeals referred to the referee shall~~ submit the transcript as soon as it is available. In the absence of a transcript or written summary of evidence submitted by a party of record, the ~~appeal~~exceptions shall be considered upon the summary of the evidence in the ~~appealed~~exceptions to the report.

(d) **Contents of the Oil and Gas Appellate Referee Reports.** In a case where ~~an appeal~~exceptions ~~is~~are referred to an Oil and Gas Appellate Referee, such Referee shall file a written report, ~~to which no appeal may be taken,~~ stating a recommendation to the Commission to affirm, reverse, or modify

the findings of fact or conclusions of law of the Administrative Law Judge below or to remand the cause for further hearing. The Commission, as the final arbiter, shall enter the order it deems appropriate.

(e) **Scope of review by the Commissioners.** With respect to any report, the Commission sitting en banc may affirm, reverse, or modify the findings of fact or conclusions of law of the Administrative Law Judge, or may remand the cause for further hearing. The Commission shall enter the order in its discretion as it deems appropriate.

SUBCHAPTER 15. ORDERS

165:5-15-1. General form and procedure

(a) **Contents of orders.** The Commission may prescribe a standardized format for all orders. Every order of the Commission shall contain the following where appropriate or except where the Commission determines otherwise:

(1) Caption, cause number on the appropriate docket and order number. Every page of the order shall also contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and order type, e.g., emergency order, final order, etc.

(2) Appearances.

(3) Date and place of all hearings.

(4) Summary of allegations of applicant, and of all other parties of record.

(5) Summary of evidence of applicant, and of all other parties of record.

(6) Findings of fact, containing all ultimate facts found to have been established.

(7) Conclusions of law, containing:

(A) All legal conclusions found to be applicable to the facts; and

(B) The directive of the order stated in concise and mandatory language.

(8) Signature of the Secretary certifying as to all Commissioners participating in making the order.

(9) Seal of the Commission.

(10) Date of filing, and effective date where appropriate.

(b) **Duty to ~~mail~~send orders.** The Court Clerk shall immediately mail or otherwise deliver a copy of the order to the applicant~~ and all parties of record~~. Except where otherwise specifically provided in this Chapter, the applicant shall thereafter mail or otherwise deliver a copy of the order within five (5) days of the receipt of the order to all parties of record and to each respondent in the cause. Where an attorney has appeared of record for a person, service shall be on the attorney.

(c) **Effectiveness of order.** The issuance of or effectiveness of an order or its enforcement will not be stayed or postponed by the filing of any motion for rehearing or for other relief therefrom. The Commission may by order stay any order pending further hearing, and may stay or postpone the effective date thereof, or enforcement thereof for such time and on such terms as may be just.

(d) **Order titles and numbers.** An order of the Commission, descriptively titled, shall be issued for all motions and other matters set for hearing, except for continuances, and all such orders shall be given an order number.

165:5-15-3. Pooling orders

(a) **Termination of order.** A pooling order shall contain language to the effect that if operations for the drilling of the well are not commenced within the time designated, the order shall terminate except as to the payment of cash bonuses.

(b) **Affidavit of mailing.** The applicant or other responsible person shall file with the Court Clerk, within ten (10) days from the date of the pooling order, an affidavit stating that a copy of said order was mailed within three (3) days from the date of the order, unless the Commission directs otherwise, to all parties of record and respondents whose addresses are known. The name and address, if known, of each respondent in the proceeding who has not previously been dismissed shall be set out in the affidavit.

(c) **List dismissed person.** The pooling order shall list all persons dismissed in the cause.

(d) **Elections.** A pooling order shall contain language to the effect that the respondents shall have at least ~~fifteen~~twenty (~~15~~20) days from the date of the order in which to communicate an election to the applicant or other responsible person as to the option selected under the order, unless the Commission directs otherwise. A respondent in a pooling order shall be deemed to have made a timely election if, as provided in the pooling order, the respondent has delivered his election ~~by telegram, by telegraph, or~~ by timely mailing as indicated by postmark of the U.S. Postal Service on or before the last day allowed in the order, or timely delivery as otherwise provided in the pooling order. The election shall be directed to the person designated in the pooling order to receive elections.

(e) **Escrow accounts.** A pooling order which pools interests of unknown or unlocated owners shall contain language to the effect that if any payment of bonus, royalty payments, or other payments due and owing under the order cannot be made because the person entitled to it cannot be located or is unknown, then the bonus, royalty payments, or other payments shall be paid into an escrow account in a financial institution within ninety (90) days after the order and shall not be commingled with any funds of the applicant or operator; that the Commission shall retain jurisdiction to grant to financially solid and stable holders an exception to the requirement that funds be paid into an escrow account with a financial institution and permit such holder to escrow such funds within such holder's organization; that responsibility for filing reports with the Commission as required by law and Commission rule as to bonus, royalty, or other payments deposited into escrow accounts shall be with the applicable holder; that such funds deposited in said escrow accounts shall be held for the exclusive use of, and sole benefit of, the person entitled to it; and that it shall be the responsibility of the operator to notify all other holders of this provision and of Commission rules regarding unclaimed monies under pooling orders.

(f) **Exhibit list of respondents.** A pooling order shall contain an attached exhibit listing all respondents or interests in the following manner:

(1) **Known respondents.** List all known respondents by name and address.

(2) **Unknown and/or unlocatable respondents.** List all respondents, with last known address if available, or if there are none so state under this section of the exhibit.

(3) **Respondents listed for curative reasons only.** List all respondents or if none so state under this section of the exhibit.

(g) **Horizontal wells: election.** A pooling order for a horizontal well unit which overlies existing production from the same common source of supply as the horizontal well unit shall provide that if any owner should elect not to participate in the development of the horizontal spacing unit, said owner's interest in the production from the well or drilling and spacing unit which existed prior to the formation of the horizontal well unit shall not be affected.

(h) **Horizontal wells: conversion.** A pooling order for a horizontal well unit which overlies existing production from the same common source of supply as the horizontal well unit may not provide for the conversion of an existing producing oil or gas well into the permitted well for the horizontal well unit unless all working interest owners in such existing well consent to such conversion. A pooling application for such conversion shall include a statement that all working interest owners in such well have agreed in writing to such conversion.

165:5-15-8. Interim order for horizontal well drilling and spacing unit [REVOKED]

~~(a) The order shall become final twenty-one (21) days after the filing of the directional surveys, plat, and well completion report as an administrative action of the Commission, if the well is drilled in compliance with the order.~~

~~(b) In the event the directional surveys and well completion report as required under 165:10-3-28(g) show that the horizontal wellbore is less than the minimum length required for the size of the horizontal well unit as established by the order of the Commission, the operator shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the order by furnishing a copy of the directional surveys, plat, and well completion report with the location of the lateral as drilled. In such case, a motion to reopen may be filed within twenty (20) days after the date of such filing by any party to the original action objecting to the formation or configuration of the unit.~~

165:5-15-9. Termination of horizontal well unit [REVOKED]

~~Any final order of the Commission establishing a horizontal well unit shall provide that the horizontal well unit shall expire ninety (90) days after the date the last producing well in the unit is plugged and abandoned. A shut-in gas well is considered to be a producing well.~~

SUBCHAPTER 17. POST ORDER RELIEF

165:5-17-1. Within 10 days; motion

(a) Within ten (10) days after an order of the Commission is entered, any person may file a motion for rehearing, or a motion to set aside or to modify the order, or for any other form of relief from the order. However, a motion to reopen the record after an order has been entered shall not be considered a proper motion to seek relief from the order. The motion shall specifically state:

(1) The parts or provisions of the order sought to be set aside or modified or from which relief is sought.

(2) The specific modifications or other relief sought by the motion.

(3) The specific grounds relied upon for relief.

(b) Such motion shall be set for hearing before the Commission, unless referred. A copy of the motion, including notice of the date set for hearing, shall be served by the movant on each party of record by regular mail, facsimile, electronic mail or in person. If any motion filed pursuant to this Section is placed on the emergency or regular docket for hearing, the movant shall give at least five (5) days written notice to all respondents listed on the affidavit of mailing and all parties of record.

165:5-17-2. After 10 days; application

(a) At any time subsequent to ten (10) days after entry of an order of the Commission, an application to vacate or modify the order, or for any other form of relief from the order, filed by any person, whether or not a party of record in the original cause, shall be treated as a separate cause, and shall be governed by rules applicable to the commencement of a cause. The application shall:

(1) Identify the order sought to be modified or vacated.

(2) State specifically the parts or provisions sought to be modified or vacated.

(3) State specifically the modifications or vacations sought.

(4) State specifically the grounds upon which such relief is sought.

(b) Notice of hearing of the application shall be served and published as required upon the commencement of the cause. The application shall be set for hearing before the Commission or Administrative Law Judge or Public Utility Referee, as provided in this Chapter as to the commencement of a cause.

165:5-17-5. Appeals

All causes on appeal shall be as prescribed by the applicable rules of the Supreme Court of Oklahoma. All appellate petitions, motions, briefs and other filings shall be served on the Commission by mail addressed to the General Counsel of the Commission.

SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK DOCKET

165:5-21-1. Purpose

The purpose of this Subchapter is to provide rules to govern proceedings filed before the Commission concerning the Oklahoma Storage Tank Regulation Program and the Petroleum Storage Tank Release Indemnity Program. Accordingly, all procedural rules necessary to initiate, regulate and litigate the above stated programs have been centralized in this Subchapter for user friendliness, with the exception of the rules contained in Chapter 5 which are "general" rules of procedure. To avoid repetitive rule language, the following rules apply to all proceedings subject to this Subchapter:

(1) OAC 165:5-1-3 (Definitions)
(2) OAC 165:5-1-4 (Office location; office hours; records)
(3) OAC 165:5-1-5 (Filing of documents)
(4) OAC 165:5-1-6 (Time computations and extensions; effective date)
(5) OAC 165:5-1-8 (Place of hearing)
(6) OAC 165:5-1-9 (Telephonic testimony)
(7) OAC 165:5-5-1 (Dockets; identifying initials)
(8) OAC 165:5-9-3 (Emergency applications)
(9) OAC 165:5-11-3 (Prehearing conference)
(10) OAC 165:5-13-1 (Sessions and hearings)
(11) OAC 165:5-13-2 (Setting of causes)
(12) OAC 165:5-13-3 (Hearings)
(13) OAC 165:5-13-4 (Report of Administrative Law Judge)
(14) OAC 165:5-13-5 (~~Appeal from~~Exceptions to Report of the Administrative Law Judge)
(15) OAC 165:5-15-1 (General form and procedure [orders])
(16) OAC 165:5-15-7 (Emergency orders)
(17) OAC 165:5-17-1 ([Post order relief] Within 10 days)
(18) OAC 165:5-17-2 (After 10 days; applicants)
(19) OAC 165:5-17-4 (Nunc Pro Tunc)
(20) OAC 165:5-17-5 (Appeals)
(21) OAC 165:5-19-1 (Contempt procedure)

SUBCHAPTER 23. INFORMAL RESOLUTION OF NATURAL GAS GATHERING DISPUTES

165:5-23-2. Definitions

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

"Complainant" means an aggrieved party, pursuant to 52 O.S. §§ 24.4 and 24.5, who seeks to have a dispute regarding natural gas gathering services resolved by the Commission. Any informal dispute resolution procedure initiated by said Complainant shall be a neutral process as it affects the Participants, and shall only occur as a result of the agreement of the Participants.

"Conservation Division" means the Oil and Gas Conservation Division.

"Formal Complaint" means a complaint filed under 52 O.S. §§ 24.4 and 24.5 and OAC 165:5-7-41.1.

"Mediator" means an individual, mutually agreeable to the Participants, selected from a list of mediators maintained by the Commission who are certified under the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq. The list of certified mediators shall include, but not be limited to,~~administrative law judges and~~ members of the Oil and Gas Conservation Division staff. Any mediator selected by the Participants shall remain neutral and shall not advocate the position of any Participant in an informal dispute resolution procedure.

"Informal dispute resolution procedure" means a non-judicial, voluntary, non-binding and informally conducted mediation procedure for resolution of disputes regarding gas gathering. Such mediations will be conducted under the provisions of the Oklahoma Dispute Resolution Act, 12 O.S. § 1801 et seq.

"Participant(s)" means the Complainant or Respondent, or both, in the informal dispute resolution procedure.

"Respondent" means the gatherer whose conduct is the subject of a Notice of Intent to Mediate.

SUBCHAPTER 25. MOTOR CARRIER TAX AND REGISTRATION PROTESTS

165:5-25-2. Applications for hearing

Taxpayer or Registrant applications for hearing shall be filed with the Commission's Court Clerk's Office. Applications shall be in writing, signed by the taxpayer/registrant, or an authorized representative thereof, and shall set out therein:

(1) The name, mailing address, physical address, telephone number, e-mail address, and social security number or employer's identification number of the taxpayer/registrant;
(2) A statement of the amount of the deficiency as determined by the Transportation Division in the proposed assessment, the nature of the tax or fee and the amount thereof in controversy, or the denial of base state registration;
(3) A clear and concise statement of each item in dispute;
(4) The argument and any legal authority upon which each item in dispute is made; provided, that the taxpayer/registrant shall not be bound or restricted in such hearing, except on ~~appeal~~exceptions, to the arguments and legal authorities contained and cited in said applications or presented in the initial hearing;
(5) A statement of the relief sought by the taxpayer/registrant;
(6) A verification by the taxpayer/registrant or his duly authorized agent that the statements and facts contained therein are true; and
(7) In a refund claim, a statement as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief explanation of the mistake.

[OAR Docket #10-992; filed 6-9-10]

TITLE 165. CORPORATION COMMISSION CHAPTER 10. OIL & GAS CONSERVATION

[OAR Docket #10-976]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 10. Oil & Gas Conservation [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. §52, 27A O.S. §1-3-101, 52 O.S. §139, 68 O.S. §1001 and OAC 165:5-1-7
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
American National Standards Institute Table I, Standard 253.1-1967.
American Petroleum Institute API Standard 2000.
Wellhead Protection Program (42 USC Section 300h-7, Safe Drinking Water Act).
RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September 1986, pp. 99-107.
Incorporating rules:
165:10-3-16
165:10-7-16
165:10-9-2
165:10-9-4
Availability:
The standards are readily available to the public for examination at the office of the Director of the Oil and Gas Conservation Division, Oklahoma Corporation Commission, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Room 254, Oklahoma City, Oklahoma, during regular business hours from 8:00 a.m. to 4:30 p.m., Monday through Friday.
ANALYSIS:
OAC 165:10-21-21, OAC 165:10-21-22, OAC 165:10-21-23, OAC 165:10-21-24, OAC 165:10-21-35, OAC 165:10-21-36, OAC 165:10-21-37, OAC 165:10-21-45, OAC 165:10-21-47, OAC 165:10-21-47.1, OAC 165:10-21-55, OAC 165:10-21-57, OAC 165:10-21-58, OAC 165:10-21-66, OAC 165:10-21-67, OAC 165:10-21-68, OAC 165:10-21-69, OAC 165:10-21-75, OAC 165:10-21-76, OAC 165:10-21-77, OAC 165:10-21-78, OAC 165:10-21-80, OAC 165:10-21-82, OAC 165:10-21-82.2 and OAC 165:10-21-82.3 in Subchapter 21, Applications for Tax Exemptions, are amended to conform to 68 O.S. §1001 and amendments thereto in Senate Bill 313 (2009). Other rules were adopted in an effort to update, standardize and streamline language and procedures appearing in OAC 165:10, as well as to address changes in technology, especially with respect to horizontal drilling.
CONTACT PERSON:
Susan Dennehy Conrad, Assistant General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939.

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 CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH HOUSTON, SUITE 114, TULSA, OKLAHOMA, 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 165:10-1-2 is amended to add a definition concerning commercial recycling facility and to make the definition of "public area" consistent with the definition of such phrase appearing in OAC 165:10-3-16 concerning operation in hydrogen sulfide areas; OAC 165:10-1-4 to update the list of effective dates for OAC 165:Chapter 10 rulemakings since 2007; OAC 165:10-1-7 to update the list of Commission forms, including the deletion and addition of forms and modifying references to applicable Commission rules; OAC 165:10-3-1, OAC 165:10-3-3, OAC 165:10-3-4, OAC 165:10-5-13, OAC 165:10-7-17, OAC 165:10-7-19, OAC 165:10-7-26, OAC 165:10-7-29 and OAC 165:10-8-7 to modify language concerning the assessment of fines; OAC 165:10-1-10 to modify language concerning the assessment of fines and to add a procedure for determining whether applicants with unsatisfactory compliance histories ought to be authorized to operate; OAC 165:10-3-10 concerning hydraulic fracturing; OAC 165:10-3-16 regarding operation in hydrogen sulfide areas, and OAC 165:10-3-17 to update the means by which operators notify the Commission of a fire or blowout and to modify language concerning the assessment of fines. Several of the rules are also amended to change references to the Commission's District or Field Operations offices to the "appropriate Conservation Division District Office."

OAC 165:10-3-28 is amended concerning horizontal drilling; OAC 165:10-3-31 to modify the procedure for obtaining authorization for use of vacuums on wells; OAC 165:10-5-5 regarding applications for approval of injection and disposal wells, including the addition of a procedure for determining whether applicants with unsatisfactory compliance histories ought to be authorized to operate commercial disposal wells; OAC 165:10-5-7 concerning the filing of Form 1012 reports and the frequency of filing such reports by operators of commercial disposal wells; OAC 165:10-7-16 to establish requirements for flow back water pits with capacity in excess of 50,000 barrels; OAC 165:10-7-20 to update requirements regarding noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater, including approval of such pits, monitor well and fencing requirements and laboratory certification; OAC 165:10-7-22 to modify language concerning laboratory certification and operation; OAC 165:10-7-27 to modify language regarding assessment of fines and laboratory certification and operation; OAC 165:10-8-5 to require operators of hydrocarbon recycling/reclaiming facilities to file agreements to properly close and reclaim such facilities with the Manager of Document Handling and to revoke Part 3 of Subchapter 8 and OAC 165:10-8-25 through OAC 165:10-8-35 concerning drilling waste recycling/reclaiming facilities.

OAC 165:10-9-1 is amended to update commercial pit requirements, including monitor well, fencing and Form 1014A filing requirements, modifying language concerning the assessment of fines and laboratory certification and operation and the procedure for determining whether applicants with unsatisfactory compliance histories ought to be authorized to operate commercial pits; OAC 165:10-9-2 to update commercial soil farming requirements, including addition of areas where commercial soil farming is prohibited, modification of monitor well, fencing, laboratory certification and Form 1014A filing requirements and to add a procedure for determining whether applicants with unsatisfactory compliance histories ought to be authorized to conduct commercial soil farming operations; OAC 165:10-9-3 to update commercial disposal well surface facility requirements, including permitting, monitor well, leachate collection system, fencing, site security and laboratory certification requirements and to add new OAC 165:10-9-4 to establish requirements for commercial recycling facilities.

OAC 165:10-11-6 is amended regarding well plugging and cementing requirements; OAC 165:10-11-7 to delete the reference to the Form 1003C Cementing Report; OAC 165:10-17-9 to add references to Order No. 571714 which issued in Cause CD No. 200902831 concerning certain special allocated

gas pools; OAC 165:10-21-21, OAC 165:10-21-22, OAC 165:10-21-23, OAC 165:10-21-24, OAC 165:10-21-35, OAC 165:10-21-36, OAC 165:10-21-37, OAC 165:10-21-45, OAC 165:10-21-47, OAC 165:10-21-47.1, OAC 165:10-21-55, OAC 165:10-21-57, OAC 165:10-21-58, OAC 165:10-21-66, OAC 165:10-21-67, OAC 165:10-21-68, OAC 165:10-21-69, OAC 165:10-21-75, OAC 165:10-21-76, OAC 165:10-21-77, OAC 165:10-21-78, OAC 165:10-21-80, OAC 165:10-21-82, OAC 165:10-21-82.2 and OAC 165:10-21-82.3 in Subchapter 21, Applications for Tax Exemptions, in accordance with 68 O.S. §1001 and amendments thereto in Senate Bill 313 (2009); Subchapter 29, Special Area Rules, to add new language concerning horizontal drilling in certain counties of the State; Appendix C regarding allowables for horizontal oil wells and Appendix F regarding Schedule B fines so as to omit the reference to filing of cementing reports in conjunction with violations of OAC 165:10-11-7.

The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at http://www.occeweb.com.

[OAR Docket #10-976; filed 6-8-10]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #10-990]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 34. Competitive Procurement
165:35-34-3 [AMENDED]
Subchapter 37. Integrated Resource Planning
165:35-37-4 [AMENDED]
165:35-37-5 [NEW]
Subchapter 38. Recoverable Costs
165:35-38-3 [AMENDED]
165:35-38-4 [AMENDED]
165:35-38-5 [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution; 17 Okla. Stat. § 152
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May 10, 2010
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May 26, 2010
Effective:
July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
OAC 165:35-34-3 is amended to clarify the time period prior to the drafting of a request for proposal (RFP) in which a soliciting utility must notify the Commission of its intent to engage in a competitive bidding process. Further, it also clarifies the procedure for a required technical conference once a utility decides to issue an RFP and final presentation of the RFP. OAC 165:35-37-4 is amended to reference the new rule (165:35-37-5) which details the procedure a utility must follow for submission of subsequent integrated resource plans. OAC 165:35-37-5 is a new rule which details the procedure a utility must follow for submission of subsequent integrated resource plans. OAC 165:35-38-3 is amended to delete quoted statutory language and to include a reference to the Oklahoma statute which sets forth certain costs that may be recovered by a utility. OAC 165:35-38-4 is amended to delete quoted statutory language and to include a reference to the Oklahoma statute which sets forth certain costs that may be recovered by a utility. OAC 165:35-38-5 is amended to delete quoted statutory language and to include a reference to the Oklahoma statute which sets forth certain costs that may be recovered by a utility and to correct typographical errors.
CONTACT PERSON:
James L. Myles, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-2308.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 34. COMPETITIVE PROCUREMENT

165:35-34-3. RFP Competitive Bidding Procurement Process

(a) **Competitive Bidding Structure and Process Guidelines**

(1) The soliciting utility shall notify the Commission of its intent to engage in a competitive bidding process at least ~~45~~30 days before ~~or as soon as reasonably practicable but not less than 30 days before drafting~~issuing a request for proposal ("RFP"), as required by subsection (4) below.

(2) The soliciting utility shall prepare the initial draft of the RFP documents, including but not limited to RFP procedures, and a pro forma power purchase agreement that, to the maximum extent practicable, utilizes industry standard contractual terms and contains all expected material terms and conditions and a solicitation schedule (collectively, the "RFP Document").

(3) In addition to the information required by (1) of this Section, the RFP and RFP Document, at a minimum, shall identify clearly:

(A) Term;

(B) Amount of megawatts, if applicable, and types of products being solicited;

(C) All price and non-price evaluation factors to be considered;

(D) Respective weight for each price and non-price evaluation factor; and

(E) Utility's preliminary analysis of transmission availability and the utility's plan for evaluation of

transmission availability for each proposal received, including, but not limited to:

(i) Description of the role of transmission analysis to be conducted by the utility in the bid evaluation process. This analysis should use publicly available tools provided by the controlling entity, such as the Southwest Power Pool Scenario Analyzer, and

(ii) Any ~~Role~~role of the transmission analysis to be conducted by the controlling entity, currently the Southwest Power Pool, in the bid evaluation process.

(4) The draft of the RFP Document, supporting documentation, and bid evaluation procedures shall be provided the Commission, Attorney General, and Independent Evaluator ~~for review~~ and posted on the utility's website at least 15 days prior to ~~the planned issue date of the RFP~~ the technical conference referenced below. After the draft RFP is issued, a technical conference shall be scheduled by the utility to discuss the draft RFP and the bidding process. After receiving input from ~~all~~ interested ~~parties~~persons, ~~which may include the Commission, Attorney General, and Independent Evaluator,~~ and holding ~~a~~the technical conference ~~regarding the bidding process,~~ the soliciting utility shall post the draft RFP Document and any comments ~~of the Commission, Attorney General, and Independent Evaluator~~received, on the soliciting utility's website or electronic bulletin board, or by some other publicly accessible method ~~and solicit comments from interested parties concerning the draft RFP Document~~. After due consideration of all comments, ~~The~~the soliciting utility will submit the final RFP Document to the Commission and post the final RFP Document on its website or electronic bulletin board, or by other publicly accessible method. RFPs shall include the Southwest Power Pool's time requirements to conduct transmission analyses, i.e. the aggregate study.

(b) **Independent Evaluator**

(1) The Commission may, at its discretion, retain and arrange compensation for an Independent Evaluator to monitor the RFP and competitive bidding process. Notwithstanding the foregoing, the Commission shall retain an Independent Evaluator to monitor the RFP and competitive bidding process in the following instances: (i) when an affiliate of the utility is anticipated to participate in the competitive bidding process; (ii) when the RFP and bid resulting therefrom is expected to have a material impact on the utilities' cost of providing electricity to its customers, or (iii) when it is anticipated that the utility may participate as a bidder in the competitive bidding process. The Commission shall establish the minimum qualifications and requirements for an Independent Evaluator and ensure the Independent Evaluator is financially and substantively independent from any soliciting electric utility or affiliate thereof, complaining entity, and any potential bidder.

(2) The Independent Evaluator will report to the Commission and the Attorney General.

(3) If the Independent Evaluator's conclusion is different from the conclusion of the soliciting utility about the winning bidder(s), the Independent Evaluator and utility may attempt to resolve such differences. In the event the Independent Evaluator and utility cannot resolve their differences, the soliciting utility will determine which bid(s) is successful. The Independent Evaluator shall submit its independent evaluation to the Commission.

(4) As part of its contract with the Independent Evaluator, the Commission shall require the Independent Evaluator, to enter into an agreement to keep all information confidential that pertains to the disclosure and use of any models, analytical tools, data, or other materials of a confidential or proprietary nature provided or made available by the soliciting utility in conjunction with the competitive bidding process.

(c) **Affiliate Bidders' Requirements**

(1) Each soliciting utility affiliate that intends to bid shall disclose publicly, in writing, the names and titles of the members of the affiliate's "Bid Team." Each soliciting utility shall disclose publicly, in writing, the names and titles of the members of its "Evaluation Team." A Bid Team develops the affiliate's bid and, to assure fairness, is not involved, directly or indirectly, in the evaluation or selection of bids. An Evaluation Team evaluates bids, selects the successful bidder and, to assure fairness, is not involved, directly or indirectly, in the development of the affiliate's bid.

(2) Each soliciting utility and bidding affiliate shall assure that the Bid Team and the Evaluation Team and any member of either do not engage in any communications, either directly or indirectly, regarding the RFP or the competitive bidding process. For bidder and Commission assurance, the soliciting utility and bidding affiliate shall execute an acknowledgement that the utility and affiliate have not and will not in the future so communicate, other than to submit and receive the bid at the appropriate time. The Bid Team and Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(3) The Evaluation Team shall report to the Independent Evaluator, any contact or communications by any bidder, including the Bid Team, and advise the bidder any future contact must be directed to the Independent Evaluator. Bidders and the Evaluation Team may communicate as part of a bidding technical conference of which potential bidders or all actual bidders, if bids have already been submitted, are given adequate notice and opportunity to attend.

(d) **Evaluation of Responses to the RFP**

(1) The evaluation of the responses to the RFP will proceed as follows:

(A) The soliciting utility will evaluate all timely submitted bids to determine the lowest reasonable cost for long-term reliable power or reliable long-term fuel sought that minimizes ratepayer cost, including

but not limited to charges for or costs relating to long-term fuel supply, long-term fuel transport, long-term fuel storage, long-term fuel processing, or increased cost of capital, consistent with the principles and procedures contained in this Subchapter and in the utility's resource plan and associated procurement plans.

(B) The Commission, Attorney General, and Independent Evaluator will be included in the evaluation of all bids submitted to the soliciting utility. The soliciting utility shall include within the RFP the time and place for the opening of the bids so that the Commission, Attorney General and the Independent Evaluator may attend and monitor the opening of bids. Bids shall be opened by the soliciting utility at the time and place so indicated in the RFP whether or not any or all of those parties are in attendance.

(2) All bids shall be evaluated on the basis of the bidder's final best offer. No bidder shall be permitted to unilaterally submit a refreshed bid unless all bidders are given a meaningful opportunity to submit a refreshed bid as a result of some material, documented change. The Independent Evaluator shall be charged with evaluating any such changes and ensuring that the changes are substantive and not an attempt to influence the final selection process in favor of a particular bidder.

(3) Should any bid be unclear to such extent that the lack of clarity could impact the outcome of the bidding, the soliciting utility, Commission, Attorney General, or Independent Evaluator may request further information from any bidder regarding its bid, provided, any such communication between or among the soliciting utility, Commission, Attorney General, or Independent Evaluator and bidder should be conducted through an open process in which the utility, Independent Evaluator, Commission and Attorney General are given adequate notice and an opportunity to attend.

(4) The Commission, Attorney General and Independent Evaluator, as well as the soliciting utility, may rely on the Southwest Power Pool to conduct all necessary transmission analyses concerning bids received. Southwest Power Pool analyses provided to the Commission, Attorney General, or Independent Evaluator shall be equivalent in quality and content to that provided to the soliciting utility. No bidder, including any bidder that is an affiliate (including the Bid Team) of the soliciting utility, shall communicate with the Southwest Power Pool Transmission group during the course of the competitive bidding process regarding any aspect of the RFP or process.

(5) In conducting the evaluation of the responses, the soliciting utility shall not:

(A) Waive or otherwise modify any evaluation factor or evaluation weight for any bidder;

(B) Add any adjustments on the basis of expected effects on the utility's cost of capital if not already contained in the RFP;

(C) Impose any penalty on the price of purchased power; or

(D) Include any discount for utility self-generation on the basis of reliability as part of the utility's resource mix.

(e) Prior to a utility taking long-term procurement action other than the competitive procurement process set forth in this Subchapter, such utility shall seek a waiver of all or any part of these competitive bidding rules by filing a cause with the Commission.

(f) The utility shall promptly submit its decision concerning the successful bid with the Commission and mail copies of such submission to all bidders, the Independent Evaluator, and the Attorney General. Included within that mailing, the utility shall provide the non-winning bidders the rationale and analysis used for the selection of the winning bid.

(1) Any unsuccessful bidder, the Independent Evaluator, or the Attorney General shall have fifteen (15) days following submission of the successful bid decision with the Commission to file with the Commission a complaint challenging the decision as not meeting the criteria for decision specified in this subchapter or waiver previously obtained pursuant to 165:35-34-3(e) and the RFP document and bid evaluation procedures developed pursuant to 165:35-34-3(a).

(2) In the event of the filing of such a complaint, after notice to all bidders and hearing, the Commission shall determine whether the utility's decision reveals either a clear departure from the criteria stated in these rules or previously obtained waiver, the RFP Document and bid evaluation procedures for decision or is erroneous, in which event the utility shall be required immediately to rebid, in accordance with this Subchapter, the items which were the subject of such determination.

(g) Upon determination of the successful bidder, the utility and successful bidder shall promptly proceed to finalize contracts necessary to implement the bid.

(1) The contract shall contain appropriate guarantees, as set by the Commission, regarding the reliability of services.

(2) At the request of either party and upon notice and hearing, the Commission shall have authority to determine any disputes between the parties as to terms incidental to the bid. All matters to be determined by the Commission under this provision shall be heard on an expedited basis and a decision rendered thereon within thirty (30) days from filing.

SUBCHAPTER 37. INTEGRATED RESOURCE PLANNING

165:35-37-4. Integrated Resource Plan Reviews

(a) Each utility shall submit to the Commission a proposed integrated resource plan, with the utility's first plan due on before October 1, 2006, and subsequent plans due every three (3) years thereafter, unless otherwise ordered by the Commission. Subsequent plans shall be developed and submitted as provided by the procedure set forth in 165:35-37-5. The proposed resource plan shall include, among other things, a

fuel procurement plan, purchased-power procurement plans, a risk management plan, an environmental compliance plan, and other elements as described further in this Subchapter. This plan will be made available upon request by any person or entity to the soliciting utility, except any portions subject to a Commission protective order.

(b) Each utility shall have an ongoing obligation to monitor markets and inputs and to notify the Commission when material changes in planning assumptions occur. As the integrated resource plan changes from year to year, the utility shall submit updates to the Commission. The Commission may require the utility to submit an interim, updated integrated resource plan to reflect material change(s) in planning assumptions.

(c) The integrated resource plan shall include, at a minimum, a tabular summary of each of the following Sections:

(1) Schedule A: An electric demand and energy forecast;

(2) Schedule B: A forecast of capacity and energy contributions from existing and committed supply- and demand-side resources;

(3) Schedule C: A description of transmission capabilities and needs covering the forecast period;

(4) Schedule D: An assessment of need for additional resources;

(5) Schedule E: A description of the supply, demand-side and transmission options available to the utility to address the identified needs;

(6) Schedule F: A fuel procurement plan, purchased-power procurement plan, and risk management plan;

(7) Schedule G: An action plan identifying the near-term (i.e., across the first five [5] years) actions that the utility proposes to take to implement its proposed resource plan;

(8) Schedule H: Any proposed RFP(s), supporting documentation, and bid evaluation procedures by which the utility intends to solicit and evaluate new resources; and

(9) Schedule I: A technical appendix for the data, assumptions and descriptions of models needed to understand the derivation of the resource plan.

(10) Schedule J: A description and analysis of the adequacy of its existing transmission system to determine its capability to serve load over the next ten (10) years, including any planned proposed changes to existing transmission facilities.

(11) Schedule K: An assessment of the need for additional resources to meet reliability, cost and price, environmental or other criteria established by the Commission, the State of Oklahoma, the Southwest Power Pool, North American Electric Reliability Council, or the Federal Energy Regulatory Commission. This assessment should address both base line forecast condition and important uncertainties, including but not limited to load growth, fuel prices, and availability of planned supplies.

(12) Schedule L: An analysis of the utility's proposed resource plan and any alternative scenarios necessary to demonstrate how the preferred plan best meets the planning criteria. Technical appendices should be included to document the planning analysis and assumptions used in preparing this analysis.

165:35-37-5. Procedure for subsequent integrated resource plans

(a) A utility shall notify the Commission that it has prepared a proposed update of its integrated resource plan at least sixty (60) days prior to submission pursuant to 165:35-37-4.

(b) In order to allow all stakeholders the opportunity to review and provide input regarding utility objectives, assumptions, planning scenarios, and other information contained in the proposed updated integrated resource plan, after giving notice and prior to submitting the final integrated resource plan, the utility shall conduct at least one technical conference for all stakeholders. Stakeholders then may submit comments to the utility as to the strengths and weaknesses of the proposed plan.

(c) The utility shall make the proposed plan available prior to the technical conference to any person who requests it, except any portions subject to a Commission protective order or confidentiality agreement.

(d) The utility shall take into account any comments received prior to or at the technical conference and make such changes to the plan as seem reasonable.

(e) The utility shall provide a facilitator to coordinate and assist the stakeholders in their discussions at the technical conference. The facilitator provided by the utility shall prepare meeting minutes from the technical conference and prepare a summary of stakeholder input for inclusion as an exhibit in the final integrated resource plan.

(f) The Commission and/or the Attorney General may, at its discretion, retain third party consultants and/or expert witnesses to review the proposed plan and participate in the technical conference on its behalf. The utility shall be responsible for, and be allowed recovery of, the cost of such third party consultants and/or expert witnesses.

(g) The Commission may conduct similar technical conferences at its discretion concerning updates to the integrated resource plan as provided by 165:35-37-4.

(h) After the above procedure has occurred, the utility shall present its final integrated resource plan at a public meeting held at the Commission.

SUBCHAPTER 38. RECOVERABLE COSTS

165:35-38-3. Transmission Upgrades

~~(a) *Effective July 1, 2006, the portion of costs incurred by an electric utility, which is subject to rate regulation by the Corporation Commission, for transmission upgrades approved by a regional transmission organization to which such utility is a member and resulting from an order of a federal regulatory authority having legal jurisdiction over interstate regulation of transmission rates, shall be presumed recoverable by such utility. The presumption established in this subsection may be rebutted by evidence that the costs so incurred by the utility for such transmission upgrades exceed the scope of the project*~~

~~*authorized by the regional transmission organization or order issued by such federal regulatory authority having jurisdiction over interstate regulation of transmission rates.* [17 O.S., Section 286(A)]~~

(~~b~~a) Costs incurred by a utility that are directly related to transmission upgrades as set forth in 165:35-38-1 are presumed recoverable by such utility. However, the presumption may be rebutted by evidence presented by a complainant or through the audit and review process that the costs so incurred by the utility for such transmission upgrades exceed the scope of the project authorized by the regional transmission organization or federal regulatory authority order.

(~~c~~b) Before costs set forth in 17 O.S. Section 286(A), as amended, are allowed to go into effect, a cause will be opened by the utility before the Commission. After notice and hearing and upon proper evidence, the Commission may authorize an electric utility to recover all or a portion of the costs incurred by the utility for such transmission upgrades.

(~~d~~c) A utility seeking cost recovery for transmission upgrades as they pertain to this subsection may file an application to recover such costs and shall provide, at a minimum:

(1) A detailed summary of the costs for which recovery is sought;

(2) Evidence of the approval received by the utility from the regional transmission organization or order received from the federal regulatory authority giving rise to the transmission upgrade; and

(3) A proposed recovery mechanism to recover such costs, which shall be in accordance with Commission's traditional rate making procedures.

165:35-38-4. Capital Expenditures to Meet Environmental Requirements

~~(a) *An electric utility subject to rate regulation by the Corporation Commission may file an application seeking Commission authorization of the utility's plan to make capital expenditures for equipment or facilities necessary to comply with the Federal Clean Air Act, as amended, and, as the Commission may deem appropriate, federal, state, local or tribal environmental requirements which apply to generation facilities. If approved by the Commission, after notice and hearing, the equipment or facilities specified in such approved utility plan are conclusively presumed used and useful. The utility may elect to periodically adjust its rates to recover the costs of such expenditures; provided that the utility shall file a request for a review of its rates pursuant to Section 152 of Title 17 of the Oklahoma Statutes. Provided further, that such periodic rate adjustment or adjustments are not intended to prevent a utility from seeking cost recovery of such capital expenditures as otherwise may be authorized by the Commission. However, the reasonableness of the costs to be recovered by the utility shall be subject to Commission review and approval.* [17 O.S. Section 286(B)]~~

(~~b~~a) A utility may file an application pursuant to 17 O.S. Section 286(B), as amended, and this subchapter seeking Commission authorization of the utility's plan to make capital expenditures for equipment or facilities necessary to comply with the environmental requirements ~~as set forth in 165:35-37~~applicable to generation facilities as set forth in 17 O.S. Section 286(B).

(~~c~~b) If approved by the Commission after notice and hearing, the equipment or facilities specified in the approved utility plan shall be conclusively presumed used and useful.

(~~d~~c) The utility may elect periodically to adjust its rates to recover the costs of such expenditures provided that the utility shall file a request for a review of its rates pursuant to Section 152 of Title 17 of the Oklahoma Statutes.

(~~e~~d) Periodic rate adjustments as contemplated above shall not prevent a utility from seeking cost recovery of capital expenditures as otherwise may be authorized by the Commission. However, the reasonableness of the costs to be recovered by the utility shall be subject to Commission review and approval.

165:35-38-5. Self-build or Purchase Options

~~(a) *An electric utility subject to rate regulation by the Corporation Commission may elect to file an application seeking approval by the Commission to construct a new electric generating facility or to purchase an existing electric generation facility subject to the provisions of this subsection. If, and to the extent that, the Commission determines there is a need for construction or purchase of such electric generating facility, the generating facility shall be considered used and useful and its costs shall be subject to cost recovery rules promulgated by the Commission. The Commission shall enter an order on an application filed pursuant to this subsection within two hundred forty (240) days of the filing of the application, following notice and hearing and after consideration of reasonable alternatives.* [17 Okla. Stat. § 286(C)]~~

(a) An electric utility may elect to file an application pursuant to 17 O.S. Section 286(C), as amended, and this subchapter seeking approval by the Commission to construct a new electric generating facility, to purchase an existing electric generation facility or to enter into a long-term contract for purchased power and/or energy.

(b) Upon application by an electric utility pursuant to this Subchapter, the Commission shall review the requested cost recovery.

(c) If the soliciting utility wishes to consider an option for full or partial ownership of a self-build option, the utility must submit its construction proposal ("Self-build Proposal") to provide all or part of the capacity requested in the RFP stated in ~~165:35-34~~165:35-34 at the same time the bids are requested.

(d) Once submitted, the Self-build Proposal may not be modified by the soliciting utility. If a Self-build Proposal is selected and approved by the Commission, the amount the soliciting utility shall recover through the rate base or other cost-recovery methods without additional Commission approval is limited to the total project cost identified in the Self-build Proposal.

(e) A Cause shall be opened by the utility for cost recovery if the competitive bidding RFP process established in ~~165:35-34~~165:35-34 is not utilized and the utility wishes to gain approval of cost before construction starts.

(f) Bid responses will be opened with the Independent Evaluator, Commission and the Attorney General present.

(g) Bid award terms and conditions shall be posted on the utility's web site or electronic bulletin board within sixty (60) days after receipt, with a notice to the Commission.

(h) The Commission decision approving or denying the plan shall address the contents of the utility's resource plan, including its fuel procurement plan, purchased-power procurement plan, and risk management plan. If the record contains sufficient evidence, the Commission shall specifically approve or reject:

(1) The utility's proposed plans for resources in the planning period,

(2) The utility's proposed plans for acquiring additional resources through the competitive acquisition process, and

(3) The utility's proposed RFP(s).

(i) Upon the filing of an application pursuant to this Subchapter, the Commission will establish a procedural schedule, which shall provide for a Commission order within two hundred forty (240) days of the date of such filing.

[OAR Docket #10-990; filed 6-9-10]

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

[OAR Docket #10-958]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. Incinerators
Part 1. General Provisions
252:100-17-1. Purpose [AMENDED]
252:100-17-1.1. Reference to 40 CFR [AMENDED]
252:100-17-1.2. Terminology related to 40 CFR [REVOKED]
252:100-17-1.3. Incinerators and fuel-burning equipment or units [NEW]
Part 3. General Purpose Incinerators [AMENDED]
252:100-17-2. Applicability [AMENDED]
252:100-17-2.1. Exemptions [AMENDED]
252:100-17-2.2. Definitions [AMENDED]
252:100-17-4. Particulate matter [AMENDED]
252:100-17-5. Incinerator design and operation requirements [AMENDED]
252:100-17-5.1. Alternative incinerator design requirements [AMENDED]
252:100-17-7. Test methods [AMENDED]
Appendix A. Allowable Emissions for Incinerators with Capacities in Excess of 100 lb/hr or greater [REVOKED]
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]
Appendix B. Allowable Emissions for Incinerators with Capacities less than 100 lb/hr [REVOKED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*
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Effective:
July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to amend OAC 252:100-17, Parts 1 and 3 to remove obsolete language and clarify the remaining provisions. In addition, the Department is proposing to revoke the current Appendices A and B and combine the requirements into a new Appendix A. Furthermore, the graphs in both appendices will be eliminated.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., § 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 17. INCINERATORS

PART 1. GENERAL PROVISIONS

252:100-17-1. Purpose

The purpose of this ~~Subchapter~~ subchapter is to specify design and operating requirements, and emission limitations for incinerators and municipal waste combustors (MWC).

252:100-17-1.1. Reference to 40 CFR

~~When a provision of Title 40 of the Code of Federal Regulations (CFR) is incorporated by reference, all citations contained therein are also incorporated by reference.~~See OAC 252:100-2.

252:100-17-1.2. Terminology related to 40 CFR [REVOKED]

~~When these terms are used in rules incorporated by reference, the following definitions shall apply:~~

~~**"EPA Administrator"** or **"Administrator"** is synonymous with "Executive Director" or "the Executive Director's designee".~~

~~**"State"** is synonymous with "Department of Environmental Quality" or "DEQ".~~

252:100-17-1.3. Incinerators and fuel-burning equipment or units

Any incinerator or MWC subject to the requirements of any part of this subchapter that is used to generate useful heat energy is also considered fuel-burning equipment or a fuel-burning unit and is subject to all applicable requirements of this chapter.

PART 3. GENERAL PURPOSE INCINERATORS

252:100-17-2. Applicability

This ~~Part~~ part applies to any new and existing ~~incinerators~~incinerator not subject to ~~New Source Performance Standards (NSPS)~~ 40 CFR Part 60, Subparts E, Ea, Eb, Ec, or EEEE, or ~~any other~~ Parts ~~in~~ 4, 5, 7, 9, or 11 of this ~~Subchapter~~ subchapter.

252:100-17-2.1. Exemptions

Thermal oxidizers, flares and any other air pollution control devices are exempt from the requirements of this ~~Part~~ part.

252:100-17-2.2. Definitions

The following words and terms when used in this ~~Subchapter~~ part and Part 4 of this subchapter shall have the following meaning unless the context clearly indicates otherwise:

"Capacity" means ~~amount~~ the maximum design charging rate of ~~specified wastes a unit~~ refuse in pounds per hour (lb/hr) an incinerator is designed to ~~burn~~ receive. ~~Capacity may be expressed as pounds per hour or tons per day.~~

~~**"Excess air"** means air entering a combustion chamber in excess of the amount theoretically required to complete combustion of materials in the combustion chamber.~~

~~**"Fly ash"** means particulate matter capable of being gas-borne or airborne consisting essentially of fused ash and/or burned or unburned material.~~

"Particulate matter" or "total particulate matter" means the sum of all filterable and condensable particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Primary combustion chamber" means the initial incinerator chamber where ~~waste~~refuse is charged, ignited, and burned.

~~**"Secondary burner"** means a supplemental burner in the secondary chamber for the purpose of maintaining a minimum temperature and to insure the complete combustion of volatile gases and smoke.~~

"Secondary combustion chamber" means ~~one or more~~ a component of the general purpose incinerator that receives combustion gases from the ~~chambers in addition to the~~ primary combustion chamber ~~that function to fully combust gaseous and particulate matter suspended in the exhaust gases from the primary~~ and in which the combustion ~~chamber~~ process is completed.

252:100-17-4. Particulate matter

~~Fly ash or other particulate~~The emissions of particulate matter from an incinerator subject to the requirements of this part shall not exceed ~~quantities greater than~~ the applicable allowable particulate matter emission rate contained in Appendix A of this chapter. ~~The allowable emissions for incinerators with capacities of 100 lb/hr or greater are set forth in Appendix A of this Chapter. The allowable emissions for incinerators with capacities less than 100 lb/hr are set forth in Appendix B of this Chapter.~~ Solid fuels charged will be considered part of the refuse weight. ~~No. 1 and No. 2 fuel oils (distillate oils), liquified petroleum gases, gaseous fuels and combustion air will not be considered as part of the refuse weight.~~

252:100-17-5. Incinerator design and operation requirements

An incinerator subject to this ~~Part must have:~~ part shall be designed and built with a primary combustion chamber ~~equipped with a burner(s)~~ that maintains a temperature of at least 800ºF in the primary combustion chamber at all times when refuse is being incinerated, and a secondary combustion chamber(s) that is ~~equipped with a burner or other combustion device~~ adequately designed and operated to ~~fully~~ combust gaseous and particulate matter suspended in the exhaust gas stream from the primary combustion chamber. The combustion device in each combustion chamber shall be in operation at all times when refuse is being incinerated.

~~(1) A primary burner that maintains a temperature of at least 800°F in the primary combustion chamber.~~

~~(2) A secondary burner that shall be used when necessary to eliminate smoke.~~

252:100-17-5.1. Alternative incinerator design requirements

Notwithstanding OAC 252:100-17-5, ~~The~~the Director may approve an alternative incinerator design ~~that does not meet the design requirements in 252:100-17-5~~ if the owner or operator of the proposed incinerator demonstrates to the ~~DEQ~~ satisfaction of the Director that the incinerator ~~can~~ will comply with OAC 252:100-17-4 and all other applicable requirements of this chapter.

252:100-17-7. Test methods

~~(a) **Opacity.** Opacity shall be measured utilizing Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources found in the Code of Federal Regulations at 40 CFR Part 60, Appendix A. This method is hereby incorporated by reference as it exists on July 1, 1997.~~

~~(b) **Particulate matter.** Particulate matter shall be measured utilizing the appropriate DEQ approved Method 5 found in the Code of Federal Regulations at 40 CFR Part 60, Appendix A. This method is hereby incorporated by reference as it exists on July 1, 1997.~~See OAC 252:100-43.

APPENDIX A. ALLOWABLE EMISSIONS FOR INCINERATORS WITH CAPACITIES IN EXCESS OF 100 LB/HR OR GREATER [REVOKED]

APPENDIX A. ALLOWABLE PARTICULATE MATTER EMISSION RATE FOR INCINERATORS [NEW]

The following information is for use only in conjunction with OAC 252:100-17-4.

The allowable particulate matter emission rate for incinerators with a capacity of 75 lb/hr or less is 0.01 pounds per hour of refuse charged, including any solid fuel, on an as-loaded basis.

The allowable particulate matter emission rate for incinerators with a capacity greater than 75 lb/hr may be calculated using one of the following formulas, where **Y** equals the allowable particulate matter emission rate in pounds per hour and **X** equals the refuse charged, including any solid fuel, in pounds per hour on an as-loaded basis.

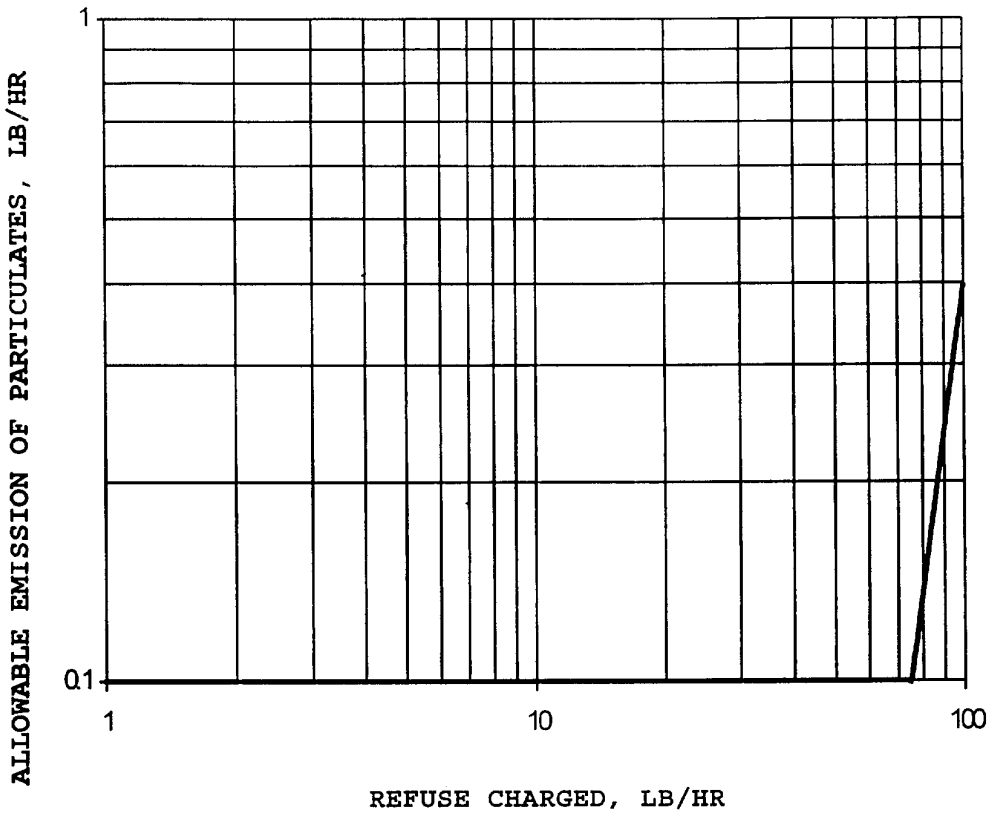
For incinerators with a capacity greater than 75 lb/hr but less than 100 lb/hr, the formula is:

$$\mathbf{Y} = 9.213\times10^{-11}\,\mathbf{X}^{4.818}$$

or incinerators with a capacity of 100 lb/hr or more, the formula is:

$$Y = .221\ 10^{-2}\,\mathbf{X}^{0.7577}$$

APPENDIX B. ALLOWABLE EMISSIONS FOR INCINERATORS WITH CAPACITIES LESS THAN 100 LB/HR [REVOKED]



Allowable emission rate may be calculated using the following formulae:

Incinerators with capacities greater than 75, but less than or equal to 100 lb/hr

$$Y = 9.213 \times 10^{-11} X^{4.818}$$

Incinerators with capacities of 75 lb/hr or less

$$Y = 0.1$$

Where,

X = refuse charged, lb/hr on an as-loaded basis.

Y = allowable particulate matter emission rate, lb/hr.

[OAR Docket #10-958; filed 6-2-10]

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

[OAR Docket #10-959]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Appendix Q. Incorporation By Reference [REVOKED]
Appendix Q. Incorporation By Reference [NEW]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101 and Air Quality Advisory Council, 27A O.S. § 2-2-201; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*
DATES:
Comment period:
September 15, 2009 through January 20, 2010
February 26, 2010
Public hearing:
October 15, 2009, January 20, 2010, and February 26, 2010
Adoption:
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Submitted to Governor:
March 8, 2010
Submitted to House:
March 8, 2010
Submitted to Senate:
March 8, 2010
Gubernatorial approval:
April 14, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 4, 2010
Final adoption:
May 4, 2010
Effective:
July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards.
40 CFR 60, subpart GGGa, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
40 CFR 60, subpart VVa, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
40 CFR 63, subpart AAAAAAA, National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
40 CFR 63, subpart CCCCCCC, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing
40 CFR 63, subpart VVVVVV, National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
40 CFR 63, subpart YYYYYY, National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
40 CFR 63, subpart ZZZZZZ, National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
Incorporating rules:
252:100 Appendix Q. Incorporation By Reference
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m.
ANALYSIS:
The proposed changes to Appendix Q are part of the annual updating and incorporation of Title 40 of the Code of Federal Regulations.
In addition, the titles for several subparts already included in Appendix Q have been modified to reflect more precisely the titles as they appear in the Code of Federal Regulations. The list in the appendix has been rearranged to reflect the order in which the subparts appear in the Code of Federal Regulations.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., § 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]

APPENDIX Q. INCORPORATION BY REFERENCE [NEW]

Except as provided under OAC 252:100-2-3(b)(2), the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on December 10, 2009.

PART	SUBPART	DESCRIPTION
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971
60	Da	Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

PART	SUBPART	DESCRIPTION
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills

PART	SUBPART	DESCRIPTION
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006

PART	SUBPART	DESCRIPTION
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for Onshore Natural Gas Processing: SO_2 Emissions
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	FFFF	Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004
60	IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines

PART	SUBPART	DESCRIPTION
60	JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

PART	SUBPART	DESCRIPTION
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

PART	SUBPART	DESCRIPTION
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

PART	SUBPART	DESCRIPTION
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

PART	SUBPART	DESCRIPTION
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
63	EEEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries
63	FFFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	LLLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands
63	QQQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

PART	SUBPART	DESCRIPTION
63	RRRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

PART	SUBPART	DESCRIPTION
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Paints and Allied Products Manufacturing
64	All Subparts	Compliance Assurance Monitoring (CAM)
72	All Subparts	Permits Regulation

[OAR Docket #10-959; filed 6-2-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #10-957]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:515-1-2. Definitions [AMENDED]
252:515-1-8. Special considerations [AMENDED]
Subchapter 3. Permit Provisions and Applications
Part 3. Permit Applications and Modifications
252:515-3-42. Permits for transfer stations [NEW]
Subchapter 15. Methane Gas Monitoring and Control
252:515-15-1. Applicability~~, with exceptions~~ [AMENDED]
Subchapter 19. Operational Requirements
Part 3. Operational Requirements for All Disposal Facilities
252:515-19-31. Prohibited wastes [AMENDED]
Subchapter 29. Exclusion of Prohibited Wastes
252:515-29-1. Applicability [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101 and Solid Waste Management Advisory Council powers and duties, 27A O.S., § 2-2-201; Solid Waste Management 27A O.S. § 2-10-201.
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ANALYSIS:
The Department is proposing changes to Subchapter 1, General Provisions, to clarify certain definitions. In addition, the Department proposes to amend certain permit modification requirements for C&D landfills and transfer stations. C&D landfills and transfer stations will be required to submit a waste exclusion plan with any permit modification. Previously, C&D landfills and transfer stations were not required to have a waste exclusion plan.

The Department is proposing changes to Subchapter 3, Permit Provisions and Applications, to add a permit requirement that transfer stations shall have a waste exclusion plan. The Department is proposing changes to Subchapter 15, Methane Gas Monitoring and Control, to remove the exemption for C&D

landfills. Previously, methane gas monitoring and control was not required at C&D landfills.

The Department is proposing changes to Subchapter 19, Operational Requirements, to add a prohibition with exception, for the disposal of unsorted baled municipal solid waste at a disposal facility. However, municipal solid waste sorted for recycling prior to baling or baled on-site may be disposed of at a disposal facility.

The Department is proposing changes to Subchapter 29, Exclusion of Prohibited Wastes, to add that transfer stations must have a waste exclusion plan and to remove C&D landfills from certain notification requirements.

CONTACT PERSON:

The contact person is Mike Stickney, Land Protection Division, DEQ. Mr. Stickney can be reached at mike.stickney@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1, WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

252:515-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. Any term not defined in this Chapter shall be defined as set forth in OAC 252:515-1-3.

"Active" means, when used to describe a solid waste disposal facility or a portion thereof (e.g., active MSWLF or active cell), any solid waste disposal facility, or portion thereof, accepting solid waste as of the effective date of this Chapter, regardless of whether such facility has obtained a solid waste permit from the DEQ.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities.

"Active portion" means:

(A) that part of a land disposal facility that has or is receiving waste and that has not received either intermediate or final cover; or

(B) solid waste process and storage areas at non-land disposal facilities.

"Airport" means a public-use airport open to the public without prior permission, and without restrictions within the physical capacities of available facilities.

"Applicant" means any person who applies for a new permit or a modification to an existing permit for a solid waste disposal facility identified in OAC 252:515-3-1(a) and (b).

"Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the land disposal facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Such areas include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluxion, block sliding, and rock fall.

"ASTM" means the American Society for Testing and Materials.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Buffer zone" means a designated waste-free area within the permit boundary of a disposal facility, to separate waste handling, processing, and/or disposal activities from adjacent areas.

"Citizen collection station" means a designated~~, unattended~~ location that is established or sponsored by a governmental entity and equipped with waste receptacles for exclusive, non-commercial use by individual residents to deposit their own household waste for collection and transportation to a permitted disposal site.

"CLIMOCS" means the following publication of the Oklahoma Climatological Survey: Shafer, Mark A., CLIMOCS: A Climatological Summary of 168 Oklahoma Cooperative Stations, Oklahoma Climatological Survey, February 1993, 184 pp.

"Composite liner" means a system installed at a land disposal facility composed of a recompacted clay liner overlain with a flexible membrane liner.

"C&D landfill" means a construction/demolition landfill.

"Composting facility" means a facility in which material is converted, under thermophilic conditions, to a product with a high humus content for use as a soil amendment or to prevent or remediate pollutants in soil, air, and stormwater run-off.

"Construction/demolition waste" means waste composed of the following:

(A) asbestos-free waste from construction and/or demolition projects that may include such materials as metal, concrete, brick, asphalt, glass, roofing materials, limited amounts of packing materials, sheetrock, or lumber;

(B) wood waste that may include such materials as yard waste, lumber, wood chips, wood shavings, sawdust, plywood, tree limbs, or tree stumps;

(C) yard waste that may include such materials as grass clippings, tree limbs, tree stumps, shrubbery, flowers, or other vegetative matter resulting from land clearing or landscaping operations; or

(D) residential lead-based paint waste.

"Contaminated stormwater" means:

(A) water such as leachate and gas collection condensate, or stormwater that has come into direct contact with solid waste or waste handling and/or treatment areas;

(B) stormwater discharged from areas of a land disposal facility with less than six inches of waste-free, compacted earthen material; or

(C) wastewater resulting from washing vehicles or areas that are or have been in direct contact with solid waste.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Disease vector" means rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the final disposition of waste and shall be taken to include any discharge, deposit, injection, dumping, spilling, leaking, or placing of waste into or on the land or water so that the waste or any constituent thereof may enter the environment, including the air and any surface waters or ground waters.

"Disposal area" means that part of a land disposal facility where waste is disposed.

"Disposal facility" means disposal site as defined at 27A O.S. § 2-10-103.

"Engineer" means a licensed, professional engineer.

"EPA" means the United States Environmental Protection Agency.

"Existing" means, when used to describe a solid waste disposal facility or portion thereof (e.g. existing MSWLF or existing cell), any solid waste disposal facility, or portion thereof, that had a solid waste permit as of the effective date of this Chapter.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling, processing, storage, and/or disposal of solid waste.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Final closure" means a disposal facility has permanently ceased to accept solid waste for disposal and all required closure activities have been completed for the entire facility in accordance with the approved closure plan. Final closure is not synonymous with phased closure.

"Flood" means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of a lake, stream, river or other body of surface water, or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood, One hundred year (100 year)" means a flood that has a one percent or greater chance of occurrence in any given one year period, or of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"Flood plain" means the lowland and relatively flat areas adjoining inland waters that are inundated by the 100-year flood.

"Gas condensate" means the liquid generated as a result of gas recovery processes.

"Generator" means, in the context of NHIW, any person, by site, whose act or process produces NHIW, or whose act first causes an NHIW to become subject to regulation.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means those wastes subject to regulation under OAC 252:205.

"HBV" means hepatitis B virus.

"HIV" means human immunodeficiency virus.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Household hazardous waste" means household waste that is corrosive, toxic, ignitable, or reactive, including, but not limited to: freon-containing appliances or tanks; non-empty propane tanks; oil, antifreeze, and other motor vehicle fluids; gasoline, kerosene, or diesel fuel; liquid paints; solvents; pesticides, herbicides, fungicides, or rodenticides; caustic cleaners; lead-acid batteries; swimming pool chemicals; unused firearm rounds; and acids and bases.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Injection well" means a facility subject to regulation by OAC 252:652, Underground Injection Control.

"Karst terrains" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic features of karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Land disposal facility" means a landfill, or any other discrete area of land or land excavation, where solid waste is placed for treatment, processing, and/or disposal. Land disposal facility does not include:

(A) land application where solid waste is placed onto, or incorporated into, the soil as a soil amendment, fertilizer, or other legitimate agricultural purpose;

(B) a surface impoundment that is either permitted by the DEQ's Water Quality Division or is a part of an approved liquid waste management system at a permitted solid waste disposal facility;

(C) a yard waste composting facility;

(D) an injection well; or

(E) a solid waste transfer station.

"Landfill" means a discrete area of land or a land excavation in which solid waste is placed for permanent disposal.

"Large NHIW generator" means any business, by site, that generates over 10,000 tons of NHIW in Oklahoma during a calendar year. This definition does not include facilities that are permitted to receive and process solid waste generated by others.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. This includes:

(A) fluid collected in a leachate collection system, including its sumps, surface impoundments, tanks, or other similar locations;

(B) fluid collected on top of the bottom liner of a disposal cell that has received solid waste; and

(C) leachate seeps from disposal cells that have received solid waste.

"Liquid waste" means any waste that is determined to contain "free liquids" as defined by the PFLT.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Litter fence" means an easily portable fence to be located adjacent to the working face to assist with control of blowing material.

"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases that will propagate flame in air at 25°C and atmospheric pressure.

"Maximum horizontal acceleration" means the maximum expected horizontal acceleration of lithified earth material, depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"MSWLF" means Municipal Solid Waste Landfill; a publicly or privately owned landfill that is or has received household waste. A MSWLF may also receive other types of non-hazardous solid wastes, such as nonhazardous sludge, NHIW, special waste, and construction/demolition waste.

"Natural disaster" means a natural occurrence or event (such as a tornado, flood, or forest or prairie fire) of such magnitude that the resultant damage and destruction produce quantities of wastes that overtax available solid waste management systems.

"NHIW" means non-hazardous industrial solid waste, as defined at 27A O.S. § 2-10-103. Examples of NHIW are listed in Appendix F of this Chapter.

"Non-contaminated stormwater" means:

(A) stormwater that has not come into direct contact with solid waste, waste handling and/or treatment areas;

(B) stormwater discharging from areas of a land disposal facility that has at least six inches of waste-free, compacted earthen material; and

(C) wastewater resulting from washing vehicles or areas that have not been in direct contact with solid waste.

"Oklahoma Uniform Environmental Permitting Act" means 27A O.S. § 2-14-101 *et seq.* and the rules adopted thereunder at OAC 252:4 ("Rules of Practice and Procedure").

"Open burning" means the combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

"Operating record" means all of the collective records of the facility relating to the site. Such records include, but are not limited to: the permit, modifications, and approvals; records concerning waste received; any sampling or analyses performed by the facility; closure, post-closure and corrective action plans; financial assurance records; inspection and compliance evaluation correspondence; reports; and scale tickets and related fee payment documentation.

"Owner/operator" means the person who owns a solid waste disposal facility and/or is responsible for the overall operation of a facility or part of a facility.

"OWRB" means the Oklahoma Water Resources Board.

"Permit boundary" means the outermost edge of the area described by legal description in the owner/operator's permit. The permitted boundary includes the area in the buffer zone.

"PFLT" means Paint Filter Liquids Test, EPA Method 9095.

"Phased closure" means the closing of individual disposal cells at a land disposal facility as they become full. Phased closure is not synonymous with final closure.

"Piezometer" means a small-diameter well used to make groundwater elevation measurements.

"Point source discharge" means any discharge of water that, when leaving the permit boundary of a facility, has been channeled or altered by man's activity in working that site.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a land disposal facility.

"POTW" means Publicly Owned Treatment Works; a wastewater treatment system, as defined at 27A O.S. § 2-6-101, that is owned by a State or municipality for the treatment of municipal or industrial wastewaters.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"Recharge area" means an area where water is absorbed and added to the zone of saturation.

"Regulated medical waste" means a waste or reusable material that contains an etiologic agent and is generated in the diagnosis, treatment or immunization of human beings or animals; research pertaining to the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. Such waste includes, but is not limited to:

(A) cultures and stocks of etiologic agents or live vaccines, and culture dishes, devices, paper, and cloth that has come into contact with such cultures, stocks or live vaccines;

(B) human blood, blood products, and human body fluids, except urine or feces;

(C) pathological wastes consisting of human tissues, organs, and body parts removed during surgery, autopsy, biopsy and other medical procedures;

(D) untreated sharps;

(E) used blood collection bags, tubes, and vials;

(F) contaminated carcasses, body parts and bedding of animals intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing of pharmaceuticals;

(G) items contaminated with blood or other human body fluids which drip freely or would release such materials in a liquid or semi-liquid state if compressed or are caked with dried blood or body fluids and are capable of releasing these materials;

(H) isolation wastes unless determined to be non-infectious by the infection control committee at the health care facility;

(I) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV;

(J) all disposable materials that have come in contact with cytotoxic or antineoplastic agents during the preparation, handling, and administration of such agents. Such wastes include, but are not limited to, masks, gloves, gowns, empty IV tubing and bags, vials, and other contaminated materials; and

(K) any other material or equipment which, in the determination of the health care facility staff, infection control committee or other responsible party, presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

"Residential lead-based paint waste" means lead-based paint debris, chips, dust, sludges, and other similar wastes generated as a result of abatement, rehabilitation, renovation, or remodeling activities in individual residences.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the uncontrolled, unorganized sorting, collecting, or removing of solid waste at the disposal site.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

"Sludge" means the definition found at 27A O.S. § 2-10-401.

"Solid waste" means the definition found at 27A O.S. § 2-10-103.

"Special waste" means those wastes that are not hazardous wastes but because of their nature or volume, require special or additional handling aside from that given to routine household refuse. This includes but is not limited to: sludge, septic tank pumpings, grease trap wastes, dead animals, packing house offal and tankage, waste fats and oils, hatchery wastes, cannery wastes, NHIW, tires, and asbestos wastes.

"Structural components" mean liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a land disposal facility that is necessary for protection of human health and the environment.

"Surface impoundment" means a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface water" means water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers, creeks, or streams.

"SW-846" means EPA Publication SW-846, Test Methods for the Evaluation of Solid Waste Physical/Chemical Characteristics.

"Tremie pipe" means a device, usually a small-diameter flexible or rigid pipe, that carries filter pack or bentonite cement from the bottom to the top of a borehole or annular space without forming void spaces. In some cases, a well casing or hollow stem auger can be considered a tremie pipe.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the structural components responsible for preventing releases from a land disposal facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Waste pile" means any non-containerized accumulation of solid, non-flowing waste.

"Waste tire facility" means the definition found at 27A O.S. § 2-11-402.

"Waters of the state" means the definition found at 27A O.S. § 2-6-101.

"Wetlands" mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

"Working face" means the place within a land disposal facility where waste has been deposited and has not been covered with at least intermediate cover.

"Yard waste composting facility" means a composting facility that only accepts yard waste.

"Zone of aeration" means a subsurface zone containing water under a pressure lower than that of the atmosphere, including water held by capillarity; and containing air or gases generally under atmospheric pressure. This zone is bounded

above by the land surface and below by the water table; and is synonymous with vadose zone and unsaturated zone.

"Zone of saturation" means a subsurface zone in which essentially all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain interstices filled with gas or liquids other than water, it is still considered saturated. This zone is separated from the zone of aeration by the water table; and is synonymous with phreatic zone.

252:515-1-8. Special considerations

(a) **Existing permits.** Permits for active solid waste disposal facilities issued under previous rules, and those in the post-closure monitoring period on the effective date of this Chapter, remain in effect.

(b) **Permit upgrades.** Within 180 days of the effective date of this Chapter, the owner/operator of the following solid waste disposal facilities shall submit a permit modification application to the DEQ to ensure compliance with certain requirements of this Chapter.

(1) **MSWLFs and C&D landfills.** Permit modifications for MSWLFs and C&D landfills shall include:

(A) a legal description, by metes and bounds; section, township, and range, or parts thereof; or book and page number of plat records for platted property, of both on- and off-site soil borrow areas, if applicable;

(B) a temporary easement in accordance with OAC 252:515-3-34(c);

(C) a stormwater management plan to demonstrate how compliance with the requirements of Subchapter 17 of this Chapter will be achieved and maintained;

(D) a disposal plan in accordance with OAC 252:515-19-34(c) through (f) for out-of-state waste, if applicable;

(E) a vegetative cover plan to ensure compliance with the requirements of OAC 252:515-19-54, if applicable;

(F) revised closure plans to ensure closure of on- and off-site soil borrow areas in accordance with OAC 252:515-25-32(b)(3)(A), if applicable;

(G) life of site calculations in accordance with OAC 252:515-27-8(c), except for those facilities owned by units of the federal government;

(H) revised closure, post-closure, and/or corrective action cost estimates calculated in aaccordance with Part 5 of Subchapter 27 of this Chapter, except for those facilities owned by units of the federal government; and

(I) a new or revised waste exclusion plan meeting the requirements of Subchapter 29 of this Chapter.

~~(2) **C&D landfills.** Permit modification applications for C&D landfills shall include those items identified in (1)(A) through (1)(H) of this Subsection.~~

(~~3~~2) **NHIW landfills.** Permit modification applications for generator-owned and operated NHIW landfills shall include those items identified in (1)(A), (1)(B), (1)(C), (1)(F), (1)(G) and (1)(H) of this Subsection, as well as a revision to the groundwater monitoring program to ensure compliance with OAC 252:515-9-31(d)(3).

(~~4~~3) **Regulated medical waste processing facilities.** Permit modification applications for regulated medical waste processing facilities shall include the information identified in (1)(B) and (1)(H) of this Subsection.

(4) **Transfer stations.** Permit modification applications for transfer stations shall include the information in (1)(I) of this Subsection.

(c) **Compliance required.**

(1) Except as provided in (2) of this Subsection, permit upgrades identified by (b) of this Section shall be implemented within one year of the effective date of this Chapter. Extensions may be granted by the DEQ for good cause shown.

(2) All solid waste disposal facilities required to establish and maintain financial assurance shall ensure financial assurance mechanisms are funded in the appropriate amount based on approved cost estimates.

(d) **MSWLFs prior to October 9, 1991.** MSWLFs that stopped receiving waste prior to October 9, 1991 are subject to the final cover and post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

(e) **MSWLFs on or after October 9, 1991.** MSWLFs receiving waste on or after October 9, 1991 are subject to this Subsection.

(1) **Less than 100 tons per day of waste.** No later than October 9, 1994, MSWLFs that received less than an average of 100 tons per day of solid waste after October 9, 1991 and stopped receiving waste before April 9, 1994 shall install final cover meeting the requirements of OAC 252:515-19-53.

(A) **Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and rules in effect at the time of closure.

(B) **Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after April 9, 1994, or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

(2) **100 tons or more per day of waste.** No later than October 9, 1994, MSWLFs that received an average of 100 tons or more per day of solid waste after October 9, 1991 and stopped receiving waste before October 9, 1993 shall install final cover meeting the requirements of OAC 252:515-19-53.

(A) **Post-closure monitoring requirements.** MSWLFs shall be subject to the post-closure monitoring requirements of the permit and the rules in effect at the time of closure.

(B) **Failure to stop accepting waste or to apply final cover.** MSWLFs that accepted waste on or after October 9, 1993 or failed to install the final cover by October 9, 1994 shall be subject to all applicable requirements of this Chapter.

(f) **Other disposal facilities.** Other solid waste disposal facilities that stopped receiving waste prior to the effective

date of this Chapter shall close, and perform any applicable post-closure monitoring, in accordance with the permit and the rules in effect at the time of closure.

(g) **Corrective action.** The DEQ may require corrective action any time an inspection of a solid waste disposal facility or review of testing data indicates the actual release of contaminants into the environment. Such corrective action shall be performed in accordance with the requirements of this Chapter.

SUBCHAPTER 3. PERMIT PROVISIONS AND APPLICATIONS

PART 3. PERMIT APPLICATIONS AND MODIFICATIONS

252:515-3-42. Permits for transfer stations

In addition to the requirements of OAC 252:515-3-36, permit applications for transfer stations shall establish a waste exclusion plan (WEP) in accordance with Subchapter 29 of this Chapter.

SUBCHAPTER 15. APPLICABILITY~~, WITH EXCEPTIONS~~

252:515-15-1. Applicability~~, with exceptions~~

(a) **New and active land disposal facilities.** ~~Except as provided for in (b) of this Section, this~~This Subchapter applies to:

(1) all new and active MSWLFs; and

(2) other new or active land disposal facilities that receive waste with the potential to generate explosive gasses, unless a demonstration can be made that the facility will not cause a hazard to safety or health from explosive gasses throughout the operating life and/or post-closure period.

~~(b) **C&D landfills.** C&D landfills are exempt from the requirements of this Subchapter.~~

(~~c~~b) **Closed land disposal facilities.** Land disposal facilities in the post-closure monitoring period may be required to develop and implement an explosive gas remediation plan meeting some or all of the requirements of this Subchapter if generation of explosive gasses is shown to create a hazard to human health or the environment.

SUBCHAPTER 19. OPERATIONAL REQUIREMENTS

PART 3. OPERATIONAL REQUIREMENTS FOR ALL DISPOSAL FACILITIES

252:515-19-31. Prohibited wastes

(a) **Hazardous, radioactive, regulated PCB waste.** The disposal of any quantity of hazardous, radioactive, or regulated polychlorinated biphenyl (PCB) waste at a solid waste disposal facility is prohibited.

(b) **Regulated medical waste.** The disposal of regulated medical waste at a solid waste disposal facility is prohibited, unless the facility is a permitted regulated medical waste processing facility.

(c) **Asbestos.** The disposal of friable asbestos waste at a solid waste disposal facility is prohibited unless the facility is a MSWLF or NHIW landfill specifically authorized by the permit to accept such waste.

(d) **NHIW.** The disposal of NHIW at a solid waste disposal facility is prohibited, unless specifically authorized by the permit.

(e) **C&D landfills.** The disposal of any waste other than construction/demolition waste at a C&D landfill is prohibited.

(f) **NHIW landfills.** In addition to the prohibitions of (a) through (c) of this Section, the disposal of any waste not authorized by the permit is prohibited at an NHIW landfill.

(g) **Baled waste, with exception.** The disposal of unsorted baled municipal solid waste at a disposal facility is prohibited. Municipal solid waste sorted for recycling prior to baling or baled on-site may be disposed of at a disposal facility.

SUBCHAPTER 29. EXCLUSION OF PROHIBITED WASTES

252:515-29-1. Applicability

(a) **Land disposal facilities and transfer stations, with exceptions.** ~~Except as provided for in (b) of this Section, this~~This Subchapter applies to all land disposal facilities and transfer stations except ~~C&D landfills,~~ generator owned and operated NHIW landfills~~,~~ and yard waste composting facilities.

(b) **~~C&D landfills and processing~~Processing facilities.** ~~C&D landfills and any~~Any type of solid waste processing facility ~~are~~is subject to the requirements of OAC 252:515-29-3(e).

[OAR Docket #10-957; filed 6-2-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #10-956]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 39. Oklahoma E-Waste Recycling [NEW]
252:515-39-1.Purpose, authority and applicability [NEW]
252:515-39-2. Definitions [NEW]
252:515-39-3. General provisions [NEW]
252:515-39-4.Annual fees [NEW]
252:515-39-5. Records [NEW]

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Solid Waste Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Oklahoma Computer Equipment Recovery Act § 2-11-601 *et seq.*

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INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The purpose of proposed Subchapter 39 is to implement the requirements of Senate Bill 1631, passed by the Oklahoma Legislature during its 2008 session. The Bill created the Oklahoma Computer Equipment Recovery Act, 27A O.S. § 2-11-601, *et seq*., which gives the DEQ the authority to govern and regulate certain collection, recycling and reuse of computers and computer monitors within the State of Oklahoma. The statutory effective date was January 1, 2009.

There are three (3) primary reasons for the proposed rulemaking. The first reason is to clarify certain definitions necessary for proper implementation of the Act.

The second reason for the proposed rulemaking is establishment of a fee structure. These fees are proposed to cover the DEQ's costs of administering the program as specified at 27A O.S. § 2-11-607(H).

The third reason is to establish record-keeping procedures and guidelines as necessary for proper implementation and oversight of the Act.
CONTACT PERSON:
The contact person is Mike Stickney, Land Protection Division, DEQ. Mr. Stickney can be reached at mike.stickney@deq.ok.gov (e-mail), (405) 702-5100 (phone) or (405) 702-5101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1, WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 39. OKLAHOMA E-WASTE RECYCLING

252:515-39-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this subchapter is to implement and enforce the Oklahoma Computer Equipment Recovery Act. The rules in this subchapter are to provide for the implementation of and a fee structure for the establishment of the Oklahoma Computer Equipment Recovery Act.

(b) **Authority.** OAC 252:515-39-1 through 39-5 is authorized by 27A O.S. §§ 2-11-601 through 611.

(c) **Applicability.** The rules in this Chapter apply to any manufacturer and/or retailer who manufactures, sells and/or imports fifty (50) or more covered devices per calendar year within the state.

252:515-39-2. 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 Computer Equipment Recovery Act.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Landfill Certification" means a written statement that the manufacturer will not dispose of necessary incidental disposal in de minimis amounts.

"Major manufacturer" means a manufacturer that produces, sells or imports one thousand (1,000) or more covered devices per calendar year.

"Minor Manufacturer" means a manufacturer that produces, sells or imports more than fifty (50) but less than one thousand (1,000) covered devices per calendar year.

252:515-39-3. General provisions

(a) **Plan required.** A manufacturer shall not sell or offer for sale and/or import a covered device in this state unless the manufacturer has adopted and is implementing a recovery plan, either alone or in cooperation with other manufacturers and the DEQ has reviewed and approved of said plan.

(b) **Plan submission.** The manufacturer shall submit recovery plans to the DEQ annually on or before March 1st.

(c) **Geographically central.** If a manufacturer's recovery plan only includes the requirements of § 2-11-605(D)(2) or (3) as allowed by the Act and if a consumer resides over one hundred (100) miles from the closest staffed physical collection site or collection event within the state offered by the manufacturer, the manufacturer must provide for a no cost mail back-system meeting the requirements of 27A O.S. § 2-11-605(D)(1).

(d) **Designated manufacturer.** If a manufacturer produces, sells or imports fifty (50) or more covered devices within the state per calendar year and has not submitted a recovery plan, the DEQ may designate a manufacturer or manufacturers as allowed by the Act.

252:515-39-4. Annual fees

(a) **Fee schedule.**
(1) Annual fee for minor manufacturer - $1,000.00
(2) Annual fee for major manufacturer - $5,000.00
(3) Late fee - $500.00

(b) **Annual Fee Adjustment.** To assist in meeting rising costs to the DEQ of the implementation of the program associated with the Act, the fees set out in this Section shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The DEQ may round the adjusted

fees up to the nearest dollar. The DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(c) **Payment.**

(1) Annual fees are due and payable by the 1st day of March of each calendar year. By February 1st of each year, the DEQ will issue invoices to manufacturers who have previously submitted recovery plans to the DEQ. Fees shall be considered delinquent 30 days after the due date. Within five (5) years but not before a grace period of 120 days from the date, the DEQ may issue an administrative order to recover such fees and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Computer Equipment Recovery Act, 27A O.S. §§ 2-11-601 *et seq.*, to a manufacturer who has failed to pay or has underpaid such fees.

(2) If a manufacturer's fee has been deemed delinquent, the DEQ may assess a late fee prior accepting the annual fee as paid.

(3) When a fee overpayment has been made as a result of an error, an owner or operator may seek a credit for such fee overpayment within five years from the date on which payment of the fee was received by the DEQ.

252:515-39-5. Records

Maintain records. The manufacturer must keep records of all covered devices produced, sold and/or imported within the state for at least five (5) years. These records must include any and/or all documentation and records that are related to the recovery plan and the annual report(s) as required by 27A O.S. § 2-11-605(H). These records must be made available for inspection by DEQ personnel and made available to the DEQ upon request.

[OAR Docket #10-956; filed 6-2-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #10-955]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:606-1-4. Date of federal regulations incorporated [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
Part 116 (Hazardous Substances List)
Part 117 (Reportable Quantities for Hazardous Substances)
The following from PART 122 (NPDES PERMIT REGULATIONS):
122.1 (b)-(scope of NPDES permit requirements)
122.2 - (definitions)
122.3 - (exclusions)
122.4 - (prohibitions)
122.5 - (effect of permit)
122.6 - (continuation of expiring permits)
122.7 (b) and (c) - (confidential information)
122.21 - (application for a permit)
122.22 - (signatories)
122.24 - (concentrated aquatic animal production facilities)
122.25 - (aquaculture projects)
122.26 - (stormwater discharges)
122.27 - (silviculture)
122.28 (a) and (b) - (general permits)
122.29 - (new sources and new dischargers)
122.30 - What are the objectives of the storm water regulations for small MS4s?
122.31 - As a tribe, what is my role under the NPDES storm water program?
122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?
122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?
122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?
122.41 - (permit conditions)
122.42 - (conditions for specified categories of permits)
122.43 - (establishing permit conditions)
122.44 - (establishing permit limitations, standards and other conditions)
122.45 - (calculating permit conditions)
122.46 - (permit duration)
122.47 (a) - (schedules of compliance)
122.48 - (monitoring requirements)
122.50 - (disposal into wells)
122.61 - (permit transfer)
122.62 - (permit modification)
122.63 - (minor modifications of permits)
122.64 - (permit termination)
122 - Appendices A through I
The following from PART 124 (Procedures for Decision making):
124.1 - (introduction)
124.2 - (definitions)
124.3 (a), (c), and (d)- (application for a permit)
124.5 (a),(c),(d) and (f) - (modification of permits)

124.6 (a),(c),(d) and (e) - (draft permit)
124.7 - (statement of basis of conditions where no fact sheet is adopted)
124.8 - (fact sheet)
124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) - (public notice)
124.11 - (public comments and requests for hearings)
124.12 (a) and (c) - (public hearings)
124.13 - (obligation of protestors, etc., to raise all issues)
124.14 - (reopening)
124.15 - (issuance & effective dates of permits)
124.17 (a) and (c) - (response to comments)
124.51 (a) and (b) - (specific permitting procedures-purpose and scope)
124.52 - (permits required on a case-by-case basis)
124.56 - (fact sheets)
124.57 (a) - (public notice)
124.59 - (comments from government agencies)
124.62 - (decision on variances)
124.66 - (thermal variance procedures)
The following from PART 125 (criteria and standards for NPDES):
Subpart A (technology-based treatment),
Subpart B (criteria for aquaculture projects),
Subpart D (fundamentally different factors),
Subpart H (alternative effluent limitations),
Subpart I (new cooling water intakes), and Subpart J (existing cooling water intakes).
40 CFR Part 129 (Toxic Pollutant Effluent Standards)
40 CFR Part 136 (testing and laboratory)
40 CFR §§ 401-471 (Effluent Guidelines and Standards)
40 CFR § 110.6 (notice of oil discharge) and
40 CFR Part 302 (Reportable Quantities and Notification).
The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter: The following Sections from Part 503, Subpart A (General Provisions):
503.1 (Purpose and applicability)
503.2 (Compliance period)
503.3 (Permits and direct enforceability)
503.4 (Relationship to other regulations)
503.5 (Additional or more stringent requirements)
503.6(a)-(e),(g)-(j) (Exclusions)
503.7 (Requirement for a person who prepares biosolids)
503.8 (Sampling and analysis)
503.9 (General definitions)
The following Sections from Part 503, Subpart B (Land Application):
503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
503.11 (Special definitions)
503.12 (General requirements)
503.13 (Pollutant limits)
503.14 (Management practices)
503.15 (Operational standards - pathogens and vector attraction reduction)
503.16(a) (Frequency of monitoring)
503.17(a) (Recordkeeping)
503.18 (Reporting)
The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
503.30 (Scope)
503.31 (Special definitions)
503.32(a), (b) (Pathogens)
503.33(a), (b)(1)-(11) (Vector attraction reduction)
The following Sections from Part 503 Subpart E (Incineration)
503.40 (Applicability)
503.41 (Special definitions)
503.42 (General requirements)
503.43 (Pollutant (Metal) limits)
503.44 (Operational standard - total hydrocarbons)
503.45 (Management practices)
503.46 (Frequency of monitoring)
503.47 (Recordkeeping)
503.48 (Reporting)
The following Appendices from Part 503:
Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)
Appendix B (Pathogen treatment processes)

Incorporating rules:
OAC 252:606-1-4

Availability:
The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

ANALYSIS:
The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2008, to July 1, 2009. Included for the first time in the incorporation is EPA's "Water Transfer Rule" at 40 CFR, Section 122.3 (i), which went into effect on August 12, 2008. The "Water Transfer Rule" exempts the need of an NPDES permit for the transfer of raw water from one watershed to another watershed.

CONTACT PERSON:
Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. INTRODUCTION

252:606-1-4. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2008~~ July 1, 2009.

[OAR Docket #10-955; filed 6-2-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 645. SEPTAGE PUMPERS AND ~~HAULERS~~ TRANSPORTERS

[OAR Docket #10-954]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
252:645-1-1 [AMENDED]
252:645-1-2 [AMENDED]
252:645-1-2.1 [NEW]
252:645-1-3 [AMENDED]
252:645-1-4 [AMENDED]
252:645-1-6 [AMENDED]
252:645-1-7 [AMENDED]
252:645-1-7.1 [AMENDED AND RENUMBERED TO 252:645-5-1]
252:645-1-8 [AMENDED AND RENUMBERED TO 252:645-5-2]
252:645-1-9 [AMENDED AND RENUMBERED TO 252:645-9-1]
Subchapter 3. Septage Storage Facility [NEW]
252:645-3-1 [NEW]
252:645-3-2 [NEW]
252:645-3-3 [NEW]
Subchapter 5. Land Application [NEW]
252:645-5-1 [NEW]
252:645-5-2 [NEW]
Subchapter 7. Septage Treatment Facility [NEW]

252:645-7-1 [NEW]
252:645-7-2 [NEW]
Subchapter 9. Fees [NEW]
252:645-9-1 [NEW]
252:645-9-2 [NEW]

AUTHORITY:
Environmental Quality Board, 27A O.S. §§ 2-2-201 and 2-3-402; and Septic Tanks 27A O.S. § 2-6-801

DATES:
Comment period:
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July 11, 2010

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATION BY REFERENCE:
N/A

ANALYSIS:
There are four (4) primary reasons for the proposed rulemaking. The first is to require training for individuals who are licensed to pump, transport, and store septage, operate a septage land application site, or treat septage as a means of final disposal. Requiring training will ensure that the licensed individuals have actual knowledge of the regulations and are aware of best management practices for handling septage.

The second reason for the proposed rulemaking is to allow the temporary storage of septage when the preferred disposal method is unavailable (e.g., land application site too wet, municipal wastewater treatment plant closed, etc.).

The third reason for the proposed rulemaking is to allow individuals to operate a treatment facility that specifically treats septage, which will provide another disposal option for septage pumpers and haulers.

The fourth reason for the proposed rulemaking is to establish a fee schedule that will help cover some of the costs of operating the program, which has historically been entirely supported by appropriation funds.

CONTACT PERSON:
The contact person is Robert Huber. Robert Huber may be reached at Robert.Huber@deq.ok.gov (e-mail), (405) 702-6100 (phone) or (405) 702-6226 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1, WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

252:645-1-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Chapter is to regulate the pumping, ~~hauling,~~ transporting, storing, treating, land applying and disposing of septage.

(b) **Authority.** 252:645 is authorized by 27A O.S. §§ 2-1-101 *et seq.* and § 2-6-801.

(c) **Applicability.** The rules in this Chapter apply to any person who pumps, ~~hauls~~ transports, stores, treats, land applies or disposes of septage.

(d) **Variances.** Deviations from this Chapter may be allowed upon written application to and approval by DEQ.

252:645-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*), the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"DEQ" means the Department of Environmental Quality.

"Septage" means either liquid or solid material removed from a septic tank, aerobic treatment system, holding tank, ~~cesspool,~~ portable toilet, Type III marine sanitation device, or similar treatment works that receives only ~~domestic septage~~ sewage. ~~Domestic septage, as used in this Chapter, does not include commercial or industrial solids or wastewater, or waste from restaurant grease traps or car wash mud traps.~~

"Sensitive Watersheds" means sensitive waters and watersheds as listed in the OKR10 Construction Stormwater General Permit.

"Sewage" means wastewater that generally originates as human waste from certain activities including using toilet facilities, washing, bathing, preparing foods and washing laundry. Sewage, as used in this Chapter, does not include industrial solids or wastewater, waste from restaurant grease traps, or waste from car wash mud traps.

252:645-1-2.1. General provisions

(a) **Specified dates.** If any date specified in this Chapter falls on a weekend or holiday, the date of the following working day shall be the effective date.

(b) **Application time frame.** Applications will become void if the applicant fails to meet all requirements within one hundred eighty (180) days of being notified of any deficiencies. All fees paid are non-refundable when an application is voided.

(c) **Retention of records.** All records required to be maintained by this Chapter shall be retained for a period of three (3) years and shall be made available to the DEQ upon request.

(d) **Uniform permitting.** In addition to the requirements of the Code and this Chapter, all applicants seeking a license, permit or authorization under this Chapter are subject to the tiered application procedural requirements of the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 *et seq.* and rules promulgated thereunder in 252:4.

252:645-1-3. Septage pumping and ~~hauling~~ transporting licenses

(a) **License required.** Any person operating a business that engages in pumping, ~~hauling~~ transporting, or disposing of septage shall obtain an annual license from the DEQ. ~~The~~ Such licenses shall be issued to the owner, president or designated officer of ~~business establishments shall be licensed in the name of~~ the business.

(b) ~~**General requirements.**~~**Prerequisites for initial license and license renewal.** In order to receive an initial license or a license renewal, an applicant must:

(1) not owe ~~no~~ any outstanding fees or fines to the DEQ;

(2) be in compliance with all rules promulgated by the DEQ; ~~and~~

(3) be in compliance with all final orders issued by the DEQ~~.~~;

(4) be eighteen years of age or older; and

(5) be in compliance with the income tax and immigrations laws of this state.

~~(c) **Application submittal.** Applications for septage pumping and hauling licenses shall be completed by the applicant and the DEQ's local representative for the county where the business is domiciled, and then submitted to the local DEQ office.~~

(~~d~~c) **Application information.** Applications for septage pumping and transporting licenses shall be completed by the applicant and the DEQ's local representative for the county where the business is domiciled, and then submitted to the local DEQ office. Applications shall include:

(1) a completed ~~form~~ DEQ Form 645-001 "Application for a Septage Pumping and ~~Hauling~~ Transporting License" that includes the registration of all vehicles used by the Applicant to pump and ~~haul~~ transport septage;

(2) a completed ~~form~~ DEQ Form 645-003 "Septage Pumping and ~~Hauling~~ Transporting Inspection Report" ~~approved~~ signed by the local DEQ ~~office~~ representative; ~~and~~

(3) ~~for each disposal site to be used, a completed form 645-004 "Consent for Disposal of Septage", or a permit for land application of septage issued by the DEQ.~~ documentation of the availability of an approvable disposal option; and

(4) payment for applicable fees.

(d) **Training and examination.** Applicants seeking an initial license to pump and transport septage must:

(1) complete the required two (2) hours of training provided by the DEQ; and

(2) pass an examination with a score of at least seventy percent (70%). Any applicant found cheating on an examination:

(A) will not be licensed,

(B) will be subject to having any current certifications, permits and/or authorizations revoked, and

(C) shall be prohibited from applying for any license, certification, permit and/or authorization for a period of twelve (12) months.

(e) **License expiration.** Septage pumping and ~~hauling~~ transporting licenses expire on January 31 after the year of issue, unless modified by an Administrative Proceeding.

(f) **License renewal.** ~~Septage pumping and hauling licensees~~ A licensed septage pumper and transporter ~~shall~~ may renew their unexpired license by submitting ~~a renewal application each year on or before the date that the license expires.~~ the following by January 15:

(1) the application information listed in 252:645-1-3(c);

(2) ~~Licensees who also have a permit to land apply septage shall include with their renewal application~~ copies of any ~~land application~~ records that ~~they~~ are required to ~~keep~~ be kept under ~~252:645-1-8(j)~~ 252:645-5-2(m) and 252:645-7-2(h) and (i); and

(3) documentation that the licensee completed two (2) hours of approved renewal training within the previous two (2) years. Renewal training credit may be granted for courses or workshops of two (2) hours or more that have been approved in writing by the DEQ in advance.

(g) **Late renewals.** The applicant shall pay a Fifty-Dollar ($50.00) late fee for renewal applications postmarked or received by the DEQ after January 15.

(h) **Failure to renew.** Any license that has not been renewed within twelve (12) months of expiring will not be renewed. Such applicants must apply for a new license.

252:645-1-4. Vehicle requirements

Each vehicle used to pump, ~~haul~~ transport, dewater or dispose of septage shall:

(1) be inspected by and registered with the DEQ each year;

(2) include ~~a vacuum pressure gauge,~~ a watertight tank~~, and~~ with adequate pump and hose facilities in such condition as to prevent spillage or leakage of septage; and

~~(3) have at least a one thousand (1,000) gallon tank capacity unless the side of the tank is clearly labeled with the capacity and all customer receipts state the tank capacity; and~~

(~~4~~3) display the vehicle registration number, preceded by the acronym "DEQ", in plain view on both sides of the tank in letters and numbers at least four ~~(4)~~ inches (4") high.

252:645-1-6. Licensee's duties

~~(a) Bound daily logs or invoices shall be kept in each registered vehicle for at least seven days after pumping and disposing of septage. After that, they shall be maintained in the vehicle or at the licensee's business office for at least six (6) months.~~

~~(b) For each tank pumped, the vehicle daily log shall show the:~~

~~(1) name of the owner of the tank and the address or location of the property where the tank is located;~~

~~(2) date and time the tank was pumped;~~

~~(3) volume of septage pumped;~~

~~(4) date, time and location of the disposal of the septage; and~~

~~(5) the name of the person who pumped the tank.~~

(a) **Requirement to maintain a daily log.** The Licensee shall maintain a daily log for each registered vehicle. The Licensee may keep copies of manifests or invoices in lieu of maintaining a log as long as they include the required information. The log shall include the following:

(1) The total volume of septage:

(A) pumped for the day and taken to:

(i) storage; or

(ii) disposal; or

(B) taken from storage to ultimate disposal.

(2) The name or number (permit or authorization) for the storage or disposal location utilized.

(3) The name of the driver of the vehicle.

(b) **Information to be provided to customer.** The Licensee shall inform the septic tank owner in writing of the volume of septage removed from the septic tank.

(c) **Pumping requirement.** The Licensee shall pump all septic tanks empty, which means no more than five percent (5%) of the tank volume is left in the tank.

(~~c~~d) **Prohibition of spillage.** Septage shall be pumped into the vehicle and transported to storage and disposal locations without spillage ~~in such a manner as to prevent spillage of septage~~.

252:645-1-7. Disposal ~~locations~~ options

Septage from holding tanks, portable toilets or Type III marine sanitation devices shall be considered and disposed of as sewage at a permitted wastewater treatment facility or at a pretreatment facility that is permitted by a city operating a pretreatment program approved by DEQ. All other septage may only be disposed of:

(1) in a publicly-owned wastewater treatment works~~, with prior written consent by the owner or operator of the works~~;

(2) at a permitted land application site ~~for which the licensee holds a land application permit~~; ~~and~~

(3) in a permitted municipal solid waste landfill~~.~~;

(4) at a permitted septage treatment facility; or

(5) at a pretreatment facility that is permitted by a city operating a pretreatment program approved by DEQ.

252:645-1-7.1. Land application permits [AMENDED AND RENUMBERED TO 252:645-5-1]

~~(a) **Uniform permitting.** In addition to the requirements of the Code and this Chapter, all applicants seeking permits to land apply septage are subject to the tiered application procedural requirements of the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 *et seq.* and rules promulgated thereunder in OAC 252:4.~~

~~(b) **Applicant.** All applicants seeking permits to land apply septage must first be licensed to pump and haul septage under this Chapter.~~

~~(c) **Application submittal.** Applications for permits to land apply septage shall be submitted to the local DEQ office.~~

~~(d) **Application information.** Applications to land apply septage shall include:~~

~~(1) a completed form 645-006 "Application for a Permit to Land Apply Septage";~~

~~(2) a map drawn to scale of one (1) inch = two hundred (200) feet showing:~~

~~(A) the boundaries of the land application site;~~

~~(B) any residences located within 1/4 mile of the site;~~

~~(C) any potable water supplies located within three hundred (300) feet of the site; and~~

~~(D) any public roads, wetlands, ponding areas, ditches, gullies, lakes, streams, caves, sinkholes, mines, gravel pits or quarries located within one hundred (100) feet of the site;~~

~~(3) a written statement from the landowner agreeing to meet the crop and access restrictions listed in 252:645-1-8(a);~~

~~(4) documentation from the United States Department of Agriculture's County Survey book showing that the groundwater is more than five (5) feet from the surface, and that the top six (6) inches of soil has a permeability of at least 0.2 inches per hour;~~

~~(5) a Federal Emergency Management Agency (FEMA) map of the area showing that the site is not within a 100-year floodplain; and~~

~~(6) documentation of the nitrogen and phosphorus requirements of the vegetation being grown on the land application site (see SCS or OSU Extension Service) and a calculation of the maximum land application rate for that site.~~

252:645-1-8. Land application requirements [AMENDED AND RENUMBERED TO 252:645-5-2]

~~(a) **Crop and access controls.** Land application sites for septage are subject to the following crop and access restrictions:~~

~~(1) Food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface shall not be harvested for fourteen (14) months after the application of septage. Food crops with harvested parts below the surface of the land shall not be harvested for thirty-eight (38) months after the application of septage. Other food crops, and feed crops and fiber crops shall not be harvested for thirty (30) days after the application of septage.~~

~~(2) Sites shall not have received publicly-owned wastewater treatment works sludge within the past year; and~~

~~(3) Sites shall be limited to non-public contact sites such as agricultural land, forest land or land reclamation areas.~~

~~(b) **Groundwater.** Septage shall not be applied to the surface of land where the known high groundwater table is within five (5) feet of the surface.~~

~~(c) **Manner of application.** Septage shall be evenly distributed across the site in a manner to prevent surface runoff,~~

~~ponding or the accumulation of septage more than one (1) inch thick.~~

~~(d) **Separation.** Septage may not be land applied within:~~

~~(1) hundred (100) feet of a public road, private water supply well, or surface waters (lakes, rivers, streams, intermittent streams, wetlands or ponds);~~

~~(2) three hundred (300) feet of a public water supply well;~~

~~(3) 1/4 mile of an occupied residence;~~

~~(4) ten (10) feet from the property line; or~~

~~(5) a 100-year floodplain.~~

~~(e) **Soil permeability.** Septage may not be land applied on soils that have a permeability of less than 0.2 inches per hour within the top six (6) inches of soil.~~

~~(f) **Discharge.** Septage may not be land applied during rainfall or discharged into or on any waters of the State, wetlands or areas subject to ponding, including any ditch, gully, pond, lake, stream, 100-year floodplain, cave, sinkhole, mine, gravel pit, or quarry.~~

~~(g) **Grass strip.** A grass strip, at least ten (10) feet wide, shall be developed and maintained at the property line downslope from land application areas.~~

~~(h) **Land application annual rates.** Septage may not be applied in excess of the below described annual application rates for nitrogen or phosphorus:~~

~~(1) During any 365 day period, the amount of domestic septage applied to land shall not exceed the annual application rate calculated using the equation AAR = N÷0.0026, where:~~

~~(A) AAR = Annual application rate in gallons per acre per 365 day period.~~

~~(B) N = Amount of nitrogen in pounds per acre per 365 day period needed by the crop or vegetation grown; and~~

~~(2) Annual septage land application shall not exceed the phosphorus rates for the crop grown and shall not be applied in rates that result in phytotoxicity.~~

~~(i) **Lime to reduce vector attraction.** Fifty (50) pounds of lime shall be added to each one thousand (1,000) gallons of septage and shall be mixed thoroughly at least thirty (30) minutes prior to land application. Prior to land application, every container of septage must be monitored to demonstrate that it maintains a pH of at least twelve (12) for thirty (30) minutes.~~

~~(j) **Record keeping.** Persons who land apply septage shall record and keep the following information for five (5) years:~~

~~(1) The location, by street address, latitude and longitude or legal description, of each site on which septage is applied.~~

~~(2) The number of acres in each site on which septage is applied.~~

~~(3) The date and time septage is applied to each site.~~

~~(4) The specific type of crop grown on the land application site along with the nitrogen and phosphorus requirement for the crop or vegetation grown during a 365 day period.~~

~~(5) The rate, in gallons per acre per 365 day period, at which septage is applied to each site.~~

~~(6) A description of how thecrop and access controls in paragraph (a) of this Section are met.~~

~~(7) The amount of lime added to each load of septage along with the measured pH level.~~

~~(8) The following signed and dated statement: "I certify, under penalty of law, that the requirements in the Septage Pumper and Haul Rules, OAC 252:645-1-8, have been met. This determination has been made under my direction and supervision according to the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site restriction and vector attraction reduction requirements have been met. I know there are significant penalties for false certification including the possibility of fine and imprisonment."~~

252:645-1-9. Fees [AMENDED AND RENUMBERED TO 252:645-9-1]

~~(a) **Septage pumping and hauling license.** The annual fee for a septage pumping and hauling license shall be $0.00.~~

~~(b) **Land application permit.** The fee for a permit to land apply septage shall be $0.00.~~

SUBCHAPTER 3. SEPTAGE STORAGE FACILITY

252:645-3-1. Septage storage facility authorizations

(a) **Authorization required.** Any person operating a business that engages in the storing of septage shall obtain an authorization from the DEQ. Such authorizations shall be issued to the owner, president or designated officer of the business.

(b) **Prerequisite.** All applicants seeking an authorization to operate a septage storage facility must first be licensed to pump and transport septage under this Chapter.

(c) **Application submittal.** Applications for authorizations to operate a septage storage facility shall be submitted to the local DEQ office.

(d) **Application information.** Applications to operate a septage storage facility shall include the following:

(1) A completed form 645-012 "Application for Authorization to Operate a Septage Storage Facility".

(2) A detailed plan of the storage facility that includes:

(A) the type of construction material (i.e., concrete or metal) of each storage tank located at the facility;

(B) the capacity of each storage tank located at the facility; and

(C) the type of security measures in place at the facility as required by 252:645-3-2(d).

(3) A site drawing showing the location of the:

(A) property lines;

(B) storage tanks located at the facility; and

(C) all-weather access road.

(4) Documentation that the licensed septage pumper and transporter owns or has a lease for the property where the septage storage facility will be located.

(e) **Authorization expiration.** Authorizations for the operation of septage storage facilities expire on January 31 after the year of issue, unless modified by an Administrative Proceeding.

(f) **Renewal of authorization.** Unexpired authorizations for the operation of septage storage facilities may be renewed by doing the following by January 15:

(1) paying the annual fee; and

(2) either verifying that the application information on file at the DEQ is correct or updating the application information.

(g) **Late renewals.** The applicant shall pay a Fifty-Dollar ($50.00) late fee for renewal applications postmarked or received by the DEQ after January 15.

(h) **Failure to renew.** Any authorization that has not been renewed within twelve (12) months of expiring will not be renewed. Such applicants must apply for a new authorization.

252:645-3-2. General requirements for septage storage facilities

(a) **Ownership of property.** Septage storage facilities may only be located on property owned or leased by the licensed pumper and transporter seeking the authorization to operate.

(b) **Operational requirements.** The person who holds the authorization shall ensure that the septage storage facility is operated in compliance with the terms of the authorization and the requirements of this Chapter. When in conflict, the terms of the authorization shall supersede the requirements of this Chapter.

(c) **Temporary.** Septage storage facilities shall be used for the temporary storage of septage and not as a method of final disposal.

(d) **Security.** Septage storage facilities shall be secured to prevent unauthorized access using one of the following methods:

(1) **Locks.** All manholes, valves and other openings on the septage storage tanks shall be locked; or

(2) **Fencing.** Either the entire property or the septage storage facility shall be surrounded by a fence that meets the following:

(A) **Specifications.** The fence shall be a minimum of four feet (4') high and provide protection equivalent to the protection afforded by a woven wire or equally-spaced five-wire fence. Storage tanks that are located within three hundred fifty feet (350') of existing or platted residential areas, or that are in public access areas shall be surrounded by a six-foot (6') woven wire fence or equivalent.

(B) **DEQ authority to require more stringent fencing requirements.** In order to protect public health and safety, the DEQ may require more stringent fencing requirements, even when the entire property is fenced.

(e) **Discharges prohibited.** The septage storage facility shall be maintained so that no part of the facility bypasses or discharges wastes or wastewater. All such bypasses and/or discharges shall be considered a violation of this Chapter and be subject to enforcement as an unpermitted discharge to waters of the State in violation of the Oklahoma Pollutant Discharge Elimination System Act.

(1) **Reporting requirements.** Any and all bypasses and/or discharges from a septage storage facility shall be reported to DEQ at (800) 522-0206 within twenty-four (24) hours of the incident and a completed and signed DEQ Form 645-009 "Self Reporting Septage Bypass Form" shall be submitted to DEQ within five (5) days of the incident.

(2) **Required response.** Whenever a bypass or discharge occurs, immediate action shall be taken to stop, contain, clean up and prevent recurrence of the bypass or discharge.

(f) **Access.** A road shall be maintained at the facility so that all septage storage tanks are accessible in all weather conditions.

(g) **Land application as final disposal.** If lime stabilized septage has been stored for more than fourteen (14) days, it must be tested to verify a pH of at least twelve (12) prior to land application or be re-stabilized and meet the requirements of 252:645-5-2(l).

252:645-3-3. Septage storage tank requirements

(a) **Watertight.** All septage storage tanks located at a septage storage facility shall be watertight.

(b) **Composition.** All septage storage tanks shall be constructed of concrete or metal.

(1) Concrete tanks can be used either above or below ground. They may be poured in place or precast, but, in either case, shall be monothilically poured and mechanically vibrated. They shall be:

(A) reinforced with rebar or fiber; and

(B) constructed of a mix that demonstrates a twenty-eight-day compressive strength of four thousand pounds per square inch (4,000 psi).

(2) Metal tanks may only be used above ground. Metal tanks shall be:

(A) properly protected by paints or other protective coating to prevent corrosion; and

(B) secured to prevent tipping or rolling.

(c) **Manholes.** Below ground septage storage tanks shall have a manhole with a cover that extends a minimum of two inches (2") above ground elevation.

(d) **Venting.** All septage storage tanks shall be vented to the atmosphere with the vent pipe terminating above the top of the tank in a full one hundred eighty-degree bend.

(e) **Capacity.** Septage storage tanks shall have a minium capacity of one thousand (1,000) gallons.

(f) **Separation distances.** Septage storage tanks may not be located within:

(1) one hundred feet (100') of a private water supply well, or surface waters (lakes, rivers, streams, intermittent streams, wetlands or ponds);

(2) three hundred feet (300') of a public water supply well;

(3) fifty feet (50') of an occupied residence;

(4) ten feet (10') of a property line;

(5) a one hundred-year floodplain; or

(6) five feet (5') of a water line.

(g) **Signage.** All above-ground septage storage tanks shall have the following displayed in letters at least four inches (4") high:

(1) the word "SEPTAGE";

(2) the name and license number of the facility owner; and

(3) the phone number of the person to be contacted in case of an emergency.

SUBCHAPTER 5. LAND APPLICATION

252:645-5-1. Land application permits

(a) **Permit required.** Any person operating a business that engages in the land application of septage shall first obtain a permit from the DEQ. Such permits shall be issued to the owner, president or designated officer of the business.

(b) **Prerequisites.** All applicants seeking permits to land apply septage must first be licensed to pump and transport septage under this Chapter.

(c) **Applications.** Applications for permits to land apply septage shall be submitted to the local DEQ office and include:

(1) a completed DEQ Form 645-006 "Application for a Permit to Land Apply Septage";

(2) a site drawing to scale showing the boundaries of:

(A) the property; and

(B) the land application site on the property.

(3) a written statement from the landowner agreeing to meet the crop and access restrictions listed in 252:645-5-2(b);

(4) documentation from the United States Department of Agriculture's County Survey book showing that the groundwater is more than five feet (5') from the surface, and that the top six inches (6") of soil has a permeability of at least 0.2 inches per hour; and

(5) documentation of the nitrogen and phosphorus requirements of the vegetation being grown on the land application site and a calculation of the maximum land application rate for that site.

(d) **Permit expiration.** Permits for the land application of septage expire on January 31 after the year of issue, unless modified by an Administrative Proceeding.

(e) **Renewal of Permit.** Unexpired permits for the land application of septage may be renewed by doing the following by January 15:

(1) paying the annual fee; and

(2) either verifying that the application information on file at the DEQ is correct or updating the application information.

(f) **Late renewals.** The applicant shall pay a Fifty-Dollar ($50.00) late fee for renewal applications postmarked or received by the DEQ after January 15.

(g) **Failure to renew.** Any permit that has not been renewed within twelve (12) months of expiring will not be renewed. Such applicants must apply for a new permit.

252:645-5-2. Land application requirements

(a) **Operational requirements.** The permittee shall ensure that the land application site is operated in compliance with the terms of the permit and the requirements of this Chapter. When in conflict, the terms of the permit shall supersede the requirements of this Chapter.

(b) **Crop and access controls.** Land application sites for septage are subject to the following crop and access restrictions:

(1) Food crops with harvested parts:

(A) that touch the septage/soil mixture and are totally above the land surface shall not be harvested for at least fourteen (14) months after the application of septage.

(B) below the surface of the land shall not be harvested for at least thirty-eight (38) months after the application of septage.

(C) that do not fall under (A) or (B) of this subsection, and feed crops and fiber crops shall not be harvested or grazed for at least thirty (30) days after the application of septage.

(2) Sites shall not have received sludge from publicly-owned wastewater treatment works within the past year.

(3) Sites shall be limited to non-public contact sites such as agricultural land or land reclamation areas.

(c) **Groundwater.** Septage shall not be applied to the surface of land where the known high groundwater table is within five feet (5') of the surface.

(d) **Manner of application.** Septage shall be evenly distributed across the site in a manner to prevent surface runoff, ponding or the accumulation of septage more than one inch (1") thick.

(e) **Separation.** Septage may not be land-applied within:

(1) one hundred feet (100') of a public road, private water supply well, or surface waters (lakes, rivers, streams, intermittent streams, wetlands or ponds);

(2) three hundred feet (300') of a public water supply well;

(3) six hundred sixty feet (660') of a residence that is owned and occupied by someone other than the permittee;

(4) ten feet (10') from the property line; or

(5) a one hundred-year floodplain.

(f) **Slope.** Septage may not be land applied on land with a slope greater than fifteen percent (15%).

(g) **Sensitive watersheds.** Septage may not be land-applied within a sensitive watershed.

(h) **Soil permeability.** Septage may not be land-applied on areas that have been identified as having karst topography or on soils that have a permeability of less than 0.2 inches per hour within the top six inches (6") of soil.

(i) **Discharge.** Septage may not be land-applied during rainfall or discharged into any waters of the State, wetlands or areas subject to ponding (e.g., ditches, gullies, ponds, lakes, streams, etc.), 100-year floodplains, caves, sinkholes, mines, gravel pits, or quarries.

(j) **Grass strip.** A grass strip at least ten feet (10') wide shall be developed and maintained at the property line downslope from land-application areas.

(k) **Land-application annual rates.** Septage may not be applied in excess of the below described annual application rates for nitrogen or phosphorus:

(1) During any 365-day period, the amount of septage applied to land shall not exceed the annual application rate calculated using the equation AAR = N÷0.0026, where:

(A) AAR = Annual application rate in gallons per acre per 365-day period.

(B) N = Amount of nitrogen in pounds per acre per 365-day period needed by the crop or vegetation grown.

(2) Annual septage land application shall not exceed the phosphorus rates for the crop grown and shall not be applied in rates that result in phytotoxicity.

(l) **Lime to reduce vector attraction.** Prior to land application, septage must be stabilized by adding:

(1) fifty (50) pounds of lime to each one thousand (1,000) gallons of septage and mixing thoroughly at least thirty (30) minutes prior to land application; or

(2) enough lime to maintain a pH of at least twelve (12) for thirty (30) minutes and tested to demonstrate that it has maintained a pH of at least twelve (12) for thirty (30) minutes.

(m) **Record keeping.** Persons who land-apply septage shall record the following information:

(1) The permit number for the land application site;

(2) The date septage was applied;

(3) The amount of septage applied;

(4) The amount of lime added to each load of septage, and, when required, the measured pH;

(5) The following signed and dated statement: "I certify, under penalty of law, that the requirements in the Septage Pumper and Transporter Rules, OAC 252:645-5-2, have been met. This determination has been made under my direction and supervision according to the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the site restriction and vector attraction reduction requirements have been met. I know there are significant penalties for false certification including the possibility of fine and imprisonment."

SUBCHAPTER 7. SEPTAGE TREATMENT FACILITY

252:645-7-1. Septage treatment permits

(a) **Permit required.** Any person operating a business that engages in the treatment of septage shall first obtain a permit from the DEQ. Such permits shall be issued to the owner, president or designated officer of the business. Treatment processes that are permitted by a city operating an approved pretreatment program are exempt from permitting by the DEQ.

(b) **Prerequisite.** All applicants seeking permits to treat septage must first be licensed to pump and transport septage under this Chapter.

(c) **Application information.** Applications for permits to treat septage shall be submitted to the local DEQ office. Applications to treat septage shall include:

(1) a completed DEQ Form 645-011 "Application for a Permit to Treat Septage";

(2) a detailed plan for the treatment process that includes:

(A) a description of the treatment process, including documentation that the treatment process produces effluent that meets 252:645-7-2(f)(1); and

(B) a site drawing showing:

(i) the property lines; and

(ii) the location of the treatment facility on the property; and

(3) documentation that the licensed septage pumper and transporter owns or has a lease for the property where the septage treatment facility will be located.

(d) **Permit expiration.** Permits for the operation of a septage treatment facility expire on January 31 after the year of issue, unless modified by an Administrative Proceeding.

(e) **Renewal of Permit.** Unexpired permits for operating a septage treatment facility may be renewed by doing the following by January 15:

(1) Paying the annual fee; and

(2) Either verifying that the application information on file at the DEQ is correct or updating the application information.

(f) **Late renewals.** The applicant shall pay a Fifty-Dollar ($50.00) late fee for renewal applications postmarked or received by the DEQ after January 15.

(g) **Failure to renew.** Any permit that has not been renewed within twelve (12) months of expiring will not be renewed. Such applicants must apply for a new permit.

252:645-7-2. Septage treatment requirements

(a) **Ownership of property.** Septage treatment facilities may only be located on property owned or leased by the licensed pumper and transporter seeking the permit to operate.

(b) **Operational requirements.** The permittee shall ensure that the septage treatment facility is operated in compliance with the terms of the permit and the requirements of this Chapter. When in conflict, the terms of the permit shall supersede the requirements of this Chapter.

(c) **Unauthorized wastes.** The permittee shall exclude portable toilet waste, marine toilet waste, holding tank waste, grease, unauthorized industrial wastewater, hazardous substances,and chemicals from the septage treatment facility.

(d) **Protection of potable water supplies.** The permittee shall prevent cross-connections between wastewater and potable water supplies.

(e) **Discharges prohibited.** The permittee shall operate and maintain the septage treatment facility so that no part of the facility bypasses or discharges wastes or wastewater. All such bypasses and/or discharges shall be considered a violation of this Chapter and be subject to enforcement as an unpermitted discharge to waters of the State in violation of the Oklahoma Pollutant Discharge Elimination System Act.

(1) **Reporting requirement.** The permittee shall ensure that any and all bypasses and/or discharges from a septage treatment facility are reported to DEQ at (800) 522-0206 within 24-hours of the incident and that a completed and signed DEQ Form 645-009 "Self Reporting Septage Bypass Form" is submitted to DEQ within five (5) days of the incident.

(2) **Required response.** Whenever a bypass or discharge occurs, the permittee shall ensure that immediate action is taken to stop, contain, clean up and prevent recurrence of the bypass or discharge.

(f) **Treatment requirements.** Septage must be treated as follows:

(1) Effluent from the treatment process may be disposed of in accordance with 252:641, provided the facility:

(A) generates less than or equal to five thousand (5,000) gallons of effluent per day;

(B) produces effluent that:

(i) has a BOD_5 of not more than 250 mg/l; and

(ii) has a TSS of not more than 150 mg/l.

(2) Residuals from the treatment process shall be disposed of at a DEQ permitted municipal solid waste landfill in accordance with 252:515.

(3) Facilities treating more than five thousand (5,000) gallons of septage per day must receive an individual permit from the Water Quality Division of the DEQ.

(g) **Testing requirements.** The permittee must annually test treated effluent for BOD_5 and the TSS, unless otherswise specified in the permit.

(h) **Record keeping.** The permittee shall record the following information:

(1) the date and volume of septage processed by the treatment facility;

(2) the date and volume and location of final disposal of residuals;

(3) any maintenance performed on the septage treatment facility; and

(4) the results of any analyses of the treated effluent.

(i) **Additional reporting and/or sampling.** DEQ may require additional reporting and/or sampling in any administrative order, closure plan, or other official document issued by DEQ.

(j) **Use of certified laboratories.** All laboratory analyses required to be conducted pursuant to this Chapter shall be performed by laboratories certified by DEQ.

(k) **Separation Distances.** Any septage treatment facility may not be located within:

(1) one hundred feet (100') of a private water supply well, or surface waters (lakes, rivers, streams, intermittent streams, wetlands or ponds);

(2) three hundred feet (300') of a public water supply well;

(3) three hundred feet (300') of an occupied residence. If the residence is owned and occupied by the permitee, this separation distance does not apply;

(4) fifty feet (50') of a property line;

(5) a one hundred-year floodplain; or

(6) five feet (5') of any potable water supply lines.

SUBCHAPTER 9. FEES

252:645-9-1. Fees

(a) **Septage pumping and transporting license.** The annual fee for a septage pumping and transporting license shall be $150.00.

(b) **Vehicles.** The annual registration fee for each septage pumping and transporting vehicle shall be $50.00.

(c) **Permit to land apply septage.** The annual fee for a permit to land apply septage shall be $250.00.

(d) **Permit to operate a septage treatment facility.** The annual fee for a permit to operate a septage treatment facility shall be $250.00.

(e) **Authorization to operate a septage storage facility.** The annual fee for an authorization to operate a septage storage facility shall be $150.00.

(f) **Late fees.** There shall be a late fee of $50.00 for failure to renew a license, permit or authorization by January 15.

(g) **Variances.** The fee for reviewing requests for variances shall be $200.00.

252:645-9-2. Fee escalator based on Consumer Price Index (CPI)

To assist in meeting rising costs to DEQ associated with the septage pumper and transporter program, the fees set out in this Subchapter shall be automatically adjusted on July 1, 2011, and every year thereafter on July 1st, to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. DEQ may round the adjusted fees up to the nearest dollar. DEQ may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this Section may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this Section, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar

year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

[OAR Docket #10-954; filed 6-2-10]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION

[OAR Docket #10-953]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:690-1-3. Technical Acronyms [AMENDED]
252:690-1-4. Incorporation of USEPA regulations by reference [AMENDED]
AUTHORITY:
Water Quality Standards Implementation Plan, 27A O.S., § 1-1-202; Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*
DATES:
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Failure of the Legislature to disapprove the rules resulted in approval on May 4, 2010
Final adoption:
May 4, 2010
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July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR, Part 260. Hazardous Waste Management System: General, except 40 CFR, Section 260.21, is as follows:
in 40 CFR, Section 260.20, "Federal Register" is synonymous with "The Oklahoma Register."
in 40 CFR, Section 260.20(e), strike the words "or a denial."
in 40 CFR, Section 260.22, references to the lists in Subpart D of Part 261 and the reference to § 261.3(a)(2)(ii) or (c) shall mean the lists in Subpart D of Part 261 and §261.3(a)(2)(ii) or (c) as adopted by reference and applicable in Oklahoma.
in 40 CFR, Section 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements:
(a) interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)];
(b) leak detection requirements for all new underground tank systems [3004(o)(4)]; and
(c) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.
40 CFR, Part 261. Identification and Listing of Hazardous Waste except 261.4(b)(18) which pertains to Utah only, thus should be excluded, and as follows:
in 40 CFR, Section 261.4(e)(3)(iii) delete "in the Region where the sample is collected".
in 40 CFR, Section 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".
in 40 CFR, Section 261.31(a), the listing for F019, add at the end: "Zinc phosphate sludgesmeeting exemption conditions remain subject to regulation as hazardous waste if the wasteexhibits a hazardous waste characteristic."
40 CFR, Part 262. Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".
40 CFR, Part 263. Standards Applicable to Transporters of Hazardous Waste.
40 CFR, Part 264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 40 CFR, Section 264.1(f), 40 CFR, Section 264.1(g)(12), 40 CFR, Section 264.149, 40 CFR, Section 264.150, 40 CFR, Section 264.301(l), 40 CFR, Section 264.1030(d), 40 CFR, Section 264.1050(g), 40 CFR, Section 264.1080(e), 264.1080(f), and 40 CFR, Section 264.1080(g), and as follows:
in 40 CFR, Section 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
in 40 CFR, Section 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
in 40 CFR, Section 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
in 40 CFR, Section 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
40 CFR, Part 265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 40 CFR, Section 265.1(c)(4), 40 CFR, Section 65.1(g)(12), 40 CFR, Section 65.149, CFR, Section 265.150, 40 CFR, Section 65.1030(c), 40 CFR, Section265.1050(f), 40 CFR, Section 65.1080(e), 40 CFR, Section 265.1080(f), and 40 CFR, Section 265.1080(g), and as follows:
in 40 CFR, Section 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.
in 40 CFR, Section 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.
in 40 CFR, Section 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.
in 40 CFR, Section 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
40 CFR, Part 266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.
40 CFR, Part 267. Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit. This permit option shall only be available to:
(i) those persons who generate hazardous waste on-site through, or as a result of, industrial production processes;
(ii) wholly owned subsidiaries, owners, or sister companies of those persons specified in paragraph (1); and
(iii) agencies, departments, or units of the federal government or the State of Oklahoma.
40 CFR, Part 268. Land Disposal Restrictions, except 40 CFR, Section 268.5, 40 CFR, Section 268.6, 40 CFR, Section 268.13, 40 CFR, Section 268.42(b) and 40 CFR, Section 268.44(a) through (g). In 40 CFR, Section

268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.

40 CFR, Part 270. The Hazardous Waste Permit Program, except 270.1(c)(2)(ix), and 270.14(b)(18).

40 CFR, Part 273. Standards for Universal Waste Management.

40 CFR, Part 279. Standards for the Management of Used Oil, except that 279.82 is revised to read in its entirety, "The use of used oil as a dust suppressant is prohibited."

40 CFR, Part 116 (Hazardous Substances List)

40 CFR, Part 117 (Reportable Quantities for Hazardous Substances)

The following from 40 CFR, PART 122 (NPDES PERMIT REGULATIONS):

40 CFR, Section 122.2 - (definitions)

40 CFR, Section 122.27 - (silviculture)

40 CFR, Section 122.28(a) and (b) - (general permits)

40 CFR, Section 122.29 - (new sources and new dischargers)

40 CFR, Section 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

40 CFR, Section 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

40 CFR, Section 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

40 CFR, Section 122.41 - (permit conditions)

40 CFR, Section 122.42 - (conditions for specified categories of permits)

40 CFR, Section 122.43 - (establishing permit conditions)

40 CFR, Section 122.44 - (establishing permit limitations, standards and other conditions)

40 CFR, Section 122.45 - (calculating permit conditions)

40 CFR, Section 122.46 - (permit duration)

40 CFR, Section 122.47(a) - (schedules of compliance)

40 CFR, Section 122.48 - (monitoring requirements)

40 CFR, Section 122.50 - (disposal into wells)

40 CFR, Section 122.61 - (permit transfer)

40 CFR, Section 122.62 - (permit modification)

40 CFR, Section 122.63 - (minor modifications of permits)

40 CFR, Section 122.64 - (permit termination)

40 CFR, Part 12 Appendices A through J

The following from 40 CFR, Part 125 (criteria and standards for NPDES):

Subpart A (technology-based treatment),

Subpart B (criteria for aquaculture projects),

Subpart D (fundamentally different factors),

Subpart H (alternative effluent limitations),

Subpart I (new cooling water intakes),

Subpart J (existing cooling water intakes), and

Subpart L (disposal of sewage sludge under CWA 405)

40 CFR, Part 129 (Toxic Pollutant Effluent Standards)

40 CFR, Part 136 (testing and laboratory)

40 CFR Parts 401-471 (Effluent Guidelines 7 and Standards)

40 CFR, Section 110.6 (notice of oil discharge)

40 CFR, Part 302 (CERCLA exemption from NPDES permits)

The following Sections from 40 CFR, Part 503, Subpart A (General Provisions):

40 CFR, Section 503.1 (Purpose and applicability)

40 CFR, Section 503.2 (Compliance period)

40 CFR, Section 503.3 (Permits and direct enforceability)

40 CFR, Section 503.4 (Relationship to other regulations)

40 CFR, Section 503.5 (Additional or more stringent requirements)

40 CFR, Section 503.6(a)-(e),(g)-(j) (Exclusions)

40 CFR, Section 503.7 (Requirement for a person who prepares biosolids)

40 CFR, Section 503.8 (Sampling and analysis)

40 CFR, Section 503.9 (General definitions)

The following Sections from 40 CFR, Part 503, Subpart B (Land Application):

40 CFR, Section 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)

40 CFR, Section 503.11 (Special definitions)

40 CFR, Section 503.12 (General requirements)

40 CFR, Section 503.13 (Pollutant limits)

40 CFR, Section 503.14 (Management practices)

40 CFR, Section 503.15 (Operational standards - pathogens and vector attraction reduction)

40 CFR, Section 503.16(a) (Frequency of monitoring)

40 CFR, Section 503.17(a) (Recordkeeping)

40 CFR, Section 503.18 (Reporting)

The following Sections from 40 CFR, Part 503, Subpart D (Pathogens and Vector Attraction Reduction):

40 CFR, Section 503.30 (Scope)

40 CFR, Section 503.31 (Special definitions)

40 CFR, Section 503.32(a), (b) (Pathogens)

40 CFR, Section 503.33(a), (b)(1)-(11) (Vector attraction reduction)

The following Sections from 40 CFR, Part 503 Subpart E (Incineration)

40 CFR, Section 503.40 (Applicability)

40 CFR, Section 503.41 (Special definitions)

40 CFR, Section 503.42 (General requirements)

40 CFR, Section 503.43 (Pollutant (Metal) limits)

40 CFR, Section 503.44 (Operational standard - total hydrocarbons)

40 CFR, Section 503.45 (Management practices)

40 CFR, Section 503.46 (Frequency of monitoring)

40 CFR, Section 503.47 (Recordkeeping)

40 CFR, Section 503.48 (Reporting)

The following Appendices from 40 CFR, Part 503:

Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)

Appendix B (Pathogen treatment processes)

Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

40 CFR, Part 130 (Water Quality Planning and Management)

40 CFR, Part 144 (Underground Injection Control Program)

40 CFR, Part 145 (State UIC Program Requirements)

40 CFR, Part 146 (Underground Injection Control Program: Criteria and Standards)

40 CFR, Part 147 (State Underground Injection Control Programs)

40 CFR, Part 148 (Hazardous Waste Injection Restrictions

Incorporating rules:

OAC 252:690-1-4

Availability:

The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

ANALYSIS:

The Department proposes to update the publication date of the federal rules adopted by reference from July 1, 2008, to July 1, 2009. Included for the first time in the incorporation is EPA's "Water Transfer Rule" at 40 CFR, Section 122.3 (I), which went into effect on August 12, 2008. The "Water Transfer Rule" exempts the need of an NPDES permit for the transfer of raw water from one watershed to another watershed. Additionally, the proposed changes would update the list of incorporated hazardous waste management rules found in 40 CFR, Parts 260 - 279, as the list had become outdated. Finally, the Department proposes to remove the reference to "EPA, Region 6" from the Technical Acronym "MQL."

CONTACT PERSON:

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. INTRODUCTION

252:690-1-3. Technical Acronyms

The following technical acronyms, when used in this Chapter, shall have the following meaning:

"ΔT_{max}" means the maximum temperature increase in ^{C}C at the edge of the temperature mixing zone.

"7Q2" means the 7 day low flow of a stream likely to occur with a 50% probability each year. The procedure for determining a site-specific 7Q2 is described at OAC 785:46.

"7T2" means the 7 day maximum temperature likely to occur with a 50% probability each year. The procedure for determining a site-specific 7T2 is described at OAC 785:46.

"ACD" means acute critical dilution.

"BOD_5" means 5-day biochemical oxygen demand.

"BT/C ratio" means the ratio of trigger background concentration to associated water quality criterion.

"$(BT/C)_{max}$" means the maximum BT/C ratio for a given criterion for which background monitoring is required as a permit condition.

"C_{95}" means the 95th percentile maximum likelihood effluent concentration of a substance. It is the product of $C_{E(mean)}$ and RPF_{95}.

"$C_{95(M)}$" means the 95th percentile maximum likelihood effluent concentration of a substance, accounting for the size of the effluent data set. It is the product of $C_{E(max)}$ and $RPF_{95(M)}$.

"C_A" means the acute numerical criterion for toxic substances.

"C_B" means background concentration.

"C_C" means the chronic numerical criterion for toxic substances.

"C_d" means the instream concentration of a substance resulting from a wastewater discharge.

"$C_{d(A)}$" means the instream concentration of a substance as determined by the acute mixing equation.

"$C_{d(c)}$" means the maximum instream concentration of a substance at the edge of the chronic mixing zone.

"$C_{d(FF)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh.

"$C_{d(FFW)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a human health criterion for the consumption of fish flesh and water.

"$C_{d(NRWQC)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an EPA human health criterion for the consumption of fish flesh.

"$C_{d(RAW)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed a raw water column criterion.

"$C_{d(SS)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture sample standard (SS).

"$C_{d(YMS)}$" means the instream concentration of a substance after complete mixing, as applied to determination of reasonable potential to exceed an agriculture yearly mean standard (YMS).

"$C_{E(max)}$" means the maximum concentration of a substance in an effluent data set.

"$C_{E(mean)}$" means mean effluent concentration.

"C_{FF}" means the numerical criterion for the protection of human health for the consumption of fish flesh.

"C_{FFW}" means the numerical criterion for the protection of human health for the consumption of fish flesh and water.

"C_{NRWQC}" means the EPA recommended national water quality criterion for the protection of human health for the consumption of fish flesh.

"C_{RAW}" means the numerical criterion for protection of the raw water column.

"C_{SS}" means agriculture sample standard numerical criterion, i.e., the historic segment averaged SS value from Appendix F of OAC 785:45, unless data more representative of the receiving stream are available.

"C_{YMS}" means agriculture yearly mean standard numerical criterion, i.e., the historic segment averaged YMS value from Appendix F of OAC 785:45, unless data more representative of the receiving stream are available.

"$CBOD_5$" means 5-day carbonaceous biochemical oxygen demand.

"CCD" means chronic critical dilution.

"CFU" means colony forming units.

"CPP" means the Continuing Planning Process document required under Section 303(e) of the Clean Water Act.

"CWAC" means cool water aquatic community.

"D" means, in the context of a discharge to a lake through a pipe, the pipe diameter in feet.

"DML" means daily maximum permit limitation.

"DML_A" means the toxic substance acute criterion DML.

"DML_C" means the toxic substance chronic criterion DML.

"DML_{CL}" means agriculture criterion-based DML for chlorides.

"DML_{FF}" means the human health/fish flesh DML.

"DML_{FFW}" means the human health/fish flesh and water DML.

"DML_{HH}" means human health-based DML.

"DML_{RAW}" means the raw water column DML.

"DML_{SO4}" means agriculture criterion-based DML for sulfates.

"DML_T" means the temperature based DML.

"DML_{TDS}" means agriculture criterion-based DML for total dissolved solids (dried at 180°C).

"DML_{TOX}" means toxic substance-based DML.

"DMR" means Discharge Monitoring Report.

"DO" means dissolved oxygen.

"gpd" means gallons per day.

"HLAC" means habitat-limited aquatic community.

"LTA" means long term average.

"LTA_A" means the toxic substance acute numerical criterion LTA.

"LTA_C" means the toxic substance chronic numerical criterion LTA.

"LTA_{FF}" means the fish flesh human health criterion LTA.

"LTA_{FFW}" means the fish flesh and water human health criterion LTA.

"LTA_{RAW}" means the raw water column criterion LTA.

"LTA_{SS}" means the agriculture sample standard LTA.

"LTA_T" means the temperature criterion LTA.

"LTA_{TOX}" means the limiting toxic substance-based LTA, i.e., the smallest of LTA_A or LTA_C, as applicable.

"LTA_{YMS}" means the agriculture yearly mean standard LTA.

"MAL" means monthly average permit limitation.

"MAL_A" means the toxic substance acute criterion MAL.

"MAL_C" means the toxic substance chronic criterion MAL.

"MAL_{CL}" means agriculture criterion-based MAL for chlorides.

"MAL_{FF}" means the human health/fish flesh MAL.

"MAL_{FFW}" means the human health/fish flesh and water MAL.

"MAL_{RAW}" means the raw water column MAL.

"MCL" means maximum contaminant level (when used in the context of primary drinking water standards).

"MAL_{HH}" means human health-based MAL.

"MAL_{SO4}" means agriculture criterion-based MAL for sulfates.

"MAL_T" means temperature MAL.

"MAL_{TDS}" means agriculture criterion-based MAL for total dissolved solids (dried at 180°C).

"MAL_{TOX}" means toxic substance-based MAL.

"mgd" means million gallons per day.

"mg/l" means milligrams per liter.

"MQL" means minimum quantifiable level~~, as established by EPA, Region 6~~.

"N" means the number of individual data points, collected over time, in an effluent or background data set.

"N_m" means the per month monitoring frequency where a permit limitation is established. When used in the context of temperature limitations, N_m is equal to four times N_w (i.e., $N_m = 4 \times N_w$).

"N_w" means the per week monitoring frequency where a temperature permit limitation is established.

"NRWQC" means the National Recommended Water Quality Criteria, publication no. EPA 822-Z-99-001, April 1999.

"PBCR" means Primary Body Contact Recreation.

"PCS" means Permit Compliance System, an EPA database which tracks NPDES permit compliance.

"Q*" means the ratio of the regulatory effluent flow to the regulatory receiving water flow.

"Q_e" means regulatory effluent flow.

"$Q_{e(30)}$" means the Q_e which is the highest monthly average flow over the two year period of record for an industrial facility.

"$Q_{e(D)}$" means the Q_e which is the design flow for a municipal POTW.

"$Q_{e(LTA)}$" means the Q_e which is the arithmetic (long term) average flow over the two year period of record for an industrial facility.

"Q_u" means regulatory receiving water flow upstream of a point of wastewater discharge.

"$Q_{u(7Q2)}$" means the same as 7Q2.

"$Q_{u(LTA)}$" means the Q_u which is the mean annual (long term) receiving water flow.

"$Q_{u(STA)}$" means the Q_u which is the short term average receiving water flow and is equal to $Q_{u(LTA)} \times 0.68$.

"SBCR" means Secondary Body Contact Recreation

"SNC" means significant noncompliance, a PCS term used to indicate significant permit violations, which may be either permit limit violations, non-reporting violations or compliance schedule violations.

"SS" means sample standard.

"s.u." means standard units for the measurement of pH.

"T_{95}" means 95th percentile effluent temperature in °C.

"T_a" means regulatory ambient temperature in °C.

"TBLL" means technically based local limits

"TDS" means total dissolved solids.

"TIE" means toxicity identification evaluation.

"TMDL" means total maximum daily load.

"TRC" means total residual chlorine.

"TRE" means toxicity reduction evaluation.

"TRO" means total residual (halogenated) oxidants.

"µg/l" means micrograms per liter.

"W" means, in the context of a discharge to a lake through an open channel (i.e., canal), the channel width in feet.

"WAL" means weekly average permit limitation.

"WAL_T" means temperature WAL.

"WET" means whole effluent toxicity.

"WLA" means waste load allocation.

"WLA_A" means an toxic substance acute criterion WLA.

"WLA_C" means a toxic substance chronic criterion WLA.

"WLA_{FF}" means a human health/fish flesh criterion WLA.

"WLA_{FFW}" means a human health/fish flesh and water criterion WLA.

"WLA_{RAW}" means a raw water column criterion WLA.

"WLA_{SS}" means an agriculture sample standard WLA.

"WLA_T" means a temperature criterion WLA.

"WLA_{YMS}" means an agriculture yearly mean standard WLA.

"WQMP" means the statewide Section 208 Water Quality Management Plan.

"WWAC" means warm water aquatic community.

"YMS" means yearly mean standard.

252:690-1-4. Incorporation of USEPA regulations by reference

The following federal regulations at 40 CFR, as published on ~~July 1, 2008~~ July 1, 2009 are incorporated by reference and applicable to this Chapter:

(1) **OAC 252:205 (Hazardous Waste Management).** 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

~~(A) **Part 260.** Hazardous Waste Management System: General, except 260.20 through 260.22.~~

~~(B) **Part 261.** Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".~~

~~(C) 262.42(a)(2)(e).~~

~~(D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.~~

~~(E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:~~

~~(i) 264.1(f)~~

~~(ii) 264.149~~

~~(iii) 264.150~~

~~(iv) 264.301(l)~~

~~(v) Part 264 Appendix VI~~

~~(F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:~~

~~(i) 265.1(c)(4)~~

~~(ii) 265.149~~

~~(iii) 265.150~~

~~(G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.~~

~~(H) **Part 268.** Land Disposal Restrictions, except:~~

~~(i) 268.5~~

~~(ii) 268.6~~

~~(iii) 268.10~~

~~(iv) 268.11~~

~~(v) 268.12~~

~~(vi) 268.13~~

~~(vii) 268.42(b)~~

~~(viii) 268.44(a) through (g)~~

~~(ix) 268.44(m) through (p).~~

~~(I) **Part 270.** Permit Programs, except 270.14(b)(18).~~

~~(J) **Part 273.** Universal Waste Rule.~~

~~(K) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."~~

(A) **Part 260.** Hazardous Waste Management System: General, except 260.21.

(i) In 260.20, "Federal Register" is synonymous with "The Oklahoma Register."

(ii) In 260.20(e), strike the words "or a denial."

(iii) In 260.22, references to the lists in Subpart D of Part 261 and the reference to §261.3(a)(2)(ii) or (c) shall mean the lists in Subpart D of Part 261 and §261.3(a)(2)(ii) or (c) as adopted by reference and applicable in Oklahoma.

(iv) In the 260.10 definitions of "new tank system" and "existing tank system", thereference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements:

(I) interim status and permitting requirements applicable to tank systems owned andoperated by small quantity generators [3001(d)];

(II) leak detection requirements for all new underground tank systems [3004(o)(4)]; and

(III) permitting standards for underground tanks that cannot be entered for inspection[3004(w)]. For tank regulations promulgated pursuant to statutory authority otherthan HSWA, the date relative to the commencement of installation is November 2, 1987.

(B) **Part 261.** Identification and Listing of Hazardous Waste except 261.4(b)(18) which pertains to Utah only, thus should be excluded.

(i) In 261.4(e)(3)(iii) delete "in the Region where the sample is collected".

(ii) In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma"after the word "State".

(iii) In 261.31(a), the listing for F019, add at the end: "Zinc phosphate sludges meeting exemption conditions remain subject to regulation as hazardous waste if the waste exhibits a hazardous waste characteristic."

(C) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".

(D) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.

(E) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.1(g)(12), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g).

(i) In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.

(ii) In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.

(iii) In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.

(iv) In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.1(g)(12), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g).

(i) In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988.

(ii) In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987.

(iii) In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987.

(iv) In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.

(H) **Part 267.** Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit. This permit option shall only be available to:

(i) those persons who generate hazardous waste on-site through, or as a result of, industrial production processes;

(ii) wholly owned subsidiaries, owners, or sister companies of those persons specified in paragraph (1); and

(iii) agencies, departments, or units of the federal government or the State of Oklahoma.

(I) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.

(J) **Part 270.** The Hazardous Waste Permit Program, except 270.1(c)(2)(ix), and 270.14(b)(18).

(K) **Part 273.** Standards for Universal Waste Management.

(L) **Part 279.** Standards for the Management of Used Oil, except that 279.82 is revised to read in its entirety, "The use of used oil as a dust suppressant is prohibited."

(2) **OAC 252:606 (Discharge Standards).**

(A) Part 116 (Hazardous Substances List)

(B) Part 117 (Reportable Quantities for Hazardous Substances)

(C) The following from PART 122 (NPDES PERMIT REGULATIONS):

(i) 122.2 - (definitions)

(ii) 122.24 - (concentrated aquatic animal production facilities)

(iii) 122.25 - (aquaculture projects)

(iv) 122.26 - (stormwater discharges)

(v) 122.27 - (silviculture)

(vi) 122.28(a) and (b) - (general permits)

(vii) 122.29 - (new sources and new dischargers)

(viii) 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

(ix) 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

(x) 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

(xi) 122.41 - (permit conditions)

(xii) 122.42 - (conditions for specified categories of permits)

(xiii) 122.43 - (establishing permit conditions)

(xiv) 122.44 - (establishing permit limitations, standards and other conditions)

(xv) 122.45 - (calculating permit conditions)

(xvi) 122.46 - (permit duration)

(xvii) 122.47(a) - (schedules of compliance)

(xviii) 122.48 - (monitoring requirements)

(xix) 122.50 - (disposal into wells)

(xx) 122.61 - (permit transfer)

(xxi) 122.62 - (permit modification)

(xxii) 122.63 - (minor modifications of permits)

(xxiii) 122.64 - (permit termination)

(xxiv) Appendices A through J

(D) The following from PART 125 (criteria and standards for NPDES):

(i) Subpart A (technology-based treatment),

(ii) Subpart B (criteria for aquaculture projects),

(iii) Subpart D (fundamentally different factors),

(iv) Subpart H (alternative effluent limitations),

(v) Subpart I (new cooling water intakes),

(vi) Subpart J (existing cooling water intakes), and

(vii) Subpart L (disposal of sewage sludge under CWA 405)

(E) Part 129 (Toxic Pollutant Effluent Standards)

(F) Part 136 (testing and laboratory)

(G) Sections 401-471 (Effluent Guidelines 7 and Standards)

(H) Section 110.6 (notice of oil discharge)

(I) Part 302 (CERCLA exemption from NPDES permits)

(J) The following Sections from Part 503, Subpart A (General Provisions):

(i) 503.1 (Purpose and applicability)

(ii) 503.2 (Compliance period)

(iii) 503.3 (Permits and direct enforceability)

(iv) 503.4 (Relationship to other regulations)
(v) 503.5 (Additional or more stringent requirements)
(vi) 503.6(a)-(e),(g)-(j) (Exclusions)
(vii) 503.7 (Requirement for a person who prepares biosolids)
(viii) 503.8 (Sampling and analysis)
(ix) 503.9 (General definitions)

(K) The following Sections from Part 503, Subpart B (Land Application):
(i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
(ii) 503.11 (Special definitions)
(iii) 503.12 (General requirements)
(iv) 503.13 (Pollutant limits)
(v) 503.14 (Management practices)
(vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
(vii) 503.16(a) (Frequency of monitoring)
(viii) 503.17(a) (Recordkeeping)
(ix) 503.18 (Reporting)

(L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):
(i) 503.30 (Scope)
(ii) 503.31 (Special definitions)
(iii) 503.32(a), (b) (Pathogens)
(iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(M) The following Sections from Part 503 Subpart E (Incineration)
(i) 503.40 (Applicability)
(ii) 503.41 (Special definitions)
(iii) 503.42 (General requirements)
(iv) 503.43 (Pollutant (Metal) limits)
(v) 503.44 (Operational standard - total hydrocarbons)
(vi) 503.45 (Management practices)
(vii) 503.46 (Frequency of monitoring)
(viii) 503.47 (Recordkeeping)
(ix) 503.48 (Reporting)

(N) The following Appendices from Part 503:
(i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
(ii) Appendix B (Pathogen treatment processes)

(O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

(3) **OAC 252:611 (General Water Quality)** Part 130 (Water Quality Planning and Management)

(4) **OAC 252:652 (Underground Injection Control).** The following apply in their entirety as they apply to the underground injection control program:
(A) Part 144 (Underground Injection Control Program)
(B) Part 145 (State UIC Program Requirements)
(C) Part 146 (Underground Injection Control Program: Criteria and Standards)
(D) Part 147 (State Underground Injection Control Programs)
(E) Part 148 (Hazardous Waste Injection Restrictions)

(5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

[OAR Docket #10-953; filed 6-2-10]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 25. ENTRIES AND DECLARATIONS

[OAR Docket #10-950]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
325:25-1-30. Jockey mount fees [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Comment Period:
February 1, 2010 through March 8, 2010
Public Hearing:
March 8, 2010
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March 25, 2010
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Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010
Final Adoption:
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July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
At its February 19, 2009 meeting, the Oklahoma Horse Racing Commission named an Ad Hoc Committee on Jockey Mount Fees to review national trends in increasing jockey mount fees and discuss the possibility of recommending a permanent rule amendment to Rule 325:25-1-30. The Ad Hoc Committee included three Commissioners, a representative of the national Jockeys' Guild, a representative from each of the two horsemen's representative organizations [the Oklahoma Quarter Horse Racing Association and the Thoroughbred Racing Association of Oklahoma] and the Commission Executive Director. The Committee subsequently recommended rule amendments [for an increase in the fees in the absence of a contract or special agreement to be the greater of the appropriate percentage of the purse or $75.00] for consideration by the Commission. The proposed rule amendments would address a national trend within the industry to increase Jockey Mount Fees and make Oklahoma's Jockey Mount Fees more in line with such fees in other racing jurisdictions.

CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

325:25-1-30. Jockey mount fees

(a) Jockey mount fees in the absence of a contract or special agreement shall be the greater of the appropriate percentage (%) of the purse as indicated on the chart below or $75.00:

Purse	Winning Mount	Second Mount	Third Mount	Losing Mount
~~$ 599 & Under~~	~~$33.00~~	~~$33.00~~	~~$33.00~~	~~$33.00~~
~~600-699~~	~~$36.00~~	~~$33.00~~	~~$33.00~~	~~$33.00~~
~~700-1,499~~	~~10% Win Purse~~	~~$33.00~~	~~$33.00~~	~~$33.00~~
~~1,500-1,999~~	~~10% Win Purse~~	~~$35.00~~	~~$33.00~~	~~$33.00~~
~~2,000-3,499~~	~~10% Win Purse~~	~~$45.00~~	~~$40.00~~	~~$38.00~~
~~3,500-4,999~~	~~10% Win Purse~~	~~$55.00~~	~~$45.00~~	~~$40.00~~
~~5,000-9,999~~	~~10% Win Purse~~	~~$65.00~~	~~$50.00~~	~~$45.00~~
~~10,000-14,999~~	~~10% Win Purse~~	~~5% Place Purse~~	~~5% Show Purse~~	~~$50.00~~
~~15,000-24,999~~	~~10% Win Purse~~	~~5% Place Purse~~	~~5% Show Purse~~	~~$55.00~~
~~25,000-49,999~~	~~10% Win Purse~~	~~5% Place Purse~~	~~5% Show Purse~~	~~$65.00~~
~~50,000-99,999~~	~~10% Win Purse~~	~~5% Place Purse~~	~~5% Show Purse~~	~~$80.00~~
$1,000 to $39,999	10%-Win Purse	5%-Place Purse	5%-Show Purse	$75.00
$40,000 to $74,999	10%-Win Purse	5%-Place Purse	5%-Show Purse	$80.00

$75,000 to $99,999	10%-Win Purse	5%-Place Purse	5%-Show Purse	$85.00
$100,000 & Up	10%-Win Purse	5%-Place Purse	5%-Show Purse	$105.00

(b) The purpose of this Section is not to set a minimum or a maximum fee, but merely to provide a fee in the event that the parties have not made any other written agreement to the contrary. In the event the parties reach an agreement with respect to the fees to be paid the Jockey, a contract or agreement in writing signed by the Jockey or his/her agent and the Owner or his/her Authorized Agent specifying the agreed upon fee in the event of a winning mount, second place mount, third place mount and losing mount, shall be delivered to the Horsemen's Bookkeeper prior to the running of the race in question. The Horsemen's Bookkeeper shall debit the Owner's purse account in accordance with the provision of the contract or written agreement. If no contract or written agreement is submitted to the Horsemen's Bookkeeper prior to the running of the race in question, the Horsemen's Bookkeeper shall debit the Owner's purse account in accordance with the fee scale set forth in this Section, which is to apply in the absence of a contract or written agreement between the parties.

(c) A jockey mount fee is considered earned by a jockey when the jockey is weighed-out by the clerk of scales, except:

(1) when a jockey elects to take himself or herself off a mount; and

(2) when the stewards replace the jockey with a substitute jockey for reasons other than the jockey suffering an injury during the time between weighing-out and the start of the race.

(d) If the jockey does not weigh-out because the owner or trainer replaces the jockey with another jockey, the owner or trainer shall pay the same fee to each jockey engaged for the race.

[OAR Docket #10-950; filed 5-28-10]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 75. OKLAHOMA-BRED PROGRAM

[OAR Docket #10-951]

RULEMAKING ACTION:
PERMANENT final adoption

RULE:
325:75-1-12. Application requirements, categories and fees for Quarter Horses, Appaloosas or Paints [AMENDED]

325:75-1-12.1. Application requirements, categories and fees for Thoroughbreds, beginning with an effective date of January 1, 2010 [AMENDED]

325:75-1-13.1. Dual breed application categories and fees [AMENDED]

325:75-1-16. Disposition or unexpended Oklahoma-Bred funds generated at a race meeting [AMENDED]

AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission

DATES:
Comment Period:
February 1, 2010 through March 8, 2010
Public Hearing:
March 8, 2010
Adoption:
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Submitted to Governor:
April 2, 2010
Submitted to House:
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Gubernatorial approval:
May 3, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010
Final Adoption:
May 26, 2010
Effective:
July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
Regarding proposed rule amendments to Rules 325:75-1-12, 325:75-1-12.1 and 325:75-1-13, in late November, 2009, Ms. Tara Teel, Oklahoma-Bred Registrar, found that two fees, properly established in substantive Commission rules when the Commission adopted the recommendations of the Ad Hoc Committee on Oklahoma-Bred Rules, were either omitted or incorrectly stated in rules containing laundry lists of all fees, adopted at the same time. Mr. Neal Leader, Senior Assistant Attorney General and Commission Legal Counsel, advised that in his judgment, if there is a conflict between the rule establishing a fee and a rule adopted at the same time which proports to contain a laundry list of all fees, which either misstates the fee established or omits an established fee from the list, the substantive provision establishing the fee controls. Nevertheless, Mr. Leader recommended that action be taken to correct these discrepancies by adoption of amendments to the three cited rules which proport to set forth a correct laundry list of fees established in the rules. The proposed rule amendments would correct unintended omissions so that the three rules reflect a correct and complete laundry list of fees established in the rules.

Regarding proposed amendments to Rule 325:75-1-16, the Oklahoma Quarter Horse Racing Association, one of two horsemen's representative organizations, advised the Commission in a November 6, 2009 e-mail that it was submitting proposed rule amendments with the goal "… for Oklahoma-Bred money accrued for use during a calendar year for each participating breed be distributed as completely as possible to those participating owners, breeders, and stallion owners. No Owner, breeder or stallion owner gets benefits intended by the Act when the money is allowed the [sic] grow in the state coffers and is not distributed to the participants in a timely manner." The proposed rule amendments would allow for direction of the Oklahoma-Bred funds, increasing the involvement of the horsemen's representative organizations in providing certain direction of the funding.

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.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

325:75-1-12. Application Requirements, Categories and Fees for Quarter Horses, Appaloosas or Paints

(a) Except as provided in 325:75-1-3(3) and 325:75-1-3.1(3), all broodmares must be accredited in the broodmare registry prior to foaling an Oklahoma-Bred eligible foal. All stallions must be accredited in the stallion registry prior to conceiving an Oklahoma-Bred eligible foal. Racing stock may register in the racing stock registry by December 31 of the year of the horse's birth with a fee of $25.00. Other racing stock applying by June 1 of their yearling year must pay a $50.00 fee. The application fee is $500.00 for all other racing stock registered through December 31 of the horse's three-year-old year. On or after January 1 of their four-year-old year, the application fee shall be $1,000.00. Broodmares may register in the broodmare registry by December 31 of the year prior to foaling with a fee of $35.00. Broodmares applying under late applications but prior to foaling must pay a $70.00 fee. Broodmares applying under hardship applications must pay ~~$235.00~~ $200.00 plus the application fee. Stallions may apply in the stallion registry by February 1 of that breeding season with a fee of $100.00. Stallions applying after February 1 and by June 30 of that breeding season must pay $200.00.

(b) The breeder or owner of an Oklahoma-Bred horse shall pay the fee required for application in the following categories:

(1) Stallion Application by February 1 of Breeding Year - $100.00

(2) Stallion Application After February 1 and by June 30 of the Breeding Year - $200.00

(3) Stallion Reaccreditation Application by February 1 of Breeding Year - $100.00

(4) Stallion Reaccreditation Application After February 1 and by June 30 of the Breeding Year - $200.00

(5) Stallion Reaccreditation Hardship Application - $200.00 plus the application fee

(~~5~~6) Broodmare Application by December 31 of Year Prior to Foaling - $35.00

(~~6~~7) Broodmare Application under Late Application - $70.00

(~~7~~8) Broodmare Hardship Application ~~under Hardship Application~~ - ~~$235.00~~ $200.00 plus the application fee

(~~8~~9) Broodmare Reaccreditation Application by December 31 prior to foaling - $35.00

(~~9~~10) Broodmare Reaccreditation Application after December 31 and prior to foaling - $70.00

(~~10~~11) Foal Application by December 31 in Year of Birth - $25.00

(~~11~~12) Yearling Application by June 1 of Yearling Year - $50.00

(~~12~~13) Racing Stock Application After June 1 of Yearling Year through December 31 of Three- Year-Old Year - $500.00

(~~13~~14) Racing Stock Application On or After January 1 of Four-Year-Old Year - $1,000.00

(~~14~~15) Transfer Fee - $25.00

(c) Paragraphs (1), (2), (3), (4), (5), (6), (7), (8) ~~and~~ (9) and (10) of (b) of this Section are registries for breeding purposes only. Paragraphs ~~(10),~~ (11), (12) ~~and~~ (13), (14) and (15) of (b) of this Section are for racing purposes only.

325:75-1-12.1. Application requirements, categories and fees for Thoroughbreds, beginning with an effective date of January 1, 2010

(a) Except as provided in 325:75-1-3(5)(C), all broodmares must be accredited in the broodmare registry prior to foaling and Oklahoma-Bred eligible foal. All stallions must be accredited in the stallion registry prior to conceiving an Oklahoma-Bred eligible foal. Racing stock may apply for the racing stock registry by December 31 of the year of the horse's birth with a fee of $50.00. Other racing stock may apply by December 31 of the horse's yearling year with a fee of $150.00. The horse may apply by December 31 of its two-year old year for $450.00. After that date, a three-year or older foal may apply for a fee of $1,000.00. Broodmares may apply for the broodmare registry by December 31 of the year prior to foaling for a fee of $75.00. Broodmares applying under late application but prior to foaling must pay a fee of $150.00. Broodmares applying under hardship applications must pay a fee of ~~$350.00 (including penalty)~~ $200.00 plus application fee. Stallions may apply for the stallion registry by February 1 of that breeding season with a fee of $225.00. Stallions applying after February 1 and by June 30 of that breeding season must pay a fee of $400.00. Further, the stallion must pay a yearly re-certification fee. If paid prior to February 1 the fee is $25.00; after February 1 but before June 30, the fee is $50.00. If the yearly fee is paid after June 30, the yearly fee is $400.00.

(b) The breeder or owner of an Oklahoma-Bred horse shall pay the fee required for applying in the following categories:

(1) Stallion Application by February 1 of breeding year - $225.00

(2) Stallion Application after February 1 but before June 30 of the breeding year - $400.00

(3) Stallion Reaccreditation Application by February 1 of breeding year - $225.00

(4) Stallion Reaccreditation Application after February 1 but before June 30 of breeding year - $400.00

(5) Stallion Reaccreditation Hardship Application - $200.00 plus the application fee

(~~5~~6) Yearly Recertification of Stallion in Registry by February 1 of breeding year - $25.00

(~~6~~7) Yearly Recertification of Stallion in Registry after February 1 but before June 30 of breeding year - $50.00

(~~7~~8) Yearly Recertification of Stallion in Registry after June 30 of breeding year - $400.00

(~~8~~9) Broodmare Application by December 31 of Year prior to foaling - $75.00

(~~9~~10) Broodmare Application after December 31 and prior to foaling - $150.00

(~~10~~11) Broodmare Reaccreditation Application by December 31 prior to foaling - $75.00

(~~11~~12) Broodmare Reaccreditation Application after December 31 and prior to foaling - $150.00

(~~12~~13) Broodmare Hardship Application ~~under Hardship Application~~ - ~~$350.00 (including penalty)~~ $200.00 plus application fee

(~~13~~14) Foal Application in Year of Birth by December 31 - $50.00

(~~14~~15) Foal Application in Yearling Year by December 31 - $ 150.00

(~~15~~16) Foal Application in Two-Year-Old Year by December 31 - $450.00

(~~16~~17) Foal Application in Three-Year-Old Year by December 31 - $750.00

(~~17~~18) Foal Application after December 31 of Three-Year-Old Year - $1,000

(~~18~~19) Transfer fee - $25.00

(c) Paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), ~~and~~ (12) and (13) of (b) of this Section are registries for breeding purposes only. Paragraphs ~~(13),~~ (14), (15), (16), ~~and~~ (17), (18) and (19) of (b) of this Section are for racing purposes only.

(d) Proceeds from the fees listed above are to be distributed in the following manner:

(1) 85% placed into the Oklahoma-Bred Fund for Thoroughbreds. Should the Legislature in the future authorize the Oklahoma Breeding Development Fund Special Account monies to be used for the care of retired and unwanted Oklahoma-Bred accredited horses, then 50% of such fees shall be placed in the Fund to be administered by the Commission for the care of retired and unwanted accredited Oklahoma-Bred Thoroughbred horses, and 35% placed in the Oklahoma-Bred Fund for Thoroughbreds, and

(2) 15% to the Oklahoma Horse Racing Commission to:

(A) Assist in funding to oversee the Fund in (c) (2), to cover related costs to administering the Oklahoma-Bred Program for Thoroughbreds, and

(B) Improve and increase the number of inspections for compliance for Thoroughbred broodmares, stallions and foals to be eligible for the Oklahoma-Bred Program.

325:75-1-13.1. Dual breed application categories and fees

The breeder or owner of a dual breed registered Oklahoma-Bred horse shall pay the fee required for accreditation in the following categories:

(1) Stallion Application by February 1 of Breeding Year - $150.00

(2) Amended Stallion Application by February 1 of Breeding Year - $100.00

(3) Stallion Application after February 1 and by June 30 of the Breeding Year - $300.00

(4) Amended Stallion Application after February 1 and by June 30 of the Breeding Year - $200.00

(5) Stallion Reaccreditation Application by February 1 of Breeding Year - $150.00

(6) Stallion Reaccreditation Application after February 1 and by June 30 of the Breeding Year - $300.00

(7) Stallion Reaccreditation Hardship Application - $200.00 plus application fee

(~~7~~8) Broodmare Application by December 31 of Year Prior to Foaling - $60.00

(~~8~~9) Amended Broodmare Application by December 31 of Year Prior to Foaling - $35.00

(~~9~~ 10) Broodmare Application after December 31 and Prior to Foaling - $120.00

(~~10~~11) Amended Broodmare Application after December 31 and Prior to Foaling - $70.00

(~~11~~12) Broodmare Hardship Application - ~~$235.00~~ $200.00 plus application fee

(~~12~~13) Broodmare Reaccreditation Application by December 31 of Year Prior to Foaling - $60.00

(~~13~~14) Broodmare Reaccreditation Application after December 31 and Prior to Foaling - $120.00

(~~14~~15) Foal Application in Year of Birth by December 31- $40.00

(~~15~~16) Amended Foal Application in Year of Birth by December 31 - $25.00

(~~16~~17) Yearling Application by June 1 of Yearling Year - $80.00

(~~17~~18) Amended Yearling Application by June 1 of Yearling Year - $50.00

(~~18~~ 19) Racing Stock Application after June 1 of Yearling Year through December 31 of Three-Year-Old Year - $750.00

(~~19~~20) Amended Racing Stock Application after June 1 of Yearling Year through December 31 of Three-Year-Old Year - $500.00

(~~20~~21) Racing Stock Application on or after January 1 of Four-Year-Old Year - $1,500.00

(~~21~~22) Amended Racing Stock Application on or after January 1 of Four-Year-Old Year - $1,000.00

325:75-1-16. Disposition of Unexpended Oklahoma-Bred Funds Generated at a Race Meeting

Breakage and unclaimed ticket revenue generated from wagering by an organization licensee shall be remitted to the Commission for deposit to the Oklahoma Breeding Development Fund Special Account [3A:208.3(A)]. Distribution of these funds is made by the Commission to owners of eligible Oklahoma-Bred horses which qualify through participation at race meetings held by the organization licensee generating the funds. In the event that the total amount of breakage and unclaimed ticket funds generated at a race meeting are not fully distributed to eligible Oklahoma-Bred participants during that race meeting, the unexpended amount(s)

(1) shall be carried over for eligible Oklahoma-Bred purse supplements and awards to the next subsequent race meeting conducted for that breed(s) by the same organization licensee; or

(2) upon request by the recognized representative organization for that breed(s), the remaining underpaid funds which were accrued for distribution from designated sources of Oklahoma Breeding Development revenue for that breed(s) and which were generated

prior to and/or during a live race meeting but remained unexpended at the conclusion of such meeting, may be allotted by the Commission to the credit of the respective breed(s) participating in live race meeting(s) conducted at other Oklahoma licensed racetrack(s) during the same or immediately subsequent calendar year.

(3) In the event an organization licensee does not conduct such subsequent race meeting in the succeeding calendar year for that breed(s) or the Commission does not re-license the organization licensee for the succeeding calendar year, ~~then~~ the recognized representative for that breed(s) shall provide direction to the Commission for the use of any amounts which would have been carried over and the funds shall be allotted by the Commission to the credit of the respective breeds participating in the immediate subsequent calendar year race meeting to provide purse supplements and awards to eligible Oklahoma-Bred participants at levels established by the Commission. Nothing in this Section shall prohibit the Commission from authorizing funds derived from breakage and/or unclaimed ticket proceeds to be used for other purposes established by the Act.

[OAR Docket #10-951; filed 5-28-10]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #10-997]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Office of the Executive Director
Part 3. Office of the Advocate General
377:3-1-21. Definitions [AMENDED]
377:3-1-23. Job duties [AMENDED]
377:3-1-25. Abuse, neglect, and caretaker misconduct of a child in OJA custody and placed in a secure facility or other facility operated by or through contract with OJA [AMENDED]
377:3-1-26. Advocate General procedures during an abuse, neglect, or caretaker misconduct investigation for other than OJA secure institution [AMENDED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10A O.S., § 2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. §302(A)(1).
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ANALYSIS:
Changes to Subchapter 1 are due to modifications in the reporting and investigation of abuse/neglect allegations for juveniles in secure facilities.
CONTACT PERSON:
Robert Morey, Operations Supervisor, (405) 530-2820

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2010:

SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

PART 3. OFFICE OF THE ADVOCATE GENERAL

377:3-1-21. Definitions

"Abuse" ~~means the causing or permitting of harm or threatened harm to the juvenile's health, safety, or welfare by a caretaker responsible for the juvenile's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the juvenile.~~ is defined in Title 10A O.S., § 1-1-105.

"Advocate defender" means the institutional staff member responsible for:

(A) assuring that juveniles in custody have available and understand grievance channels;

(B) monitoring and reviewing grievance procedures;

(C) conducting the tentative release date hearings with juveniles and attending parole hearings;

(D) supervising the communication of grievance procedure to staff and juveniles;

(E) facilitating resolutions and regularly reviewing informal grievances; ~~and~~

(F) ensuring allegations of abuse~~,~~ and neglect~~, or mistreatment~~ are properly reported to the ~~Department of Human Services, Office of Client Advocacy (OCA).~~ Advocate General of the Office Of Juvenile Affairs; and

(G) ensuring that allegations of caretaker misconduct by a person responsible for a child residing in an OJA secure facility not rising to the level of abuse or neglect are reported to the Advocate General of the Office of Juvenile Affairs.

"Caretaker" with regard to juveniles in the Office of Juvenile Affairs' custody means an agent or employee of~~:~~ a public or private institution or a public or private residential home above the level of foster care.

~~(A) a public or private residential home, institution, or facility above the level of foster care; or~~

~~(B) a day treatment program as defined in 10 O.S., § 175.20 or § 7001.~~

"Caretaker Misconduct" is defined in Department of Human Services' Rule OAC:340:2-3-2. ~~as an act or omission by a caretaker that:~~

~~(A) Violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;~~

~~(B) is not found to be abuse or neglect; and~~

~~(C) results in or creates the risk of injury including, but not limited to:~~

~~(i) Acts or omissions that contribute to the delinquency of a minor;~~

~~(ii) unintentional excessive or unauthorized use of force;~~

~~(iii) unintentional causing of mental anguish; and~~

~~(iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client.~~

~~**"Demonstrable injury"** means clear evidence of physical injury (for example, a laceration, bruise, burn, or visible swelling), or an injury which is confirmed by a physician, dentist, or nurse.~~

"Grievance coordinator" means a group home staff member responsible for:

(A) assuring that juveniles in custody have available and understand grievance channels;

(B) monitoring and reviewing grievance procedures and hearings;

(C) supervising the communication of grievance procedure to staff and juveniles; and

(D) regularly reviewing informal grievances and resolutions.

"Neglect" ~~means:~~

~~(A) failure of a caretaker to provide adequate food, clothing, shelter, medical care, and supervision; or~~

~~(B) the failure to provide special care made necessary by the physical or mental condition of the juvenile, including the lack of appropriate supervision which results in consensual sexual activity between juveniles.~~ is defined in Title 10A O.S., § 1-1-105.

~~**"Resident grievance clerk"** means a resident of the group home or institution elected by his or her peers to assist in the grievance process.~~

~~**"Serious physical injury"** means any physical injury to a person's body determined to be serious by a physician, dentist, or nurse, and includes but is not limited to death, fracture, dislocation of any major joint, internal injury, concussion, or second or third degree burn.~~

377:3-1-23. Job duties

The job duties of the Advocate General (AG) are provided in (1)-~~(8)~~ (11) of this Section.

(1) The AG shall supervise staff assigned to secure juvenile facilities as advocate defenders.

(2) The AG shall inquire into and make recommendations to the appropriate Division Director regarding juvenile-related grievances which are not resolved at the facility level.

(3) The AG shall ~~require~~ monitor the system to ensure that allegations of abuse~~,~~ or neglect~~, or caretaker misconduct~~ of ~~juveniles~~ a child who ~~are~~ is in OJA custody and placed in a ~~facilities~~ facility operated by or under contract with OJA are reported ~~to the OCA by the appropriate person~~ as provided by law. ~~The AG shall ensure that immediate protection of resident issues are addressed by the facility and follow up on OCA findings and recommendations regarding corrective action.~~

(~~3~~ 4) The AG shall coordinate any hearings or meetings of administrative review committees conducted as a result of investigations or unresolved grievances.

(~~4~~5) The AG shall make recommendations to the OJA Executive Director and appropriate ~~Division Administrator~~ Division Director pursuant to 377:3-1-25;

(~~5~~6) The AG shall provide reports on grievance procedures, hearings, and investigations to the Executive Director of OJA, ~~Office of Juvenile Systems Oversight,~~ the Board of Juvenile Affairs, and to other persons or entities as necessary to ~~assure action~~ facilitate system responsiveness.

(~~6~~7) The AG shall forward an abstract of grievances which are not resolved in favor of the person filing the grievance, and which have exhausted all available levels of appeal, to the Office of Juvenile ~~Systems~~ System Oversight, the Executive Director, and the OJA Board of Juvenile Affairs.

(~~7~~8) The AG shall:

(A) monitor rules and practices of OJA and its contractors to ensure compliance with juveniles' rights;

(B) report the number and types of investigations at juvenile facilities at least quarterly to the OJA Board of Juvenile Affairs in open meeting; and

(C) make additional reports to the OJA Board of Juvenile Affairs as needed.

(~~8~~ 9) The AG shall perform other duties as required by the Executive Director.

(10) In cooperation with the Executive Director, the Advocate General shall establish a system for review of allegations of caretaker misconduct by a person responsible for a child residing in an OJA secure facility not rising to the level of abuse or neglect. Such system shall be approved by the Board of Juvenile Affairs.

(11) The AG shall ensure that an appropriate training program in child abuse and neglect reporting for facility staff is developed by the Office of Juvenile Affairs.

377:3-1-25. Abuse, neglect, and caretaker misconduct of a child in OJA custody and placed in a secure facility or other facility operated by or through contract with OJA

(a) **Requirements for reporting incidents of abuse, and neglect, or caretaker misconduct.** State law Title 10A O.S., § 1-2-101 requires every person who, in good faith and exercising due care, has with reason to believe that a child or juvenile under the age of 18 is or has been abused or neglected to report the condition or incident to the appropriate office for investigation. Title 10 §7004-3.4(B)(2) confers on OCA the responsibility of investigating allegations of caretaker abuse and neglect of juveniles, regardless of custody, residing outside their own homes, other than the foster care level. Incidents which occur in a residence, including a foster home, shall be reported to the local child welfare office or the child abuse hotline. An employee who, in good faith and exercising due care, has reason to believe that a child is a victim of abuse or neglect shall make an immediate, verbal or email transmittal report directly to OCA, as required by 10A O.S. § 1-2-101 [10 O.S., § 7103(B)] and to the supervisor who shall ensure a report is made to OCA, law enforcement, and the OJA Office of Advocate General when:

(1) the employee has reason to believe a juvenile in OJA such child custody has been the victim of abuse, or neglect, or caretaker misconduct;

(2) a juvenile child, parent, guardian, or other person makes an allegation of abuse, or neglect, or caretaker misconduct; of such child.

(3) death of an OJA juvenile occurs;

(4) a serious or demonstrable injury to a custody juvenile occurs:

(A) as a result or in the course of the use of physical force by an employee;

(B) as a result of an assault by any person; or

(C) under unexplained, suspicious, or unusual circumstances including where the presence of alcohol or a controlled dangerous substance is detected on either the juvenile or staff; or

(5) a custody juvenile is the apparent victim of, or participates in, sexual activity prohibited by State Law.

(b) **Acts which are not considered to be abuse, neglect, or caretaker misconduct Use of restraints and physical force.** Abuse, and neglect, or caretaker misconduct does do not include the use of restraints or physical force as authorized by law, allowed by regulation or policy, and which is performed in such a manner as to be deemed acceptable by approved systems of restraint including, but not limited to, MANDT, CPI, CAPE, or CCMS. Medical attention shall be provided immediately upon the juvenile's release from restraint as a result of physical force even if there is no visible evidence or complaint of injury. Medical attention shall be provided in an institution by a licensed physician, licensed practical nurse, registered nurse, physician's assistant, or emergency medical technician; or in a group-home or private facility, staff certified in first aid and CPR may provide medical attention and are responsible for referring the juvenile to licensed medical personnel, if warranted.

(c) **Preliminary assessment procedures.** The advocate defender or grievance coordinator shall refer a report of alleged abuse, neglect, or caretaker misconduct to OCA for investigation. The advocate defender or grievance coordinator is responsible for obtaining the alleged victim's, the accused's and any witnesses' written statement regarding the incident which shall then be provided to the facility or group home administrator or designee and the Advocate General. After reporting to OCA and upon their advice, the advocate defender may assist in facilitating the preliminary assessment.

(1c) When a reportable situation arises and within 24-hours, each staff member, resident, or other person present during the incident shall prepare and submit to the, facility administrator, or designee, a written incident report describing what the person saw or heard. The facility administrator, shall ensure a preliminary assessment is conducted to:

(A1) assure the safety of any juvenile named in the referral and of other juveniles in the same placement;

(B2) protect the integrity of any evidence which may be relevant to the allegation, including taking photos of potentially relevant injuries following every restraint or act of physical force; and

(C3) coordinate activities with OCA and any law enforcement authority involved in investigating the allegation.

(2d) The facility administrator shall collect medical records, other documents and reports which pertain to the alleged incident, written statements and any other documentary evidence and place them in a holding file for investigative use by OCA and any other the appropriate investigative authority. Employees of the facility shall not conduct an investigation of an alleged incident pending OCA's decision to accept the referral for investigation or during a pending OCA investigation. This prohibition does not extend to interviews and investigations conducted by law enforcement when responding to a report of criminal wrongdoing. OCA shall coordinate activities with local, state, and federal law enforcement entities.

(3e) Caretaker misconduct in OJA secure facilities. Every employee in an OJA secure facility shall report allegations of caretaker misconduct to the OJA AG for investigation and disposition. The system for investigation and disposition of such investigation shall be developed by the AG in cooperation with the Executive Director and shall be approved by the Board of Juvenile Affairs. If The Advocate General shall determine whether the allegation involves caretaker misconduct. and the juvenile has not incurred a demonstrable injury, and is an incident which is required to be reported under 377:3-1-25 OCA may instruct the advocate defender or grievance coordinator to treat the allegation or incident as a formal caretaker misconduct review, and the review will be processed as follows:

(A) The facility administrator shall be responsible for having an investigation conducted within ten working days and preparing a report of his/her findings and resolution in writing. A facility employee designated to conduct a caretaker misconduct review shall:

(i) review documentation, records, and evidence collected;

~~(ii) view any injuries and photos of injuries;~~

~~(iii) obtain written statements and conduct interviews with:~~

~~(I) each alleged victim;~~

~~(II) each eyewitness;~~

~~(III) other persons with knowledge relevant to the allegation; and~~

~~(IV) each accused caretaker;~~

~~(iv) review any policies, directives, standards, rules, or statutes relevant to the allegation; and~~

~~(v) provide an analysis of employee actions in relation to policy, directives, standards, and rules by:~~

~~(I) reviewing written and verbal accounts from those involved;~~

~~(II) examining other documentation collected; and~~

~~(III) providing a finding.~~

~~(B) Findings. Findings are made based on a preponderance of the evidence. The finding options are:~~

~~(i) **Confirmed.** A finding of "confirmed" means that the available evidence establishes that it is more likely than not that the alleged caretaker misconduct occurred;~~

~~(ii) **Not confirmed.** A finding of "not confirmed" means there was insufficient evidence to find that it is more likely than not that the alleged caretaker misconduct occurred;~~

~~(iii) **Not confirmed/ruled out.** A finding of "not confirmed/ruled out" means the available evidence established that it is unlikely that the alleged caretaker misconduct occurred.~~

~~(C) A copy of the report shall be forwarded to OCA and the OJA Advocate General upon completion.~~

~~(D) If at any time during the caretaker misconduct review process it is determined that abuse, neglect, or caretaker misconduct involving a demonstrable injury to a juvenile may have occurred, the caretaker misconduct review process will be terminated by the facility and the matter referred to OCA for investigation. The Advocate General or facility administrator may, at his/her discretion, request OCA to conduct a formal investigation of any caretaker misconduct review.~~

~~(4) When OCA initiates an investigation, the assigned OCA investigator shall conduct a prompt investigation of the allegation. The investigator shall contact the facility administrator to arrange for document production, site visits, and interviews. The facility administrator who employed any accused caretaker at the time of the alleged incident shall inform that employee of:~~

~~(A) the name and telephone number of the OCA investigator;~~

~~(B) the administrative investigative process;~~

~~(C) the employee's rights and responsibilities relating to the investigation described in subsection (d) of OCA's Rules, 340:2-3-36; and~~

~~(D) the nature of any allegation against the caretaker.~~

~~(5) The administrator shall not provide the accused caretaker with the details of the referral or the substance of the evidence. The facility administrator shall arrange for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a resident of the facility.~~

(f) **Caretaker misconduct in facilities other than OJA secure facilities.** Every employee of a facility, other than an OJA secure facility, operated by or through contract with OJA shall report allegations of caretaker misconduct in accordance with DHS Rule 340:2-3-33.

(~~6~~g) **Educational employees.** If the alleged abuse, neglect, or caretaker misconduct involves an employee of a school district which provides contract educational services to OJA, either as a witness or as an accused caretaker, the facility administrator shall notify the principal of the school of the nature of the allegation, and name of the assigned investigator. The principal shall then be responsible for advising the employee accordingly and coordinating with ~~OCA~~ the appropriate investigative authority.

~~(7) Supervisory staff who have been informed of alleged or possible abuse, neglect, or caretaker misconduct shall report such allegations as required by this subsection.~~

(~~d~~h) **Protection or medical treatment.** In the event of alleged abuse, neglect, or caretaker misconduct in a facility, the facility administrator or designee shall assure protection of the juvenile and obtain medical attention for the juvenile.

~~(e) **Referral to law enforcement agency.** If the reportable situation could result in criminal charges, the superintendent, facility director, JSU district supervisor, or an OJA employee having direct knowledge shall also immediately report the matter to the appropriate law enforcement agency. If there is a question as to whether the reportable situation could result in possible criminal charges, the superintendent, facility director, or JSU district supervisor shall immediately consult with the Advocate General or a representative of the OJA Office of General Counsel. The advocate defender or Advocate General shall ensure that the referral was made.~~

(~~f~~i) **Failure to report.** Any employee who fails to report abuse, neglect, or caretaker misconduct as required by this Section, is subject to disciplinary action under OJA's personnel rules. If it is determined the employee failed to report as required, the Advocate General of OJA shall make a referral to the appropriate law enforcement agency.

(~~g~~j) **Interference prohibition.** Any employee who interferes with an abuse, neglect, or caretaker misconduct investigation, or attempts to intimidate or harass a witness, victim, or employee accused of alleged abuse, neglect, or caretaker misconduct through force or fear, or by threatening physical or mental harm to a witness, victim or others, is subject to disciplinary action under OJA's personnel policy and could be subject to criminal prosecution.

(~~h~~k) **Contract termination.** A contractor's contract shall be subject to immediate termination for failure to adhere to this subchapter or ~~a contractor~~ knowingly allowing an employee to:

(1) interfere with an abuse, neglect, or caretaker misconduct investigation;
(2) interfere or retaliate against any employee for reporting or cooperating in such investigation; or
(3) deny the assigned investigator immediate and direct access to the contractor's employees, facilities, clients, places, or records of any type.

377:3-1-26. Advocate General procedures during an abuse, neglect, or caretaker misconduct investigation for other than OJA secure institutions

(a) Upon receiving a report from OCA concerning an investigation of abuse, neglect, or caretaker misconduct, the Advocate General shall send a copy of the report to the facility administrator and notify the Executive Director or appropriate Division ~~Administrator~~ Director. If a facility administrator is named as an accused caretaker in the allegation, the report shall be forwarded to the Chair of the Board of Directors of the facility or to the Director of the state agency operating the facility.
~~(b) If OCA finds that abuse, neglect, or mistreatment did not occur, further action by the OJA Advocate General is not necessary.~~
(~~c~~b) If OCA confirms findings of abuse, neglect, or caretaker misconduct, the Advocate General shall request appropriate corrective action within 21 days of the Advocate General's receipt of OCA's report. ~~In cases of confirmed abuse or neglect, the appropriate District Attorney will be notified and asked to advise whether or not criminal charges will be filed.~~
(~~d~~c) Even if abuse, neglect, or caretaker misconduct is not confirmed by OCA, the Advocate General may recommend to the Executive Director appropriate measures to address systemic or individual concerns raised during the course of the OCA investigation.
(~~e~~d) Upon receipt of OCA's report, the facility administrator, OJA administration, or Advocate General on behalf of a juvenile who is the subject of the report may request that the DHS Grievance Abuse Review Committee (GARC) review its findings and return a different result.
(~~f~~e) OCA investigative reports, records, files, and audio tapes are considered confidential under Title 10 O.S. § ~~7005-1.2~~ 1-6-102 ~~and § 7101~~ *~~et seq~~*.

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TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 3. ADMINISTRATIVE SERVICES

[OAR Docket #10-998]

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Changes to Subchapter 1 are due to modifications of the juvenile grievance process. Subchapter 13 is being amended to comply with changes in Title 10 that require OJA to promulgate rules which outline the certification and licensing of Secure Juvenile Facilities.
CONTACT PERSON:
Robert Morey, Operations Supervisor, (405) 530-2820

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2010:

SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

PART 3. OFFICE OF THE ADVOCATE GENERAL

377:3-1-27. OJA grievance policy

(a) It is OJA's intent to establish and maintain a fair, simple, and speedy system for resolution of grievances of all OJA-custody juveniles. The grievance policy and procedure is designed to provide an OJA-custody juvenile with a way to have another person review and, when appropriate, correct problems the juvenile is having.
(b) A juvenile may file a grievance regarding:
(1) the ~~meaning or use of any of OJA's or OJA contractor's written or unwritten policies, rules, or regulations; or~~ conditions of confinement, action of staff, and incidents

occurring within or under the authority and control of the Office of Juvenile Affairs.

(2) any decision, behavior, or action by an OJA employee or contractor, or by another juvenile in OJA custody.

(c) A grievance may be filed by either a juvenile or by another person on behalf of the juvenile. ~~Generally, grievances must be filed within seven days of the occurrence to facilitate resolution, but may be filed at any time.~~ The juvenile or person filing on behalf of the juvenile shall try to resolve the grievance informally at the local level before he or she submits a formal appeal. The procedures for informally resolving grievances with JSU and in institutions and contract facilities are set forth in OAC 377:3-1-28. If resolution cannot be achieved through the informal process, the juvenile has the right to appeal.

(d) Staff members shall not in any way discourage any juvenile from filing a grievance or appealing a grievance resolution. The rules in this Section shall not be construed to impinge upon the duties of the Advocate General, advocate defender, grievance coordinator, or any designee thereof from fairly and accurately advising a juvenile of his or her rights or alternative means of dispute resolution.

(e) OJA ensures the quality of the system by maintaining minimum standards and by using an ongoing monitoring program carried out by the Office of Advocate General in conjunction with other OJA Divisions.

(f) Each OJA and contracted facility shall make its grievance policies and procedures available upon request to any member of the public.

(g) Each OJA and contracted facility shall post its grievance policies in conspicuous places readily accessible to the juveniles in residence.

(h) Each OJA and contracted facility shall explain OJA grievance policies and procedures to every resident during intake at the facility.

(i) Every effort should be made to utilize the correct form, but all grievances must be processed regardless of the form used by the juvenile.

377:3-1-28. General Grievance Procedure

(a) **Informal grievances.**

(1) Informal grievances are issues relating to daily life at the juvenile's placement, which can be resolved at the facility or local level. Informal grievances include, but are not limited to:

(A) grooming and hygiene;
(B) clothing;
(C) cottage cleanliness;
(D) food;
(E) disrespect not involving threats of harm;
(F) restrictions; or
(G) routine problems with the JSU; i.e., complaints against a JSU worker.

(2) A juvenile shall try to informally resolve his or her grievance by talking with the Social Service Inspector, supervising employee or other appropriate staff within three (3) working days, excluding weekends and holidays, of the incident. If the issue is not resolved the juvenile may submit in writing a brief description of the problem and what efforts have been made to resolve the issue within (7) seven working days, excluding weekend and holidays, of the incident. The grievance should include the name of the person or group with whom the juvenile wants to meet to discuss the problem. The juvenile may put the written information in a designated grievance box or give the grievance to any staff member.

(3) The grievance must be numbered and logged in a grievance log on the day the grievance is received and distributed to the appropriate staff for processing and possible resolution.

(4) The assigned staff shall review each grievance and attempt to resolve the grievance with the juvenile.

(5) If the grievance is not resolved within ~~(3) three~~ (5) five working days (excluding weekends and holidays), the juvenile may ~~appeal~~ seek review by ~~to~~ the supervisor.

(6) The supervisor shall have ~~(5) five~~ (10) ten working days (excluding weekends and holidays) from receipt of the ~~grievance~~ review to resolve the grievance.

(7) If the juvenile does not accept the resolution of the supervisory review, he/she may file a formal grievance, which shall be received within 5 working days (excluding weekends and holidays) from the receipt of the review.

(~~7~~8) The grievance log must also indicate the disposition of the grievance and the date of the resolution or ~~appeal~~ the review. OJA Form OJA-AG-2 may be used to facilitate the grievance resolution process.

(b) **Formal Grievances.**

(1) Formal grievances are those grievances, which are appeals of informal grievances or those which cannot otherwise be resolved at the facility or local level. Issues which cannot be resolved at the facility or local level include, but are not limited to:

(A) placement;
(B) treatment;
(C) psychological services;
(D) social services;
(E) educational services;
(F) recreation; or
(G) abuse, neglect, or caretaker misconduct.

(2) Grievances which contain allegations of abuse, neglect, or caretaker misconduct shall be processed in accordance with 377:3-1-25 and 377:3-1-26.

(3) Formal grievances may be filed with any staff member but shall be routed to the Advocate General for appropriate distribution and resolution by OJA State Office as set forth in paragraph (c) of this section. Form OJA-AG-3 may be used to facilitate the formal grievance process.

(c) **Grievances received by Advocate General.** Upon receipt of an appeal of an informal grievance or formal grievance, the Advocate General's Office shall post the date of receipt. The Advocate General shall review the grievance and the accompanying documentation to determine what additional information is necessary for disposition of the grievance within five (5) working days and set deadlines for receipt of required information. If the Advocate General finds that an appeal or

formal grievance was prematurely filed, the Advocate General shall send a reply containing suggestions regarding the proper procedure to the person that sent the grievance. The Advocate General shall review the applicable OJA rules, policy, and/or Oklahoma law to determine if the appeal or formal grievance is appropriate and provide an opinion regarding possible resolution.

(d) **Appeal to the Division Director/final decision** The Advocate General shall prepare a cover worksheet or memorandum for the appeal or formal grievance and forward a copy to the Division Director/designee for response. The response shall be completed within ten (10) working days (extension may be granted by the Advocate General where a formal, legal opinion or policy decision is necessary). Upon receipt of the proposed resolution, the Advocate General shall forward a copy to the juvenile and/or to other appropriate person named in the grievance and to the appropriate advocate defender or grievance coordinator. A copy of the resolution shall be inserted in the juvenile's master file. Resolutions, which will change or create OJA rules, are submitted to the appropriate division responsible for drafting new or revised rules. The Advocate General shall ensure that resolutions containing directives for specific action are completed.

(e) **Board notification.** All matters referred to the Division Director for final decision may be placed on the agenda for the next, regularly scheduled meeting of the Board of Juvenile Affairs upon authorization of the Executive Director. If the Executive Director denies the request the OJA Board shall be informed. The Executive Director shall review any such grievance with the Board during Executive Session. At that time, the Advocate General will be allowed to voice concerns, the wishes of the juvenile, or such other matters as are relevant to the Board's understanding of the issues presented in the appeal.

(f) **Review by juvenile.** The grievance coordinator, advocate defender, or Advocate General (whoever filed the last grievance), shall review the Division Director's resolution with the juvenile and notify the juvenile that his or her administrative remedies have been exhausted. If the juvenile does not accept the resolution, a copy of the grievance, appeals, and proposed resolutions shall be forwarded to the Office of Juvenile Systems Oversight.

(g) **Grievances originated by the Advocate General.** The Advocate General may, on behalf of all or part of the juveniles committed to OJA, originate a grievance at the State Office level concerning:

(1) the substance or application of any written or unwritten policy, rule, or regulation of:
- (A) OJA;
- (B) an agent of OJA; or
- (C) an OJA contractor; or

(2) any decision, behavior, or action of
- (A) an OJA employee;
- (B) an agent of OJA;
- (C) an OJA-contractor; or
- (D) any other person committed to OJA.

(h) The Advocate General may write the grievance by way of a detailed memorandum.

(i) The appropriate Division Director and Advocate General may determine there is misuse of the grievance process. Types of misuse, include, but are not limited to:
- (1) Grievances intended to harass another;
- (2) The continual and repeated submitting of frivolous grievances (frivolous grievances are those with no basis in fact or law);
- (3) The repeated submitting of grievances about an issue, which has been adequately and completely addressed by staff.
- (4) If misuse of the process is determined, the juvenile will be notified in writing, citing the above listed reason or reasons the grievance will not be processed through the grievance procedure. A copy of the determination will be placed in the offender's field file, Advocate General's and Advocate Defender's file.

(j) Non-grievable issues include;
- (1) any appeals finalized and resolved by the disciplinary hearing process shall not be processed through the grievance process, or
- (2) Requests for disciplinary action against staff.

377:3-1-30. Grievance procedures for institutions, group homes, and contract facilities

(a) Group homes and contract facilities. Contract facilities, youth shelters, and crisis intervention centers shall develop grievance policies and procedures consistent with those as contained in OAC 377:3-1-27 and 28.

(b) Institutions. Each institution shall have a locked, grievance box and a system to enable juveniles to obtain a grievance form upon request. The juvenile may put their written information in the grievance box or give the grievance to any staff member. The advocate defender shall on the same day log the grievances in a master grievance log and distribute the grievances to the appropriate staff member for processing and possible resolution. The advocate defender shall notify the juvenile of receipt of the grievance within one working day. The assigned staff shall review each grievance and attempt to resolve the grievance with the juvenile. If the grievance is not resolved in three working days, the juvenile may appeal to the supervisor or facility administrator who will have an additional five working days in which to attempt resolution. The grievance shall be resolved within seven working days. The advocate defender shall inform the juvenile of the decision regarding his or her grievance and the right to appeal. If the juvenile appeals the grievance decision, the advocate defender shall send the appeal to the appropriate person or Advocate General and document such in the log. If the juvenile does not appeal, the advocate defender shall file the completed grievance and document such in the log.

~~(c) Committees and resident grievance clerks. An institution or group home may establish a staff/resident grievance committee and grievance clerk to assist in facilitating the grievance resolution process.~~

- ~~(1) Committees. When utilized, an equal number of staff and juveniles shall be selected to serve on a committee to hear grievances concerning rules, policies, programs, and procedures. The committee shall be selected~~

~~by the grievance coordinator or advocate defender from a list of juveniles and staff submitted by the facility administrator. The grievance coordinator or advocate defender shall not vote on the outcome of the grievance. Juveniles selected to serve shall be either grievance clerks or alternate grievance clerks.~~

~~(2) Grievance clerks. Institutional or group home residents shall elect two high phase peers from their unit to serve as grievance clerk and alternate clerk. Elections shall be conducted as needed to ensure that juveniles perform this function.~~

377:3-1-31. Monitoring and evaluation

The purpose of this section is to describe the process by which the Advocate General monitors and evaluates group home and institutional grievance systems.

~~(1) The grievance coordinator or advocate defender shall meet with the resident grievance clerks at least once each week as an ongoing monitoring program.~~

(~~2~~ 1) The grievance coordinator~~,~~ or advocate defender ~~or the resident grievance clerks~~ may request a personal visit with the Advocate General on an as-needed basis.

(~~3~~ 2) If the grievance coordinator or advocate defender becomes aware of any program deficiencies or service program omissions which result in individual group home or community-based problems, the grievance coordinator or advocate defender shall write a special report to the Office of the Advocate General about the program deficiencies or omissions. The grievance coordinator or advocate defender shall write the special report even when a grievance has not been filed. The grievance coordinator or advocate defender shall send copies of the report to the group home supervisor and the affected Division ~~Administrator~~ Director. The grievance coordinator or advocate defender shall maintain the master grievance log and grievance files and shall report grievance statistical information to the Office of Advocate General monthly.

SUBCHAPTER 5. OFFICE OF HUMAN RESOURCES MANAGEMENT

PART 3. OFFICE OF HUMAN RESOURCES MANAGEMENT- PERSONNEL PROGRAMS

377:3-5-12. The Office Of Juvenile Affairs promotional plan

(a) **Promotional policy.** The Office of Personnel Management (OPM) requires that each state agency shall post vacancies in a particular job family in accordance with a promotional plan filed by the agency with OPM (530:10-11-51). The Office of Juvenile Affairs (OJA) shall follow this plan when posting and filling classified positions. The OJA promotional plan is designed to provide employees with opportunities for career growth and advancement. No person shall be discriminated against because of race, sex, age, color, creed, religion, political affiliation, national origin, or disability [74 O.S. §840-2.9(A)].

(b) **Posting decision.** The Executive Director or designee shall make the decision to fill a vacancy, whether classified or unclassified, and post a notice. When continuous, multiple vacancies are anticipated, general promotional opportunities may be posted. [74 O.S. §840- 4.15(B)].

(c) **Agency Selection Process.** The Office of Juvenile Affairs shall conduct the selection process of applicants in accordance with (OPM) requirements, state and federal laws. Applicants may be required to participate in other selection and assessment procedures.

(1) A personal background investigation shall be conducted, which may include civilian and military court records. Background investigations will be conducted in compliance with ~~DHS Residential Child Care Facilities Licensing requirements [340:110-3-145 through 340:110-3-169]~~ Title 10 O.S. §404.1A.

(2) Applicant drug testing may be required in accordance with 377:3-11-1 though 377:3-11-12.

SUBCHAPTER 13. OFFICE OF PUBLIC INTEGRITY

PART 1. GENERAL PROVISIONS

377:3-13-1. General purpose, legal basis and authority

(a) **Unit Purpose.** The Office of Public Integrity (OPI) is a unit established within the Oklahoma State Office of Juvenile Affairs (OJA) and is directly responsible, organizationally and administratively, to the OJA Executive Director. The unit is composed of three sections: (1) Internal Affairs/Employment Discrimination Investigations; (2) OJA Licensing and Programs Assessment Section; (3) Financial Contract Monitoring/Reviews Section and other duties as assigned by the Executive Director. The unit conducts investigations, performs on-site assessments, licensing visits, and financially monitors OJA state contracts, functions and activities to ensure compliance with, state statutes, OJA policies/procedures, contractual provisions, and other applicable professional rules and standards.

(1) Internal Affairs/EEO Investigations Section may among other activities and functions include investigations of:

(A) Allegations of serious misconduct and/or criminal violations committed by OJA personnel as assigned to the unit by the agency's Executive Director;

(B) Allegations of discrimination (Equal Employment Opportunity) either by or against OJA employees as received and assigned by the agency's Executive Director, affirmative action officer, or the agency's grievance manager; and

(C) Specifically assigned Caretaker Conduct Reviews (CCR) that are returned to the OJA operated

juvenile institutions by the state Department of Human Services' Office of Client Advocacy (OCA) or other entity as prescribed by law for administrative review, as well as major incidents (i.e. serious assaults, riots, escapes) that occur at the OJA operated institutions.

(2) OJA Licensing and Programs Assessment Section includes the licensing and assessing of the following:

(A) On-site licensing and unannounced monitoring visits to OJA state contracted juvenile detention centers, community intervention centers (CIC) and municipal juvenile detention facilities, See OJA Rule 377-3-13-6;

(B) Announced and unannounced assessments of contracted residential care, non-residential services and shelters as directed by the OJA Executive Director.

(C) On-site assessments and licensing of ~~the OJA operated institutions~~ a Secure Juvenile Facility;

(D) On-site assessments of the OJA Juvenile Services Unit (JSU) offices located throughout the state;

(E) Assessments of State Office units as directed by the OJA Executive Director;

(3) Financial Contract Monitoring/Review Section includes the financial monitoring of the following:

(A) ~~OJA operated institutions~~ Secure Juvenile Facilities;

(B) OJA contracted detention centers and community intervention centers;

(C) OJA contracted residential care and shelter services as directed by the OJA Executive Director;

(D) OJA contracted non-residential services provided by designated youth services agencies; by performing

(i) On-site contractor visits to reconcile claims against supporting documentation with a documented recommended corrective action, if appropriate;

(ii) Reviews of reimbursed claims for payment by OJA, to include: compliance with contract requirements; applicable laws, rules and regulations; and adequate supporting documentation.

(E) In addition to the above duties, the financial contract monitoring/review section shall perform in-depth financial audits as directed by the OJA Executive Director.

(b) **Legal Basis/Authority.** Authorization for the monitoring/assessment functions of the Office of Public Integrity is found in 10A O.S., §~~7302-3.1~~ 2-7-301. Authorization for detention certification is found in 10A O.S., §~~§ 7304-1.3C and 7303-1.2E~~ 2-3-103. Authorization for certification of community intervention centers (CIC) is found in 10A O.S. §~~7302-3.3~~ 2-7-305.

(c) **Unit Independence.** The Office of Public Integrity is organizationally and administratively independent from the other units and divisions of the agency that actually provide, or contract for, programs and services. Communication and coordination with agency and contractor personnel is necessary and desirable during the investigative, assessment, and monitoring procedures.

(d) **Frequency of Assessments/Monitoring**

(1) OPI shall conduct announced certification assessments of contracted facilities, i.e. detention centers and community intervention centers, and municipal juvenile detention facilities on a bi-annual basis, with announced annual inspections during the interim year. OPI may conduct unannounced assessments at the direction of the OPI administrator. OPI shall conduct announced assessments of its Juvenile Services Units (JSU) in each county of the state on a bi-annual basis and unannounced assessments as requested by the Juvenile Services Division Director with approval of the OJA Executive Director. OPI shall conduct program assessments of OJA institutions, State Office units, contracted residential care facilities, non-residential services and shelters as directed by the OJA Executive Director.

(2) OPI shall financially monitor the OJA contracts with the youth services agencies at a minimum of twice per fiscal year. OPI shall financially monitor other contracted facilities and services, OJA institutions, and State Office units at the direction of the OJA Executive Director.

PART 3. REQUIREMENTS FOR SECURE JUVENILE DETENTION CENTERS

377:3-13-42. Juvenile rights

Written policy and procedure provides that facility staff shall ensure the rights of a detained juvenile are preserved. Staff shall not diminish or deny a detained juvenile his or her rights for disciplinary reasons. The rights of a juvenile in detention are subject only to the limitations necessary to maintain order and security in the facility. Each juvenile has the rights listed in (1)-(14) of this Subsection.

(1) A juvenile shall have freedom from discrimination because of race, national origin, color, creed, sex or physical handicap.

(2) Male and female juveniles shall have equal access to all programs and services offered in a detention facility housing both sexes.

(3) The facility shall have a written grievance procedure, in accordance with OJA policy and approved by the Advocate General. Facility staff shall explain and make the grievance procedure available to the juvenile.

(4) The facility shall have on-site nondenominational religious services and religious counseling. A juvenile shall have the right to voluntarily participate in on-site religious services and religious counseling.

(5) A juvenile shall have access to on-site recreational opportunities, including daily outdoor exercise, weather permitting. The facility shall provide adequate and appropriate recreational equipment.

(6) A juvenile shall have access to the courts and confidential contact with attorneys and their authorized representatives. Contact includes, but is not limited to:

(A) telephone conversations;

(B) uncensored correspondence; and
(C) visits.

(7) Facility staff shall not discipline a juvenile by using:
(A) corporal or unusual punishment;
(B) humiliation;
(C) mental abuse; or
(D) punitive interference with the daily functions of living such as eating or sleeping.

(8) A juvenile shall be allowed to receive visitors according to the facility's written policy and procedures.

(9) A juvenile shall have reasonable access to the general public.

(10) A juvenile's access to the media is subject to the limitations necessary to protect the juvenile's rights and ensure the security of the facility. Media requests for interviews and juvenile consents must be in writing.

(11) A juvenile shall be allowed to determine the length and style of his or her hair, except in individual cases where restrictions are necessary for reasons of health and safety.

(12) A juvenile shall keep facial hair, if desired, except in individual cases where such restrictions are necessary for reasons of health and safety.

(13) A juvenile shall have supervision and control exercised by staff or training volunteers while at the facility.

(14) A juvenile shall receive educational instruction to which the juvenile is entitled under provisions of state education laws and regulations.

377:3-13-43. Staff requirements

(a) **General provisions.** The requirements for facility staff are set forth in this Section.

(1) **Personnel policy.** Every facility shall have written personnel policy which includes the maintenance of personnel records. The facility director shall make available to employees personnel policy and written job descriptions. The policy and job descriptions specify the person to whom the employee is responsible and the duties the employee is expected to perform.

(2) **Juveniles' tasks.** A juvenile in detention shall not be used as an employee. A juvenile in detention is permitted to perform tasks, if the tasks teach the juvenile responsibility and the juvenile is supervised. ~~A juvenile shall not be allowed to perform tasks in areas of the facility where juveniles are not usually permitted.~~ A juvenile shall be allowed to perform tasks (chores) in any area (restricted to the facility) in which adequate security exists. The facility administrator shall approve all work assignments.

(3) **Supervision.** Sufficient staff shall be available to provide continuous day and night supervision of the residents and protection of the facility as well as to allow staff relief from duty.

(4) **Auxiliary staff.** There shall be sufficient auxiliary staff to maintain adequate support services. Auxiliary staff are all staff that are not direct-care staff.

(5) **Health requirements.** Staff health requirements are given in (A)-(C) of this paragraph.

(A) ~~Each person employed shall have a pre-employment physical examination by a licensed physician.~~ Each person employed shall have a physical examination by a licensed physician, within the first 90 days of employment. ~~The physical examination is performed not more than 90 days prior to employment.~~ The physician shall verify in a written statement that the individual is physically able to perform his or her job-related functions.

(B) Upon employment each employee who has not had a documented skin test within the past 12 months shall have a Mantoux tuberculin skin test unless he/she has had a previous positive skin test.

(C) An employee with a positive skin test reaction must have or provide documentation of a chest x-ray.

(i) Additional tests or x-rays are not required unless symptoms develop that are suggestive of tuberculosis.

(ii) Employees with a positive skin test reaction must submit annual documentation by medical personnel that signs or symptoms of tuberculosis are not present.

(6) **Criminal history investigation.** The facility shall comply with statutory requirements mandating a criminal history investigation for each applicant for employment [10 O.S. Section 404.1]. The facility shall not employ or retain any person for whom there is documented evidence that the employee would endanger the health, safety, and/or well-being of juveniles.

(A) A facility shall not employ or retain an individual who has been:

(i) convicted of or entered a plea of guilty or nolo contendere to any felony involving:
(I) violence against a person;
(II) child abuse or neglect;
(III) possession, trafficking, manufacturing, sale or distribution of illegal drugs, or conspiracy to traffic, manufacture, sale, or distribute illegal drugs;
(IV) sexual misconduct; ~~or~~
(V) gross irresponsibility or disregard for the safety of others;
(VI) any crime against a child; or

(ii) in the case of child abuse and neglect, identified as a perpetrator in a juvenile court proceeding and/or has made an admission of guilt to a person authorized by state or federal laws or regulations to investigate child abuse and neglect.

(B) As to a simple drug possession offender, the facility may, at its own discretion, make exceptions to the prohibition of employment if five years have passed from completion of the applicant's criminal sentence and the facility can document that the health, safety, and well-being of juveniles would not be endangered.

(i) The facility shall consider, document, and submit to the Office of Public Integrity within 10 days of the employees first day of work the:

(I) type of crime or offense for which the individual was convicted or a finding was made; and

(II) reference letters concerning the individual in question.

(ii) The Office of Public Integrity shall make a recommendation to the Executive Director as to whether the applicant shall be approved or disapproved.

(C) If there is an allegation that a staff member has committed an act as described in OAC 377:3-13-43(a)(6)(A), the facility shall determine and document whether the staff member shall be removed from contact with juveniles until the allegation is resolved.

(D) If any person is formally charged with any of the offenses described in OAC 377:3-13-43(a)(6)(A), he or she must be removed from contact with juveniles until the charges are resolved.

(E) No employee of the facility shall use or be under the influence of alcohol or illegal drugs during hours of work.

(7) **Personnel records.** The facility shall keep on file a written personnel record available for review for every staff person employed by the facility.

(A) The personnel record includes, but is not limited to:

(i) an application, resume or staff information sheet that documents qualifications for the position, valid drivers license or other state ID, birth certificate, applicable educational diploma;

(ii) health records as required by the facility;

(iii) three written references and/or documentation of telephone interviews;

(iv) any reports and notes relating to the individual's employment with the facility and an annual job performance evaluations;

(v) dates of employment; and

(vi) date and reason for leaving employment.

(B) When employment is involuntarily terminated, a statement regarding the reason for termination is to be included in the personnel file.

(C) Personnel records are maintained for at least three years following a staff member's separation.

(D) All employees' records are kept confidential subject to existing state and federal statutes.

(E) Staff members shall have access to their personnel files for reviewing purposes if a request is made to the facility administrator.

(8) **Staff training.** All staff shall be trained on facility policy and procedure and a training record be established for each staff member. A record of all annual training shall be maintained. At the end of he year, it shall become part of the personnel record.

(A) Each direct-care staff member shall be provided orientation before being allowed to work independently.

(B) Auxiliary staff shall receive orientation to the facility's policy and procedure and to their assigned duties.

(C) During orientation the trainer shall acquaint staff with the philosophy, organization, program practice, and goals of the secure juvenile detention facility.

(D) "Requirements for Secure Juvenile Detention Facilities" is reviewed as a part of the orientation process and is available to staff at all times.

(E) Within 90 days of employment, by a detention facility, all direct-care staff shall have successfully completed a specific course of instruction in first aid as established by the Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), and presented by a certified instructor, or by a certified instructor in an equivalent professionally recognized first aid training program. There shall be a certificate or card issued to the employee and this card must be signed by the certified instructor attesting to the employee's successful completion of the professionally recognized first aid training program. The Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), or its equivalent, first aid course of instruction, presented by a certified instructor shall be updated within the employee's third year of employment and each succeeding three-year increment. The first aid training may count towards the employee's required annual training hours.

(F) Within 90 days of employment by a detention facility, all direct-care staff shall be certified in have successfully completed a specific course of instruction in cardiopulmonary resuscitation (CPR) as established by the Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), or its equivalent. This training must be presented by a certified instructor, or by a certified instructor in an equivalent professionally recognized CPR training program. There shall be a certificate or card issued to the employee and this card must be signed by the certified instructor attesting to the employee's successful completion of the professionally recognized CPR training program. The Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), or its equivalent CPR course of instruction shall be presented by a certified instructor, and shall be updated on an annual basis. The CPR training may count towards the employee's required annual training hours.

(G) Full-time direct-care staff and administrators shall obtain at least 24 clock hours of training per employment year. Hours are prorated at two hours per month for staff who have not been employed for a full year.

(H) Part-time direct-care staff shall have training hours prorated based on the average number of hours of work per month.

(I) On-call staff shall have a minimum of 6 hours of training per year.

(J) Support staff shall obtain a minimum of 12 hours of training per employment year.

(K) The content of staff development courses for direct-care staff is relative to their roles and responsibilities. Content may include:

(i) crisis intervention;

(ii) child development;

(iii) behavior management;

(iv) discipline;

(v) stress management;

(vi) therapeutic relationship and intervention;

(vii) child abuse detection, reporting and prevention;

(viii) suicide prevention;

(ix) human sexuality;

(x) client grievance procedures;

(xi) communicable diseases, including sexually transmitted diseases; and

(xii) any other training deemed necessary to meet individual or group training needs.

(L) Attendance at professional conferences, workshops, seminars, formal education classes, or in-service training is counted toward the training requirements provided the training is documented and meets the content requirements.

(b) **Facility Administrator.** The duties and qualifications of the facility administrator are described in (1) - (2) of this subsection.

(1) **Responsibilities.** The facility administrator is responsible for implementing the policies adopted by the governing body, the ongoing operation of the facility, and compliance with the Requirements for Secure Juvenile Detention Facilities.

(A) In the facility administrator's absence a person shall be designated to act as administrator and shall be available to detention staff in person or by telephone.

(B) A designated person of responsibility shall be at the secure juvenile detention facility at all times. The designated person is directly responsible to the administrator who is to be notified of any irregularities in the general affairs of detention and follow through with directives given.

(C) The duties of the facility administrator include, but are not limited to:

(i) preparing and presenting the budget for the appropriate authority to review and approve;

(ii) administering the budget and maintaining accurate financial records;

(iii) employing and discharging staff according to the established personnel rules;

(iv) supervising the program overall;

(v) holding staff meetings on a monthly basis to discuss plans and interpret policies to the staff;

(vi) organizing a program for the continued training and development of staff;

(vii) establishing and maintaining working relationships with other social services agencies within the community; and

(viii) interpreting the program to professional and lay groups.

(2) **Qualifications.**

(A) The education, experience, and qualifications of the administrator of a large facility (20 beds or more) are specified in writing by the governing body of the facility and includes, at a minimum:

(i) bachelor's degree from an accredited college/university in an appropriate discipline;

(ii) two (2) years of experience working with juveniles; and

(iii) five (5) years in staff supervision and administration.

(B) The education, experience, and qualifications of the administrator of a small facility (less than 20 beds) are specified in writing by the governing body of the facility and includes, at a minimum:

(i) associate's degree from an accredited junior college/college/university in an appropriate discipline (i.e. social work, sociology, psychology, criminal justice, etc.); OR

(ii) 60 hours of credits from an accredited junior college/college/university of which 15 hours must be in the appropriate discipline as indicated in (i); and

(iii) two (2) years in staff supervision; and

(iv) one (1) year of experience working with juveniles.

(C) A facility administrator hired prior to January 1, 2000 shall be exempt from the rules set forth in (A) of this paragraph.

(3) **Location.** All facilities administrators must maintain their primary office at the detention facility.

(c) **Direct care staff.** The qualifications and hiring requirements for direct care staff are described in (1) - (2) of this subsection.

(1) **Qualifications.** All direct-care staff shall be at least 21 years of age and possess a high school diploma or its equivalent.

(2) **Hiring requirements.** A direct-care staff person can be hired when the person:

(A) has his or her character and fitness attested to by three satisfactory written references and a criminal history background check conducted;

(B) is qualified and capable of satisfactorily performing assigned job responsibilities; and

(C) does not pose a known risk to juveniles.

(d) **Support staff.** Support staff shall be able to read and write; demonstrate knowledge and skills necessary to the job assignments; and meet the requirements for direct-care staff if responsible for direct care of juveniles for any part of the day.

PART 7. REQUIREMENTS FOR COMMUNITY INTERVENTION CENTERS (CIC)

377:3-13-87. Policy and Procedure Manual

(a) The CIC shall have an operations manual which specifically describes its purpose, program, and the services offered. The manual must be reviewed annually and updated if necessary. The manual must be made available to all staff and authorized regulatory authorities. The manual includes, but is not limited to the CIC's:

(1) intake procedures;
(2) initial screening assessment;
(3) assessments;
(4) juvenile disciplinary procedures/crisis intervention;
(5) security and control;
(6) discharge procedures;
(7) personnel practices;
(8) juvenile rights;
(9) juvenile grievance procedures;
(10) confidentiality consistent with state law;
(11) compliance with child abuse or neglect reporting requirements as provided in ~~21 O.S., §836~~ 10A O.S. § 1-2-101;
(12) reporting critical incidents requirements;
(13) information gathering and reporting procedures;
(14) clothing and personal hygiene provisions;
(15) food distribution and documentation requirements;
(16) general emergency procedures, including first aid and emergency medical services;
(17) fire and disaster plans
(18) transportation arrangements; and
(19) suicide prevention procedures.

(b) The manual shall contain a provision which ensures that no juvenile placed in a CIC shall be used as an employee.

PART 11. REQUIREMENTS FOR CERTIFICATION OF SECURE JUVENILE FACILITIES

377:3-13-120. Legal basis

The statutory authorization for the Office of Juvenile Affairs to certify Secure Juvenile Facilities is found in 10A O.S., § 2-7-611. As of November 1, 2009, the Office of Juvenile Affairs shall certify all secure juvenile facilities.

377:3-13-121. Definitions

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

"Assessment" means an examination, more comprehensive than a screening, performed on each newly admitted juvenile soon after arrival to the secure facility. It usually includes a review of the medical screening, behavior observations, an inquiry into mental health history, and an assessment of suicide potential.

"Juvenile" for the purposes of this part means a person adjudicated by a court of competent jurisdiction and eligible for placement in a secure juvenile facility.

"Secure juvenile facility" is defined in 10A O.S., § 2-1-103 (31).

"Screening" means the administration of a tool to identify persons in need of more in-depth evaluation or treatment. A screening instrument (using standard forms and following standard procedures) is used to identify immediate risks-suicide, health, mental health and substance abuse-upon arrival of a newly admitted juvenile to a facility. At a minimum, a screening includes an interview, questions, or testing of a juvenile and review of available records, in accordance with a screening instrument and relevant policies.

377:3-13-122. Requirements for secure juvenile facilities

To be certified, a secure juvenile facility shall be required to meet standards for certification promulgated by the Board of Juvenile Affairs. Each secure facility shall be operated by, or under contract with, a governmental entity and shall maintain ongoing accreditation approved by the Office of Juvenile Affairs. In addition, each facility shall comply with the licensing standards of the Oklahoma Health Department and Oklahoma State Fire Marshal's Office, as well as all local, state, and federal codes and guidelines for the operation of a secure juvenile facility. Each facility shall ensure juveniles are afforded educational programs as mandated by law and the Oklahoma State Board of Education.

377:3-13-123. Provisional certification

(a) Secure facilities certified by the Department of Human Services as residential childcare facilities prior to November 1, 2009, shall receive provisional certification to operate as a secure juvenile facility for 180 days. Prior to the conclusion of the 180 days, the Office of Juvenile Affairs shall evaluate of the facility to ensure that the facility meets the certification standards promulgated by the Board of Juvenile Affairs for secure juvenile facilities.

(b) The Office of Juvenile Affairs shall initially evaluate any newly established secure juvenile facility to ensure compliance with standards relating to staffing and the physical plant. A determination that the facility meets the standards shall result in the issuance of a provisional certification for 180 days and authorization for the placement of juveniles into the facility. Prior to the conclusion of the 180 days, the Office of Juvenile Affairs shall evaluate the facility to ensure that it meets all certification standards promulgated by the Board of Juvenile Affairs for secure juvenile facilities.

(c) **Denial or revocation of certification.** When the operator of a secure juvenile facility is unable or unwilling to comply with standards promulgated by the Office of Juvenile Affairs' Board or has failed to adequately protect the health, safety and welfare of the juveniles in its facility, OJA may deny or revoke the facility's certification. OJA shall furnish thirty (30) calendar days written notice of the decision to deny or revoke certification and the grounds for such action. The facility operator shall have thirty (30) calendar days from receipt of the OJA notice of denial or revocation to protest the action in writing to the OJA Executive Director. An administrative hearing

shall be convened where the facility operator will be given the opportunity to present testimony and witnesses. If the result of the hearing is to uphold the OJA action of denial or revocation, the facility operator may appeal to the district court pursuant to 12 O.S. § 951. In the event there is not an appeal, the secure juvenile facility shall cease operation on the effective date of the denial or revocation action.

377:3-13-124. Purpose

The Office of Juvenile Affairs designates its Office of Public Integrity (OPI) as responsible for the certification of secure juvenile facilities. Each secure juvenile facility shall undergo annual certification prior to the start of each fiscal year (July 1). As part of certification, the Office of Public Integrity shall perform a review of the facility's fiscal management process. The Office of Public Integrity shall conduct ongoing unannounced visits as necessary and conduct appropriate investigations as directed by the Office of Juvenile Affairs' Executive Director or designee.

377:3-13-125. Fiscal management

Secure juvenile facilities shall adhere to the OJA Financial Services Division's rules, policies, and procedures. Each facility shall have policies and procedures that address:

(1) fiscal planning;
(2) budgeting;
(3) accounting procedures;
(4) inventory procedures; and
(5) a system of regular reviews.

377:3-13-126. Policies and procedures

Each secure juvenile facility shall develop and maintain a written policies and procedures manual that is reviewed/approved initially by OJA Institutional Services Division Director or designee and annually by the facility's superintendent and changes shall be reviewed/approved by the OJA Institutional Services Division Director or designee. The manual shall outline the purpose of the secure juvenile facility and include, at a minimum, the following:

(1) physical plant requirements;
(2) fire safety procedures;
(3) general emergency procedures;
(4) intake/screening criteria;
(5) admission procedures;
(6) juvenile rights and grievance procedures;
(7) visitation procedures;
(8) clothing provision;
(9) personal hygiene provision;
(10) juvenile case records;
(11) disciplinary procedures;
(12) medical and health care programs;
(13) suicide prevention program/guidelines;
(14) treatment programs;
(15) educational programs;
(16) recreational programs;
(17) discharge procedure;
(18) security and control;
(19) transportation procedures;
(20) personnel practices/staff training;
(21) abuse/neglect reporting procedures; and
(22) food and nutrition requirements.

377:3-13-127. Physical plant requirements

(a) The secure juvenile facility shall conform to applicable federal, state and/or local building codes and zoning ordinances.

(b) The secure juvenile facility shall be clean and sanitary and shall comply with all applicable sanitation and health codes.

(c) Each juvenile shall have at a minimum a bed, storage space for clothing and access to a writing area.

(d) Multiple-occupancy rooms, including open-bay dormitories, and single occupancy rooms shall provide at least 80 square feet per juvenile.

(e) Dayrooms are situated adjacent to sleeping areas and provide a minimum of 35 square feet per juvenile for the maximum number of juveniles who use the dayroom at one time (exclusive of lavatories, showers and toilets).

(f) Clean and sanitary bathrooms are convenient to sleeping rooms and dayrooms:

(1) One flush toilet, hand sink and bathtub or shower in good working order is available for each six juveniles.
(2) Flush urinals may be substituted for up to one-half the required number of toilets to serve male juveniles only.
(3) Hand sinks, bathtubs and showers have cold and hot water with temperatures between 100 and 120 degrees Fahrenheit.
(4) Toilet paper, soap and individual sanitary towels are provided to juveniles

377:3-13-128. Fire safety procedures

(a) All secure juvenile facilities shall fully comply with:

(1) the applicable Life Safety Codes of the National Fire Protection Association;
(2) the applicable standards pertaining to fire safety; and
(3) any successor fire safety codes or standards.

(b) Each secure juvenile facility shall establish procedures to ensure:

(1) an adequate fire protection service is maintained;
(2) a system of fire inspections and testing of equipment is conducted at least quarterly by a qualified person;
(3) an annual inspection is conducted by the State Fire Marshal's Office;
(4) adequate fire protection equipment is maintained throughout the secure juvenile facility at locations designated by the State Fire Marshal's Office;
(5) a qualified fire and safety officer is responsible for periodic inspections; (6) flammable, toxic and caustic materials are controlled, labeled, handled, stored and disposed of properly; and
(6) flammable, toxic and caustic materials are controlled, labeled, handled, stored and disposed of properly; and

(7) at least two fire drills are conducted per quarter during the year.

377:3-13-129. General emergency procedures

(a) Temporary unit closure shall be a programmed response to significant unit/facility disorders and may also be utilized in other types of emergencies;

(b) Emergency evacuation plans shall be posted in prominent locations on all floors of every building and include the locations of primary and secondary exits;

(c) A minimum of one seasonal (April-June) tornado drill per fiscal year shall be conducted;

(d) There shall be an established system for immediate emergency notification of secure facility juveniles and employees, as well as emergency responders;

(e) Power generators and/or alternate emergency power sources shall be inspected weekly and load tested quarterly.

377:3-13-130. Intake/Screening criteria

(a) A staff member shall be assigned the responsibility for ensuring a newly arrived juvenile successfully completes the admission process, from arrival at the facility to introduction to staff at the assigned unit.

(b) The court order of commitment and a placement worksheet for a new juvenile admission shall be reviewed to determine if the documents are complete and the juvenile is properly admitted to the facility.

(c) All new juvenile admissions shall receive a health/medical screening, mental health screening and a suicide screening by a qualified person within one (1) hour of admission.

377:3-13-131. Admission procedures

(a) A juvenile body disrobement search by gender appropriate staff and a complete search of the juvenile's property shall be conducted for contraband and facility prohibited items (FPI).

(b) A nurse shall interview the juvenile, review immunization records, complete routine lab work, obtain medical consent signatures and fill out a nursing assessment form.

(c) Staff shall make initial phone contact with the juvenile's family/guardian and the juvenile shall be allowed to speak with the contacted family member/guardian.

(d) Pictures of the juvenile shall be taken and basic personal data verified for the establishment of the juvenile's file.

(e) The juvenile shall be provided an orientation session that includes the issuance of the facility's juvenile handbook, with written receipt for the handbook retained in the juvenile's file.

(f) The juvenile shall be issued appropriate clothing and personal hygiene items and allowed to shower, if necessary.

(g) Upon completion of the admission process, an admission letter shall be sent to the juvenile's parents/guardian to acquaint them with the following secure facility information:

(1) The facility address and phone number;

(2) Directions to the facility;

(3) Visitation days/hours/rules/procedures;

(4) Telephone and mail rules/procedures.

(h) The juvenile shall have a health/medical assessment and a dental assessment, with x-rays and cleaning, conducted within fourteen (14) days of admission, unless there is documentation of a health/medical assessment within the previous ninety (90) days.

(i) Within thirty (30) days of admission juveniles shall have a speech and hearing evaluation conducted, as well as a psychiatric evaluation for those juveniles taking psychotropic medications. The psychiatrist shall issue orders regarding the administration of psychotropic medications until the juvenile is psychiatrically evaluated.

(j) All juveniles shall receive written health/medical clearance prior to participation in any physical training/recreational activities.

377:3-13-132. Juvenile rights and grievance procedures

(a) Juvenile rights shall be consistent with Oklahoma Administrative Code (O.A.C.) 377:35-9-1, where applicable.

(b) Juvenile grievance procedures shall conform to the provisions contained in O.A.C. 377:3-1-27 and 377:3-1-28.

(c) Juvenile rights and grievance procedures shall be included in the juvenile handbook issued to new juvenile admissions during orientation.

377:3-13-133. Visitation procedures

(a) Written policy and procedure shall:

(1) Specify how many visitors the juvenile can receive;

(2) Specify how often visitation is available;

(3) Require the maintenance of a log of persons allowed to visit; and

(4) Designate the length of the visitation.

(b) Written policy and procedures shall also address the following:

(1) Visits may be limited by the facility's schedule, space, and personnel constraints or where there are other substantial reasons to justify limiting visitations.

(2) Juveniles have the right to refuse visitation.

(3) A juvenile's legal counsel, or counsel's authorized representative, may visit the juvenile at any reasonable time a request is made.

(4) All visitors are subject to searches.

(5) A written record shall be maintained of visitation restrictions and the subsequent review of those restrictions.

377:3-13-134. Clothing provision

(a) A standard seasonable uniform shall be issued to all juveniles. The facility shall provide a list of clothing items issued to the juvenile and document the issuance of the clothing items with a written receipt.

(b) The repair, replacement and cleaning of facility issued clothing items shall be provided by the facility.

(c) The facility shall restrict inappropriate clothing items (i.e. pictures, slogans references, logos regarding gangs, drugs or sex).

377:3-13-135. Personal hygiene provision

(a) Juveniles shall have daily access to proper bathroom/shower facilities and personal hygiene supplies.

(b) The staff shall issue and supervise the use of facility-approved hygiene products.

(c) The hygiene products shall be securely stored and maintained separately from all other types of chemical supplies.

377:3-13-136. Juvenile case records

(a) The facility staff shall establish and maintain a confidential record on each juvenile admitted to the facility and ensure it is safeguarded from unauthorized and improper disclosure. The record includes, at a minimum, the following demographic information, if applicable:

(1) name, nicknames, gender, race/nationality, date and place of birth, a copy of the birth certificate to establish legal citizenship;

(2) a copy of the drivers' license, social security number, Medicaid number;

(3) identifying marks, scars, tattoos;

(4) education status and last school attended;

(5) religious preference;

(6) last known address and name of the person the juvenile resided with prior to admission;

(7) name and relationship of the parent(s), guardian, legal custodian of the juvenile;

(8) name, address and phone number of the emergency contact person;

(9) name of the juvenile's attorney; and

(10) signature of staff recording the juvenile's demographic information.

(b) In addition, each juveniles record shall include, at a minimum, the following confidential information:

(1) documented legal authority to accept the juvenile;

(2) county of commitment and legal transportation order;

(3) date and time of admission;

(4) inventory of personal property with the juvenile's signature on a receipt;

(5) signed release of information forms for requested/distributed records;

(6) signed statement(s) by the juvenile acknowledging participation in an orientation that includes the presentation of juvenile rights, program rules, grievance procedures, disciplinary processes and the issuance of the juvenile handbook;

(7) reports of accidents and/or injuries involving the juvenile occurring while at the facility;

(8) names of the juveniles' probation and/or parole officer and assigned caseworker;

(9) grievances and disciplinary records;

(10) final discharge or transfer report; and

(11) signature of staff recording the juvenile's confidential information.

377:3-13-137. Disciplinary procedures

Secure facility staff members shall protect the safety and constitutional rights of juveniles and seek a balance between expression of individual rights and preservation of facility order. The facility's disciplinary process shall include:

(1) A list of prohibited acts and sanctions constituting minor rule violations and the following procedural safeguards:

(A) The procedure for addressing minor rule violations that is initiated by a staff report of an incident that includes the proper offense citation;

(B) A maximum time frame of five (5) days, excluding weekends and holidays, from the discovery of the offense to final disposition; and

(C) The list of minor rule violations that is included in the juvenile handbook issued to all juveniles during orientation.

(2) A list of prohibited acts and sanctions constituting major rule violations and the following procedural safeguards:

(A) The procedure for addressing major rule violations that is initiated by a staff report of an incident that includes the proper offense citation;

(B) Juveniles charged with major rule violations are scheduled for a hearing as soon as practicable, but no later than seven (7) days, excluding weekends and holidays, after being charged with a violation. Juveniles are notified in writing of the time and place of the hearing at least 24 hours in advance of the hearing;

(C) The list of major rule violations that is included in the juvenile handbook issued to all juveniles during orientation;

(D) A juvenile charged with a major violation of facility rules shall be given a written copy of the report containing the alleged rule violation(s) within 24 hours of the incident or within 24 hours of the facility staff's discovery of a violation. A hearing may be held within 24 hours of the violation notification providing the juvenile can prepare for the hearing with assistance, if needed, and furnishes written consent;

(E) A hearing is conducted with an opportunity to present evidence;

(F) The hearing officer shall issue a written decision within three (3) days excluding weekends and holidays; and

(G) An opportunity to appeal shall be provided.

377:3-13-138. Medical and health care programs

(a) Each facility shall have written health care policies approved by a designated physician, which include the following:

(1) The arrival of a new juvenile admission shall require a medical screening by a qualified health care professional or health-trained personnel;

(2) all medical screening findings shall be recorded on a form approved by the physician;

(3) all medication and first aid supplies shall be accounted for during the receiving, storing, dispensing, administering and distributing process; and

(4) medical and dental instruments and supplies (i.e. syringes, needles, scalpel blades, and other sharps) shall be under maximum secure storage, controlled, and perpetually inventoried under the supervision of on-duty secure facility staff.

(b) Current credentials/licensures and job descriptions for health care providers shall be maintained at the facility.

(c) The facility shall prohibit the use of juveniles for medical, pharmaceutical or cosmetic experiments.

(d) The facility shall have a designated physician as a health care authority.

(e) The health care authority shall be authorized to make and shall be responsible for making decisions about the deployment of health resources and the day-to-day operations of the health care services program.

(f) Upon arrival at the secure facility, all juveniles shall receive health care services information as contained in the juvenile handbook issued during orientation.

(g) No member of the secure facility staff shall impede a juvenile's requests for access to health care services.

(h) A medical/health care assessment shall be conducted within fourteen (14) days of admission unless there is documentation of a medical/health assessment within the previous ninety (90) days.

(i) Upon discharge/release the facility's designated physician shall sign a medical summary that is included in the juvenile's medical file.

(j) The juvenile's medical and health care shall be provided in accordance with O.A.C. 377: 35-7-1, where not inconsistent with this rule.

(k) Medication is administered by a qualified nurse or by a staff member who has received approved medication administration training.

(l) The use of medication for punishment, control or program management shall be prohibited.

(m) Any medication administered to juveniles shall conform to the Medication Administration Recording System (MARS) standard for record keeping.

(n) When prescription medications are used, the juvenile, parent/guardian/ custodian, and appropriate staff members shall be made aware of the side effects of the medication and proof of said notification shall be maintained in writing.

(o) Psychotropic medication(s) administered to juveniles shall comply with applicable laws and regulations of the jurisdiction.

(p) Each facility shall have a written program addressing the management of communicable and infectious diseases in juveniles, to include tuberculosis, hepatitis, HIV, and Methicillin-resistant Staphylococcus aureus (MRSA).

(q) All medical/health care records are confidential and shall be maintained in a separate secure file.

377:3-13-139. Suicide prevention program/guidelines

There shall be a written suicide-prevention program approved by the designated health and mental health authority and reviewed by the facility superintendent. The program shall include specific procedure and documentation for performing intake, screening, identifying, and supervising juveniles exhibiting suicidal behavior. The program shall include management review of suicidal incidents, suicide precautions, death of a juvenile or staff member, and staff and juvenile critical-incident debriefing. All direct care staff shall be trained annually in suicide prevention.

377:3-13-140. Treatment programs

(a) Each secure facility shall provide professional services necessary to meet the identified needs of juveniles. At a minimum services shall include:

(1) individual, group and family counseling;

(2) family planning and parent education; and

(3) programs for juveniles with drug and alcohol problems.

(b) An initial treatment plan for each juvenile shall be completed within seven (7) days of admission to the secure facility.

(c) A final treatment plan shall be completed for each juvenile within thirty (30) days of admission to the secure facility.

(d) The facility shall document resident and parent/guardian/legal custodian participation in the development of the treatment plan.

(e) Treatment plan reviews shall be completed and documented on a monthly basis.

377:3-13-141. Educational programs

A secure juvenile facility shall maintain an educational program in accordance with state laws and the policies and procedures of the Oklahoma Department of Education. The secure facility shall verify there is a current teaching certificate on file for each educational instructor and that each instructor is teaching the course for which they are qualified.

377:3-13-142. Recreational programs

A secure facility shall provide a daily written schedule of recreational and physical exercise activities that includes at least one hour of large muscle activity and may include one hour of structured leisure activity.

377:3-13-143. Discharge procedures

(a) All juveniles released from a secure facility shall have a completed discharge summary placed in the case record and the case record shall be maintained in a confidential manner.

(b) The juvenile's case record shall be disposed of in accordance with state and federal law.

377:3-13-144. Security and control

(a) **Juvenile count.**

(1) At least one daily uninterrupted juvenile population count shall be conducted on each shift;

(2) The results of the population count shall be transmitted to central control were it is documented and available at all times; and

(3) No movement of juveniles shall be permitted during the population count.

(b) **Mail security.**

(1) Juveniles may send and receive mail in accordance with state law and rules promulgated by the Board of Juvenile Affairs; and

(2) All juveniles' mail shall be processed in accordance with O.A.C. 377:35-11-5.

(c) **Control of contraband and Facility Prohibited Item (FPI).**

(1) Contraband is defined as any item introduced or found in the secure facility, the mere presence or possession of which shall constitute a violation of criminal law. Contraband discovery procedures require:

(A) confiscation by staff with the completion of a report prior to the end of the shift;

(B) a log entry by staff containing the contraband description and names of involved person(s);

(C) placement of the contraband into secure storage;

(D) a notification to the facility administration for the initiation of a criminal investigation; and

(E) the establishment of a timeline and procedures for storing and disposing of contraband;

(2) A Facility Prohibited Item (FPI) is defined as an item in an individual's possession or control, which is a violation of facility, or unit rules, but does not constitute a violation of criminal law. FPI discovery procedures require:

(A) The confiscation of the FPI by staff with the completion of a report prior to the end of the shift;

(B) a log entry by staff containing the FPI description and the names of involved person(s);

(C) non-perishable FPI confiscated from a juvenile shall be entered on the juvenile's personal property inventory and, if appropriate, returned upon the juvenile's release;

(D) all other non-perishable FPI confiscated from staff, visitors or others shall be inventoried and properly disposed of when no longer administratively necessary;

(E) all perishable FPI shall be photographed, if necessary, and immediately disposed of in an appropriate manner; and

(F) the opportunity for juveniles to challenge the confiscation of FPI through the established grievance procedure.

(d) **Searches.**

(1) **General area search** is defined as a random search of all areas of the secure facility for the security and safety of the juveniles and staff.

(A) The superintendent shall authorize the procedures through the distribution of a post order.

(B) The search shall be accomplished under the direction of a security shift supervisor by teams of two or more staff trained in conducting searches.

(C) The use of a canine may be authorized, if appropriate and available.

(D) Dates and times for the searches shall be at the discretion of the secure facility's superintendent.

(E) The objective of the searches shall be to discover and confiscate contraband and/or FPI.

(F) The completion of staff reports shall be required before the end of shift.

(2) **Specific area search** is defined as a search limited to a certain time and area involving juveniles' personal property in one or more juvenile living quarters.

(A) The search shall be based on reasonable suspicion that a juvenile(s) is in possession of contraband and/or FPI or without reasonable suspicion upon the routine transfer of a juvenile from one living area to another.

(B) A facility administrator shall authorize a search based upon reasonable suspicion while a shift supervisor or above shall authorize a search based on a routine transfer.

(C) The search shall be accomplished under the direction of a security shift supervisor by teams of two or more staff trained in conducting searches.

(D) The use of a canine may be authorized, if appropriate and available.

(E) The date and time for the search shall be specific to the event establishing reasonable suspicion or to the date, time and location of the routine juvenile transfer.

(F) The search objective shall be to discover and confiscate contraband and/or FPI and/or recover missing property and/or injurious item(s).

(G) The completion of staff reports shall be required prior to the end of shift.

(3) **Juvenile body search** is defined as observing and touching the body to discover contraband and/or FPI and is described from the least intrusive to the most intrusive types of search:

(A) **Pat search** is considered to be a routine search and the least intrusive type of search.

(i) It shall be routinely conducted based on suspicion of contraband and/or FPI on the juvenile's person.

(ii) It shall be routinely conducted:

(I) Upon the completion of work assignments (i.e. kitchen, maintenance, etc.); or

(II) At the conclusion of visitation;

(III) After returning from recreation or from school; or

(IV) Following a restraint.

(iii) The search shall be conducted by a minimum of two staff members trained in searches, one of whom shall be the same gender as the juvenile, except in an emergency situation.

(iv) Procedures for conducting the search include:

(I) The use of hands to pat the outside clothing covering the body;

(II) The back of the hands shall be used to pat the genitals, buttocks (males and females) and breasts (female); and

(III) The search may include the removal of coat, hat, gloves, shoes and socks.

(v) A written report shall be required by the end of the shift only when an illegal and/or prohibited item(s) is found.

(B) **Disrobement search** is considered intrusive and involves the complete removal of all clothing items from the body.

(i) This search requires reasonable suspicion that a juvenile(s) is in possession of contraband and/or injurious item(s) and shall be conducted pursuant to verbal or written authorization from the superintendent or designee.

(ii) The search shall be routinely conducted:

(I) During admission to the secure facility; or

(II) During discharge from the secure facility; or

(III) Upon return from a pass; or

(IV) Upon return from any appointment, court appearance, event or activity outside the perimeter fence of the secure facility.

(iii) The search shall be accomplished under the direction of a security shift supervisor by a minimum of two staff members trained in searches, both of whom are the same gender as the juvenile.

(iv) The search shall be conducted in a professional manner in an area that prevents observation by other staff and/or other juveniles and not covered by surveillance cameras.

(v) A written report is required by the end of the shift whether or not an illegal and/or prohibited item(s) is found.

(C) **Cavity search** is defined as a non-routine and intrusive search that involves medical personnel in searching the internal areas of body orifices.

(i) The search requires prior written authorization by the facility's superintendent or designee based on written facts that would lead a reasonable person to believe a juvenile is carrying contraband and/or injurious item(s) in a body cavity.

(ii) The search shall only be conducted by a physician at the secure facility or by medical personnel at a local hospital.

(iii) A written report shall be required by the end of the shift documenting the search, including the names of the medical personnel involved, whether or not an illegal and/or prohibited item(s) is found.

(4) Each facility shall maintain a stationary and mobile magnetometer in good working order. All juveniles, staff, and visitors shall be required to pass through the facility's magnetometer (metal detector), and hand-wand if necessary, prior to entry into the facility.

(e) **Staff ratios.**

(1) The ratio of staff to juveniles on a unit shall not be less than 1 to 10 during waking hours and 1 to 12 during sleeping hours. For units composed entirely of secure individual sleeping rooms the ratio shall not be less than 1 to 10 during waking hours and 1 to 14 during sleeping hours.

(2) At least one staff member of the same gender as the juveniles shall be on duty within the facility on each shift.

(3) Juveniles shall be supervised at all times. Each secure facility shall maintain a plan that details the frequency of visual checks of juveniles made by the staff.

(f) **Surveillance plan.**

(1) The secure facility shall have a plan for surveillance of all areas of the facility's perimeter. Outside lighting must be sufficient to provide visibility under all conditions with no blind spots.

(2) The facility shall maintain a camera system that is in working condition and monitored by staff in real time with recording capabilities to maintain a minimum of ninety (90) days of video.

(g) **Door security.**

(1) All perimeter security doors to the living units shall be locked and doors to vacant or unoccupied living units and storage rooms shall remain locked when not in use.

(2) The facility shall maintain a backup release system that allows for the immediate release of juveniles from locked areas in the event of an emergency.

(h) **Key control.**

(1) The facility's key control system shall include:

(A) The maintenance of a log of all keys with lock locations and names of employees possessing keys;

(B) Key storage that permits easy determination of the presence or absence of keys;

(C) The maintenance of at least one duplicate key for each lock in the facility;

(D) A central area from which keys are issued; and

(E) The labeling of all keys to include color-coding and touch identification of emergency keys.

(F) No keys shall be taken off the premises except as authorized by the superintendent.

(i) **Physical force.**

(1) Physical force is never used as punishment or retaliation.

(2) Use of force is limited to:

(A) self-protection;

(B) separate juveniles who are fighting;

(C) restraining juveniles in danger of inflicting harm to themselves or other; and

(D) restraining juveniles who have escaped or are in the process of escaping.

(3) Use of physical force requires a medical evaluation and photo(s) of the juvenile(s) immediately following the incident.

(4) A written report is required prior to the end of shift following all uses of physical force.

(j) **Mechanical restraints.**

(1) Mechanical restraints are applied according to facility procedures and are limited to incidents involving:

(A) self-protection;

(B) separate juveniles who are fighting;
(C) restraining of juveniles in danger of inflicting harm to themselves or other;
(D) escort/transfer of juveniles to crisis management or solitary confinement; and
(E) the restraining of juveniles who have escaped or are in the process of escaping.
(2) Mechanical restraints shall only be used by trained staff members.
(3) Juveniles shall not be restrained to immovable objects nor shall the juvenile's hands be restrained to the feet.
(4) Juveniles shall not be left unattended while in mechanical restraints.
(5) A written report is required following every use of mechanical restraints.
(6) Mechanical restraints shall never be used as punishment or retaliation.

(k) **Firearms and tools.**
(1) Firearms shall not be permitted in the secure facility except for law enforcement officers during emergency situations.
(2) All tools and kitchen utensils shall be classified, controlled and stored based on their level of risk for death or serious injury.

(l) **Confinement and seclusion.**
(1) The use of confinement and seclusion as a method of intervention with juveniles shall be limited to the following:
(A) for self-protection;
(B) for separating juveniles who are fighting;
(C) for juveniles in danger of inflicting harm to themselves or others;
(D) for juveniles who have escaped or who are in the process of escaping;
(E) for juvenile's whose behavior incites other juveniles to jeopardize the safety of staff and/or juveniles; and
(F) for juveniles who request to be placed in protective care.
(2) A facility shall establish procedures for confinement and seclusion that include:
(A) a log of events to include date, time, location and rationale;
(B) staff visual observation of juvenile behavior as documented every fifteen minute period the juvenile is in confinement or seclusion; and
(C) reauthorization by the facility superintendent after every twenty-four (24) hour period of time the juvenile has been in confinement or seclusion.
(3) Juveniles are afforded living conditions and privileges based on their behavior.
(4) The juvenile placed in confinement or seclusion shall be released as soon as the juvenile demonstrates he/she is under control of his/her behavior and no longer a threat to self or others.
(5) The establishment of a cool down period, time out period and temporary seclusion as appropriate types of interventions for inappropriate juvenile behaviors.

(m) **Escape.** The facility shall develop procedures for apprehension of juveniles who escape from the facility to include notification of law enforcement agencies and OJA criminal investigators.

377:3-13-145. Transportation procedures
(a) The Superintendent or designee shall assign responsibility for transportation of juveniles to a specific staff member. At least one employee of the same sex shall accompany any transported juvenile.
(b) Facility policy shall outline written requirements specific to vehicle use and maintenance, staff responsibilities and oversight, establishment of a transportation log and vehicle insurance.

377:3-13-146. Staff training
(a) All new direct care workers and professional specialist staff shall receive 120 hours of orientation training during their first year of employment and 40 hours of training each subsequent year of employment. At a minimum, the training shall cover:
(1) security procedures;
(2) supervision of juveniles;
(3) suicide intervention/prevention;
(4) use-of-force;
(5) juvenile rules and regulations;
(6) safety procedures;
(7) key control;
(8) interpersonal relations;
(9) communication skills;
(10) cultural awareness;
(11) sexual abuse/assault; and
(12) ethics training.

(b) **Medical training requirements**
(1) The facilities shall establish an employee orientation and training program that includes:
(A) The recognition of signs and symptoms of illness or injury and knowledge of action required in potential emergency situations;
(B) The administration of first aid and cardiopulmonary resuscitation (CPR);
(C) The establishment of methods of obtaining assistance;
(D) The signs and symptoms of mental illness, retardation and drug and alcohol abuse; and
(E) The procedures for transfer to appropriate medical facilities or health care providers.

(c) New direct care staff and professional care staff who work with juvenile shall receive orientation training before assignment as the only staff responsible for juveniles.

377:3-13-147. Personnel practices
(a) The facility shall comply with state law requirements for each applicant for employment. The facility shall not employ or retain any person for whom there is documented evidence that the employee would endanger the health, safety, and/or well-being of juveniles.

(b) The criminal background check shall be maintained separately from the employee's personnel file.
(c) All personnel shall be selected, retained, and promoted on the basis of merit and specified qualifications should be examined by individuals from outside the facility to ensure the system is open and fair.
(d) Equal employment opportunities shall exist for all positions.
(e) All professional specialists shall be qualified in their fields as determined by their job description.
(f) Employees who have direct contact with juveniles shall receive a physical examination prior to a job assignment. Employees receive reexaminations according to a defined need or schedule.
(g) All employees shall be provided annual performance reviews.
(h) The facility personnel manual shall be accessible to employees through hard copy or electronic means.
(i) The facility shall establish a grievance process available to all employees.
(j) The facility shall maintain a current, accurate and confidential personnel record on each employee.
(k) A separate confidential medical file shall be established for each employee.
(l) A training file shall be established for each employee.

377:3-13-148. Abuse/neglect reporting procedures

Facility policy shall outline reporting requirements for staff in accordance with Title 10A O.S., § 1-2-101, 10A O.S., § 1-9-112 and O.A.C. 377:3-1-25.

377:3-13-149. Food and nutrition requirements

(a) All facilities shall comply with regulations promulgated by Oklahoma State Department of Health Rules and Regulations pertaining to food service establishments.
(b) A qualified nutritionist or dietician shall review and approve the facility's dietary menus at least annually to ensure nationally recommended, age- appropriate, daily allowances for basic nutrition are met. Food service supervisory staff shall verify adherence to the established basic daily servings and shall conduct menu evaluations at least quarterly.
(c) Therapeutic diets shall be prepared and served by written orders of a physician pursuant to federal and state law.

[OAR Docket #10-998; filed 6-9-10]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 35. INSTITUTIONAL SERVICES

[OAR Docket #10-996]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
377:35-1-2. Definitions [REVOKED]
Subchapter 3. Security and Control
377:35-3-7. Contraband and facility prohibited items [REVOKED]
377:35-3-8. Searches and control of contraband/evidence [REVOKED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10A O.S., § 2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. §302(A)(1).
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SUPERSEDED EMERGENCY ACTIONS.
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rule revisions in Subchapter 35 are needed to ensure that institutional (Secure Juvenile Facility) rules are congruent with new licensing provisions as outlined in 377:3-13.
CONTACT PERSON:
Robert Morey, Operations Supervisor, (405) 530-2820

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

377:35-1-2. Definitions [REVOKED]

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

~~**"Contraband"** is any item introduced or found in the facility the mere presence of which constitutes a violation of criminal law.~~

~~**"Facility prohibited item" (FPI)** is any item which possession thereof is a violation of agency, institutional, or unit rules, but the mere presence of the item does not violate criminal law.~~

SUBCHAPTER 3. SECURITY AND CONTROL

377:35-3-7. Contraband and facility prohibited items [REVOKED]

~~(a) Contraband is any item introduced or found in the facility, the mere presence of which constitutes a violation of criminal law.~~

~~(1) Upon discovery of any contraband, the institutional staff member shall make a log notation including the name and/or description of:~~

~~(A) the item or substance;~~

~~(B) the person who provided the substance, if known; and~~

~~(C) the juvenile's name.~~

~~(2) If contraband is found at the institution the Institutional Superintendent shall confiscate and store the item until the Office of Public Integrity (OPI) Criminal Investigator takes custody of the item. The Institutional Superintendent shall provide written notification of the violation of federal and state statutes to the:~~

~~(A) Division Director of Institutional Services; and~~

~~(B) OPI Criminal Investigator.~~

~~(3) The Director of the Office of Public Integrity shall approve the disposition of contraband. Contraband shall be maintained until (60) sixty days after the conclusion of all legal and disciplinary actions. All contraband shall be disposed of in accordance with state and federal guidelines.~~

~~(b) A facility prohibited item (FPI) item is any item which possession thereof is a violation of agency, institutional, or unit rules, but the mere presence of the item does not violate criminal law.~~

~~(1) Staff shall enter the facility prohibited item that was confiscated from the juvenile, on the juvenile's personal property inventory unless the item is a perishable item. If exclusive ownership can be established, staff shall return the confiscated item to the juvenile upon release. After being properly documented, all perishable items shall be immediately~~ destroyed.

~~(2) When a facility prohibited item is found and the owner is unidentifiable, the staff member shall immediately inventory and store the nonperishable item. Upon approval of the Institutional Superintendent, staff may destroy the facility prohibited item after six months, if no further legal or administrative action is pending.~~

~~(3) A juvenile may challenge the confiscation of a facility prohibited item through the established grievance procedure.~~

377:35-3-8. Searches and control of contraband/evidence [REVOKED]

~~(a) The control of contraband and weapons shall be valid basis for authorization of searches. Searches shall be conducted in a manner, which avoids undue or unnecessary force, embarrassment, or indignity. Each institution shall have written policy and procedure that govern searches and control of contraband/evidence, and will include, but not be limited to:~~

~~(1) Search authorization requirements will include the title of approving authority and the designee authority.~~

~~(2) Training requirements will encompass all aspects of searches and control of contraband, specific training time and annual requirements.~~

~~(3) Control of contraband will include items deemed illegal by statute or disallowed by the agency/facility.~~

~~(4) Staffing requirements: All property searches will be conducted with a minimum of two trained staff members, except in emergency situations. Body searches, with the exception of pat-downs, will be conducted by a trained staff member of the same sex, and a witness. Pat searches may be conducted by one trained staff member of the same sex, and a witness.~~

~~(5) The Juvenile whose property is being searched shall be present when the search is conducted, except in an emergency. The juvenile may request the presence of the Advocate Defender or a supervisory staff person.~~

~~(6) Searches for contraband will include:~~

~~(A) Body searches: Which include pat searches, disrobement searches, and cavity searches.~~

~~(i) Staff members shall strive to preserve the dignity and integrity of the juvenile.~~

~~(ii) Only staff members who have been appropriately trained will be authorized to conduct the search.~~

~~(iii) The Executive Director shall develop an agency policy providing guidelines for institutional searches, which shall be submitted to the OJA Board. Any changes made to the search policy shall be provided to the OJA Board at the next regularly scheduled meeting.~~

~~(iv) The Institutional Superintendents, through a local procedure, will provide instruction and direction as to under what circumstances and how a juvenile can be searched.~~

~~(v) Cavity searches will only be conducted with the approval of the Institutional Superintendent or designee. Cavity searches will be conducted only when there is a strong reason to believe that the juvenile is carrying contraband in a body cavity. The juvenile will be sent to the local hospital emergency room, unless there is a physician at the facility, where experienced medical personnel will perform the search.~~

~~(B) Property searches: Which include juvenile living quarters and juvenile personal property.~~

~~(C) Search of the facility: Which will include all areas of the facility, excluding the juvenile living quarters and personal property.~~

~~(D) Search of visitors/employees: Which include personal belongings, and body searches;~~ **~~consequences for a visitor's refusal to submit to a search will be denial of visit; employees who refuse to submit to a search may be subject to disciplinary action.~~**

~~(E) Use of canines: Which will include employees, visitors, juveniles, facility grounds, parking lots, vehicles, juvenile living quarters, buildings, and offices.~~

~~(7) Storage and disposal of contraband/evidence will include specific storage area, containers, and accessibility.~~
~~(8) Drug identification shall be conducted to confirm suspect illegal substances.~~
~~(9) Contraband/evidence tags/chain of custody, and logs will include format, intended use, and length of time retained.~~
~~(10) Reporting requirements: Staff will document all non-routine searches. Non-Routine searches include, but are not limited to, searches of a juvenile or juvenile's cubical for contraband when the juvenile is suspected of possessing contraband. Routine searches include pat down search when leaving the kitchen or maintenance area after completing a work assignment, pat down searches after visitation, etc. The report will include the scope of the search, detailing any item confiscated. The juvenile-owner shall be given a receipt for any item confiscated. If the confiscated contraband is determined to be a statutorily defined controlled or dangerous item, the Institutional Superintendent/Designee will contact the appropriate law enforcement authorities, and notify the Chief of Staff/Designee.~~
~~(11) Policies regarding searches and control of contraband/evidence shall be reviewed annually and updated as necessary.~~

[OAR Docket #10-996; filed 6-9-10]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 1. ADMINISTRATION

[OAR Docket #10-986]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 1. Administration [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. §85.9G.
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ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. In an effort to provide greater assistance and clarity as to the Departments rules, the Department is gradually consolidating all definitions provided for in Title 450 into Chapter 1. This will allow for greater consistency in defining similar terms as well as ease in locating. Changes to Chapter 1 also include changes to the Department's certification process to help expedite the application process and, in turn, provide quicker access to behavioral health services for the public. These changes will also assist applicants for certification by clarifying what standards must be met to obtain certain levels of certification. Further, these changes establish qualifications for individuals providing behavioral health services at state-operated facilities or pursuant to a contract with the Department.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL INFORMATION

450:1-1-1.1. Definitions

The following words or terms, as defined below, when used in ~~this Chapter~~ Chapters 1, 15, 16, 17, 18, 21, 22, 23, 30, 50, 55, 60, 65 and 70, shall have the following meaning, unless the context clearly indicates otherwise and will prevail in the event there is a conflict with definitions included elsewhere in Chapters 1, 15, 16, 17, 18, 21, 22, 23, 30, 50, 55, 60, 65 and 70:

"Administrative Hearing Officer" means an individual who is an attorney licensed to practice law in the State of Oklahoma and is appointed by the Commissioner of ODMHSAS to preside over and issue a proposed order in individual proceedings.

"AOA" means American Osteopathic Association.

"Behavioral Health Aide (BHA)" means individuals must have completed sixty (60) hours or equivalent of college credit or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience, and:

(A) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and
(B) must be supervised by a bachelor's level individual with a minimum of two years case management experience or care coordination experience; and
(C) treatment plans must be overseen and approved by a LBHP; and

(D) must function under the general direction of a LBHP and/or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

"Behavioral Health Case Manager (BHCM)" means an individual certified as a Behavioral Health Case Manager pursuant to Oklahoma Administrative Code, Title 450, Chapter 50.

"Behavioral Health Rehabilitation Specialist (BHRS)" means 1) Bachelor degree or above; and 2) ODMHSAS training as a Behavioral Health Rehabilitation Specialist; or 3); CPRP (Certified Psychiatric Rehabilitation Practitioner) credential; or 4) Certification as an Alcohol and Drug Counselor (CADC). CADC's are allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or drug dependencies or addictions as a primary or secondary DSM-IV Axis I diagnosis.

"Board" means the Oklahoma State Board of Mental Health and Substance Abuse Services.

"CARF" means Commission on Accreditation of Rehabilitation Facilities (CARF).

"Certification" means a status which is granted to a person or an entity by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS, and indicates ~~approval~~ the provider is in compliance with minimum standards as incorporated in OAC 450 to provide a particular service. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified Alcohol and Drug Counselor (CADC)" means Oklahoma certification as an Alcohol and Drug Counselor.

"Certified Behavioral Health Case Manager" or "CBHCM" means any person who is certified by the ODMHSAS to offer behavioral health case management services as one of the three (3) classifications of case manager within the confines of a mental health facility or drug or alcohol treatment facility that is operated by the department or contracts with the State of Oklahoma to provide behavioral health services.

"Certified facility" means any facility which has received a certification status by the Oklahoma State Board of Mental Health and Substance Abuse Services or the ODMHSAS.

"Certification report" means a written notice of the deficiencies developed by ODMHSAS Provider Certification.

"COA" means the Council on Accreditation of Services for Families and Children, Inc.

"Contractor" or **"contractors"** means any person or entity under contract with ODMHSAS for the provision of goods, products or services.

"Employment Consultant (EC)" means an individual who (i) has a high school diploma or equivalent; and (ii) successful completion of Job Coach training.

"Entities" or **"entity"** means sole proprietorships, partnerships and corporations.

"Facilities" or **"facility"** means entities as described in 43A O.S. § 1-103(7), community mental health centers, residential mental health facilities, community-based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"Family Support and Training Provider (FSP)" means

(A) have a high school diploma or equivalent;

(B) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(C) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS;

(D) pass OSBI background check;

(E) treatment plans must be overseen and approved by a LBHP; and

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

"Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature.

"Institutional Review Board" or **"IRB"** means the ODMHSAS board established in accordance with 45 C.F.R. Part 46 for the purposes expressed in this Chapter.

"Intensive Case Manager (ICM)" means an individual who is designated as an ICM and carries a caseload size of not more than twenty-five (25) individuals. They are certified as a Behavioral Health Case Manager II or III, and have:

(A) a minimum of two (2) years Behavioral Health Case Management experience,

(B) crisis diversion experience, and

(C) successfully completed ODMHSAS ICM training.

"IRB approval" means the determination of the IRB that the research has been reviewed and may be conducted within the constraints set forth by the IRB and by other agency and Federal requirements.

~~**"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.~~

"Levels of performance" or **"level of performance"** means units of service by types of service.

"Licensed Alcohol and Drug Counselor" or **"LADC"** means any person who is licensed through the State of Oklahoma pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act.

"Licensed Behavioral Health Professional" or **"LBHP"** means:

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

(B) practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards:

(i) Psychology;
(ii) Social Work (clinical specialty only);
(iii) Professional Counselor;
(iv) Marriage and Family Therapist;
(v) Behavioral Practitioner; or
(vi) Alcohol and Drug Counselor;

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

(D) a physician assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or therapy functions.

"Licensed dietitian" means a person licensed by the Oklahoma Board of Medical Licensure and Supervision as a dietitian.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103(11).

"Licensed physician" means an individual with an M.D. or D.O. degree who is licensed in the state of Oklahoma to practice medicine.

"Licensed practical nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the State of Oklahoma to provide practical nursing services.

"Minimal risk" means that the probability and magnitude of harm or discomfort anticipated in the research are not greater, in and of themselves, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examination or tests.

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

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

"Paraprofessional" means a person who does not have an academic degree related to the scope of treatment or support services being provided but performs prescribed functions under the general supervision of that discipline.

"Probationary certification" means a certification status granted for a period less than three (3) years.

"Psychiatrist" means a licensed physician who specialized in the assessment and treatment of individuals having psychiatric disorders and who is fully licensed to practice medicine in the state in which he or she practices and is certified in psychiatry by the American Board of Psychiatry and Neurology, or has equivalent training or experience.

"Recovery Support Specialist" or **"RSS"** means an individual who has completed the ODMHSAS RSS training (also referred to as Peer Recovery Support Specialist (PRSS) training) and has passed the ODMHSAS RSS exam.

"Registered nurse" means an individual who is a graduate of an approved school of nursing and is licensed in the state of Oklahoma to practice as a registered nurse.

"Rehabilitative services" means face-to-face individual or group services provided by qualified staff to develop skills necessary to perform activities of daily living and successful integration into community life.

"Reimbursement rates" means the rates at which all contractors are reimbursed (paid) for services they provide under their ODMHSAS contract, and which are reported to ODMHSAS on the Integrated Client Information System ("ICIS").

"Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this Chapter, whether or not they are conducted or supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities.

"Respondent" means the person(s) or entity(ies) named in a petition for an individual proceeding against whom relief is sought.

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health ~~and substance abuse services~~ [43A O.S. § 3-302(1)].

"Service Provider" means a person who is allowed to provide substance abuse services within the regulation and scope of their certification level or license.

"Site Review Protocol" means an ODMHSAS ~~internal~~ document ~~used by ODMHSAS staff~~ developed as a work document in the certification site visit(s) that is based primarily upon the rules (standards/criteria) being reviewed. The Site Review Protocol is used in preparing the Certification Report, which is provided to the facility, and in preparing recommendations regarding certification to the Board for its consideration and action.

"Support Services Provider (SSP)" means an individual age eighteen (18) or older with a high school diploma or equivalent.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Volunteer" means any person who is not on the program's payroll, but provides services and fulfills a defined role within the program and includes interns and practicum students.

~~**"Units"** or **"unit"** means an hour, or part of an hour, or group of hours, or a 24 hour day during which a specific service is rendered.~~

450:1-1-4. Organization

(a) The Board is the entity vested with authority to make rules for the implementation of the Department's statutorily mandated and permissible functions under 43A O.S. §§ 1-101, et seq.

(b) The Board shall appoint the Commissioner, who is the chief executive officer of the Department with duties, privileges and responsibilities set forth in 43A O.S. § ~~2-202.~~ 2-202.1. The Commissioner shall maintain such staff as authorized by law and assign said staff to carry out the duties and responsibilities required to fulfill the statutory requirements of 43A O.S. §§1-101 et seq., and the rules and directives of the Board.

(c) The Department shall be organized and divided into such areas and departments as the Board and the Commissioner deem desirable for efficiency. Copies of organizational charts are available upon request from the Human Resources Management Division.

SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND RESIDENTIAL CARE SERVICES

PART 1. ELIGIBILITY TO CONTRACT

450:1-3-4. Criteria for eligibility to contract

The criteria for eligibility to contract with the ODMHSAS are as follows:

(1) The entity shall exist in conformity with Oklahoma Statutes regulating said entity, and provide such proof. In addition, if said entity purports to be a not for profit corporation, the proof of exemption from federal taxes under the U.S. Internal Revenue Service Code shall be made.

(2) Revocation or non-renewal of an entity's certification by ODMHSAS shall result in contract termination for any service requiring such certification as of the date of ODMHSAS action.

~~(3) For any facility requiring certification, the facility shall have deficiencies of no more than 20% of the standards on which the facility is reviewed.~~

450:1-3-5. Staff qualifications for contracted entities

(a) All staff who provide clinical or supportive services for an agency contracting with ODMHSAS shall have documented qualifications, licensing or training specific to the clinical services they provide.

(b) The following service providers, as defined in 450:1-1-1.1, may provide behavioral health treatment and support services as agreed upon per contact between ODMHSAS and the contractor:

(1) Behavioral Health Aide (BHA);
(2) Behavioral Health Case Manager (BHCM);
(3) Behavioral Health Rehabilitation Specialist (BHRS);
(4) Certified Alcohol and Drug Counselor (CADC);
(5) Employment Consultant (EC);
(6) Family Support and Training Provider (FSP);
(7) Intensive Case Manager (ICM);
(8) Licensed Behavioral Health Professional (LBHP);
(9) Licensed Mental Health Professional (LMHP);
(10) Licensed Physician;
(11) Licensed Practical Nurse;
(12) Paraprofessional;
(13) Psychiatrist;
(14) Recovery Support Specialist (RSS);
(15) Registered Nurse;
(16) Support Services Provider (SSP).

(c) Compliance with 450:1-3-5 shall be determined by a review of staff personnel files and other supporting documentation provided.

PART 3. CONTRACTS AND CONTRACTING PROCESSES

450:1-3-21. Contract renewal

(a) Contracts for community mental health services, substance abuse services, community-based structured crisis services, eating disorder services, gambling addiction services, narcotic treatment services, and residential care services are considered during the third (3rd) and fourth (4th) quarter of the ODMHSAS fiscal year, for contracting in the following fiscal year.

(b) Consideration for renewal shall include a review of performance of the current contract including, but not limited to, measurable outcome indicators, target populations served, levels of performance of specific services, ~~having deficiencies of no more than 20% of the standards reviewed~~, the existence of any patients' rights violations, and cost effectiveness of the delivery of services.

(c) If ODMHSAS determines the contractual relationship shall be renewed, it shall be in a new contract for the upcoming fiscal year and may or may not contain the same terms, conditions, form and format as the previous contract.

SUBCHAPTER 7. CHARGES AND ELIGIBILITY FOR ODMHSAS SERVICES

450:1-7-6. Liability of Consumer for care and treatment - Eligibility for Waiver of Liability

(a) A consumer at a facility within the Department is responsible for payment and liable for his care and treatment unless he or she has received a waiver of the indebtedness from the Department.

(b) A consumer at a facility within the Department shall be granted a waiver from payment for services if the following criteria are met:

(1) The individual must be in need of behavioral health services. An individual shall be considered to be in need of behavioral health services if treatment is needed to stabilize, reduce or eliminate the symptoms of, or prevent worsening of any of the following conditions for which

a facility within the Department offers treatment needed based on the diagnosis and level of care:

(A) A diagnosable behavioral health condition as defined by the current DSM, excluding a sole diagnosis of developmental disorders or dementia disorders;

(B) A presenting problem(s) that indicates a behavioral health illness or condition;

(C) A level of functioning that indicates the need for behavioral health treatment based on a standard assessment instrument; or

(D) A behavioral health crisis.

(2) The individual must be uninsured. An individual shall be considered uninsured if one of the following applies:

(A) The individual is not covered by private or public insurance and receives no insurance benefits for behavioral health services;

(B) The individual has used all available benefits or coverage allowed for behavioral health services;

(C) The individual has limited benefits for behavioral health services, but the service(s) needed by the individual are not covered by the individual's insurance or plan; or

(D) Except for housing and vocational services, persons receiving behavioral health services through a health maintenance organization are considered to be fully covered for behavioral health services and are not eligible for a waiver of liability.

(3) The individual is indigent. An individual shall be considered indigent if he or she is at or below 200% of the Federal Poverty Guidelines based solely on the individual's applicable income. The indigence requirement does not apply to persons receiving emergency services or to persons seventeen (17) years of age or younger.

(A) "Income" is total annual cash receipts before taxes from all sources, and includes money wages and salaries before any deductions, net receipts from self-employment, regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Temporary Assistance for Needy Families and Supplemental Security Income), training stipends; alimony, child support, military family allotments or other regular support from an absent family member or someone not living in the household, private pensions, government employee pensions, regular insurance or annuity payments, college or university scholarships, grants, fellowships and assistantships, dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

(B) "Income" does not include non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied non-farm or farm housing, and federal non-cash benefit programs such as Medicare, Medicaid, food stamps, school lunches, loans and housing assistance.

(C) Adjustments to "income" are allowed for the following:

(i) Child care allowance for dependent children under the age of fourteen (14). The amount of $200 for each child under the age of two (2), and $175 for each child under the age of fourteen (14) can be deducted from "income" to calculate total adjusted "income". If the family has children, there is no verification requirement.

(ii) Working adult allowance for working adults in the household. The amount of $240 for each working adult can be deducted from "income" to calculate total adjusted "income". "Working adult" is defined as a person age eighteen (18) or older with earned income (adult children in the household are not eligible to be counted for this deduction). There is no verification requirement for this deduction.

(c) Before any waiver of liability is granted, a report or questionnaire must be prepared which indicates the demographic information including the consumer's name, address if any, telephone number if any, and social security number, the consumer's income, number of dependents and third-party insurance or payer information. Income must be verified by the facility obtaining one of the following:

(1) The consumer's Internal Revenue Service Form W-2 from the previous year;

(2) The consumer's federal or state income tax return from the previous year;

(3) Two recent, consecutive paycheck stub(s) showing the pay date, hours worked, types of pay and gross rate of pay;

(4) A Medicaid card; or

(5) Any government document that verifies income.

If the facility is unable to verify the consumer's income by an independent source, the consumer or a family member of the consumer must sign an income verification statement before a waiver of liability may be granted.

(d) The executive director of the facility within the Department or his or her designee shall make a determination of whether the consumer meets the criteria for waiver of liability and sign a statement, which must be placed in the consumer's record at the facility, of the reasons for the waiver.

SUBCHAPTER 9. CERTIFICATION AND DESIGNATION OF FACILITY SERVICES

450:1-9-3. Purpose of certification

The purpose of is to assess, facility's responsibility to the consumer, and delivery of acceptable services to the consumer. Responsibility to the consumer is demonstrated through the provision of suitable facilities, trained staff and needed services which are accessible, safe and confidential. In addition to the above, is demonstrated by the willingness and ability of

the organization's governing authority and staff to provide the planning, budgeting and management of resources necessary to the continued existence and effectiveness of the facility/services.

450:1-9-4. Reviewing authority

(a) The Board may certify community mental health centers, community residential mental health facilities, community-based structured crisis centers, eating disorder treatment programs, alcohol and drug treatment programs, programs of assertive community treatment, gambling addiction treatment programs, and narcotic treatment programs as cited in Section 450:1-9-1, and directs that such shall be carried out as stated in this subchapter.

(b) The Board and ODMHAS may also certify qualified individuals to perform within the scope of specific functions to provide treatment or support services related to behavioral health services. Certification of individuals shall be carried out as stated in OAC 450: 1 and in accordance with applicable requirements specified in other chapters of OAC:450.

(c) The Commissioner of ODMHSAS may grant or extend a Permit for Temporary Operations ~~Certification~~ to respond to unplanned changes that create an emergency need for service provision in the ODMHSAS delivery system for services operated by or funded by ODMHSAS.

(1) Provider Certification shall conduct a site review at the designated facility which must meet the minimal compliance requirements as cited in 450:1-9-7.

(2) The application procedure for completion of the certification process shall be accomplished in accordance with 450:1-9-6 and 450:1-9-7.

(3) The Permit for Temporary Operations ~~Certification~~ emergency certification status granted to the facility by the Commissioner as described above must be presented at the next ODMHSAS Board meeting for Board review and confirmation. In the event the Board does not confirm the Temporary Certification status granted by the Commissioner, the Permit for Temporary Operations expire no later than thirty (30) days from the Board's action as stipulated in a written notice provided to the organization for which the Permit was denied. ~~Department shall initiate revocation proceedings pursuant to 450:1-9-8.~~

450:1-9-5. Qualifications for certifications of facilities and programs and individuals

(a) Qualifications for certification are as follows:

(1) Compliance with applicable Standards and Criteria as set forth in the Chapter of OAC Title 450 regulating the area for which certification is being sought is required to qualify for certification. Recovery Support Specialists shall comply with applicable ~~standards~~ requirements and procedures specified by the Department. Other specific Standards and Criteria are:

(A) Chapter 16, Standards and Criteria for Community Residential Mental Health Facilities;

(B) Chapter 17, Standards and Criteria for Community Mental Health Centers;

(C) Chapter 18, Standards and Criteria for Alcohol and Drug Treatment Programs;

(D) Chapter 21, Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and ~~Instructors~~ Facilitators;

(E) Chapter 22, Certification of Alcohol and Drug Assessment and ~~Evaluation~~ Evaluations ~~Programs~~ Related to Driver's License Revocation;

(F) Chapter 23, Standards and Criteria for Community ~~based~~Based Structured Crisis Centers;

(G) Chapter 50, Standards and Criteria for Certified ~~Certification of~~ Behavioral Health Case Managers;

(H) Chapter 55, Standards and Criteria for Programs of Assertive Community Treatment;

(I) Chapter 60, Standards and Criteria for Certified Eating Disorder Treatment Programs;

(J) Chapter 65, Standards and Criteria for Gambling ~~Addiction~~ Treatment Programs; and

(K) Chapter 70, Standards and Criteria for ~~Narcotic~~ Opioid Substitution Treatment Programs.

(2) Subsequent to the adoption of this rule, ODMHSAS will designate specific standards in the Chapters listed above, that are applicable to facilities and programs, as Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards and the requirements that must be present to determine minimal compliance with each type of standard

(A) Core Organization Standards will address requirements necessary to assure the public and consumers of services that essential organizational functions are substantially in place at the facility and the facility is prepared to initiate services for which certification is being requested. These can be verified prior to the initiation of services for which the organization is requesting certification.

(B) Core Operational Standards will address other essential conditions and processes that must be in place to assure basic safety and protection of consumer rights. Some of these can also be verified prior to the initiation of service. Others must be verified when an organization begins providing services.

(C) Quality Clinical Standards will address actual services provided, qualifications of staff, clinical documentation, and processes designed to assure consistency in quality and efficacy of services. Theses can only be verified after a reasonable time during which services have been provided.

(~~2~~3) An applicant for certification must also comply with all other applicable statutory licensing provisions, including but not limited to individual professional licensure, other licenses, or permits required of organizational entities.

(b) A certified Community Mental Health Center that provides alcohol and drug treatment services in the course of its outpatient or inpatient services, but has no designated or specialized alcohol and drug abuse treatment program component,

shall not be subject to additional certification under the Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.

(c) A certified Community Mental Health Center providing alcohol and drug abuse treatment services as a designated or specialized program component shall be subject to certification under the Certified Services for Alcohol- and Drug-Dependent Standards and Criteria in OAC 450, Chapter 18.

(d) Certified Services for the Alcohol- and Drug-dependent providing community mental health services shall be subject to certification as a community mental health center in OAC 450, Chapter 17.

450:1-9-5.1. Types and duration of certification status for facilities and programs

(a) The ODMHSAS may grant the following types of certification for the durations specified below.

(1) **Permit for Temporary Operations.** Permits for temporary operations will be granted by ODMHSAS upon ODMHSAS's verification that the organization has complied with all Core Organizational Standards and Core Operational Standards applicable to the level of services for which certification applies. The Permit will expire at the end of six (6) months or if a subsequent certification is achieved by the organization and subsequently granted by ODMHSAS prior to the expiration of the Permit. ODMHSAS may extend a Permit for no more than 60 days in the event of extenuating circumstances as determined by ODMHSAS.

(2) **Probationary Certification.** Probationary Certification may be awarded for a one (1) year period by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS verifies that all conditions in 450:1-9-5.1(a)(3) exist but the program initiated operations prior to the awarding of a Permit for Temporary Operations for the services for which certification is statutorily required. Organizations awarded Probationary Certification must apply for and be awarded Probationary Certification for two additional one (1) year terms, prior to being considered for other categories of ODMSHAS Certification.

(3) **Certification.** ODMHSAS may award Certification for a one (1) year or two (2) year period beyond the period approved for a Permit for Temporary Operations or as a renewal of a previously awarded Certification in accordance with applicable chapters as stipulated in 450:1-9-5 and when ODMHSAS determines that the organization has met minimal compliance with each type of standard (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards). To qualify for Certification, programs must meet the following:

(A) Demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS and within timeframes stipulated by ODMHSAS; and,

(B) For a one (1) year certification, demonstrate compliance with at least 51% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3; or,

(C) For a two (2) year certification, demonstrate compliance with at least 75% of all Quality Clinical Standards on the initial site review, and file an acceptable plan of correction and demonstrate compliance with 100% of Quality Clinical Standards, as verified by ODMHSAS in accordance 450:1-9-7.1 and 450:1-9-7.3.

(D) Community Residential Mental Health Programs can be recommended for no more than a one (1) year certification.

(E) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(3) until all conditions of 450:1-9-5.1(2) have been satisfied.

(4) **Certification with Distinction.** Certification with Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

(A) Programs must have provided services with an approved ODMHSAS Certification as described in 450:1-9-5.1(3) for one (1) year or longer in addition to the time services were provided under an approved Permit for Temporary Operations or a Probationary Certification.

(B) Programs must demonstrate compliance with all Core Organizational Standards and with all Core Operational Standards as verified by ODMHSAS; and,

(C) Programs must also demonstrate compliance with at least 90% of all Quality Clinical Standards on the initial renewal site visit and review as verified by ODMHSAS. Compliance may be determined during initial site reviews or during additional site reviews following the implementation of a plan of correction as required ODMHSAS, in accordance 450:1-9-7.1 and 450:1-9-7.3.

(D) Programs for which ODMHSAS determines compliance with all standards as required in (a), (b), and (c) will be recommended for Certification with Distinction for a three (3) year period.

(E) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.

(F) Community Residential Mental Health Programs can be recommended for no more than a one (1) year Certification with Distinction.

(G) Programs awarded a Probationary Certification are not eligible for Certification under the

conditions described in 450:1-9-5.1(4) until all conditions of 450:1-9-5.1(2) have been satisfied.

(5) **Certification with Special Distinction.** Certification with Special Distinction may be awarded for up to three (3) years by ODMHSAS in accordance with applicable chapters as stipulated in 450:1-9-5 for programs seeking renewal of previously awarded certification when ODMHSAS verifies all of the following minimal conditions are satisfied.

(A) The program must meet all conditions for Certification with Distinction as outlined in 1-9-5.1 (4); and,

(B) The program has attained national accreditation (COA, CARF, or TJC) for the services to which ODMHSAS Certification applies.

(C) Certification with Special Distinction will be reduced by ODMHSAS to Certification with Distinction by ODMHSAS if during the certification period for which the Special Distinction was approved, the program fails to maintain national accreditation status.

(D) ODMHSAS may refund certification renewal application fees for organizations that demonstrate 100% compliance with all standards (i.e. Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards) during the initial renewal site visit and review.

(E) Community Residential Mental Health Programs can be recommended for no more than a one (1) year Certification with Distinction.

(F) Programs awarded a Probationary Certification are not eligible for Certification under the conditions described in 450:1-9-5.1(4) until all conditions of 450:1-9-5.1(2) have been satisfied.

(b) Permits for Temporary Operations granted to applicants for initial certification of a facility, location, or level of service shall be for a period of six (6) months and shall become effective immediately upon approval by the ODMHSAS Board, the Commissioner or designee.

(c) Certification, other than Permits for Temporary Operations, granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, the Board may waive this requirement and make the Certification effective immediately.

450:1-9-5.2. Types and Duration of certification of individuals

(a) Certification for Behavioral Health Case Managers will be in accordance with requirements and procedures stipulated in 450:50 Certification of Behavioral Health Case Managers.

(b) Certification for organizations and individuals providing alcohol and drug abuse course instruction will be in accordance with requirements and procedures stipulated 450:21 Certification of Alcohol and Drug Substance Abuse Courses (ADSAC), Organizations and Facilitators.

(c) Certification related to alcohol and drug assessment and evaluation related to driver's licenses revocation will be in accordance with requirements and procedures stipulated in 450:22, Certification of Alcohol and Drug Assessment and Evaluations Related to Driver's License Revocation.

(d) Credentialing for Recovery Support Specialists will be as done in accordance with procedures and guidelines established by ODMHSAS.

450:1-9-5.3. Additional conditions related to certification

(a) Certification and credentials granted by ODMHSAS are not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring application for certification by the new ownership.

(1) If the certified facility is owned by a corporation the following applies:

(A) If the corporation is not-for-profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal expiration of terms in accordance with the bylaws of the Board of Directors, shall require the facility to be recertified.

(B) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.

(2) It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification and to request the application materials for recertification.

(b) Certification or credentials may be suspended or revoked with the basis for such action being delineated in Section 450:1-9-9 of this Subchapter.

450:1-9-6. Procedures for application for certification

(a) Applications for certification as a community mental health center, community residential mental health facility, community-based structured crisis center, eating disorder treatment program, alcohol and drug treatment program, program of assertive community treatment, gambling addiction treatment program, and narcotic treatment program must be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS and include the following:

(1) A fully completed ODMHSAS application for certification form signed by authorized officials;

(2) The necessary written documentation or supporting evidence required on the application for certification form; and

(3) The required certification fee in the form of a check or money order, payable to the Oklahoma Department of Mental Health and Substance Abuse Services.

(~~b~~4) The following fees are required:

(~~1~~A) Application fee for all Treatment Programs is $300 per certification period.

(~~2~~B) Application fee for Community Residential Mental Health Programs is $100 per certification period.

(~~c~~5) The application for certification form, required written documentation and fee must be submitted to Oklahoma Department of Mental Health and Substance Abuse Services, Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

(~~d~~6) The application may require a listing of all services provided by the applicant, as well as specifics about the applicant including but not limited to governing authority, administrative, fiscal, all locations or sites where applicant will provide services and types of services to be provided.

(7) ODMHSAS may refund certification fees based on exemplary performance during the Certification process for which the application has been submitted and based on guidelines established by ODMHSAS.

(b) Applications for certification or credentials as individual must be made to ODMHSAS in writing on a form and in a manner prescribed by the Commissioner of ODMHSAS and, as applicable, in accordance with specific requirements stipulated in the following chapters of 450:21, 450:22, 450:50, and for Recovery Support Specialist, in accordance with application instructions stipulated by ODMHSAS.

~~(e) If, after being certified, a facility desires to add a service location within the facility's currently certified service area or to extend services to a different service area, approval may be granted by the Commissioner upon submission of the required documentation to the Provider Certification Division.~~

~~(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by the Commissioner of ODMHSAS.~~

~~(2) The required written documentation or supporting evidence includes, but is not limited to:~~

~~(A) fire & safety inspection;~~

~~(B) facility policies and procedures;~~

~~(C) zoning compliance; and~~

~~(D) evidence of compliance with Title 43A O.S. §3-417.1, if applicable.~~

~~(f) At the time of the next review of the facility's main office certification, any location which extended service provision to a different service area will require a separate certification application and may be reviewed on a schedule separate and apart from the certification schedule of the main office.~~

~~(g) If after being certified, a facility desires to offer a new type of service or new level of care, the facility must submit an application for certification, the required documentation and fee to the ODMHSAS Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.~~

450:1-9-6.1. Expanding certification of facilities and programs to additional geographical areas; Adding new programs or levels of care

(a) A facility or program, after being certified, may request to add a service location within the geographic area in which the facility's currently provides certified services or to extend services to a different geographic area. Approval may be granted by the Commissioner upon submission of the required documentation to the Provider Certification Division provided the organization is not certified under a Permit for Temporary Operations.

(1) The facility must notify ODMHSAS in writing of the plan to expand service locations on a form and in a manner prescribed by the Commissioner of ODMHSAS.

(2) The required written documentation or supporting evidence includes, but is not limited to:

(A) fire & safety inspection;

(B) facility policies and procedures;

(C) zoning compliance; and

(D) evidence of compliance with Title 43A O.S. §3-417.1, if applicable.

(b) At the time of the next review of the facility's main office certification, any location which extended service provision to a different geographic area will require a separate certification application and may be reviewed on a schedule separate and apart from the certification schedule of the main office.

(c) If after being certified, a facility desires to offer a new type of service or new level of care, for which certification is required, the facility must submit an application for certification, the required documentation and fee to the ODMHSAS Provider Certification Division, P.O. Box 53277, Oklahoma City, Oklahoma 73152-3277.

450:1-9-7. Procedures for completion of the Permit for Temporary Operations certification process

(a) ~~**Certification process.**~~ Completion of the certification process for a Permit for Temporary Operations will be done in cooperation between the applicant and ODMHSAS staff, and consists of the following:

(1) Each organization pursuing ODMHSAS certification shall initially apply for a Permit for Temporary Operations.

(2) Upon receipt of an application ODMHSAS will provide all applicants for a Permit for Temporary Operations a document listing the Core Organizational Standards and Core Operational Standards required for a Permit for Temporary Operations.

(3) The application shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled and completed.

(4) Any deficiencies of applicable Core Organizational Standards and Core Operational Standards cited as a result of the site visit or subsequent review(s) of documents requested by ODMHSAS will be identified and a report will provided to the facility by ODMHSAS within five (5) working days of the site visit.

(5) The facility will have ten (10) working days from receipt of the deficiency report to correct deficiencies and provide to ODMHSAS proof of compliance. ODMHSAS may require an additional site visit(s) to verify proof of compliance.

(6) If any pending deficiencies in Core Organizational Standards and Core Operational Standards are identified

following this ten (10) day correction period, the program will have five (5) additional working days from receipt of any subsequent report to correct and verify compliance with any pending deficiencies.

(7) Failure of any applicant for a Permit for Temporary Operation to clear deficiencies of Core Organizational Standards or Core Operational Standards within twenty (20) working days of the initial site visit, shall result in a notice of denial of the application for a Permit for Temporary Operations.

(8) Applicants that clear pending deficiencies and for whom ODMHSAS can verify compliance with all applicable Core Organizational Standards and Core Operational Standards within twenty (20) working days of the initial site visit, will recommended for a Permit for Temporary Operation by ODMHSAS.

(b) Additional certification procedures related to a Permit for Temporary Operations.

(1) Re-application for a Permit can be accepted no sooner than ninety (90) days after issuance of a notification of denial.

(2) If an applicant fails a second time to satisfy requirements for a Permit for Temporary Operations as stipulated in 450:1-9-7(a)(8), ODMHSAS can accept an additional re-application no sooner than twelve (12) months from time of the issue of the second notification of denial.

(3) Organizations granted a Permit for Temporary Operations must achieve a subsequent level of ODMHSAS certification prior to the expiration of a Permit for Temporary Operations. Failure to do so will result in a cancellation by ODMHSAS of the Permit for Temporary Operations. ODMHSAS will provide notice of the cancellation and stipulate to the organization that it is must discontinue services subject to any statutory provisions that mandate the applicable ODMHSAS Certification. Re-application for a Permit for Temporary Operations, following a cancellation by ODMHSAS or by the organization to which a Permit was issued, may occur after ninety (90) days and in accordance with the requirements of 450:1-9-7 and 450:1-9-12.

~~(1) a review by ODMHSAS of all application materials;~~

~~(2) an on-site review of the facility and completion of the applicable site visit protocol by ODMHSAS ;~~

~~(3) a review of all records deemed applicable by the ODMHSAS ;~~

~~(4) development and dissemination of report materials by ODMHSAS;~~

~~(5) development and review of any needed plans of correction;~~

~~(6) applicable follow-up on-site reviews; and~~

~~(7) presentation by ODMHSAS staff of the review results and associated recommendations to the Board or Commissioner or designee.~~

~~(b) **Initial applications**:~~

~~(1) All initial applications for certification shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the applicant is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules, based on the initial on-site review findings, a plan of correction will not be requested and a notice of denial of the certification application shall be sent to the applicant by the Commissioner or designee.~~

~~(2) If applicable, a plan of correction will be requested. The applicant must submit a written plan of correction for each deficiency within the required time frame to continue the certification process. If a revised plan of correction is requested, the applicant must submit an acceptable plan of correction within the required time frame to continue the certification process. Failure to submit a plan of correction within the required time frame or to submit a timely and adequate revised plan of correction shall result in a notice of denial of the application.~~

~~(3) Re-application will be accepted after three (3) months have passed since issuance of a notification of denial.~~

~~(c) **Length of certification process.**~~

~~(1) If an applicant for initial certification fails to achieve full Certification within six (6) months of being granted Temporary Certification, the applicant shall not receive full Certification and a recommendation of revocation of the existing certification status will be initiated at the direction of the Commissioner or designee. Re-application for certification shall be made in accordance with the requirements of 450:1-9-7 and 450:1-9-12.~~

~~(2) If the applicant requests withdrawal of the certification status because of the circumstances cited above, the applicant may reapply three months after receipt of the written request for withdrawal by the Provider Certification Division. Re- application for certification shall be made in accordance with these Rules.~~

~~(d) **Renewal applications.**~~

~~(1) ODMHSAS will, prior to the renewal date, notify facilities the application for renewal of Certification is due.~~

~~(2) The facility shall submit its application for renewal before the expiration of its Certification.~~

~~(3) Renewal applications for certification shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction shall not be requested and revocation of the certification status will be initiated at the direction of the Commissioner or designee.~~

~~(4) If applicable, a plan of correction will be requested. The applicant must submit a written plan of correction for each deficiency within the required time frame to continue the certification process. If a revised plan correction is requested, the applicant must submit an acceptable plan of correction within the required time frame to continue the certification process. If the applicant fails to submit a plan of correction within the required time frame or fails to submit a timely or adequate revised plan of correction, denial~~

~~of the renewal application shall be sent to the applicant by the Commissioner or designee and the current Certification status will be allowed to expire.~~

~~(5) Length of certification process~~

~~(A) If, after being granted Conditional Certification, an applicant for renewal fails to achieve full Certification within four (4) months, the applicant shall not receive full Certification and revocation of the existing certification status shall be initiated at the direction of the Commissioner or designee. Reapplication for certification shall be made in accordance with the requirements of 450:1-9-7 and 450:1-9-12.~~

~~(B) If the applicant requests withdrawal of the certification status because of the circumstance cited above, the applicant may reapply three months after the receipt of the written request for withdrawal by the Provider Certification Division.~~

~~(e) **Site reviews.**~~

~~(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant.~~

~~(2) Only one follow-up site review will be conducted on facilities receiving Temporary or Conditional Certification for the purpose of determining compliance with standards and the plan of correction.~~

~~(3) For a facility granted Temporary Certification, the follow-up site review will be conducted on standards not applicable during the initial certification visit, and a minimum of five (5) records shall be made available for review.~~

~~(4) The follow-up site review to Conditional Certification will be conducted to review implementation of the plan of correction. A minimum of five (5) records shall be made available for review. Failure to come into compliance with applicable rules and to implement the plan of correction shall result in a recommendation that the Conditional Certification status be revoked.~~

~~(5) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.~~

~~(A) A facility must be prepared to provide evidence of compliance with each applicable standard.~~

~~(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects consumer safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension of certification may be made by the Commissioner of ODMHSAS.~~

~~(f) **Accreditation status.** The ODMHSAS may accept accreditation granted by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation of Services for Families and Children, Inc. (COA), or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including survey reports of all visits by the accrediting organization, any reports of subsequent actions initiated by the accrediting organization, any plans of correction, and the dates for which the accreditation has been granted.~~

~~(g) **Deficiencies.** A deficiency shall be cited for each rule not met by the facility.~~

~~(h) **Report to applicant and plan of correction.**~~

~~(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the on-site review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report.~~

~~(2) The facility must submit a written plan of correction for each deficiency for approval within two (2) weeks of the receipt of the Certification Report. Approval of the plan of correction shall be required before the completed application for certification will be presented to the Board.~~

~~(3) If a request for a revised plan of correction is necessary, the facility must submit an acceptable plan of correction within the required time frame to continue the certification process. Failure to submit a timely and adequate revised plan of correction shall result in either a notice of denial of the application or revocation of the certification status, as applicable.~~

~~(4) However, if the facility is cited for deficiencies on fifty percent (50%) or more of the applicable standards and rules based on the initial site review findings, a plan of correction will not be requested.~~

~~(i) **Notification of Departmental recommendation for certification.**~~

~~(1) After completion of the on-site review and report on the Application for Certification, ODMHSAS staff shall prepare a recommendation on the certification status or application.~~

~~(2) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the Board, the ODMHSAS staff shall notify the applicant of:~~

~~(A) the recommendation, and~~

~~(B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented.~~

~~(3) Achievement of certain scores is a prerequisite for consideration of a specific certification status but may not be the sole determinant. Individual deficiencies that meet the criteria in 450:1-9-9 may be grounds for suspending or revoking certification or denying applications for certification.~~

~~(4) Consideration of certification may be deferred while additional information regarding a facility's compliance status is reviewed.~~

~~(5) The minimum compliance scores for recommendation of a certification status to the Board are:~~

~~(A) **Certification with Commendation.** Facility is in compliance with 100% of the applicable rules.~~

~~(B) **Certification.** Facility achieves compliance with 100% of the applicable rules after on-site correction(s).~~

~~(C) **Conditional Certification.** Facility is in compliance with 51% of the applicable rules.~~

~~(D) **Temporary Certification.** Facility is in compliance with 51% of the applicable standards and rules.~~

~~(j) **Actions on Non-Certified Providers.** If at the initial site review it is found the facility is providing services:~~

~~(1) The review will be continued including the review of clinical records.~~

~~(2) The facility must comply with the requirements cited in 450:1-9-7 to continue the certification process.~~

~~(3)The applicant must achieve 100% compliance within four (4) months of being granted Temporary Certification for a recommendation of Probationary Certification to be made to the Board. Failure to achieve the required compliance level shall result in a recommendation of revocation of the existing Temporary Certification status and an Order issued to cease the provision of services, if applicable.~~

~~(4) If the applicant achieves the required compliance level within the required time frame, a recommendation of Probationary Certification will be recommended for no more than one (1) year.~~

~~(5) The desire for continued certification after the Probationary Certification period of one year will require the submission of a new application for each of the next two (2) years. The requirements in 450:1-9-7 shall apply. If the applicant achieves the required compliance level within the required time frame, a recommendation for full Certification for no more than one (1) year will be made to the Board for each of the next two years.~~

~~(6) If during this three-year period the facility is found non-compliant with Title 43A O.S. § 3-301, Unified Community Mental Health Services Act, or 43A O.S. § 3-401 Oklahoma Alcohol and Drug Abuse Services Act, the non-compliance will result in revocation of Certification. Re-application for certification will be accepted one year after revocation.~~

~~(k) **Actions on certification applications.** ODMHSAS staff shall make one of the following recommendations to the Board:~~

~~(1) Certification with Commendation;~~

~~(2) Certification;~~

~~(3) Conditional Certification;~~

~~(4) Temporary Certification; or~~

~~(5) Probationary Certification.~~

~~(l) ODMHSAS shall forward recommendation for revocation of certification to the Commissioner or designee. If the Commissioner or designee approves a recommendation to revoke certification, an individual proceeding shall be initiated pursuant to Subchapter 5.~~

450:1-9-7.1. Procedures for completion of additional certification processes subsequent to a Permit for Temporary Operations

(a) The following procedures apply for organizations awarded Permit for Temporary Operation pursuant to 450:1-9-7 that elect to progress to an additional certification by ODMHSAS. The process outline below will be done in cooperation between the applicant and ODMHSAS staff, and consists of the following:

(1) Ninety (90) days prior to the expiration of a Permit for Temporary Operations, ODMHSAS will notify the permitted facility that a supplemental certification application form must be completed so the organization can be reviewed for a new certification level. Along with a request for a supplemental certification application, ODMHSAS will provide a document listing Quality Clinical Standards applicable to the new certification level. The document will also indicate the Core Organization Standards and Core Operational Standards for which continued compliance must be verified.

(2) Each organization desiring to be considered for certification subsequent to being awarded a Permit for Temporary Operations will complete a supplemental certification application form at least sixty (60) days prior to the expiration of the Permit for Temporary Operations.

(3) In the event an organization, after being awarded a Permit for Temporary Operations, fails to supply the supplemental certification application in accordance with (1) and (2) above or elects to not pursue further ODMHSAS certification, the Permit for Temporary Operations will be allowed to expire.

(4) No additional fee, beyond that required for a Permit for Temporary Operation will be required along with the supplemental certification application.

(5) The application shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled and completed.

(6) Any deficiencies of applicable standards identified as a result of the subsequent certification site visit or documentation reviews requested by ODMHSAS will be identified and a report will provided to the facility by ODMHSAS within five (5) working days of the site visit.

(7) The facility will have ten (10) working days from receipt of the report to correct deficiencies of all Core Organizational Standards and Core Operational Standards and provide ODMHSAS proof of compliance with these standards. ODMHSAS may require an additional site visit(s) to determine of compliance with Core Organizational Standards and Core Operational Standards. The facility will have no more than twenty (20) working days from the certification site visit referenced in (6) above to achieve complete compliance with all Core Organizational Standards and Core Operational Standards.

(8) The facility will also have ten (10) working days from receipt of the report to submit a plan for correction related to deficiencies in Quality Clinical Standards. The plan of correction will indicate the earliest date by which ODMHSAS should schedule a site visit or documentation review to determine compliance with Quality Clinical Standards for which deficiencies were cited but not more than twenty (20) working days from receipt of report as referenced in (6) above. The site visit or review

may or may not be conducted in conjunction with a review to verify compliance with pending Core Organizational Standards, and Core Operational Standards.

(9) Any deficiencies of applicable standards identified during the site visit or review referenced in (8) above will be identified by ODMHSAS and included in a report provided to the facility by ODMHSAS within three (3) working days of the site visit or review. Facilities for which ODMHSAS cannot determine compliance with all pending Clinical Standards during the follow up site visit or review referenced in (8) above may request ODMHSAS to complete one additional site visit or review prior to the finalization of a recommendation related to certification as referenced in (10) below. Facilities desiring this additional review must do so in writing to the Director of Provider Certification within three (3) working days of receipt of the follow up report referenced in (9) above and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of report as referenced in (9) above.

(10) Facilities for which ODMHSAS can verify compliance with all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards, within the timeframes specified in 450:1-9-7.1 will be recommended for a certification status in accordance with guidelines established in 450:1-9-5.1.

(11) Anytime, during the process outlined above, ODMHSAS may request one or more written plan(s) of correction in a form and within a timeframe designated by ODMHSAS.

(12) If the applicant fails to submit a plan of correction within a required time frame or fails to submit a timely or adequate revised plan of correction, denial of the application for subsequent certification shall be sent to the applicant by the Commissioner or designee and the current Permit for Temporary Operations be allowed to expire. Likewise, if the applicant fails to request an additional site visit or documentation review in accordance with timeframes stipulated in (9) above denial of the application for subsequent certification shall be sent to the applicant by the Commissioner or designee and the current Permit for Temporary Operations be allowed to expire

450:1-9-7.2. Procedures for renewal of certification.

(a) The following procedures apply to organizations previously awarded certification pursuant to 450:1-9-7.1 and organizations that have maintained Certification or Certification with Commendation awarded by ODMHSAS prior to November 1, 2010. The process outline below can result in an entity being awarded Certification, Certification with Distinction, or Certification with Special Distinction. The process will be done in cooperation between the applicant and ODMHSAS staff, and consists of the following:

(1) Ninety (90) days prior to the expiration of a current Certification, except a Permit for Temporary Operations, ODMHSAS will provide the certified the facility with a notice of certification expiration and advise the facility that a renewal certification application form must be completed so the organization can be reviewed for consideration for a renewal of certification. Along with the notice of certification expiration, ODMHSAS will provide a document listing Core Organization Standards, Core Operational Standards, and Quality Clinical Standards potentially applicable to the renewed certification.

(2) Each organization desiring to renew Certification must submit a completed certification application form, fees and other required materials in accordance with 450:1-9-6 and at least sixty (60) days prior to the expiration of the current Certification.

(3) In the event an organization, after being notified of the Certification expiration in accordance with (1) and (2) above fails to submit the renewal certification application, fees, or other materials as referenced in (2) above, the current Certification will be allowed to expire.

(4) The application shall be reviewed for completeness by ODMHSAS staff. If the application is deemed complete, a site review of the facility or program will be scheduled and completed.

(5) Any deficiencies of applicable standards identified as a result of the renewal site visit or subsequent review(s) of documents requested by ODMHSAS will be identified and a report will provided to the facility by ODMHSAS within five (5) working days of the initial renewal site visit.

(6) The facility will have ten (10) working days from receipt of the report to correct deficiencies of all Core Organizational Standards and Core Operational Standards and provide to ODMHSAS proof of compliance with these standards. ODMHSAS may require an additional site visit to verify proof of compliance of Core Organizational Standards and Core Operational Standards. If deficiencies continue, the facility will have no more than twenty (20) working days from the initial renewal site visit to achieve complete compliance with all Core Organizational Standards and Core Operational Standards.

(7) The facility will also have ten (10) working days from receipt of the report to submit a plan for correction related to cited deficiencies in Quality Clinical Standards. The plan of correction will indicate the earliest date by which ODMHSAS should schedule an additional site visit or documentation review to determine compliance with Quality Clinical Standards for which deficiencies were cited but not more than twenty (20) working days from receipt of report as referenced in (5) above. The site visit may or may not be conducted in conjunction with a site visit to verify compliance with pending Core Organizational Standards, and Core Operational Standards.

(8) Any deficiencies of applicable standards identified during the additional site visit or review referenced in (7) above will be identified by ODMHSAS and included in a report provided to the facility by ODMHSAS within three (3) working days of the site visit or review. Facilities for which ODMHSAS cannot determine compliance with all pending Clinical Standards during the follow up site visit or review referenced in (8) above may request ODMHSAS to complete one additional site visit or review prior to the finalization of a recommendation related to certification as

referenced in (10) below. Facilities desiring this additional review must do so in writing to the Director of Provider Certification within three (3) working days of receipt of the follow up report referenced in (8) above and indicate the earliest date by which ODMHSAS should schedule the final review but not more than fifteen (15) working days from receipt of report as referenced in (8) above.

(9) Facilities for which ODMHSAS can verify compliance with all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards, within the timeframes specified in 450:1-9-7.3 will be recommended for renewal of Certification in accordance with guidelines established in 450:1-9-5.1.

(10) Anytime, during the process outlined above, ODMHSAS may request one or more written plan(s) of correction in a form and within a timeframe designated by ODMHSAS.

(11) If the applicant fails to submit a plan of correction within the required time frame, fails to submit a timely and adequate revised plan of correction, or fails to provide evidence of correction for all cited deficiencies, a recommendation to initiate revocation proceedings must be made to the Commissioner or designee. If the Commissioner or designee approves the initiation of revocation proceedings, the provisions of Subchapter 5 will be followed.

450:1-9-7.3. Additional certification procedures

(a) The following conditions will apply to site visits and other related certification reviews conducted by ODMHSAS.

(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled and conducted by designated representatives of the ODMHSAS at each location or site of the applicant.

(2) ODMHSAS may require materials be submitted to Provider Certification, in a form determined by ODMHSAS, prior to on-site visits to verify compliance with one or more applicable Core Organizational Standards, Core Operational Standards, and/or Quality Clinical Standards.

(3) One or more site review(s) may be conducted to determine compliance with prior deficiencies as well as with standards not applicable during the prior certification visit(s).

(4) A minimum of five (5) consumer records shall be made available for review to determine compliance with applicable Quality Clinical Standards. For organizations, unable to provide a minimum of five (5) records, the current certification status, including a Permit for Temporary Operations, will be allowed to expire. ODMHSAS may require review of additional consumer records to assure a representative sample of records is evaluated to determine compliance with Quality Clinical Standards.

(5) A Site Review Protocol shall be completed during each certification review. Protocols shall contain the current ODMHSAS Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects consumer safety or health, the reviewer(s) shall notify the facility director and appropriate ODMHSAS staff. An immediate suspension of certification may be made by the Commissioner of ODMHSAS.

(b) **Accreditation status.** The ODMHSAS may accept accreditation granted by The Joint Commission (TJC), the Commission on Accreditation of Rehabilitation Facilities (CARF), the Council on Accreditation of Services for Families and Children, Inc. (COA), or the American Osteopathic Association (AOA) as compliance with certain specific ODMHSAS standards. For such to be considered, the facility shall make application and submit evidence to the ODMHSAS of current accreditation status. This evidence shall include documentation of the program or programs included in the most recent accreditation survey, including survey reports of all visits by the accrediting organization, any reports of subsequent actions initiated by the accrediting organization, any plans of correction, and the dates for which the accreditation has been granted.

(c) **Deficiencies.** A deficiency shall be cited for each rule not met by the facility.

(d) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, ODMHSAS staff shall report the results of the certification review to the facility. The facility shall receive written notice of the deficiencies in a Certification Report in accordance with 450:1-9-7, 450:1-9-7.1, and 450:1-9-7.3.

(2) The facility may be required to submit a written plan of correction as determined by 450:1-9-7, 450:1-9-7.1, and 450:1-9-7.3. Approval of the plan of correction by Provider Certification may be required before a recommendation for certification can be presented to ODMHSAS or the Board.

(3) If a request for a revised plan of correction is necessary, the facility must submit an acceptable plan of correction within the required time frame to continue the certification process. Failure to submit a timely and adequate revised plan of correction shall result in either a notice of denial of the application, expiration of certification, or revocation of the certification status, as applicable.

(e) **Notification of Departmental recommendation for certification.**

(1) After consideration of materials requested by ODMHSAS pursuant to certification procedures, and completion of the necessary review(s), ODMHSAS staff shall prepare a recommendation on the certification status or application.

(2) Recommendations regarding applications for Permit for Temporary Operations will be forwarded to the ODMHSAS Board, the Commissioner, or designee.

(3) Recommendations for all other Certification applications will be forwarded to the ODMHSAS Board for consideration or in accordance with procedures outlined in 450:21, 450:22, or 450;50.

(4) Prior to the ODMHSAS staff's presentation of its recommendation of an applicant's certification to the

Board or the Commissioner or designee the ODMHSAS staff shall notify the applicant of:

(A) the recommendation, and

(B) the date and time of the Board meeting at which the facility's application, and the recommended certification will be presented.

(5) Achievement of certain scores is a prerequisite for consideration of a specific certification status but may not be the sole determinant. Individual deficiencies that meet the criteria in 450:1-9-9 may be grounds for suspending or revoking certification or denying applications for certification.

(6) Consideration of certification may be deferred while additional information regarding a facility's compliance status is reviewed.

(7) The minimum conditions for compliance that must be verified by ODMHSAS for recommendation of a certification status shall be stipulated in 450:1-9-5.1.

(f) **Recommendations for revocation of certification.** In the event ODMHSAS can not recommend certification in accordance with 450:1-9-5.1, except for Permits for Temporary Operations, ODMHSAS shall forward recommendation for revocation of certification to the Commissioner or designee. If the Commissioner or designee approves a recommendation to revoke certification, an individual proceeding shall be initiated pursuant to Subchapter 5. Applicants unable to demonstrate compliance with standards required for Permit for Temporary Operation are not subject to the provisions for revocation and are simply denied the Permit as stipulated in 450:1-9-7.

450:1-9-7.4. Actions on Non-Certified Providers

If at the initial site review it is found the facility is providing services prior to the granting of an ODMHSAS certification status, applicable for those services being provided and in violation of statutory requirements, including prior to the granting of a Permit for Temporary Operations, the following actions will be taken:

(1) The review will be continued and will include a review of all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards.

(2) The facility must comply with the requirements cited in 450:1-9-5. to continue the certification process. An organization providing services statutorily subject to ODMHSAS Certification prior to the issuance of a Permit for Temporary Operations cannot be recommended for a Permit for Temporary Operations specific to those services. Such organizations are eligible only for a recommendation of Probationary Certification.

(3) The applicant must comply within twenty (20) working days of the initial certification visit, with all applicable Core Organizational Standards, Core Operational Standards, and Quality Clinical Standards for a recommendation of Probationary Certification to be made to the Board. Failure to achieve the required compliance level for Probationary Certification shall result in a denial for Certification and an Order issued to cease the provision of services, if applicable.

(4) If the applicant achieves the required compliance level within the required time frame, a recommendation of Probationary Certification will be recommended for no more than one (1) year.

(5) Continued certification after the Probationary Certification period of one year will require the submission of a new application for each of the next two (2) years. The requirements in 450:1-9-5.1(a)(3) shall apply. If the applicant achieves the required compliance level within the required time frame, a recommendation for Probationary Certification for no more than one (1) year will be made to the Board for each of the next two years.

450:1-9-8. Duration of certification status [REVOKED]

~~(a) Certification status of either "Certification with Commendation" or "Certification" shall be for period of:~~

~~(1) Up to three (3) years for Community Mental Health Centers, Alcohol and Drug Treatment Programs, Community-based Structured Crisis Centers, Programs of Assertive Community Treatment, Gambling Addiction Treatment Programs, Eating Disorder Treatment Programs, and Narcotic Treatment Programs.~~

~~(2) One (1) year for Community Residential Mental Health Facilities.~~

~~(b) Conditional Certification granted to applicants for renewal shall be for a period not to exceed four (4) months. During that period, a follow-up site review will be conducted to ensure cited deficiencies have been corrected as provided in the plan of correction or to demonstrate continued correction and compliance with the previously cited deficiencies.~~

~~(c) Certification or Conditional Certification granted to an applicant shall become effective the first day of the month following the date of the action by the Board, provided however, that the Board may waive this requirement and make the Certification or Conditional Certification effective immediately.~~

~~(d) Temporary Certification granted to applicants for initial certification of a facility, location or level of service shall be for a period of six (6) months and shall become effective immediately following Board or Commissioner action. During that period, a follow-up site review will be conducted to ensure any deficiencies cited during the initial site visit have been sufficiently corrected and to assess the facility's compliance with remaining applicable standards necessary to meet the requirements for Certification.~~

~~(e) Certification is not transferable. A change of the ownership of a facility automatically terminates any certification status, requiring application for certification by the new ownership.~~

~~(1) If the certified facility is owned by a corporation the following applies:~~

~~(A) If the corporation is not for profit, a change in membership of the Board of Directors of more than fifty percent (50%) of the Directors in three (3) or less calendar months, unless such change was caused by the normal expiration of terms in accordance with the By-Laws of the Board of Directors, shall require the facility to be recertified.~~

~~(B) If the corporation is other than not-for-profit, a change in the ownership of more than forty per cent (40%) of the stock in the corporation from the owners at the beginning of the period of certification shall require the facility to be recertified.~~

~~(2) It is the responsibility of the facility to notify the ODMHSAS of the occurrence of either of the conditions requiring recertification and to request the application materials for recertification.~~

~~(f) Certification may be suspended or revoked with the bases for such action being delineated in Section 450:1-9-9 of this Subchapter.~~

450:1-9-13. Designated emergency examination sites ~~facilities~~

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate to conduct emergency examinations to determine if emergency detention is warranted. All hospitals licensed by the Oklahoma State Department of Health who have a designated emergency department and who have an LMHP on staff, under contract, or on call, shall automatically be designated as an emergency examination site.

(b) The following types of facilities may be placed on the list of designated emergency examination facilities:

(1) Hospitals licensed by the Oklahoma State Department of Health;

(2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;

(3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code;

(4) Facilities operated by ODMHSAS; or

(5) Hospitals accredited by JCAHO, CARF or AOA.

(c) A facility may request the Commissioner to designate the facility as an emergency examination facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to conduct emergency examinations as defined in 43A O.S. § 5-206(4) and has one or more licensed mental health professionals as defined in 43A O.S. § 1-103(11) capable of performing the functions set forth in 43A O.S. §§ 5-207 and 5-208.

(d) The facility shall receive a letter from the Commissioner notifying the facility whether its request to be placed on the list of designated emergency examination facilities has been granted.

450:1-9-14. Designated emergency detention sites ~~facilities~~

(a) ODMHSAS shall maintain a list of facilities designated by the Commissioner as appropriate for emergency detention. All hospitals licensed by the Oklahoma State Department of Health who have an LMHP on staff, under contract, or on call and have designated beds for the treatment of mental health or substance abuse disorders, shall automatically be designated as an emergency detention site.

(b) The following types of facilities may be placed on the list of designated emergency detention facilities:

(1) Hospitals licensed by the Oklahoma State Department of Health;

(2) Community Mental Health Centers certified by the Board pursuant to Chapter 17 of Title 450 of the Oklahoma Administrative Code;

(3) Community-based Structured Crisis Centers certified by the Board pursuant to Chapter 23 of Title 450 of the Oklahoma Administrative Code; and

(4) Facilities operated by ODMHSAS; or

(5) Hospitals accredited by JCAHO, CARF or AOA.

(c) A facility may request the Commissioner to designate the facility as an emergency detention facility to be placed on the list. The facility shall make a request in writing to the Provider Certification Division of ODMHSAS and verify it has the ability to detain a person in emergency detention as defined in 43A O.S. § 5-206(5) and comply with 43A O.S. §§ 5-208 and 5-209.

(d) The facility shall receive a letter from the Commissioner notifying the facility whether its request to be placed on the list of designated emergency detention facilities has been granted.

SUBCHAPTER 11. RESEARCH

450:1-11-4. Adherence to ethical principles

All of the ODMHSAS's human subject activities, and all human subject activities of the ODMHSAS IRB designated under the ODMHSAS Federal ~~wide~~ Wide Assurance, regardless of funding source, shall be guided by the ethical principles in The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research of the National Commission of the Protection of Human Subjects of Biomedical and Behavioral Research.

450:1-11-8. IRB Membership

(a) The ODMHSAS IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted at facilities or programs operated or funded by ODMHSAS. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of agency commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If the ~~an~~ IRB ~~regularly~~ reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) The Commissioner or designee shall appoint IRB members and the IRB chairperson.
(c) Every nondiscriminatory effort shall be made to ensure that the ODMHSAS IRB does not consist entirely of men or entirely of women, including the agency's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.
(d) The ODMHSAS IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.
(e) The ODMHSAS IRB shall include at least one member who is not otherwise affiliated with the ODMHSAS and who is not part of the immediate family of a person who is affiliated with ODMHSAS.
(f) ODMHSAS IRB Members will not participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.
(g) The IRB may invite individuals with competence in special areas to assist in the review of issues, which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

[OAR Docket #10-986; filed 6-9-10]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 17. STANDARDS AND CRITERIA FOR COMMUNITY MENTAL HEALTH CENTERS

[OAR Docket #10-987]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 17. Standards and Criteria for Community Mental Health Centers [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315; 74 O.S. §85.9G.
DATES:
Comment period:
February 16, 2010 thru March 18, 2010
Public hearing:
March 19, 2010
Adoption:
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Submitted to Governor:
March 30, 2010
Submitted to House:
March 30, 2010
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May 10, 2010
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Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2010
Final adoption:
May 25, 2010
Effective:
July 11, 2010
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 17 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

In an effort to provide increased clarity and uniformity, Chapter 17 definitions have been changed to be more congruent with like definitions in Chapter 18. Other changes have also been made throughout Chapter 17 to further clarify terms used and to reflect terms that are more current, and additional language has been added to further operationalize service functions. Additional changes include reorganization of information within Chapter 17 to improve clarity, and changes to the process for identifying detailed requirements for clinical documentation in an effort to improve effectiveness and flexibility. Also, qualifications for individual's providing behavioral health services at state-operated facilities or pursuant to contract with the Department have been deferred to Chapter 1 to allow for greater consistency in defining similar terms as well as ease in locating.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

450:17-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer ~~resident~~ by a staff responsible for the consumer's ~~resident's~~ health, safety, or welfare, including but not limited to: non-accidental physical injury or mental anguish; sexual abuse; sexual exploitation; use of mechanical restraints without proper authority; the intentional use of excessive or unauthorized force aimed at hurting or injuring the resident; or deprivation of food, clothing, shelter, or healthcare by a staff responsible for providing these services to a consumer ~~resident~~.

"Adults who have a serious mental illness" are persons eighteen (18) years of age or older who meet the following criteria:

(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, substance abuse disorders, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; and
(B) Based on a client assessment scale, has moderate impairment in at least four, severe impairment

in two or extreme impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Family relationships;
(iv) Interpersonal skills;
(v) Role performance;
(vi) Socio-legal; or
(vii) Self care and basic needs; or

(C) Has duration of illness of at least one year and at least moderate impairment in two, or severe impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Family relationships;
(iv) Interpersonal skills;
(v) Role performance;
(vi) Socio-legal; or
(vii) Self care and basic needs.

"AOA" means American Osteopathic Accreditation

"Case management services" means planned ~~linkage, advocacy and~~ referral, linkage, monitoring and support, and advocacy ~~assistance~~ provided in partnership with a consumer to ~~support~~ assist that consumer ~~in~~ with self sufficiency and community tenure and take place in the individual's home, in the community, or in the facility, in accordance with a ~~treatment~~ service plan developed with and approved by the consumer and qualified staff.

"CARF" means Commission on Accreditation of Rehabilitation Facilities

"Child with Serious Emotional Disturbance" or **"SED"** means a child under the age of 18 who meets the following criteria:

(A) Currently or at any time during the past year have had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet criteria specified within DSM-IV with the exception of "V" codes, and developmental disorders, unless they co-occur with another diagnosable serious mental illness; and

(B) Based in a client assessment scale, has moderate impairment in at least four, severe impairment in two or extreme impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Substance use;
(iv) Family;
(v) Interpersonal;
(vi) Role performance;
(vii) Socio-legal;
(viii) Self care and basic needs; or
(ix) Caregiver resources; or

(C) Has duration of illness for at least one year and at least moderate impairment in two, or severe impairment in one of the following areas:

(i) Feeling, mood and affect;
(ii) Thinking;
(iii) Substance use;
(iv) Family;
(v) Interpersonal;
(vi) Role performance;
(vii) Socio-legal;
(viii) Self care and basic needs; or
(ix) Caregiver resources.

"Chronic Homelessness" refers to an individual with a disabling condition who has either: (a) been continuously homeless for a year or more, or (b) has had at least 4 episodes of homelessness in the past 3 years. For this condition, the individual must have been on the streets or in an emergency shelter (i.e. not transitional housing) during these episodes. Chronic homelessness only includes single individuals, not families. A disabling condition is a diagnosable substance abuse disorder, serious mental illness, or developmental disability, including the co-occurrence of two or more of these conditions.

"Clinical privileging" means an organized method for treatment facilities to authorize an individual permission to provide specific care and treatment services to consumers within well-defined limits, based on the evaluation of the individual's license, education, training, experience, competence, judgment, and other credentials.

"Clubhouse" means a psychiatric rehabilitation program currently certified as a Clubhouse through the International Center for Clubhouse Development (ICCD).

"Community living programs" means either transitional or permanent supported housing for persons not in crisis who need assistance with obtaining and maintaining an independent living situation.

"Community-based Structured Crisis Center" or "CBSCC" means a program of non-hospital emergency services for mental health and substance abuse crisis stabilization as authorized by 43A O.S. §3-317, including, but not limited to, observation, evaluation, emergency treatment and referral, when necessary, for inpatient psychiatric or substance abuse services. This service is limited to CMHC's who are certified by the Department of Mental Health and Substance Abuse Services or facilities operated by the Department of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult, adolescent, or child, who has applied for, is receiving or has received evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in OAC Title 450 as client(s) or patient(s) or resident(s) or a combination thereof.

"Consumer advocacy" includes all activities on behalf of the consumer to assist with or facilitate resolution of problems in the acquisition of resources or services needed by the consumer.

"Consumer committee" or **"consumer government"** means any established group within the facility comprised of consumers, led by consumers and meets regularly to address consumer concerns to support the overall operations of the facility.

"Co-occurring disorder" (COD) means any combination of mental health symptoms and substance abuse symptoms or diagnoses that affect ~~in~~ a consumer and are typically determined by the current Diagnostic and Statistical Manual of Mental Disorders.

"Co-occurring disorder capability" means the organized capacity within any type of program to routinely screen, identify, assess, and provide properly matched interventions to ~~individuals~~ consumers with co-occurring disorders.

"Co-occurring disorder enhanced" means that the program (or subunit of the program) provides a specialized service designed for individuals with co-occurring disorders, usually with a higher level of available service capacity or intensity for the co-occurring substance use disorder than would be the case in a comparable co-occurring disorder capable program.

"Crisis Diversion" means an unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community.

"Crisis Intervention" means actions taken, and services provided to address emergency ~~an immediately available service to meet the~~ psychological, physiological, and safety aspects ~~environmental needs~~ of alcohol, drug-related, and mental health crises. ~~individuals who are mentally ill.~~

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of a ~~the~~ facility, service setting, or otherwise ~~the~~ routine care of a consumer. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to consumers, staff and visitors; medication errors; residential consumers that are absent without leave (AWOL); neglect or abuse of a consumer; fire; unauthorized disclosure of information; damage to or theft of property belonging to ~~a~~ consumers or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, religious, sexual orientation, and/or social group.

"DSM" means the most current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted~~,~~ by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Face-To-Face" for the purposes of the delivery of behavioral health care, means a face-to-face physical contact and in-person encounter between the health care provider and the consumer, including the initial visit. The use of telemedicine shall be considered a face-to-face encounter.

"Facilities or Facility" means entities as described in Title 43A O.S. § 1-103(7), community mental health ~~center~~ centers, residential mental health facilities, community based structured crisis centers, certified services for the alcohol and drug dependent, programs of assertive community treatment, eating disorder treatment, gambling addiction treatment, and narcotic treatment programs.

"General psychiatric rehabilitation" or **"PSR"** means a type of psychiatric rehabilitation program which focuses on long term recovery and maximization of self-sufficiency, role function and independence. General psychiatric rehabilitation programs may be organized within a variety of structures which seek to optimize the participants' potential for occupational achievement, goal setting, skill development and increased quality of life.

"Historical timeline" means a method by which a specialized form is used to gather, organize and evaluate information about significant events in a consumer's life, experience with mental illness, and treatment history.

"Homebased services to children and adolescents" means intensive therapeutic services provided in the home to children for the purpose of reduction of psychiatric impairment and preventing removal of the child to a more restrictive setting for care. Services include a planned combination of procedures developed by a team of qualified mental health professionals, including a physician.

"Homeless" refers to a person who is sleeping in an emergency shelter; sleeping in places not meant for human habitation, such as cars, parks, sidewalks, or abandoned or condemned buildings; spending a short time (30 consecutive days or less) in a hospital or other institution, but ordinarily sleeping in the types of places mentioned above; living in transitional/supportive housing but having come from streets or emergency shelters; being evicted within a week from a private dwelling unit and having no subsequent residence identified

and lacking the resources and support networks needed to obtain access to housing; being discharged from an institution and having no subsequent residence identified and lacking the resources and support networks needed to obtain access to housing; or is fleeing a domestic violence situation and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.

"ICCD means the International Center for Clubhouse Development.

"Independent living skills, assistance in development of" means all activities directed at assisting individuals in the development of skills necessary to live and function within the community, e.g., cooking, budgeting, meal planning, housecleaning, problem-solving, communication and vocational skills.

"Integrated Client Information System" or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide ~~DMHSAS~~ ODMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, ~~domestic violence service providers,~~ residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by ~~DMHSAS~~ ODMHSAS.

~~**"JCAHO"** means the Joint Commission on the Accreditation of Healthcare Organizations.~~

"Licensed mental health professional" or **"LMHP"** ~~means:~~ as defined in Title 43A §1-103(11).

~~(A) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology;~~

~~(B) a physician licensed pursuant to Section 480 et seq. or Section 620 et seq. of Title 59 of the Oklahoma Statutes who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions;~~

~~(C) a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists;~~

~~(D) a professional counselor licensed to Section 1901 et seq. of Title 59 of the Oklahoma Statutes;~~

~~(E) a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act;~~

~~(F) a licensed marital and family therapist as defined in Section 1925.1 et seq. of Title 59 of the Oklahoma Statutes;~~

~~(G) a licensed behavioral practitioner as defined in Section 1930 et seq. of Title 59 of the Oklahoma Statutes;~~

~~(H) an advanced practice nurse as defined in Section 567.1 et seq. of Title 59 of the Oklahoma Statutes specializing in mental health; or~~

~~(I) a physician's assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.~~

"Linkage" refers to the communication and coordination with other service providers to assure timely appropriate referrals between the CMHC and other providers.

"Medical resident" means a physician who is a graduate of a school of medicine or osteopathy and who is receiving specialized training in a teaching hospital under physicians who are certified in that specialty.

"Medication error" means an error in prescribing, dispensing or administration of medication, regardless if the error reached the consumer, e.g., omission of prescribed drugs, giving drugs not prescribed, prescribing inappropriate drugs, prescribing or administering incorrect dosages, incorrectly filling or labeling prescriptions, incorrectly transcribing medication orders.

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

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

~~**"Peer Recovery Support Specialist"** or **"PRSS"** means an individual who has completed the ODMHSAS PRSS training and has passed the ODMHSAS PRSS exam.~~

"Performance Improvement" or **"PI"** means an approach to the continuous study and improvement of the processes of providing health care services to meet the needs of consumers and others. Synonyms, and near synonyms include continuous quality improvement, continuous improvement, organization-wide quality improvement and total quality management.

"Permanent supported housing" means a type of Community Living Program, either permanent scattered site housing or permanent congregate housing, where consumers are assisted with locating housing of their choice and are offered on-going support services based on need and choice to ensure successful independent living.

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Progress notes" mean a chronological written description of services provided to a consumer, resident, client, or patient that documents, utilizing acceptable documentation practices, ~~and documentation of~~ the consumer's response related to the intervention plan or services provided.

"Psychological-Social evaluations" are in-person interviews conducted by professionally trained personnel designed to elicit historical and current information regarding the behavior and experiences of an individual, and are designed to provide sufficient information for problem formulation and intervention.

"Psychotherapy" or "Therapy" means a goal directed process using generally accepted clinical approaches provided

face-to-face by a qualified service provider with consumers in individual, group or family settings to promote positive emotional or behavioral change.

"Recovery Support Specialist" or **"RSS"** means an individual who has completed the ODMHSAS RSS training and has passed the ODMHSAS RSS exam.

"Rehabilitation Services" means face-to-face individual or group services provided by qualified staff to develop skill necessary to perform activities of daily living and successful integration into community life.

"Resident" means a person residing in a community living program certified by ODMHSAS.

"Residential treatment" means a structured, 24-hour supervised treatment program for individuals who are mentally ill with a minimum of twenty-one (21) hours of therapeutic services provided per week with the emphasis on stabilization and rehabilitation for transfer to a less restrictive environment. Stay in the program is time limited.

"Restraint" refers to manual, mechanical, and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Screening" means the process to determine whether the person seeking assistance needs further comprehensive assessment.

"Sentinel event" is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms of ~~or~~ violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.

~~**"Serious Emotional Disturbance"** or **"SED"** means a child from birth to eighteen years of age who does not have a primary diagnosis of a developmental disorder(s) and meets the following criteria:~~

~~(A) possesses a diagnosable, serious disorder under DSM-IV such as pervasive developmental disorder, childhood schizophrenia, schizophrenia of adult type manifesting in adolescence, conduct disorder, affective disorder, other disruptive behaviors, or other disorders with serious medical implications such as eating disorders, or persistent involvement with alcohol or drugs; and~~

~~(B) has a functioning level which includes: a moderate impairment in at least four; severe impairment in two; or extreme impairment in one of the following areas; OR has an illness with a duration of at least one year and has a functioning level of moderate impairment in at least two; or a severe impairment in one of the following areas:~~

~~(i) Feeling, mood and affect include: an uncontrolled emotion that is clearly disruptive in its effects on other aspects of a child's life; frustration, anger, loneliness and boredom persist beyond the precipitating situation; and symptoms of distress are pervasive and do not respond to encouragement or reassurance;~~

~~(ii) Thinking processes include: daily life is disrupted due to impaired thoughts and thinking process; an inability to distinguish between fantasy and reality exists; and unusual thoughts or attachments to objects are present;~~

~~(iii) Substance use includes: frequent difficulties due to substance use and repeated use of substances causing difficulty at home or in school;~~

~~(iv) Family situation includes: disruption of family relationships or family does not function as a unit and experiences frequent turbulence; relationships that exist are psychologically devastating; the child does not have family support and is abused or neglected;~~

~~(v) Interpersonally the child will: have a severe inability to establish or maintain a personal social support system; lacks close friends or group affiliations; is socially isolated; and lacks age appropriate social skills;~~

~~(vi) Role performance consists of: frequent disruption of role performance and the individual is unable to meet usual expectations; has persistent behavior problems; and has failure, or been suspended or expelled from school;~~

~~(vii) Socio-legal issues include: inability to maintain conduct within the limits prescribed by law, rules and strong mores; shows little concern for consequences of actions; and delinquent acts or frequent contact with law enforcement exists;~~

~~(viii) Self care and basic needs are such that the ability to care for self is considerably below expectation; or~~

~~(ix) Caregiver resources are: the caregiver has difficulties in providing for the child's basic needs; or the developmental needs are such that there is a negative impact on the child's level of functioning.~~

"Service area" means a geographic area established by the Department of Mental Health and Substance Abuse Services for support of mental health and substance abuse services [43A O.S.§3-302(1)].

"Service plan" or "Treatment plan" means the document used during the process by which a qualified service provider and the consumer together and jointly identify and rank problems, establish agreed-upon immediate short-term and long-term goals, and decide on the treatment process and resources to be utilized.

"Socialization" means all activities, which encourage interaction and the development of communication, interpersonal, social and recreational skills and can include consumer education.

"Supportive services" refers to assistance with the development of problem-solving and decision-making skills to maintain or achieve optimal functioning within the community and can include consumer education.

"TJC" means The Joint Commission formerly referred to as the Joint Commission on Accreditation of Healthcare Organizations or JCAHO.

"Transitional housing program" means a type of Community Living Program in which the consumer's stay in the residence is considered temporary and time-limited in nature. The actual program model may include a range of approaches, including but not limited to supervised transitional living programs and supervised transitional housing programs.

"Trauma informed capability" means the capacity for a facility and all its programs to recognize and respond accordingly to the presence of the effects of past and current traumatic experiences in the lives of its consumers.

"Vocational assessment services" means a process utilized to determine the individual's functional work-related abilities and vocational preferences for the purpose of the identification of the skills and environmental supports needed by the individual in order to function more independently in an employment setting, and to determine the nature and intensity of services which may be necessary to obtain and retain employment.

"Vocational placement services" means a process of developing or creating an appropriate employment situation matched to the functional abilities and choices of the individual for the purpose of vocational placement. Services may include, but are not limited to, the identification of employment positions, conducting job analysis, matching individuals to specific jobs, and the provision of advocacy with potential employers based on the choice of the individual served.

"Vocational preparation services" means services that focus on development of general work behavior for the purpose of vocational preparation such as the utilization of individual or group work-related activities to assist individuals in understanding the meaning, value and demands of work; to modify or develop positive work attitudes, personal characteristics and work behaviors; to develop functional capacities; and to obtain optimum levels of vocational development.

"Volunteer" means any person who is not on the program's payroll, but provides ~~direct~~ services and fulfills a defined role within the program and includes interns and practicum students.

"Walk through" means an exercise in which staff members of a facility walk through the program's treatment processes as a consumer. The goal is to view the agency processes from the consumer's perspective for the purpose of removing barriers and enhancing treatment.

"Wellness" means the condition of good physical, mental and emotional health, especially when maintained by an appropriate diet, exercise, and other lifestyle modifications.

SUBCHAPTER 3. REQUIRED SERVICES

PART 1. REQUIRED SERVICES

450:17-3-2. Core community mental health services

(a) Each CMHC shall provide the following services:

(1) Screening intake and referral services;
(2) Emergency services;
(3) Outpatient therapy ~~counseling~~;
(4) Case management services;
(5) ~~Adult psychiatric~~ Psychiatric rehabilitation services;
(6) Medication clinic services; ~~and~~
(7) Service to homeless individuals;
(8) Peer Support Services, and
(9) Wellness Activities and Support.

(b) Compliance with 450:17-3-2 shall be determined by a review of the following:

(1) On-site observation;
(2) Staff interviews;
(3) Written materials;
(4) Program policies;
(5) Program Evaluations ~~Evaluations~~;
(6) Data reporting ~~ICIS data~~; and
(7) Clinical records.

PART 7. OUTPATIENT ~~COUNSELING~~ THERAPY SERVICES

450:17-3-61. Outpatient ~~counseling~~ therapy services

(a) Outpatient services shall include a range of co-occurring disorder capable services to consumers based on their needs regarding emotional, social and behavioral problems. These outpatient ~~counseling~~ therapy services shall be provided or arranged for, and shall include, but not be limited to the following:

(1) Individual therapy ~~counseling~~;
(2) Group therapy ~~counseling~~;
(3) Family therapy ~~counseling~~;
(4) Psychological/psychometric evaluations or testing; and
(5) Psychiatric assessments.

(b) Compliance with 450:17-3-61 shall be determined by a review of written policy and procedures; clinical records; and ICIS data reported by facilities.

450:17-3-62. Outpatient therapy ~~counseling~~ services, substance abuse, co-occurring

(a) Facilities shall provide co-occurring disorder capable outpatient substance abuse ~~counseling~~ therapy services.

(b) These services shall include the provision of or referral for Human Immunodeficiency Virus (HIV), Sexually Transmitted Diseases (STD), and Acquired Immunodeficiency Syndrome (AIDS) education, training, and counseling services for drug dependent persons (43A O.S. §3-425.1), and every facility shall:

(1) Provide or refer for educational sessions regarding HIV/STD/AIDS to consumers and the significant other(s) of the consumer ~~such persons, and also make the sessions available to spouses or other sexual partners of the drug dependent person~~; and

(2) Provide or refer ~~Refer~~ all drug dependent persons, and their identified significant other (s), for HIV/STD/AIDS ~~infection~~ testing and counseling~~.~~:

(3) Provide documentation of services described in (1) and (2) above, including refusal of these services; and

(4) Maintain all test results in the confidential manner prescribed by applicable state or federal statutes or regulations.

~~(c) The HIV testing and counseling may be provided by the facility, or through a public or private organization for the testing or counseling services. All test results shall be maintained in the confidential manner prescribed by applicable state or federal statutes or regulations.~~

(~~d~~c) Compliance with 450:17-3-62 shall be determined by a review of the following: written policy and procedures; consumer records; and other supporting facility records and documentation.

PART 11. CASE MANAGEMENT

450:17-3-101. Case management services

(a) Case management efforts shall empower consumers to access and use needed services and meet self-determined goals. These services include resource skills development and consumer advocacy provided in various settings based on consumer need.

(b) Case management services shall be offered to all adults who have a serious mental illness~~,~~ and, to each ~~child~~ Child (or their parent/guardian) with ~~serious~~ Serious Emotional Disturbance.

(c) Case management shall be co-occurring disorder capable. ~~and shall provide the following:~~

~~(1) Screening to determine their need for case management services, which shall include evidence the following were evaluated:~~

~~(A) Consumer's level of functioning within the community;~~

~~(B) Consumer's job skills and potential; and/or educational needs;~~

~~(C) Consumer strengths and resources;~~

~~(D) Consumer's present living situation and support system;~~

~~(E) Consumer's use of substances and orientation to changes related to substance use;~~

~~(F) Consumer's medical and health status;~~

~~(G) Consumer's needs or problems which interfere with the ability to successfully function in the community; and~~

~~(H) Consumer's goals, hopes and dreams.~~

~~(2) Emergency services and emergency assistance.~~

(d) Case management services shall be planned referral, linkage, monitoring and support, and advocacy ~~linkage, advocacy and referral~~ assistance provided in partnership with a client to support that client in self sufficiency and community tenure. Activities include:

(1) Completion of strengths based assessment for the purpose of individual plan of care development, which shall include evidence that the following were evaluated:

(A) Consumer's level of functioning within the community;

(B) Consumer's job skills and potential; and/or educational needs;

(C) Consumer strengths and resources;

(D) Consumer's present living situation and support system;

(E) Consumer's use of substances and orientation to changes related to substance use;

(F) Consumer's medical and health status;

(G) Consumer's needs or problems which interfere with the ability to successfully function in the community; and

(H) Consumer's goals.

(2) Development of case management care plan; ~~Linkage with appropriate components of the service system;~~

(3) Referral, linkage and advocacy to assist with gaining access to appropriate community resources; ~~Support to maintain community living skills;~~

(4) Contacts with other individuals and organizations that influence the recipient's relationship with the community, i.e., family members, law enforcement personnel, landlords, etc.; ~~and~~

(5) Monitoring and support related to the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress; ~~Activities can include follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, counseling, rehabilitation, or other supportive service appointments as delineated on the service plan).~~

(6) Follow-up contact with the consumer if they miss any scheduled appointments (including physician/medication, therapy, rehabilitation, or other supportive service appointments as delineated on the service plan); and

(7) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist consumer(s) from progression to a higher level of care.

(e) Compliance with 450:17-3-101 shall be determined by on-site observation and a review of the following: clinical records, and written policy and procedures.

450:17-3-102. Case management services, locale and frequency

(a) Case management services shall be provided within community settings; the residence of the consumer; or any other appropriate settings, based on the individual needs of the consumer. Contact with consumers shall be made on at least a monthly basis unless otherwise specified in the ~~treatment~~ service plan.

(b) Compliance with 450:17-3-102 shall be determined by a review of the following: Case managers shall contact each consumer at least once a month, unless otherwise specified in

the service ~~treatment~~ plan to monitor progress or provide case management services. Inability to make face to face contact shall be documented. Contact was made with consumers as specified in the ~~treatment~~ service plan.

PART 15. ~~ADULT RECOVERY AND~~ BEHAVIORAL HEALTH REHABILITATION SERVICES ~~PROGRAMS~~

450:17-3-141. Psychiatric rehabilitation ~~programs~~ services

(a) This section governs ~~day programs~~ psychiatric rehabilitation services for Adults ~~persons living~~ with Serious Mental Illness ~~serious mental illness~~, and Children with Serious Emotional Disturbance. These standards reflect two recovery focused programs for adults: General psychiatric rehabilitation ~~model~~ program (PSR) and ICCD Clubhouse ~~model~~; along with individual and group rehabilitation services for both adults and children.

(b) The CMHC shall provide one or more of the following for adults: ~~either, or both, the~~ a PSR ~~model~~ program, or ICCD Clubhouse ~~model~~ program, or individual and group rehabilitation services. In addition, the CMHC shall provide individual and group rehabilitation services for children. CMHC policy and procedures shall reflect that ~~these models~~ all psychiatric rehabilitation programs and services incorporate the following core principles:

(1) Recovery is the ultimate goal of psychiatric rehabilitation. Interventions must facilitate the process of recovery.

(2) Psychiatric rehabilitation practices help people re-establish normal roles in the community and their integration into community life.

(3) Psychiatric rehabilitation practices facilitate the development of personal support networks.

(4) Psychiatric rehabilitation practices facilitate an enhanced quality of life for each person receiving services.

(5) People have the capacity to learn and grow.

(6) People receiving services have the right to direct their own affairs, including those that are related to their psychiatric disability.

(7) People are to be treated with respect and dignity.

(8) Psychiatric rehabilitation practitioners make conscious and consistent efforts to eliminate labeling and discrimination, particularly discrimination based upon a disabling condition.

(9) Culture and ethnicity play an important role in recovery. They are sources of strength and enrichment for the person and the services.

(10) Psychiatric rehabilitation interventions build on the strength of each person.

(11) Psychiatric rehabilitation services are to be coordinated, accessible, and available as long as needed.

(12) Services are to be designed to address the unique needs of each individual, consistent with the individual's cultural values and norms.

(13) Psychiatric rehabilitation practices actively encourage and support the involvement of persons in normal community activities, such as school and work, throughout the rehabilitation process.

(14) The involvement and partnership of persons receiving services and family members is an essential ingredient of the process of rehabilitation and recovery.

(15) Psychiatric rehabilitation practitioners should constantly strive to improve the services they provide.

(c) CMHC policy and procedures shall reflect that psychiatric rehabilitation services ~~Psychiatric rehabilitation programs recognize that co-occurring substance abuse disorders will be common place among many of the participants in these programs. As such, the program~~ shall be co-occurring disorder capable and facilitate processes for dual recovery for these individuals.

~~(d) Psychiatric rehabilitation programs are required to maintain minimum staff ratios to assure participants have choices in activities and staff with whom they work. The following staffing ratios shall be maintained for each location at which a psychiatric rehabilitation program is in operation.~~

~~(1) Fourteen (14) or fewer participants in attendance; at least one staff member present provided arrangements for emergency back up staff coverage are in place and described in the program's policy and procedures;~~

~~(2) Fifteen (15) to twenty eight (28) participants in attendance; at least two staff members present; or,~~

~~(3) Programs with twenty nine (29) or more participants shall maintain a 14:1 participant to staff ratio.~~

(~~e~~d) Compliance with 450:17-3-141 shall be determined by on-site observation; interviews with participants; interviews with staff; a review of policy and procedures; and a review of clinical records; or proof of compliance with 450:17-3-146.

450:17-3-144. General psychiatric rehabilitation program (PSR)

(a) The PSR shall be designed to provide an array of services that focus on long term recovery and maximization of self-sufficiency, role functioning, and independence as distinguished from the symptom stabilization function of acute care. Program services shall seek to optimize the participant's potential for occupational achievement, goal setting, skill development, and increased quality of life, therefore maximizing the individual's independence from institutional care and supports in favor of community and peer support.

~~(b) The program shall be open a minimum of five (5) hours per day for at least three (3) days per week.~~

(~~c~~b) Proof of completion of orientation in the PSR model shall be kept on file for all program staff members. The CMHC policies and procedures shall document a plan by which employees who are staff members in the PSR program are to be oriented to the PSR model.

(~~d~~c) Program participants shall be referred to as members, as opposed to patients or clients. Members choose the way they utilize the program. Participation is voluntary; there shall be no artificial reward systems such as, but not limited to, token economy and point systems.

(~~e~~d) The program shall incorporate the following functions:

(1) **Recovery Orientation.** The service elements include a Recovery oriented treatment plan, member goal setting, employment and educational support services, and a staff philosophy of recovery that permeates all service elements and activities.

(2) **Empowerment Orientation.** The service elements include peer support, leadership skill development, member participation on agency boards, and participation in consumer advocacy groups. All PSR programs shall establish an advisory committee consisting of members and a staff person, which will address issues such as program development and planning, and program problem solving.

(3) **Competency Orientation.** The service elements include curriculum based life skills training (covering self-management of illness, independent living skills, social skills, and work related skills), a multi-dynamic learning approach, an explicit focus on generalization to contexts beyond the immediate learning task and transfer of skills to real life situations and a community based supports component that provides on-going in home or community based support services, based on consumer need and choice, in the areas of housing, employment, education and the development of natural supports (i.e., family, cultural and social). Curricula shall include attention to building decision making capacity and life skills to implement decisions regarding substance use, including nicotine and caffeine, to promote health choices. Decision making should not be mandated abstinence but should be client-centered within the overall context of recovery goals. Service elements also include a work unit component that adheres to the following standards:

(A) Members and staff work side-by-side.

(B) The work completed is work generated by the PSR program. No work for outside individuals or agencies is acceptable.

(C) All work in the PSR program is designed to help members regain self-worth, purpose and confidence; it is not intended to be job specific training.

(D) The program is organized into one or more work units, each of which has sufficient staff, members and meaningful work.

(e) PSR programs are required to maintain minimum staff ratios to assure participants have choices in activities and staff with whom they work. The following staffing ratios shall be maintained for each location at which a psychiatric rehabilitation program is in operation.

(1) Fourteen (14) or fewer participants in attendance; at least one staff member present provided arrangements for emergency back up staff coverage are in place and described in the program's policy and procedures;

(2) Fifteen (15) to twenty eight (28) participants in attendance; at least two staff members present; or,

(3) Programs with twenty nine (29) or more participants shall maintain a 14:1 participant-to-staff ratio.

(f) Compliance with 450:17-3-144 shall be determined by on-site observation; interviews with members; interviews with staff; a review of policy and procedures; and a review of clinical records.

450:17-3-146. ICCD Clubhouse program ~~Model~~

(a) The Clubhouse program shall be certified as a Clubhouse through the International Center for Clubhouse Development (ICCD). A Clubhouse shall be considered certified when a copy of the Clubhouse's current ICCD certification has been received by ODMHSAS Provider Certification. When a Clubhouse is renewing certification, a Clubhouse will continue to be considered certified provided the following conditions are met:

(1) At least (60) days prior to expiration of ICCD certification a copy of the application to ICCD for re-certification has been received by ODMHSAS Provider Certification.

(2) A copy of the re-certification visit schedule from the ICCD has been received by ODMHSAS Provider Certification.

(3) Within one-hundred and twenty (120) days of the ICCD re-certification visit, a copy of the re-certification letter from the ICCD reflecting that the Clubhouse has been recertified has been received by ODMHSAS Provider Certification.

(4) Any interim notice or decision of ICCD regarding re-certification status has been received by ODMHSAS Provider Certification.

(b) Compliance with 450:17-3-146 shall be determined by receipt of the identified documentation needed to support that a Clubhouse program is ICCD certified.

450:17-3-147. Individual and Group Rehabilitation Services

(a) CMHC policy and procedures shall reflect that individual and group rehabilitation services are available to both adults and children.

(b) Facility policy and procedures shall outline the way these services are provided, including but not limited to the populations served, staff qualifications for providing the service, and general design(s) by which these services are provided.

(c) Compliance with 450:17-3-146 shall be determined by a review of CMHC policy and procedures and personnel files.

PART 21. PEER SUPPORT SERVICES

450:17-3-191. Peer support services

(a) Peer support services are provided as a program integrated within the overall structure of Community Mental Health Center services and must be offered to adults age 18 and older with serious mental illnesses, including co-occurring disorders.

(b) Peer support services may be offered to other consumers of the community mental health center and their families.

(c) These services shall

(1) Be based on an individualized, recovery-focused service philosophy that allows individuals the opportunity to learn to manage their own recovery and advocacy process;

(2) Recognize the unique value of services being provided by persons with lived experience who are able to demonstrate their own hopefulness and recovery;

(3) Enhance the development of natural supports, coping skills, and other skills necessary to function as independently as possible in the community, including, but not limited to assisting re-entry into the community after a hospitalization or other institutional settings;

(4) Have written policies specific to these services; and,

(5) Be provided by ~~Peer~~ Recovery Support Specialist(s) as defined by 450:17-3-192.

(d) Each CMHC shall have in place provisions for direct supervision and other supports for staff providing this service.

(e) Compliance with 450:17-3-191 shall be determined by a review of the following: documentation of linkage activities and agreements; clinical records; ICIS reporting data; and, CMHC policy and procedures.

450:17-3-192. ~~Peer~~ Recovery Support Specialists staff requirements

(a) Recovery Support Services shall be provided only by staff who have completed the ODMHSAS ~~P~~RSS training and have passed the ODMHSAS ~~P~~RSS exam.

(b) Each CMHC shall document and maintain records to verify compliance with training and testing requirements. ~~current credentialing~~ of each provider of this service.

(c) Compliance for 450:17-3-192 shall be determined by a review of the facility personnel records and ODMHSAS ~~credentialing~~ files.

SUBCHAPTER 5. OPTIONAL SERVICES

PART 5. HOMEBASED SERVICES TO CHILDREN AND ADOLESCENTS [REVOKED]

450:17-5-22. Homebased services to children and adolescents, family preservation [REVOKED]

~~(a) Homebased services to children and adolescents may be available in any location based on consumer's need for the purpose of reducing psychiatric impairment or preventing out-of-home placement. If provided, these services shall:~~

~~(1) Be provided based on an assessed family need for this intensive service to prevent unnecessary out-of-home placement of the child/adolescent;~~

~~(2) Have written policies and procedures specifically defining the philosophy to include:~~

~~(A) Provision of, or arrangement for, twenty-four (24) hour Emergency services;~~

~~(B) Provision of parent education and training;~~

~~(C) Accessing community resources and services for children and families; and~~

~~(D) Provision of integrated interventions to address co-occurring issues in the child and/or family.~~

~~(3) Home services scheduled as the child and family's needs dictate, taking into account services will often times need to be offered during evening and weekend hours; and~~

~~(4) Limit caseload size, based on the acuity level of the children and families, not to exceed a caseload of twelve (12) families actively involved in homebased services.~~

~~(b) Compliance with 450:17-5-22 shall be determined by a review of written policy and procedures, consumer clinical records, ICIS data on-site observation; and staff interviews.~~

450:17-5-25. Behavioral health aide services to children, adolescents and families [REVOKED]

~~(a) Behavioral health aide services to children and adolescents may be available in any location based on a consumer's need for the purpose of reducing psychiatric impairment or preventing out-of-home placement. Behavioral health aides provide behavior management, redirection and life skills remedial training in home, school or community setting, to include training and remediation of children and the families on behavioral, interpersonal, communication, self help, safety, substance use decisions, and daily living skills. If provided, these services shall:~~

~~(1) Be provided based on an assessed family need for this intensive service to prevent unnecessary out-of-home placement of the child/adolescent;~~

~~(2) Have written policies and procedures specific to this service;~~

~~(3) Use only qualified staff in accordance with the following requirements:~~

~~(A) Behavioral Health Aides must have completed 60 hours or equivalent of college credit, or may substitute one year of relevant employment and/or responsibility in the care of emotionally disturbed children for one year of college experience, for up to two years of college experience.~~

~~(B) Behavioral Health Aides must complete the Module 1, CPR, Blood Born Pathogens, and First Aid training portions of the specialized training and education curriculum provided by the ODMHSAS before beginning work with children and families, and must have successfully completed the entire training and education curriculum, including passing a final examination, within six (6) months of their employment.~~

~~(C) The supervisor for Behavioral Health Aides must possess a bachelor's degree plus two years of case management or care coordination experience. Supervision is to include:~~

~~(i) weekly team supervision for a minimum of four hours of direct service; and~~

~~(ii) one-on-one supervision will take place as needed in real-time consultation/coaching (on the job training — this can mean visiting the aide on the job, receiving calls from the aide from the job for consultation, etc.)~~

~~(b) Behavioral Health Aides will function under the general direction of the established systems of care team and pursuant~~

~~to the child/adolescent's current plan of care (treatment plan). Treatment plans must be overseen and approved by a licensed Mental Health Professional.~~

~~(c) Compliance with 450:17-5-25 shall be determined by a review of written policy and procedures, personnel records, on-site observation; and staff interviews.~~

PART 11. COMMUNITY LIVING PROGRAMS

450:17-5-60. Supervised transitional living programs

(a) Supervised transitional living programs are supervised places of temporary transitional residence for mental health consumers needing on-site support twenty-four (24) hours a day. These programs are intended to assist residents with stabilization and acquisition of skills necessary to transition to an independent living situation.

(b) Supervised transitional living programs shall:

(1) Have paid staff on duty twenty-four (24) hours a day, with backup coverage in case of staff unscheduled absences, illness or emergencies.

(2) Maintain staffing number and composition, and training and expertise to sufficiently supervise, provide and maintain the services as defined in the program's goals and objectives and to ensure the safety of the residents.

(3) Develop and implement a component of governance by the tenants.

(4) Be licensed by the Oklahoma State Department of Health if required.

(c) In these programs, the following shall be available for all residents, and shall be specified on the resident's ~~treatment~~ service plan or housing plan, according to individual resident needs and interests: The program shall offer 20 hours per week of meaningful activity. A minimum of ten (10) hours should be provided on-site, with at least eight (8) of those ten (10) hours focusing specifically on independent living skills training.

(d) Compliance with 450:17-5-60 shall be determined by on-site observation; interviews with residents, program staff, and other appropriate CMHC staff; and a review of the following: policy and procedures, facility documentation (including staff schedules), residents' council minutes, and valid State Department of Health Certificate of Licensure if required.

450:17-5-66. Permanent supported housing programs

(a) Permanent supported housing programs include at least one of the following two (2) types of housing programs:

(1) Permanent scattered site housing programs; or

(2) Permanent congregate housing programs.

(b) In permanent supported housing programs the following shall be available for all residents, and shall be specified on the resident's ~~treatment~~ service plan or housing plan, according to individual resident needs and interests:

(1) The CMHC permanent supported housing programs shall make ongoing monthly contact with each resident, either on or offsite.

(2) The program shall offer independent living skill training. This training shall include working side by side with residents to provide instruction in the development of independent living skills.

(3) Psychiatric rehabilitation program services shall be made available to residents.

(4) The CMHC shall offer, or arrange for, socialization and recreational opportunities at least twice a week for individuals in permanent supported housing programs; including at least one evening activity.

(c) Compliance with 450:17-5-66 shall be determined by interviews with residents, program staff, and other appropriate CMHC staff; and a review of CMHC policy and procedures, and resident records.

PART 15. INPATIENT SERVICES

450:17-5-95. Inpatient services within the community mental health setting

(a) Any community mental health center providing inpatient services must demonstrate current compliance with applicable accreditation requirements for inpatient psychiatric or behavioral health services as stipulated by any of the following: the TJC ~~JCAHO~~, CARF, AOA, and also demonstrate current licenses as required by the Oklahoma State Department of Health.

(b) Compliance with 17-5-95(a) will be determined by a review of current documentation related to applicable accreditation and licensure.

PART 19. PROGRAM FOR ASSERTIVE COMMUNITY TREATMENT

450:17-5-111. General program description and target population [REVOKED]

~~Program Description. A Program of Assertive Community Treatment (PACT) is a self contained clinical program which is the fixed point of responsibility for providing treatment, rehabilitation, and support services to identified consumers with serious mental illnesses. The PACT team shall use an integrated service approach to merge clinical and rehabilitation staff expertise, e.g., psychiatric, substance abuse, employment, etc., within one service delivery team, supervised by a qualified program director. Accordingly, there shall be a minimal referral of consumers to other program entities for treatment, rehabilitation, and support services. The PACT staff is responsible to ensure services are continuously available in natural settings for the consumer in a manner that is courteous, helpful, and respectfulness to consumers.~~

450:17-5-112. Admission criteria [REVOKED]

~~(a) The PACT program shall maintain written admission policies and procedures that, at a minimum include the following:~~

~~(b) Consumers with serious mental illnesses listed in the diagnostic nomenclature, currently the Diagnostic and Statistical~~

~~Manual, Fourth Edition, or DSM-IV, of the American Psychiatric Association, and that seriously impair their functioning in community living. Priority shall be given to people with schizophrenia and other psychotic disorders, e.g., schizoaffective disorder, or bipolar disorder because these illnesses more often cause lont-term psychiatric disability. Individuals with a primary diagnosis of a substance use disorder or mental retardation are not appropriate for admission to PACT services.~~

450:17-5-113. Discharge criteria [REVOKED]

~~The PACT program shall maintain written discharge policies and procedures that, at a minimum includes the following discharge criteria:~~

~~(1) The consumer and program staff mutually agree to the termination of services; or~~

~~(2) The consumer moves outside the geographic area of PACT's responsibility. In such cases, the PACT team shall arrange for transfer of mental health service responsibility to a provider where the consumer is moving. The PACT team shall maintain contact with the consumer until this service transfer is arranged; or~~

~~(3) The consumer demonstrates an ability to function in all major role areas, i.e., work, social, self-care, without requiring assistance from the program, such a determination shall be made by both the consumer and the PACT team; or~~

~~(4) The consumer becomes physically unable to benefit from the services.~~

450:17-5-114. Program Management and Capacity [REVOKED]

~~(a) Program Organization. The PACT program shall vest authority with a team leader who shall be responsible for ensuring the PACT team meets the following organizational requirements:~~

~~(b) Hour of Operation and Staff Coverage. The PACT program shall assure adequate coverage to meet consumers' needs, including, but not limited to:~~

~~(1) The PACT team shall be available to provide treatment, rehabilitative support services seven days per week, over two eight-hour shifts, and operate a minimum of 12 hours per day on weekdays and eight hours each weekend day and every holiday.~~

~~(2) The PACT team shall operate an after-hours on-call system. PACT team staff who are experienced in the program and skilled in crisis-intervention procedures shall be on call and available to respond to consumers by telephone or in-person.~~

~~(3) Psychiatric backup shall also be available during all off-hour periods. If availability of the PACT team's psychiatrist during all hours is not feasible, alternative psychiatric backup should be arranged (e.g., mental health center psychiatrist, emergency room psychiatrist).~~

~~(c) Advisory Committee. The PACT Program shall assure that a local advisory committee is established, with input of local advocates and other stakeholders.~~

~~(1) The committee shall be constituted of representative stakeholders including consumers, family members, advocates, other professionals and community leaders.~~

~~(2) The team leader shall convene the advisory committee and work with the committee to establish a structure for meetings and committee procedures.~~

~~(3) The primary role of the Advisory Committee is to assist with implementation, policy development, advocate for program needs, and monitor outcomes of the program.~~

~~(4) The Advisory Committee shall meet at least once each quarter.~~

~~(5) Written minutes of committee meetings shall be maintained.~~

~~(d) Location. The program shall have adequate space to support program operations.~~

~~(e) Service Intensity. Resources and operations for the PACT program shall minimally including the following:~~

~~(1) The PACT team shall have the capacity to provide multiple contacts per week to consumers experiencing severe symptoms or significant problems in daily living.~~

~~(2) The PACT team shall provide an average of three contacts per week to consumer, unless otherwise clinically indicated.~~

~~(f) Place of Treatment. Each team shall provide 75 percent of service contacts in the community, in non-office or non-facility based settings.~~

~~(1) Each PACT team shall maintain data to verify the service contact mandates are being met.~~

~~(2) The location of each treatment service provided will be documented in the clinical record.~~

450:17-5-115. Staff communication and planning [REVOKED]

~~(a) The organizational structure of the PACT team shall minimally include the following:~~

~~(b) The PACT team shall conduct daily organizational staff meetings at regularly scheduled times as prescribed by the team leader. Daily organizational staff meetings shall be conducted in accordance with the following procedures, which include but are not limited to:~~

~~(1) The PACT team shall maintain a written daily log, using either a notebook or cardex. The daily log shall document:~~

~~(A) a roster of the consumers served in the program; and,~~

~~(B) for each program consumer, brief documentation of any treatment or service contacts which have occurred during the day and a concise, behavioral description of the consumer's daily status.~~

~~(2) the daily organizational staff meeting shall commence with a review of the daily log, to update staff on the treatment contacts which occurred the day before and to provide a systematic means for the team to assess the day-to-day progress and status of all consumers.~~

~~(A) The PACT team, under the direction of the team leader, shall maintain a weekly consumer schedule for each consumer. The weekly consumer schedule is a written schedule of all treatment and~~

~~service contacts which staff must carry out to fulfill the goals and objectives in the consumer's treatment plan. The team shall maintain a central file of all weekly consumer schedules.~~

~~(B) The PACT team, under the direction of the team leaver, shall develop a daily staff assignment schedule from the central file of all weekly consumers schedules. The daily staff assignment schedule is a written timetable for all consumer treatment and service contacts, to be divided and shared by the staff working on that day.~~

~~(C) The daily organizational staff meeting shall include a review by the shift manager of all the work to be done that day as recorded on the daily staff assignment schedule. During the meeting, the shift manager will assign and supervise staff to carry out the treatment and service activities scheduled to occur that day, and the shift manager will be responsible for assuring that all tasks are completed.~~

~~(D) At the daily organizational staff meeting, the PACT team shall also revise treatment plans as needed, plan for emergency and crisis situations, and add service contacts to the daily staff assignment schedule per the revised treatment plans.~~

~~(3) The PACT team shall conduct treatment planning meetings under the supervision of the team leader and the psychiatrist. These treatment planning meetings shall minimally:~~

~~(A) convene at regularly scheduled times per a written schedule maintained by the team leader, and~~

~~(B) occur with sufficient frequency and duration to develop written individual consumer treatment plans and to review and rewrite the plans every six months.~~

450:17-5-116. Clinical supervision [REVOKED]

~~(a) Each PACT team shall develop a written policy for clinical supervision of all staff providing treatment, rehabilitation, and support services. The team leader, or his or her clinical staff designee, or both, shall assume responsibility for supervising and directing all PACt team staff activities. This supervision and direction shall minimally consist of:~~

~~(b) Individual, side by side sessions in which the supervisor accompanies an individual staff member to meet with consumers in regularly scheduled or crisis meetings to assess performance, give feedback, and model alternative treatment approaches; and~~

~~(c) Participation with team members in daily organizational staff meetings and regularly scheduled treatment planning meetings to review and assess staff performance and provide staff direction regarding individual cases.~~

450:17-5-117. Orientation and training [REVOKED]

~~(a) Each PACT program shall develop and implement an orientation and training program that all new staff shall complete prior to providing services. The orientation shall minimally include a review of the following:~~

~~(1) Title 450, Chapter 15, Consumer Rights and Chapter 17, Subchapter 5, Part 19, Optional Services, Program for Assertive Community Treatment, Subchapter 9, Consumer Records and Confidentiality, and any other part of Title 450 deemed appropriate;~~

~~(2) PACT program policies;~~

~~(3) Job responsibilities specified in job description.~~

~~(b) Each PACT program shall develop and implement a training plan for all staff including:~~

~~(1) use of staff meeting time which is set aside for training;~~

~~(2) presentations by community resource staff from other agencies;~~

~~(3) attendance at conferences and workshops; and,~~

~~(4) discussion and presentation of current principles and methods of treatment, rehabilitation, support services for persons with serious mental illness.~~

450:17-5-118. Services [REVOKED]

~~(a) The PACT program shall minimally provide the following comprehensive treatment, rehabilitation, and support services as a self-contained service unit on a continuous basis.~~

~~(b) Treatment. The PACT program shall provide or make arrangements for treatment services, which shall minimally include:~~

~~(1) Crisis Assessment and Intervention. Crisis assessment and intervention shall be provided 24 hours per day, seven days per week. These services will include telephone and face-to-face contact and will be provided in conjunction with the local mental health system's emergency services program as appropriate.~~

~~(2) Symptom Assessment, Management and Individual Supportive Therapy. Symptom assessment, management, and individual supportive therapy shall be provided to help consumers cope with and gain mastery over symptoms and impairments in the context of adult role functioning. This therapy shall include but not necessarily be limited to the following:~~

~~(A) ongoing assessment of the consumer's mental illness symptoms and the consumer's response to treatment;~~

~~(B) education of the consumer regarding his or her illness and the effects and side effects of prescribed medications, where appropriate;~~

~~(C) symptom management efforts directed to help each consumer identify the symptoms and occurrence patterns of his or her mental illness and develop methods (internal, behavioral, or adaptive) to help lessen their effects; and~~

~~(D) psychological support to consumers, both on a planned and as-needed basis, to help them accomplish their personal goals and to cope with the stresses of day-to-day living.~~

450:17-5-119. Medication prescription, administration, monitoring, and documentation [REVOKED]

~~(a) The PACT team program shall have medication policies and procedures that are specific to the PACT program and meet the unique needs of the consumers served.~~

~~(b) Medication related policies and procedures shall identify processes to:~~

~~(1) record physician orders;~~

~~(2) order medication;~~

~~(3) arrange for all consumer medications to be organized by the team and integrated into consumers' weekly schedules and daily staff assignment schedules; and,~~

~~(4) provide security for medications (i.e., long-term indictable, daily, and longer term supplies) and set aside a private designated area for set-up of medications by the team's nursing staff; and,~~

~~(5) administer medications to program consumers.~~

~~(c) The PACT team psychiatrist shall minimally:~~

~~(1) assess each consumer's mental illness symptoms and behavior and prescribe appropriate medication;~~

~~(2) regularly review and document the consumer's symptoms of mental illness as well as his or her response to prescribed medication treatment;~~

~~(3) educate the consumer regarding his or her mental illness and effects and side effects of medication prescribed to regulate it; and ,~~

~~(4) monitor, treat, and document any medication side effects.~~

~~(d) All PACT team members shall assess and document the consumer's mental illness symptoms and behavior in response to medication and shall monitor for medication side effects.~~

450:17-5-120. Rehabilitation [REVOKED]

~~(a) The PACT program shall provide or make arrangements for rehabilitation services, which shall minimally include.~~

~~(b) Work Related Services. Work related services shall be provided as needed to help consumers find and maintain employment in community based job sites. These shall include but not limited to:~~

~~(1) assessment of job-related interests and abilities, through a complete education and work history assessment as well as on the job assessments in community based jobs;~~

~~(2) assessment of the effect of the consumer's mental illness on employment, with identification of specific behaviors that interfere with the consumer's work performance and development of interventions to reduce or eliminate those behaviors;~~

~~(3) development of an ongoing employment rehabilitation plan to help each consumer establish the skills necessary to find and maintain a job;~~

~~(4) individual supportive therapy to assist consumers to identify and cope with the symptoms of mental illness that may interfere with their work performance;~~

~~(5) on the job or work related crisis intervention; and~~

~~(6) work related supportive services, such as assistance with grooming and personal hygiene, securing of appropriate clothing, wake up calls, and transportation.~~

~~(c) Substance Abuse Services. The PACT program shall provide substance abuse services as needed by consumers. These shall include but not be limited to individual and group interventions to assist consumers to:~~

~~(1) identify substance use, effects, and patterns;~~

~~(2) recognize the relationship between substance use and mental illness and psychotropic medications;~~

~~(3) develop motivation for decreasing substance use; and,~~

~~(4) develop coping skills and alternatives to minimize substance use and achieve periods of abstinence and stability.~~

~~(d) Activities of Daily Living. The PACT program shall provide as needed services to support activities of daily living in community based settings. These shall include individualized assessment, problem solving, side by side assistance and support, skill training, ongoing supervision, e.g. prompts, assignments, monitoring, encouragement, and environmental adaptations to assist consumers to gain or use the skills required to:~~

~~(1) carry out personal hygiene and grooming tasks;~~

~~(2) perform household activities, including house cleaning, cooking, grocery shopping, and laundry;~~

~~(3) find housing which is safe and affordable (e.g., apartment hunting, finding a roommate, landlord negotiations, cleaning, furnishing and decorating, procuring necessities, such as telephone, furnishings, linens, etc.;~~

~~(4) develop or improve money management skills;~~

~~(5) use available transportation; and,~~

~~(6) have and effectively use a personal physician and dentist.~~

~~(e) Social, Interpersonal Relationship, and Leisure Time Skill Training. The PACT program shall provide as needed services to support social, interpersonal relationship, and leisure time skill training include supportive individual therapy, e.g., problem solving, role playing, modeling, and support, etc.; social skill teaching and assertiveness training; planning, structuring, and prompting of social and leisure time activities; side by side support and coaching; and organizing individual and group social and recreational activities to structure consumers' time, increase their social experiences, and provide them with opportunities to practice social skills and receive feedback and support required to:~~

~~(1) improve communication skills, develop assertiveness, and increase self esteem as necessary;~~

~~(2) develop social skills, increase social experiences, and where appropriate, develop meaningful personal relationships;~~

~~(3) plan appropriate and productive use of leisure time;~~

~~(4) relate to landlords, neighbors, and others effectively; and,~~

~~(5) familiarize themselves with available social and recreational opportunities and increase their use of such opportunities.~~

450:17-5-121. Support services [REVOKED]

~~(a) The PACT program shall provide for support services to minimally include case management, education, support, and consultation to families and other supports.~~

~~(b) Case Management. Each consumer will be assigned a primary case manager who coordinates and monitors the activities of the individual treatment team and has primary responsibility to write the treatment plan, to provide individual supportive therapy, to ensure immediate changes are made in treatment plans as consumers' needs change, and to advocate for consumer rights and preferences. The primary case manager is also the first staff person called on when the consumer is in crisis and is the primary support person and educator to the individual consumer's family. Members of the consumer's individual treatment team share these tasks with the case manager and are responsible to perform the tasks when the case manager is not working.~~

~~(c) Support Services. The PACT program shall provide support direct assistance to ensure that consumers obtain the basic necessities of daily life include but are not necessarily limited to:~~

~~(1) medical and dental services;~~

~~(2) safe, clean, affordable housing;~~

~~(3) financial support;~~

~~(4) social services;~~

~~(5) transportation; and,~~

~~(6) legal advocacy and representation.~~

~~(d) Education, Support and Consultation to Consumers' Families and Other Major Supports. The PACT program shall provide services as needed to consumers' families and other major supports for consumer families, with consumer agreement or consent, which includes the following:~~

~~(1) Education about the consumer's illness and the role of the family in the therapeutic process; or,~~

~~(2) Intervention to resolve conflict; or,~~

~~(3) Ongoing communication and collaboration, face to face and by telephone, between the PACT team and the family.~~

450:17-5-122. Staffing requirements [REVOKED]

~~(a) The PACT team shall include individuals qualified to provide the services described above, including case management; crisis assessment and intervention; symptom assessment and management; individual supportive therapy; medication prescription, administration, monitoring, and documentation; substance abuse treatment; work-related services; activities of daily living services; social, interpersonal relationship and leisure time activity services; support services or direct assistance to ensure that consumers obtain the basic necessities of daily life; and education, support, and consultation to consumers' families and other major supports.~~

~~(b) The PACT program shall employ a minimum of five full-time equivalent (FTE) clinical staff persons, in addition to one program assistant, a psychiatrist and a peer support specialist.~~

~~(c) Each PACT team shall have the following minimum staffing configuration:~~

~~(1) A full-time team leader, who is the clinical and administrative supervisor of the team and also functions as a practicing clinician on the PACT team. The team leader has at least a master's degree in nursing, social work, psychiatric rehabilitation, or psychology, or is a psychiatrist.~~

~~(2) A psychiatrist on a full-time or part-time basis for a minimum of 16 hours per week for every 50 consumers. The psychiatrist provides clinical services to all PACT consumers, works with the team leader to monitor each consumer's clinical status and response to treatment, supervises staff delivery of services, and directs psychopharmacologic and medical treatment.~~

~~(3) A minimum of five FTE licensed professionals on a team, including the team leader. The licensed professional shall be as defined in 43A O.S. §5-206(1) or be a licensed registered nurse. Required among the mental health professionals are:~~

~~(A) At least two FTE shall be registered nurses on each team; and,~~

~~(B) One or more staff mental health professionals designated for the role of vocational specialist, preferably with a master's degree in rehabilitation counseling.~~

~~(4) Remaining clinical staff shall have a bachelor's degree in a behavioral science and work experience with adults with serious mental illness(es) and paraprofessional mental health workers who carry out rehabilitation and support functions.~~

~~(5) A minimum of one half (0.5) FTE peer specialist shall be included on each team for every 50 consumers on the team. A person who is or has been a recipient of mental health services for serious mental illness holds the position. Because of their life experience with mental illness and mental health services, the peer specialist provide expertise that professional training cannot replicate. Peer specialists shall be fully integrated team members who provide highly individualized services in the community and promote consumer self-determination and decision making. Peer specialists shall also provide essential expertise and consultation to the entire team to promote a culture in which each consumer's point of view and preferences are recognized, understood, respected, and integrated into treatment, rehabilitation, and community self-help activities.~~

~~(6) Each team shall minimally have one half (0.5) FTE program assistant team for every 50 consumers on the team. Program assistants shall be responsible for organizing, coordinating, and monitoring non-clinical operations of PACT including, but not limited to managing clinical records; operating and coordinating the management information system; maintaining accounting and budget records for consumer and program expenditures; and providing receptionist activities including triaging calls and coordinating communication between the team and consumers.~~

~~(d) Service Capacity. Each PACT team shall have the organizational ability to provide a staff to consumer ratio of at least one (1) FTE staff person for every ten (10) consumers, excluding the psychiatrist and the program assistant, with no more than 120 consumers served on any given team.~~

~~(e) Staffing Roster. Each PACT team shall maintain and post a current staffing roster that includes staff work schedules and on-call duty.~~

450:17-5-123. Assessment and treatment planning [REVOKED]

~~(a) The PACT team shall maintain written assessment and treatment planning policies and procedures to assure that appropriate, comprehensive, and on-going assessment and treatment planning occur.~~

~~(b) Initial assessment and initial treatment plan. The team leader or the psychiatrist, with participation of designated team members, shall do an initial assessment and complete an initial treatment plan at the time of the consumer's admission to PACT.~~

~~(c) The team leader will assign the consumer a psychiatrist, primary case manager, and individual treatment team members within one (1) week of admission.~~

~~(d) Assessment data shall be collected and evaluated by PACT team staff with the skill and knowledge in the area being assessed within one month of the consumer's admission. Assessments shall be based upon all available information, including self reports, reports of family members and other significant parties, and written summaries from other agencies, including police, courts, and outpatient and inpatient facilities, where applicable, culminating in a comprehensive assessment.~~

~~(e) Comprehensive Assessment. The consumer's psychiatrist, primary PACT case manager, and individual treatment team members shall prepare the written comprehensive assessment and the comprehensive treatment plan within six (6) weeks of admission. Input from all team members shall be included in these individual assessments. The comprehensive assessment shall include a written narrative report for each of the following areas:~~

~~(1) Psychiatric history, mental status, and a DSM-IV diagnosis, to be completed by the PACT psychiatrist;~~

~~(2) Medical, dental, and other health needs; to be completed by a PACT registered nurse;~~

~~(3) Extent and effect of drugs or alcohol use completed by a team professional as approved by the team leader;~~

~~(4) Education and employment;~~

~~(5) Social development and functioning by a team professional as approved by the team leader;~~

~~(6) Activities of daily living, to be completed the team professional or peer specialist under the supervision of the team leader;~~

~~(7) Family structure and relationships by a team professional as approved by the team leader; and,~~

~~(8) Historical timeline by all team members under the supervision of the team leader.~~

450:17-5-124. Treatment planning [REVOKED]

~~(a) The PACT program shall have written treatment planning policies and procedures with the following treatment planning process:~~

~~(b) The PACT team shall evaluate each consumer's needs, strengths, abilities and preferences and develop an individualized treatment plan, which shall identify individual needs and problems and specific measurable long- and short- term goals along with the specific services and activities necessary for the consumer to meet those goals and improve his or her capacity to function in the community. The treatment plan shall be developed in collaboration with the consumer or guardian, if any, and when feasible, the consumer's family. The consumer's participation in the development of the treatment plan shall be documented.~~

~~(c) The PACT team shall meet at regularly scheduled times for treatment planning meetings. Treatment planning meetings shall be scheduled in advance of the meeting and the schedule shall be posted. A summary of the treatment planning meeting shall be documented in the consumer's clinical record. At each treatment planning meeting the following staff should attend: team leader, psychiatrist, primary case manager, individual treatment team members, and all other PACT team members involved in regular tasks with the consumer.~~

~~(d) Individual treatment team members shall ensure the consumer is actively involved in the development of treatment and service goals. With the permission of the consumer, PACT team staff shall also involve pertinent agencies and members of the consumer's social network in the formulation of treatment plans.~~

~~(1) Each consumer's treatment plan shall identify needs and problems, strengths and weaknesses, goals, and specific, measurable treatment objectives. The treatment plan shall clearly specify the services and activities necessary to meet the consumer's needs and who will be providing those services and activities.~~

~~(2) The following key areas shall be addressed in every consumer's treatment plan: symptom stability, symptom management and education, housing, activities of daily living, employment and daily structure, and family and social relationships.~~

~~(3) The primary case manager and the individual treatment team shall be responsible for reviewing and revising the treatment goals and plan whenever there is a major decision point in the consumer's course of treatment, e.g., significant changes in consumer's condition, etc., or at least every six months. The revised treatment plan shall be based on the results of a treatment planning meeting. Additionally, the primary case manager shall prepare a summary, i.e., treatment plan review, describing the consumer's progress since the last treatment planning meeting and outlining the consumer's current functional strengths and limitations. The plan and review will be signed or acknowledged by the consumer, the primary case manager, individual treatment team members, the team leader, the psychiatrist, and all PACT team members.~~

450:17-5-125. Discharge [REVOKED]

~~(a) Documentation of consumer discharge shall be completed within 15 days of discharge and shall include all of the following elements:~~

~~(b) The reasons for discharge;~~

~~(c) The consumer's status and condition at discharge;~~
~~(d) A written final evaluation summary of the consumer's progress toward the treatment plan goals;~~
~~(e) A plan developed in conjunction with the consumer for treatment after discharge and for follow-up;~~
~~(f) Referral and transfer to other mental health services; and,~~
~~(g) The signature of the consumer's primary PACT case manager, team leader, and psychiatrist.~~

450:17-5-126. PACT Consumer Clinical Records [REVOKED]

~~(a) Consumer Clinical Records. For each consumer, the PACT team shall maintain a treatment record that is confidential, complete, accurate, and contains up-to-date information relevant to the consumer's care and treatment.~~
~~(b) The team leader and the program assistant shall be responsible for the maintenance and security of the consumer clinical records.~~
~~(c) The consumer clinical records are located at PACT team headquarters and, for confidentiality and security, are to be kept in a locked file.~~
~~(d) The program shall comply with Subchapter 7, Facility Clinical Record requirements except for 450:17-7-5; 450:17-7-7; 450:17-7-8; and 450:17-7-12.~~

SUBCHAPTER 7. FACILITY CLINICAL RECORDS

450:17-7-3. Basic requirements

(a) The CMHC's policies and procedures shall:

(1) Define the content of the consumer record in accordance with 450:17-7-4 through 17-7-9.

(2) Define storage, retention and destruction requirements for consumer records. ODMHSAS operated CMHCs shall comply with the Department's Records Disposition Schedule as approved by the Oklahoma Archives and Records Commission.

(3) Require consumer records be ~~contained within equipment which is~~ maintained in locked equipment which is kept within a locked room, vehicle, or premise. ~~under locked, secure measures.~~

(4) Require legible entries in consumer records, signed with first name or initial, last name, and dated by the person making the entry.

(5) Require the consumer's name be typed or written on each page in the consumer record.

(6) Require a signed consent for treatment before a consumer is admitted on a voluntary basis.

(7) Require a signed consent for follow-up before any contact after discharge is made.

(b) Compliance with 450:17-7-3 shall be determined by a review of the following: facility policy, procedures or operational methods; clinical records; other facility provided documentation; and PI information and reports. A CMHC may propose administrative and clinical efficiencies through a streamlining of the requirements noted in this subchapter if client outcomes are maintained or improved and face-to-face clinical time is able to be increased by proposed reduction in recordkeeping requirements. Such proposal shall be submitted for consideration and approval by the Department.

450:17-7-5. Clinical record content, screening, intake and assessment

(a) All facilities shall complete a face-to face screening with each individual to determine appropriateness of admission.

(b) The CMHC shall document the face-to-face screening between the potential consumer and the CMHC including how the consumer was welcomed and engaged, how the consumer was assisted to identify goals and experience hope, how the consumer received integrated screening to identify both immediate and ongoing needs and how the consumer was assisted to determine appropriateness of admission, and/or to access other appropriate services.

(c) Upon determination of appropriate admission, consumer ~~assessment~~ demographic information shall be collected. ~~contain but not be limited to the following:~~

~~(1) Date, to include month, day and year of the interview or intake including re-admissions for CMHC services;~~
~~(2) Source of information;~~
~~(3) Consumer's first name, middle initial and last name;~~
~~(4) Gender;~~
~~(5) Birth date;~~
~~(6) Home address;~~
~~(7) Telephone number;~~
~~(8) Referral source;~~
~~(9) Reason for referral;~~
~~(10) Significant other to be notified in case of emergency; and~~
~~(11) ICIS intake data core content.~~

(d) All programs shall complete a psychological-social assessment which gathers sufficient information to assist the consumer in developing an individualized service plan. ~~The program shall develop a psychological-social evaluation which contains, but is not limited to the following:~~

~~(1) Identification of the consumer's strengths, needs, abilities, and preferences;~~
~~(2) History of the presenting problem;~~
~~(3) Previous treatment history, to include mental health and substance abuse;~~
~~(4) Health history and current biomedical conditions and complications;~~
~~(5) Alcohol and drug use history;~~
~~(6) History of trauma;~~
~~(7) Family and social history, including alcohol and drug use;~~
~~(8) Educational attainment, difficulties, and history;~~
~~(9) Cultural and religious orientation;~~
~~(10) Vocational, occupational and military history;~~
~~(11) Sexual history, including HIV, AIDS and STD at risk behaviors;~~
~~(12) Marital or significant other relationship history;~~
~~(13) Recreational and leisure history;~~
~~(14) Legal history;~~

~~(15) Present living arrangement;~~
~~(16) Economic resources;~~
~~(17) Level of functioning;~~
~~(18) Current support system including peer and other recovery supports;~~
~~(19) Current medications, if applicable, to record a consumer's current medications, and shall include obtainable information regarding the name of prescribing physician, name of medication, strength and dosage, and length of time consumer was on the medication;~~
~~(20) Strengths/assets and weakness/liabilities of the consumer;~~
~~(21) Consumer's expectations in terms of service; and~~
~~(22) Assessment summary or diagnosis, and signature of the assessor and date of the assessment.~~

(e) The CMHC shall have policy and procedures that stipulate content required for items (c) and (d) above as well as dictate timeframes by when intake assessment must be completed for each program service to which a client is admitted.

(f) An intake assessment update, to include date, identifying information, source of information, present needs, present life situation, current level of functioning, and what consumer wants in terms of service, is acceptable only on re-admissions within one (1) year of previous admission.

(g) Compliance with 450:450:17-7-5 shall be determined by a review of the following: psychological-social assessment instruments; consumer records; case management assessments; interviews with staff and consumers; policies and procedures and other facility documentation.

450:17-7-8. ~~Integrated~~ Behavioral Health Service plan

(a) The service plan is performed with the active participation of the consumer and a support person or advocate if requested by the consumer. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The service plan shall provide the formation of measurable service objectives and reflect ongoing changes in goals and objectives based upon consumer's progress or preference or the identification of new needs, challenges and problems.

(b) The ~~integrated~~ service plan is developed after and based on information obtained in the mental health assessment and includes the evaluation of the assessment information by the clinician and the consumer.

(c) For adults, the service plan must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(d) Comprehensive ~~integrated~~ service plans must be completed within ~~five (5)~~ six (6) treatment sessions ~~for each program service to which a consumer is admitted~~ and adhere to the format and content requirements described in the facility policy and procedures.

~~(e) Comprehensive integrated service plan contents shall address the following:~~
~~(1) Consumer strengths, needs, abilities, and preferences;~~
~~(2) Identified presenting challenges, needs and diagnosis;~~
~~(3) Goals for treatment with specific, measurable, realistic and time-limited objectives;~~
~~(4) Description of the consumer's involvement in and responses to the treatment plan and his/her signature and date;~~
~~(5) Date each objective is initiated and target date for completion;~~
~~(6) Type and frequency of services estimated to be provided;~~
~~(7) The practitioner(s) who will be providing and responsible for each service;~~
~~(8) Any needed referrals for services; and~~
~~(9) Specific discharge criteria.~~

~~(f) Service plan updates shall address the following:~~
~~(1) Progress on previous service plan goals and/or objectives;~~
~~(2) A statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;~~
~~(3) Change in goals and/or objectives (including target dates) based upon consumer's progress or identification of new need, challenges and problems;~~
~~(4) Change in frequency and/or type of services provided;~~
~~(5) Change in practitioner(s) who will be responsible for providing services on the plan;~~
~~(6) Additional referrals for needed services; and~~
~~(7) Change in discharge criteria.~~

(~~d~~e) ~~Integrated~~ Service ~~Plan~~ plan updates should occur at a minimum of every 6 months during which services are provided and adhere to the format and content requirements described in the facility policy and procedures.

(~~h~~f) Service plans, both comprehensive and update, must include dated signatures for the consumer customer (if over age 14), the parent/guardian (if under age18 or otherwise applicable), and the primary service practitioner.

(~~i~~g) Compliance with 450:17-7-8 shall be determined by a review of the clinical records~~.~~, policies and procedures, and interviews with staff and consumers, and other agency documentation.

450:17-7-9. Medication record

(a) A medication record shall be maintained on all consumers who receive medications or prescriptions through the outpatient clinic services and shall be a concise and accurate record of the medications the consumer is receiving or prescribed.

(b) The consumer record shall contain a medication record with the following information on all medications ordered or prescribed by physician staff:

~~(1) The record of medication administered, dispensed and prescribed shall include all of the following:~~

(~~A~~1) Name of medication,

(~~B~~2) Dosage,

(~~C~~3) Frequency of administration or prescribed change, and

(~~D~~4) Staff member who administered or dispensed each dose, and prescribing physician; and

(~~2~~c) A record of pertinent information regarding adverse reactions to drugs, drug allergies, or sensitivities during intake, updated when required by virtue of new information, and kept in a highly visible location in or on the record.

(~~c~~d) Compliance with 450:17-7-9 shall be determined by a review of medication records and clinical records.

450:17-7-10. Progress Notes

(a) Progress notes shall chronologically describe the services provided, the consumer's response to the services provided and the consumer's progress in treatment and adhere to the format and content requirements described in the facility policy and procedures.

~~(b) Progress notes, except for in PSR programs, shall address the following:~~

~~(1) Date;~~

~~(2) Person(s) to whom services were rendered;~~

~~(3) Start and stop time for each timed treatment service;~~

~~(4) Integrated service plan needs, goals and/or objectives addressed;~~

~~(5) Type of Service provided;~~

~~(6) Progress or lack of progress made in treatment as it relates to service plan needs, goals and/or objectives;~~

~~(7) Consumer's response, and family's response when applicable, to the treatment services provided;~~

~~(8) Any new need(s), goals and/or objectives identified during the treatment service;~~

~~(9) Signature of the service provider; and~~

~~(10) Credentials of service provider.~~

~~(c) Progress notes for PSR programs shall address the following:~~

~~(1) Date(s) attended during the week;~~

~~(2) Start and stop time(s) for each day attended;~~

~~(3) Specific goal(s) and/or objectives addressed during the week (these must be identified on the service plan);~~

~~(4) Type of skills training provided during the week;~~

~~(5) Consumer satisfaction with staff intervention(s);~~

~~(6) Progress made toward goals and objectives;~~

~~(7) Any new needed supports identified during the week;~~

~~(8) Signature of the psychiatric rehabilitation practitioner; and~~

~~(9) Credentials of the psychiatric rehabilitation practitioner.~~

(~~d~~b) Progress notes shall be documented according to the following time frames:

(1) Outpatient staff must document each visit or transaction, except for assessment completion or service plan development, including missed appointments;

(2) Community living program staff shall complete a summary note monthly identifying the name of the person served and the day(s) the person received the service;

(3) Inpatient: nursing service is to document on each shift. Each member of the treatment team shall write a weekly progress note for the first two months and monthly thereafter; and

(4) PSR staff must maintain a daily, member sign-in/sign-out record of member attendance, and shall write a progress note daily or a summary progress note weekly.

(~~e~~c) Compliance with 450:17-7-10 shall be determined by a review of clinical records and policies and procedures.

450:17-7-12. Discharge summary

(a) A discharge summary shall document the consumer's progress made in treatment; response to services rendered; and recommendation for any referrals, if deemed necessary. It shall include a discharge plan which lists written recommendations, and specific referrals for implementing aftercare services, including medications. Aftercare plans shall be developed with the knowledge and cooperation of the consumer, when possible.

(b) A discharge summary shall be entered in each consumer's record within fifteen (15) days of release, discharge, or transfer from inpatient treatment or upon discharge from facility services. Consumers who have received no services for one hundred twenty (120) days shall be discharged if it is determined that services are no longer needed or desired.

(c) ~~The discharge summary shall minimally include, but is not be limited to:~~

~~(1) Presenting problem at intake;~~

~~(2) Medication summary when applicable;~~

~~(3) Treatment provided and treatment outcome and results;~~

~~(4) Psychiatric and physical diagnosis or the final assessment;~~

~~(5) Discharge plan: Written recommendations, specific referrals for implementing aftercare services, including medications. Aftercare plans shall be developed with the knowledge and cooperation of the consumer, when possible;~~

~~(6)~~ In the event of death of a consumer: A summary statement including this information shall be documented in the record; and

~~(7) Signature of staff member, professional credentials, if any, and date.~~

(d) Compliance with 450:17-7-12 shall be determined by a review of closed consumer records.

SUBCHAPTER 9. CONSUMER RECORDS AND CONFIDENTIALITY

450:17-9-1. Confidentiality, mental health consumer information and records [REVOKED]

~~(a) Consumer records and clinical information are confidential, and are protected under the provisions of 43A O.S.§§ 109, 3-422 and 3-423; 63 O.S. § 502.2 and (U.S.) 42 CFR, Part 2. The facility shall have policy and procedures protecting this~~

~~confidentiality which shall be communicated to the consumer including, but not limited to:~~

~~(1) Medical records and all communications between consumer and doctor or psychotherapist are privileged and confidential; with such information limited to entities actively engaged in treatment of the consumer or related administrative tasks.~~

~~(2) Privileged and confidential information shall not be released to any person or entity not involved in the consumer's treatment without the written, informed consent of the consumer, or his or her guardian, or parent of a minor child, or a private or public child care agency having legal custody of the minor child.~~

~~(3) Identifying information may be released without the consent required in 450:17-9-1(a)(2) under any of the following conditions:~~

~~(A) Required to fulfill any statutorily required reporting of child abuse (10 O.S. § 7005(1.7) and abuse of elderly or incapacitated adults (43A O.S. § 10-104); and all treatment staff shall have a general knowledge of the provisions of Public Law 99-401, which amended the federal confidentiality laws to remove any restrictions on compliance with state laws mandating reporting of child abuse and neglect. (This statute requires cases involving suspected, actual or imminent harm to children must be reported to child protection agencies; and therefor, are not covered by confidentiality requirements. This provision applies only to initial reports of child abuse or neglect, and not to requests for additional information or records. Thus, court orders are still required before records may be used to initiate or substantiate any criminal charges against a consumer, or to conduct any investigation of a consumer.)~~

~~(B) Release is required as provided by 10 O.S.§§005(1.1) through 7005(1.3).~~

~~(C) On the order of a court of competent jurisdiction.~~

~~(D) Between holders of contracts with ODMHSAS having signed a qualified service agreement (43A O.S.§1-109(A)(2), as provided by said contract. These facilities shall have policy and procedures to permit transmittal of records and information regarding the care and treatment of a specific consumer as necessary and appropriate between them or ODMHSAS, or another contracted holder of a qualified service agreement.~~

~~(4) The manner of personal access of a present or former consumer to his or her records shall conform to the provisions of 43A O.S. §1-109(B).~~

~~(5) With the consent of the consumer, information may be provided to responsible family members as provided for and limited in 43A O.S. §1-109(C)(1 through 5).~~

~~(6) The reviews of records by state or federal accrediting, certifying, or funding agencies may occur to verify services, or facility compliance with statutes or regulations.~~

~~(7) A written consent for release of confidential information form shall be used, which contains and encompasses:~~

~~(A) The consumer being informed of the reason and need for the information release, the specific information to be released, and the period of time covered by the information to be released.~~

~~(B) The consumer being informed that treatment services are not contingent upon, or influenced by, his or her decision to permit the information release.~~

~~(C) The consumer's consent being given freely and voluntarily.~~

~~(D) The following information shall appear on the consent to release of confidential information form:~~

~~(i) The name and address of the facility making the disclosure of information; and the name and title of the person completing the disclosure.~~

~~(ii) The name of the person, title (if any), and name of the organization (if any) to which the information is being supplied.~~

~~(iii) The name of the consumer.~~

~~(iv) The exact extent of information being disclosed.~~

~~(v) The length of time the consent will remain valid unless otherwise revoked, in writing, by the consumer.~~

~~(vi) Signature of the consumer, or legal guardian, and the date of such signature.~~

~~(vii) Notice in bold face type stating, "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immuno-deficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS). [63 O.S. §1-1502(B)]"~~

~~(b) In addition, the facility shall have policy and procedures which shall:~~

~~(1) Limit access to records to persons with a need to know;~~

~~(2) Provide for the safe storage of consumer records under lock and key; and~~

~~(3) Provide for stated periods of retention of closed consumer records, and subsequent disposition of the records. Facilities operated by the ODMHSAS shall comply with the provisions of the Department's Records Disposition Schedule as approved by the Oklahoma Archives and Records Commission.~~

~~(c) Compliance with 450:17-9-1 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.~~

450:17-9-1.1. Confidentiality of mental health and drug or alcohol abuse treatment information

Confidentiality policy, procedures and practices must comply with federal and state law, guidelines, and standards,

and with OAC 450:15-3-20.1, OAC 450: 15-3-20.2 and OAC 450:15-30-60.

450:17-9-2. Confidentiality, substance abuse consumer information and records [REVOKED]

~~The rules governing confidentiality for mental health consumers are found in 450:17-9-1. For CMHCs evaluating or treating persons where substance abuse is a focus of the evaluation or treatment, the rules governing confidentiality of consumer substance abuse information and records as set forth in 450:18-7-3 apply and shall be complied with, as particular federal regulations (42 CFR, Part 2) apply to the release of information regarding substance abuse consumers and their records.~~

SUBCHAPTER 13. ORGANIZATIONAL AND FACILITY MANAGEMENT

450:17-13-1. Organizational and facility description

(a) The CMHC shall have a written organizational description which is reviewed annually and minimally includes:

(1) The overall target population to be served; ~~specifically including welcoming those individuals with co-occurring disorders, for whom services will be provided;~~

(2) The overall mission statement; and

(3) The annual facility goals and objectives, including the goal of continued progress for the agency in providing recovery oriented, culturally competent, trauma informed and co-occurring capable services.

(b) The CMHC's governing authority shall review and approve the mission statement and annual goals and objectives and document their approval.

(c) The CMHC shall make the organizational description, mission statement and annual goals available to staff.

(d) The CMHC shall make the organizational description, mission statement and annual goals available to the general public upon request.

(e) Each CMHC shall have in writing, by program component or service, the following:

(1) Philosophy and description of services, including the philosophy of recovery oriented and welcoming service delivery;

(2) Identity of the professional staff that provides these services;

(3) Admission and exclusionary criteria that identify the type of consumers for whom the services is primarily intended, with no exclusion criteria based on active substance use disorders;

(4) Goals and objectives, including making progress toward co-occurring capable, trauma informed, and culturally competent service delivery; and

(5) Delineation of processes to assure welcoming accessible, integrated, and co-occurring capable services and a plan for how each program component will address the needs of individuals with co-occurring disorders.

(f) The CMHC shall have written statement of the quality improvement processes, procedures and plans for attaining the organization's goals and objectives. These procedures and plans shall define specific tasks, including actions regarding the organization's co-occurring capability set target dates and designate staff responsible for carrying out the procedures and plans.

(g) Compliance with OAC 450:18-13-1 shall be determined by a review of the facility's target population definition; facility policy and procedures; mission statement; written plan for professional services; other stated required documentation; and any other supporting documentation.

SUBCHAPTER 15. PERFORMANCE IMPROVEMENT AND QUALITY MANAGEMENT

450:17-15-1.1. Performance improvement program

(a) The CMHC shall have an ongoing performance improvement program designed to objectively and systematically monitor, evaluate and improve the quality of consumer care.

(b) The Performance improvement program shall also address the fiscal management of the organization.

(c) The facility shall have an annual written plan for performance improvement activities. The plan shall include but not be limited to:

(1) Outcomes management specific to each program component which minimally measures:

(A) efficiency;

(B) effectiveness; and

(C) consumer satisfaction.

(2) A quarterly quality consumer record review to evaluate and ensure, among others:

(A) the quality of services delivered;

(B) the appropriateness of services;

(C) patterns of service utilization;

(D) consumers are provided an orientation to services, and actively involved in making informed choices regarding the services they receive;

(E) assessments are thorough, timely and complete;

(F) treatment goals and objectives are based on, at a minimum,

(i) assessment findings, and

(ii) consumer input;

(G) services provided are related to the treatment plan goals and objectives;

(H) services are documented as prescribed by policy; and

(I) the ~~treatment~~ service plan is reviewed and updated as prescribed by policy.

(3) Clinical privileging;

(4) Review of critical and unusual incidents and consumer grievances and complaints; and

(5) Improvement in the following:

(A) co-occurring capability, including the utilization of self-assessment tools as determined or recommended by ODMHSAS;

(B) provision of trauma informed services;
(C) provision of culturally competent services; and
(D) provision of consumer driven services~~.~~; and

(6) Activities to improve access and retention within the treatment program, including an annual "walk through" of the intake and admission process.

(d) The CMHC will identify a performance improvement officer.

(~~d~~e) The CMHC shall monitor the implementation of the performance improvement plan on an ongoing basis and makes adjustments as needed.

(~~e~~f) Performance improvement findings shall be communicated and made available to, among others:
(1) the governing authority;
(2) facility staff; ~~and~~
(3) consumers;
(4) stakeholders; and
(5) ODMHSAS, as ~~if and when~~ requested.

(~~f~~g) Compliance with 450:17-15-1.1 shall be determined by a review of the written program evaluation plan; written program evaluations (annual and or special or interim; program goals and objectives; and other supporting documentation provided).

450:17-15-5. Critical ~~Incident~~ incident reporting

(a) The facility shall have written policies and procedures requiring documentation and reporting of critical incidents and analysis of the contributors to the incident, with attention to issues that may reflect opportunities for system level or program level improvement.

(b) The documentation for critical incidents shall ~~contain,~~ minimally include:
(1) the facility, name and signature of the person(s) reporting the incident;
(2) the name(s) of the consumer(s), staff member(s) or property involved;
(3) the time, date and physical location of the critical incident;
(4) the time and date the incident was reported and name of the staff person within the facility to whom it was reported;
(5) a description of the incident;
(6) resolution or action taken, date action taken, and signature of appropriate staff; and
(7) severity of each injury, if applicable. Severity shall be indicated as follows:
(A) No off-site medical care required or first aid care administered on-site;
(B) Medical care by a physician or nurse or follow-up attention required; or
(C) Hospitalization or immediate off-site medical attention was required;

(c) Critical incidents shall be reported to ODMHSAS with specific timeframes, as follows:
(1) Critical incidents requiring medical care by a physician or nurse or follow-up attention and incidents requiring hospitalization or immediate off-site medical attention shall be delivered via fax or mail to ODMHSAS Provider Certification within twenty-four (24) hours of the incident being documented.
(2) Critical incidents involving allegations constituting a sentinel event or consumer abuse shall be reported to ODMHSAS immediately via telephone or fax, but not more than twenty-four (24) hours of the incident. If reported by telephone, the report shall be followed with a written report within twenty-four (24) hours.

(d) Compliance with 450:17-15-5 shall be determined by a review of facility policy and procedures; ~~copies of~~ critical ~~incidents~~ incident reports at the facility~~;~~ and those ~~reports of incidents~~ submitted to ODMHSAS, performance improvement program documents and reports, and staff interviews.

SUBCHAPTER 21. STAFF DEVELOPMENT AND TRAINING

450:17-21-1. Staff qualifications

(a) All staff who provide clinical services shall have documented qualifications or training specific to the clinical services they provide within the CMHC.

(b) Staff qualifications for contracted entities shall be in compliance with 450:1-1-1.1 and 450:1-3-5.

(~~b~~c) Compliance with 450:17-21-1 shall be determined by a review of staff personnel files and other supporting documentation provided.

[OAR Docket #10-987; filed 6-9-10]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 18. STANDARDS AND CRITERIA FOR ALCOHOL AND DRUG TREATMENT PROGRAMS

[OAR Docket #10-988]

RULEMAKING ACTION:
PERMANENT final adoption
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Chapter 18. Standards and Criteria for Alcohol and Drug Treatment Programs [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306, 3-306.1 and 3-315; 74 O.S. §85.9G.
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

In an effort to provide increased clarity and uniformity, Chapter 18 definitions have been changed to be more congruent with like definitions in Chapter 17. Other changes have also been made throughout Chapter 18 to further clarify terms used and to reflect terms that are more current, and additional language has been added to further operationalize service functions. Also, qualifications for individual's providing behavioral health services at state-operated facilities or pursuant to contract with the Department have been deferred to Chapter 1 to allow for greater consistency in defining similar terms as well as ease in locating.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.
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 DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES, 1200 NE 13TH STREET, OKLAHOMA CITY, OKLAHOMA 73152-3277, 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:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 18 are part of the Department's review of Title 450. The proposed rules are intended to clarify existing rules, improve processes, and are intended to comply with statutory changes.

In an effort to provide increased clarity and uniformity, Chapter 18 definitions have been changed to be more congruent with like definitions in Chapter 17. Other changes have also been made throughout Chapter 18 to further clarify terms used and to reflect terms that are more current, and additional language has been added to further operationalize service functions. Also, qualifications for individual's providing behavioral health services at state-operated facilities or pursuant to contract with the Department have been deferred to Chapter 1 to allow for greater consistency in defining similar terms as well as ease in locating

[OAR Docket #10-988; filed 6-9-10]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 50. STANDARDS AND CRITERIA FOR CERTIFIED BEHAVIORAL HEALTH CASE MANAGERS

[OAR Docket #10-989]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
450:50-1-2. Definitions
Subchapter 3. Behavioral Health Case Manager Certification Application
450:50-3-1. Qualifications for certification [AMENDED]
450:50-3-2. Applications for certification [AMENDED]
450:50-3-3. Duration of certification [AMENDED]
450:50-3-4. Fees [AMENDED]
450:50-3-5. Fitness of applicants [AMENDED]
450:50-3-7. Classifications of Certified Behavioral Health Case Managers [NEW]
Subchapter 5. Behavioral Health Case Manager Certification Training and Web-based Competency Exam
450:50-5-1. Case management certification training [AMENDED]
450:50-5-4. Continuing education requirements [AMENDED]
450:50-5-5. Web-based competency exam [NEW]
Subchapter 7. Rules of Professional Conduct
450:50-7-1. Responsibility and scope of practice [AMENDED]
450:50-7-2. Consumer welfare [AMENDED]
450:50-7-3. Reimbursement for services rendered [AMENDED]
450:50-7-4. Professional standards [AMENDED]
450:50-7-5. Failure to comply [AMENDED]
Subchapter 9. Enforcement
450:50-9-1. Enforcement [AMENDED]
Subchapter 11. Complaint Process and Investigation/resolution of Complaints [NEW]
450:50-11-1. Complaints of Professional Conduct [NEW]
450:50-11-2. Reviewing complaints [NEW]
450:50-11-3. Investigation [NEW]
450:50-11-4. Filing of an action [NEW]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306 and 3-318.
DATES:
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Submitted to Governor:
March 30, 2010
Submitted to House:
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Submitted to Senate:
March 30, 2010
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2010
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 50 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes.
CONTACT PERSON:
Stephanie Kennedy, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3871.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

450:50-1-2. Definitions

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

"Board" means the State Board of Mental Health and Substance Abuse Services.

"Case management" means the application of principles and practices of linking, advocacy and referral in partnership with a consumer to support the consumer in self-sufficiency and community tenure.

"Certified ~~behavioral health case manager~~ Behavioral Health Case Manager or CBHCM" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health case management services as one of the three (3) classifications of case manager within the confines of a mental health facility or drug or alcohol treatment facility that is operated or certified by the Department or contracts with the State to provide behavioral health services.

"Commissioner" means the Commissioner of Mental Health and Substance Abuse Services.

"Consumer" means an individual who is receiving or has received services

(evaluation or treatment) from a facility operated or certified by ODMHSAS or with which

ODMHSAS contracts and includes all persons referred to in Title 450, Chapters 16, 17, 18, 19 and 23 of the Oklahoma Administrative Code as client(s) or patient(s) or resident(s) or a combination thereof.

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

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103 (11).

"Provisionally Certified Behavioral Health Case Manager" means a person who has met the requirements of the Department's web-based competency exam in behavioral health case management.

"Web-Based Competency Exam" as prescribed by the ~~department~~ Department is a competency exam individuals must pass to become provisionally or fully certified.

"36-Months Experience" means twenty (20) or more hours work or volunteer experience per week over the course of time indicated with persons living with mental illness and/or substance abuse.

450:50-1-3. Authority of the Commissioner and Department

(a) The Commissioner shall have the authority and duty to issue, renew, revoke, deny, suspend and place on probation certifications to offer behavioral health case management and shall have authority to reprimand ~~certified behavioral health case managers~~ Certified Behavioral Health Case Managers.

(b) The Department shall have authority to:

(1) Receive and deposit fees as required by 43A O.S. § 3-318(C);

(2) Examine all qualified applicants for ~~certified behavioral health case management~~ Certified Behavioral Health Case Management;~~; and~~

(3) Investigate complaints and possible violation of the rules and standards of ~~behavioral health case managers.;~~ Certified Behavioral Health Case Managers;

(4) Make recommendations regarding the outcome of formal complaints; and

(5) Enforce the recommendations of the formal complaint process.

SUBCHAPTER 3. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION APPLICATION

450:50-3-1. Qualifications for certification

(a) Each applicant for certification as a behavioral health case manager shall:

(1) Be currently employed at a mental health facility, or a drug or alcohol treatment facility that is operated or certified by the Department or contracts with the State to provide behavioral health services;

~~(2) Attend the requisite case management certification training offered by the Department~~

(~~3~~2) Possess good moral ~~character~~ turpitude;

(~~4~~3) Be at least 21 years of age; and

(~~5~~4) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-318.

(b) In addition to the qualifications specified by subsection (a) of this rule, an applicant for a certification as a ~~behavioral health case manager~~ Certified Behavioral Health Case Managers shall~~:~~ possess one of the following:

~~(1) Possess one of the following:~~

(~~A~~1) ~~Certified Behavioral Health Case Manager III:~~ Licensed Mental Health Professional or Licensed Alcohol and Drug Counselor;

(~~B~~2) ~~Certified Behavioral Health Case Manager II:~~ bachelor's or master's degree in a behavioral health related field which includes but is not limited to psychology, social work, occupational therapy, family studies, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency studies, school guidance and counseling, rehabilitative services, sociology, or criminal justice, earned from a regionally accredited college or university recognized by the United States Department of Education, a current license as a registered nurse in Oklahoma, or a current certification as an alcohol and drug counselor in Oklahoma; or

~~(C) Certified Behavioral Health Case Manager I: have completed 60 college credit hours; or High school diploma with 36 total months of experience working with persons who have a mental illness. Applicants must verify experience by submitting a letter from employer(s) verifying length of employment and documenting job responsibilities during employment.~~

(3) Have one of the following qualifications:

(A) Have completed 60 college credit hours; or

(B) High school diploma, or equivalent, with 36 total months of direct, documented experience working with persons who live with a mental illness and/or substance abuse issues.

450:50-3-2. Applications for certification

(a) Applications for certification as a ~~behavioral health case manager~~ Certified Behavioral Health Case Manager shall be submitted electronically ~~made in writing~~ to the Department on a form and in a manner prescribed by the Commissioner or designee. ~~The application shall be accompanied by the application fee and official education transcripts.~~

(b) An application shall include the following ~~documents~~ items.

(1) Application form completed in full according to its instructions;

(2) Official college or university transcript(s); ~~or documentation of current status as a licensed mental health professional in the state of Oklahoma in lieu of official university transcript(s) to evidence completion of a completed bachelor's degree, or documentation of current certification as an alcohol and drug counselor in the state of Oklahoma, or current licensure as a registered nurse in the state of Oklahoma; and~~

(3) Documentation of current status as a licensed mental health professional in the state of Oklahoma or documentation of current license as an alcohol and drug counselor in the state of Oklahoma, or current licensure as a registered nurse in the state of Oklahoma to evidence completion of a completed bachelor's degree;

(~~3~~4) Fees

(5) Verification of work experience or volunteer experience (if applicable) shall be submitted on a Department approved form only

(A) The verification form(s) from the employer or volunteer agency must be sent to ODMHSAS by the employer or volunteer agency.

(B) Volunteer work must be time spent directly with persons who have a mental illness, co-occurring or substance abuse disorder.

(c) A complete application must be submitted at least fourteen (14) days prior to attending ~~case manager~~ Certified Behavioral Health Case Manager certification training.

~~(d) An applicant, who meets the requirements for certification and otherwise complied with this Chapter, shall be eligible for certification.~~

(d) Applications shall be submitted and approved by the Department prior to eligibility of taking the case management exam.

(e) Applications shall only be valid for a period up to six (6) months.

(f) Applicants shall have no violations of moral turpitude or misconduct as set forth in these rules during time of application process.

(g) An applicant, who meets the requirements for certification and otherwise complied with this Chapter, shall be eligible for certification.

450:50-3-3. Duration of certification

(a) Certification issued pursuant to this Chapter shall require renewal annually ~~every two (2) years~~ from the year of issuance unless revoked. Certified ~~behavioral health case managers~~ Behavioral Health Case Managers must renew their certification prior to December 31 of the renewal year and ~~every two (2) years~~ annually thereafter.

(b) ~~A certification may be renewed by ODMHSAS upon application and payment of fees.~~ Renewal shall be accomplished by submitting the renewal application, annual report of continuing education units with accompanying documentation, and the renewal fee.

(c) A certification not renewed by the December 31 deadline will be suspended. A suspended certification may be renewed by submitting required fees and documentation of continuing education within ~~12~~ six (6) months of the expiration date. Certificates not renewed within ~~the 12~~ six (6) months will not be reinstated.

(d) A certification that was not renewed within the period provided and was not reinstated, must wait a period of sixty (60) days before reapplying and shall submit a new application.

450:50-3-4. Fees

(a) **Application Fee.** Twenty-five dollars ($25.00) shall be submitted with the application form.

(b) **Renewal Fee.** Fifteen dollars ($15.00) shall be submitted with the renewal application and required continuing education documentation.

(c) **Late Renewal Fee.** An additional twenty-five dollars ($25.00) shall be ~~submitted~~ included with the Renewal Fee ($15.00), renewal application, and required continuing education documentation if the certification is renewed after the December 31 deadline.

(d) **Replacement Fee.** Ten dollars ($10.00) shall be submitted to replace a certificate that has been lost, damaged or in need of revision.

450:50-3-5. Fitness of applicants

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as a Certified Behavioral Health Case Manager and to set forth the criteria by which the Commissioner will determine the fitness of the applicants.

(b) The substantiation of any of the following items related to the applicant may be, as the Commissioner or designee determines the basis for the denial of or delay of certification of the applicant:

(1) Lack of necessary ~~skill~~ skills and abilities to provide adequate services;

(2) Misrepresentation on the application or other materials submitted to the Department ~~committee~~; or

(3) A violation of the rules of professional conduct set forth in this Chapter.

~~(c) The following materials may be used to determine fitness of the applicant:~~

~~(1) Evaluations of supervisors or instructors;~~

~~(2) Allegations of consumers; and~~

~~(3) Transcripts or other findings from official court, hearing or investigative procedures.~~

(c) The Department shall obtain document(s) necessary to determine the fitness of an applicant.

(d) The Department may require explanation of negative references prior to issuance of certification.

450:50-3-7. Classifications of Certified Behavioral Health Case Managers

(a) Certified Behavioral Health Case Manager III: Licensed Mental Health Professional or Licensed Alcohol and Drug Counselor;

(b) Certified Behavioral Health Case Manager II: bachelor's or master's degree in a behavioral health related field which includes but is not limited to psychology, social work, occupational therapy, family studies, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency studies, school guidance and counseling, rehabilitative services, sociology, or criminal justice, earned from a regionally accredited college or university recognized by the United States Department of Education, a current license as a registered nurse in Oklahoma, or a current certification as an alcohol and drug counselor in Oklahoma; or

(c) Certified Behavioral Health Case Manager I: have completed 60 college credit hours; or High school diploma (or equivalent) with 36 total months of experience working with persons who have a mental illness and/or substance abuse issues.

SUBCHAPTER 5. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION TRAINING AND WEB-BASED COMPETENCY EXAM

450:50-5-1. Case management certification training

(a) The purpose of this section is to delineate the training requirements for each of the three classifications of Certified Behavioral Health Case ~~Manager~~ Managers (CBHCM).

(b) The Department shall have the authority and responsibility for providing case management training classes on a regular basis but no less than six times during the year.

~~(c) The case management certification training consists of a web-based competency exam and a class that focuses on case management issues of persons receiving services in mental health facilities, or drug or alcohol treatment facilities operated by the Department or contracted with the State to provide behavioral health services. Applicants passing the web-based competency exam will be provisionally certified for six months. CBHCM III applicants passing the web-based competency exam will become fully certified.~~

(~~d~~c) Certified Behavioral Health Case Manager I Training requirements - Meet the requirements for successful completion of the web-based competency exam and complete fourteen (14) hours of case management training as specified by the department.

(~~e~~d) Certified Behavioral Health Case Manager II Training requirements - Meet the requirements for successful completion of the web-based competency exam and complete seven (7) hours of case management training as specified by the department.

(~~f~~e) Certified Behavioral Health Case Manager III Training Requirements - Meet the requirements for successful completion of the web-based competency exam.

(f) Case management certification training must be completed during the provisional certification period. Once the provisional certification period has ended, the provisionally certified case manger that has not completed the training must wait a period of sixty (60) days before reapplying, and shall submit a new application.

(g) Enrollment to the certification training is not permitted without the successful completion of the web-based competency exam.

450:50-5-4. Continuing education requirements

(a) Certified ~~behavioral health case manager~~ Behavioral Health Case Managers must complete twelve (12) hours continuing education per year and submit documentation of the continuing education to ODMHSAS annually for consideration. ~~every two (2) years~~.

(b) Continuing education is acceptable when it~~:~~ provides information to enhance delivery of case management services and;

~~(1) Provides information to enhance delivery of case management services; or~~

(~~2~~1) Meets the requirements for LPC, LMFT, LBP, LCSW, CADC, LADC, or CME continuing education; or

(~~3~~2) Is a ~~required~~ undergraduate or graduate course in a behavioral health related field and pertains to direct interaction with consumers (three hours of course work is equal to twelve (12) hours of CEUs ~~in service~~).

(4) The ODMHSAS Director of Community Based Services or designee shall approve all in-house/agency trainings that are provided for the intent of submitting towards case management CEUs (unless they meet the requirement in 450:50-5-4(b)(2). Certified case managers shall not submit more than three (3) hours of these approved CEUs annually towards their required minimum.

(c) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers must complete, as part of their required twelve (12) hours annually, three (3) hours of ethics training every year. Ethics training must meet the requirements for LPC, LMFT, LBP, LCSW, CADC, LADC or CME ethics training; and annually, three (3) hours of training related to Strengths-Based/Recovery Principles.

(d) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall retain documents verifying attendance for all continuing education hours claimed for the reporting period. Documentation shall be submitted upon the request of the Department. Acceptable verification documents include:

(1) An official continuing education validation form furnished by the presenter; or

(2) A letter or certificate from the organization sponsoring the training ~~agency~~ verifying name of program, presenter, ~~and~~ number of hours attended, ~~and~~ participant's name, and approval by licensure board; or

(3) An official grade transcript verifying completion of the undergraduate or graduate course. Ethics or Strengths based curriculum training must be verified with a course syllabus or other information submitted with official transcript.

(e) Failure to complete the continuing education requirements and submit the required documentation by the renewal date renders the certification in suspension, and results in the loss of all rights and privileges of a ~~certified behavioral health case manager~~ Certified Behavioral Health Case Manager. The Certified Behavioral Health Case Manager certification may be reinstated during a period of no longer than ~~12~~ six (6) months following the suspension date. If not reinstated the certification shall become null and void. The Certified Behavioral Health Case Manager has the right to renew the certificate by payment of renewal fees ($15.00) and late renewal fees ($25.00) and documentation of obtaining twelve (12) hours of continuing education. ~~for each of the two prior years.~~

450:50-5-5. Web-based competency exam

(a) Applicants passing the web-based competency exam will be provisionally certified as a Certified Behavioral Health Case Manager I or II for six months. CBHCM III applicants passing the web-based competency exam will become fully certified.

(b) The web-based competency exam shall not be administered until approval from ODMHSAS has been received.

(c) Applicants shall comply with the rules of the examination process as outlined by the contracted testing site.

(d) Applicants who fail to complete and pass the web-based competency exam within six (6) months of application must reapply.

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

450:50-7-1. Responsibility and scope of practice

(a) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall be dedicated to advancing the welfare of individuals, and children and their families. Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall not participate in, condone, or be associated with dishonesty, fraud, deceit or misrepresentation, and shall not exploit their relationships with the consumers for personal advantage, profit, satisfaction, or interest.

(b) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall practice only within the boundaries of their competence based on their education, training, supervised experience, state and national accreditations and licenses.

(c) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall only use the title if employed by the state or a private or nonprofit behavioral health services provider contracting with the state to provide behavioral health services.

(d) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers may not practice any of the following professions or use the following titles unless also licensed or accredited by the appropriate authority: physician, psychologist, clinical social worker, professional counselor, marital and family therapist, behavioral practitioner or alcohol and drug counselor.

(e) Certified Behavior Case Managers shall adhere to the following code of ethics that are set within the rules of this chapter and set forth by the Department.

(1) Certified Behavioral Health Case Managers shall be committed to respect the dignity and autonomy of all persons that is to include, but is not limited to professional relationships with clients (or former clients), supervisees, students, employees, or research participants in efforts to maintain the highest standards of their practice.

(2) Certified Behavioral Health Case Managers shall terminate service to clients, and professional relationships with them, when such service and relationships are no longer required or in which a conflict of interest arises.

(3) Certified Behavioral Health Case Managers shall be aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with members of such groups. They shall also eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices or influence.

(4) Certified Behavioral Health Case Managers shall be obligated to report witnessed, involved, or reported ethical violations without violation of any confidentiality rights that may be involved. Certified Behavioral Health Case Managers shall be obligated to follow steps of reporting professional misconduct as set forth by the Department and in this chapter.

(5) Certified Behavioral Health Case Managers shall give precedence to his or her professional responsibility over personal interests.

(f) Certified Behavioral Health Case Managers shall not exploit their relationships with current or former clients, supervisees, students, employees, or others, sexually or otherwise, for personal advantage, profit, satisfaction, or interest.

(1) Certified Behavioral Health Case Managers shall be committed to each individual's rights of their own life choices and recovery journey by letting them direct their own healing process.

(2) Certified Behavioral Health Case Managers shall keep confidential all information entrusted except when to do so puts the consumer at grave risk. Case Managers will be obligated to explain the limits of confidentiality initially in the professional working relationship.

(3) If the demands of an affiliated organization for whom the Certified Behavioral Health Case Manager is

working, is in conflict with these ethics, the issues must be clarified and resolved to allow adherence to the Rules of professional Conduct code set forth in this chapter.

(g) Certified Behavioral Health Case Managers shall provide services with populations and in areas only within the boundaries of their competence, based on education, training, supervised experience, consultation, study or professional experience.

(1) Certified Behavioral Health Case Managers that delegate or assign work to employees, supervisee, or assistants must take reasonable steps to see that such person performs the services competently.

(2) Certified Behavioral Health Case Managers are eligible to provide certified behavioral health case management services that would not lead to conflict of interest, exploitation of relationship, loss of objectivity and based on education, training or experience.

(3) Certified Behavioral Health Case Managers shall provide clients at the beginning of service written, accurate and complete information regarding the extent and nature of the services available to them, to include fees and manner of payment.

(4) Certified Behavioral Health Case Managers shall not solicit the clients of one's agency for private practice or to change service locations.

(5) Certified Behavioral Health Case Managers shall not commit fraud and shall not represent that she or he performed services which they did not perform.

450:50-7-2. Consumer welfare

(a) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall not, in the rendering of their professional services, participate in, condone, and promote discrimination on the basis of race, color, age, gender, religion, disability and or limitation or national origin.

(b) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers must be aware of their influential positions with respect to consumers and not exploit the trust and dependency of consumers. Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall refrain from dual relationships with consumers because of the potential to impair professional judgment and to increase the risk of harm to consumers. Examples of such relationships include, but are not limited to familial, social, financial, business, and professional or close personal relationships with consumers.

(1) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall not have any type of sexual contact with consumers and shall not provide case management services to persons with whom they have had a sexual relationship.

(2) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall not engage in sexual contact with former consumers for at least two (2) years after terminating the professional relationship.

(c) If ~~certified behavioral health case managers~~ Certified Behavioral Health Case Managers determine that they are unable to be of professional assistance to a consumer, the Certified Behavioral Health Case Manager shall refer the consumer to appropriate sources when indicated. If the consumer declines the referral the Certified Behavioral Health Case Manager shall terminate the relationship.

(d) CBHCM shall report any violation of professional conduct by a CBHCM as outlined in this chapter.

(e) The Department shall conduct itself in a manner to intervene in an immediate action to protect a consumer(s) according to the guidelines and rules provided, to prevent further detriment to any consumer.

450:50-7-3. Reimbursement for services rendered

Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall practice case management services only if employed by the State or a private or nonprofit behavioral health services provider contracting with the state to provide behavioral health services. As an employee of a state or a private or nonprofit behavioral health provider reimbursement for services rendered will not be collected outside of the agency's system of service reimbursement.

450:50-7-4. Professional standards

(a) It shall be unprofessional conduct for a Certified Behavioral Health Case Manager or applicant to violate a state or federal statute if the violation is directly related to the duties and responsibilities of the counselor or if the violation involves moral turpitude.

(b) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall not render professional services while under the influence of alcohol or other mind or mood altering drugs.

(c) Certified ~~behavioral health case managers~~ Behavioral Health Case Managers shall notify the Department of any change in name, address, telephone number and employment if the case manager will continue to provide case management services as defined by 450:50-1-2 in the new employment setting.

450:50-7-5. Failure to comply

A provisionally certified or Certified Behavioral Health Case Manager who does not comply with the Rules of Professional Conduct (450:50-7-1) or consumer welfare (450:50-7-2) shall be guilty of unprofessional conduct and subject to disciplinary action.

SUBCHAPTER 9. ENFORCEMENT

450:50-9-1. Enforcement

(a) ODMHSAS may impose administrative sanctions, including revocation, suspension, non-renewal of certification and reprimand, against ~~certified behavioral health case managers.~~ Certified Behavioral Health Case Managers.

(b) All proceedings, hearing and appeals shall be conducted in accordance with Chapter 1 of the Rules of ODMHSAS, Title

450 Oklahoma Administrative Code and the Administrative Procedures Act.

SUBCHAPTER 11. COMPLAINT PROCESS AND INVESTIGATION/RESOLUTION OF COMPLAINTS

450:50-11-1. Complaints of Professional Conduct

If ODMHSAS determines that a possible violation of any rules set forth in this Chapter has occurred, ODMHSAS may commence an investigation of the complaint pursuant to this Chapter and Title 450 OAC Chapter 1.

[OAR Docket #10-989; filed 6-9-10]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-941]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Individual Proceedings
535:1-7-3. Hearings [AMENDED]
535:1-7-6. Hearing records and record maintenance [AMENDED]
535:1-7-7. Final orders [AMENDED]
535:1-7-8. Appeal [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-3. Practical experience licenses and certificates [AMENDED]
535:1-11-4. Other fees ~~Public access, open records~~ [AMENDED]
535:1-11-5. Miscellaneous [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3)
DATES:
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Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revisions in 535:1-7-3 describes changes in notice for continuance requirements. The removal of the portion of rule 535:1-7-6 regarding retaining tape recordings under hearing records and maintenance as it is covered in the Administrative Procedures Act (APA).

The change in 535:1-7-7 will correct grammar in the final order rule language. Revisions of 535:1-7-8 removes language that is already better covered under the APA. The revisions in Subchapter 7 are additionally at the recommendation of our Assistant Attorney General liaison.

The revisions 535:1-11-1 add the fee for a pharmacy license as authorized under 353.18 (A) for a long-term care pharmacy remote site. The change in 535:1-11-3 updates the fee for pharmacy intern to better reflect the cost of maintaining and following Oklahoma pharmacy interns. The revision in 535:1-11-4 clean up the language describing other fees and it adds a fee for certified letters of good standing or letters of verification that take a good deal of staff time. Revisions in 535:1-11-5 are updating for the changes made in HB 1180 to special inspection and fine fees.
CONTACT PERSON:
Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE JULY 11, 2010:

SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

535:1-7-3. Hearings

(a) **Notice time; continuances.** The time set for a hearing, specified in the notice, shall not be less than ten (10) days after the date of the notice. Written motions for any continuances or extensions of time shall state the time desired and the reasons for the request~~.~~, and shall be filed with the Board at least five (5) business days before the hearing, and may be denied by the Director of the Board if not filed at least (five) 5 business days before the hearing. The Board hereby authorizes the Director of the Board to rule on said motions. Said application shall be served upon the Director of the Board and be acted upon promptly by the Director; if the motion for continuance or extension is denied; the party may renew the request and make a proper showing for continuance at the hearing.

(b) **Imminent Danger Suspension.** If the Director finds there is imminent danger to the public health or safety, he or she may immediately suspend any registration simultaneously with the scheduling of a Board hearing.

(1) **Method.** The registrant shall be notified of such suspension through an imminent danger letter signed by the Director.

(2) **Notice.** Notice shall be given in the manner described in 535:1-7-2.

(c) **Order of procedure.** The hearing shall be conducted in an orderly manner by the President of the Board, or his designee. The order of procedure will follow that which applies in civil proceedings of Law. However, the rules of evidence shall be those specified by the Oklahoma Administrative Procedures Act.

(d) **Admissibility.** The President of the Board, or his designee, shall rule upon the admissibility of evidence and objections thereto, and shall rule upon other motions or objections arising in the course of the hearing.

535:1-7-6. Hearing records and record maintenance

(a) **Recordings.** A record by means of tape recording or shorthand notes will be made of all hearings conducted by the Board of Pharmacy unless the presiding officer designates otherwise.

(1) Oral proceedings during Board hearings shall be electronically recorded.

(A) The record of the hearing and the file containing the pleading will be maintained in the Board Office.

(B) Such record and recordings shall be maintained for such time as to protect the record through judicial review. ~~The tape recordings of the proceedings shall be maintained for a period of one year or for such time as necessary to protect the record through judicial review whichever is more.~~

(2) Copies of the recordings of the proceedings shall be provided by the agency at the request of any party to the proceedings.

(b) **Transcription costs.** The costs of transcription of the recordings shall be borne by the party requesting the transcription. A transcript of the proceedings shall not be made except upon written application and a deposit sufficient in the amount to pay for having the record transcribed.

(c) **Judicial review.** Electronic recordings of an individual proceeding, as certified by the agency, may be submitted to the reviewing court by the agency as part of the record of the proceedings under review. In such case where the reviewing court requires transcription the expense of transcriptions shall be paid by the non-prevailing party.

(d) **Court reporter.** Parties to any Board hearing may have the proceedings transcribed by a court reporter at their own expense.

535:1-7-7. Final orders

All final orders in individual proceedings shall be in writing. The final order shall include findings ~~or~~ of fact and conclusions of law, separately stated. A copy of the final order will be mailed forthwith to each party.

535:1-7-8. Appeal

A petition for rehearing is not required before an appeal may be perfected. A petition for rehearing, reopening or reconsideration of a final order may be filed with the ~~Director of~~ Board within ten (10) days from the entry of the order. It must be signed by the party or his attorney or representative and must set forth with particularity the statutory grounds upon which it is based. ~~However, a petition for rehearing based upon fraud by any party or procurement of the order by perjured testimony or fictitious evidence may be filed at any time.~~

SUBCHAPTER 11. FEES

535:1-11-1. Annual licenses, permits and renewals

Annual license, permit and renewal fees, as set by the Board, shall be as follows:

(1) Pharmacist renewal (active or inactive) - $ 75

(2) Senior inactive pharmacist renewal (age 65 or over, retired) - $20

(3) Pharmacy license

(A retail, hospital, and non-resident) - $150

(B) Charitable clinic - $ 75

(C) Hospital drug room - $ 40

(D) Long term care pharmacy remote site - $50

(4) Parenteral permit - $ 75

(5) Drug supplier permit - $ 20

(6) Wholesaler permit - $200

(7) Packager permit - $200

(8) Manufacturer permit - $200

(9) Medical gas supplier permit- $100

(10) Medical gas distributor permit - $200

(11) Pharmacy technician permit - $40

(12) Duplicate renewal receipt, permit, or practical experience certificate:

(A) Duplicate for lost, destroyed or damaged original - $10

(B) Duplicate or multiple location copy - $10

535:1-11-3. Practical experience licenses and certificates

Practical experience license and certificate fees, as set by the Board, shall be as follows:

(1) Intern certificate - ~~$ 50~~ $100

(2) Training area certificate - $25

(3) Training area ~~triennial~~ renewal - $10

(4) Preceptor certificate - $25

(5) Preceptor ~~triennial~~ renewal - $10

535:1-11-4. Other fees ~~Public access, open records~~

(a) ~~Public access, open record~~ For all records required to be open by the Oklahoma Open Records Act, fees shall be charged for copying as specified in the open records act. ~~Such public records fees, as set by the Board,~~

(b) Other fees shall be as follows:

(1) Registrant computer address disk or e-mailed file:

(A) Facility (wholesaler, packager, manufacturer) - $50

(B) Pharmacy - $75

(C) Technician - $100

(D) Intern - $100

(E) Pharmacist - $100

(2) Photostat copies, per page - $.25

(3) Facsimile (Fax) fee, per page - $1

(4) Annual subscriptions (7/01 - 6/30 each year)

(A) Notification of rulemaking intent - $18

(B) OSBP/NABP Quarterly Voluntary Compliance Newsletter for other than Oklahoma registered Pharmacists - $25

(C) Board meeting agenda notice - $18

(5) Research time, when available (per hour)

(A) Staff research time - $20

(B) Computer research time - $100

(6) Reproduction of Board meeting recordings, if available;

(A) Audio tape copy (per tape), $15

(B) Video tape copy (per tape), $15

(7) Certification of public record, not certification of grades, $1.00 per page.

(8) Certified letters of good standing or licensure verification, $10

(~~b~~c) Open records, available and obtained from our website www.pharmacy.ok.gov - no charge.

535:1-11-5. Miscellaneous

Miscellaneous fees, as set by the Board, shall be as follows:

(1) Oklahoma State Board of Pharmacy lawbook - $10

(2) Duplicate certificate of registration - $30

(3) Certification of grades - $10 - (exempt if ELTP)

(4) Special inspection fee (each) Not to exceed - ~~$100~~ $200

(5) Pharmacist Reinstatement: Back fees + CE + 15 hours CE penalty + $100

(6) Fines (not to exceed on each count) - ~~$1,000~~ $3,000

(7) Duplicate for lost/destroyed license, renewal receipt, permit, or practical experience certificate - $10.

(8) Late fee for renewal of registration, licenses and/or permits if not received by the Board office within 15 days after expiration date - $ fee x 2

(9) Insufficient check charge - $25

(10) Reinstatement of permits or licenses other than pharmacists - $ fee x 2

[OAR Docket #10-941; filed 5-27-10]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 10. PHARMACISTS; AND INTERNS, PRECEPTORS AND TRAINING AREAS

[OAR Docket #10-942]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Pharmacists
535:10-3-1.2. Violations of professional conduct [AMENDED]
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-3. Intern requirements; licenses [AMENDED]
535:10-5-4. Intern practice requirements [AMENDED]
535:10-5-8. Preceptor requirements [AMENDED]
535:10-5-9. Training area requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-4. General requirements for pharmacist licensure applicants [AMENDED]
535:10-7-10. Pharmacist reinstatement [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

This corrected notice adds "or should have known" in 535:10-3-1.2 (3). It includes the rule changes in the first notice as follows: The rule revisions include changes in 535:10-3-1.2 (24) - (27) that add to violations of professional conduct the failure by the pharmacist of pharmacist in charge to fulfill their responsibilities in under the rules of 535:15. It adds dispensing outdated drugs, failure to cooperate in Board investigations, failure to adequately supervise pharmacy interns or pharmacy technicians as violations. It corrects535:10-3-1.2 (20) to use a Board approved law exam.

The revision in 535:10-5-3 corrects numbering and cleans up language. In 535:10-5-4 will not allow a licensed intern to work in any capacity if a preceptor is not on duty. The rules in 535:10-5-8 and 535:10-5-9 change preceptor and training licenses to run together with pharmacist and pharmacy licenses after December 31, 2011.

The changes in 535:10-7-4, Oklahoma law examination requirements, allow the Board to choose which law examination to use; such as the NABP Multiple State Licensure jurisprudence/law examination which allows access to nationwide computer testing. It corrects 535:10-7-10 (f) to use a Board approved law exam.

CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE JULY 11, 2010:

SUBCHAPTER 3. PHARMACISTS

535:10-3-1.2. Violations of professional conduct

Violations of the rules of professional conduct, which may also be called unprofessional conduct, include, but are not limited to, the following:

(1) The act of violating directly, indirectly, through actions of another, assisting in or abetting the violation of, or conspiring to violate, any provision or term of the Oklahoma State Board of Pharmacy, Title 59, 353 et seq., the Prescription Drug Marketing Act (21 U.S.C., Sec. 331 et seq.), the Robinson-Patman Act (15 U.S.C., Sec. 13 et seq.), or federal, state and local laws and rules governing pharmacists or pharmacies.

(2) Failure to establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(3) Making or filing a report or record which a pharmacist or pharmacy knows or should have known to be false, intentionally or negligently failing to file a report or record required by federal, state or local laws or rules, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records include only those which the pharmacist or pharmacy is required to make or file in his capacity as a licensed pharmacist or pharmacy.

(4) Practicing pharmacy without reasonable skill and safety by reason of illness, use and/or abuse of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(5) Knowingly dispensing a prescription drug after the death of a patient.

(6) Knowingly billing or charging for quantities greater than delivered, or for a brand when a generic or a compounded product is dispensed.

(7) Submitting fraudulent billing or reports to a third party payor of prescription drugs.

(8) Refusing to answer reasonable questions or provide information about prescriptions dispensed by the pharmacy when requested by, or for, the patient and which would aid the patient's health in the professional judgement of the pharmacist.

(9) Not attempting to resolve a possible prescription error; or situation of potential harm to the patient when apparent or should have been apparent to the pharmacist.

(10) Not attempting to address the possible addiction or dependency of a patient to a drug dispensed by the pharmacist, if there is reason to believe that the patient may be dependent or addicted.

(11) The assertion or inference in a public manner of material claims of professional superiority in the practice of pharmacy that cannot be substantiated.

(12) The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy.

(13) Discriminating in any manner between patients or groups of patients for reasons of a particular disease, religion, race, creed, color, sex, age or national origin.

(14) Violating patient confidentiality. This does not prevent pharmacies from providing drug therapy information to physicians for their patients, nor does it prevent the provision of information as required by law.

(15) Theft while practicing pharmacy.

(16) Knowingly dispensing prescription drug refills after the death of a physician. (A limited quantity may be allowed for the patient's health and safety.)

(17) Failure to establish and maintain effective controls to prevent prescription errors or mis-fills.

(18) The misfilling of a prescription that departs from the standards of care ordinarily exercised by a pharmacist with proof of actual injury not having to be established.

(19) Providing fictitious information, fraud or misrepresentation in applying for or procuring a pharmacist license, preceptor certificate or other permit, or in connection with applying for or procuring periodic re-registration or renewal of the same.

(20) Attempting to cheat or subverting the pharmacist licensure examination, ~~Oklahoma~~ law examination, ~~Oklahoma~~ preceptor examination or any other examination required by the Board.

(21) Allowing a non-pharmacist to perform any of the duties reserved to a pharmacist.

(22) Use or abuse of an illegal CDS substance or a positive drug screen for such illegal CDS substance or its' metabolite.

(23) Violation of any voluntary or Board ordered rehabilitation program for the impaired contract, e.g. OPHP contract.

(24) Failure of pharmacist or pharmacy manager (pharmacist in charge) to fulfill the responsibilities as set out in 535:15.

(25) Dispensing outdated prescription drugs.

(26) Failure to cooperate in Board investigations.

(27) Failure by the pharmacist to adequately supervise a pharmacy technician or a pharmacy intern; working or scheduling an intern when there is no supervising pharmacist preceptor present or working or scheduling a technician when there is no pharmacist supervising.

SUBCHAPTER 5. INTERNS, PRECEPTORS AND TRAINING AREAS

535:10-5-3. Intern requirements; licenses

~~(a)~~ A registered intern shall be defined as a student having completed fifty (50) college hours of credit, with an overall average of not less than "C", currently enrolled and attending classes and in good standing in an accredited college of pharmacy in a PharmD in Pharmacy program, or

~~(b)~~ a graduate of an accredited college of pharmacy not otherwise eligible for registration as an intern or pharmacist, except as provided in 535:10-7-8.

(1) The Board of Pharmacy shall be notified by the Pharmacy Colleges in Oklahoma

(A) when a student is not continuously enrolled in a college of pharmacy in an accredited Pharmacy program; or,

(B) when a pharmacy student is not in good standing - or when a pharmacy student's ~~for~~ overall grade point average is less than "C";

(C) Then an intern license or registration is automatically void and the intern shall return such license to the Board.

(2) Such intern may apply for a new intern license when the Board is notified by the college of pharmacy that the applicant is in good standing in a PharmD ~~in~~ Pharmacy program and actively attending classes provided the provisions of these regulations have not been violated by the intern.

(3) An intern shall notify the Board when requesting the transfer of intern hours to another state of any intent not to return to Oklahoma; or, within ten (10) days of becoming licensed as a pharmacist in another state.

(4) An intern certificate becomes void five (5) years after date of issuance or at such other date as set by the Board.

535:10-5-4. Intern practice requirements

(a) **Supervision requirement.** An intern may practice in an approved training area only under the immediate visual supervision of a preceptor, except as described in 535:10-5-4-(a) (3). See also 535:10-5-2.

(1) A preceptor may supervise only one intern at a time.

(2) A ratio of one (1) faculty preceptor with up to two (2) interns will be allowed in a pro-practice rotation.

(3) Non-dispensing pro-practice rotations are to be supervised by a preceptor, but immediate visual supervision is not required.

(4) An intern may not be on duty in any capacity without a licensed pharmacist preceptor on site and supervising the intern.

(b) **Professional Conduct.** Interns will be held accountable to the rules and violations of professional conduct. The professional conduct rules for interns will be the same as required by 535:10-3-1.1 and 535:10-3-1.2 for pharmacists.

(c) **Employment notification.** All licensed pharmacy interns shall notify the Board of Pharmacy, in writing, of the place of their non-college practice within ten (10) days of going to work and/or termination of this practice location. The pro-practice employment location notification will be the responsibility of the college of pharmacy.

535:10-5-8. Preceptor requirements

A person who has been licensed as a registered pharmacist and engaged in the practice of pharmacy for a period of not less than one (1) year and is currently licensed as an Oklahoma pharmacist is eligible to apply for preceptor exam and certificate, as allowed under this section. The preceptor fee for original examination and certification shall be set by the Board.

(1) Any pharmacist desiring approval as a preceptor must make application to the Board on a form supplied by the Board. The Board will consider the requirements and qualifications listed in this section and in 535:25-3 at a minimum. Preceptors will be issued identifying certificates by the Board, which must be conspicuously posted in the training area where they practice.

(A) All preceptors shall successfully complete an examination, prepared by the Board, relating to this Subchapter and pharmacy law and rules. Said examination shall be made a part of the application for certification as a preceptor.

(B) After December 31, 2011 ~~All~~ all preceptors will have to renew their certification ~~by examination every three years~~ at each renewal date of their doctor of pharmacy license for a fee set by the Board.

~~(C) Preceptor renewal of certification will be effective January 1, 2000 and expire December 31, 2002, 2005 and every three years on a calendar year basis.~~

(2) Preceptors must show themselves to be interested in pharmacy as a profession, and at the same time instruct the intern in all operations of their training area.

(3) Preceptors will supervise only one intern at a time, except as allowed under 535:10-5-4(a).

(4) Preceptor evaluation report(s) shall be submitted by the preceptor at least by the end of each two hundred and forty (240) hours or upon termination of the intern as required under 535:10-5-5(b).

(5) No pharmacist shall be approved or continue as a preceptor, who is under probation or suspension by the Board, or who has been convicted of a felony which was drug related. After practicing two (2) years on probation the pharmacist may request permission from the Board to apply for a new preceptor certificate. A pharmacist will have to apply for a new preceptor certificate after completion of probation and/or suspension by the Board.

535:10-5-9. Training area requirements

(a) **Pharmacies.** Any pharmacy desiring approval for the training of interns shall make application to the Board of Pharmacy on a form supplied by the Board. The Board will consider the requirements and qualifications listed in 535:25-3 at a minimum. A pharmacy approved as a training area shall conspicuously display its training area certificate in the pharmacy, and be subject to the following provisions:

(1) Such pharmacy shall be subject to inspection by the Board.

(2) Such pharmacy shall agree to furnish the necessary preceptor(s) under whose supervision the intern will be allowed to perform the duties outlined in this Subchapter. The number of interns practicing in a training area is limited to the number of preceptors present and on duty in a training area.

(3) No pharmacy under probation or suspension by the Board shall be approved as a training area. A pharmacy will not be able to continue as a training area under the above conditions. A pharmacy must apply for a new training area certificate and be approved by the Board after completion of probation and/or suspension.

(4) All training areas shall submit reports as required by the Board.

(5) The Board shall set the training area original certification fee.

(6) All training areas shall renew their certification for a fee set by the Board.

(7) ~~Training area renewal certification will be effective January 1, 2000 and expire December 31, 2002, 2005 and every three years thereafter.~~ After December 31, 2011, all training areas will renew their certification when the pharmacy license is renewed.

(b) **Unique or specific training areas.** Any Oklahoma college of pharmacy may apply to the Board for approval of a specific or unique training area. This training area shall be subject to Subsection (a) (1), (2), (4) and (5) of this Section.

(c) **Changes.** Changes of pharmacy location, name or ownership shall require a new training area certificate.

SUBCHAPTER 7. PHARMACIST LICENSURE

535:10-7-4. General requirements for pharmacist licensure applicants

(a) All applicants for Oklahoma pharmacist licensure shall meet the statutory requirements in O.S. 59, Section 353.9, the rules of this Title and subchapter, and the requirements regarding applicants in 535:25.

(b) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with public health and safety.

(c) The Board must approve all applicants for Oklahoma pharmacist licensure as required in Title 59 O.S. 353.9.

(d) All applicants may be required to appear before the Board for interview. If interview is required, the applicant must communicate with the Board in a satisfactory manner.

(e) To be eligible for pharmacist licensure all applicants shall successfully pass ~~the Oklahoma~~ a Board approved jurisprudence examination and/or any licensure examination required by the Board including but not limited to NAPLEX.

(1) Should an applicant fail the pharmacist licensure and/or the ~~Oklahoma Pharmacy Board~~ jurisprudence examination(s) twice the Board may require evidence of additional education before further re-examination.

(2) Providing the applicant fails three times, the Board may deny the applicant further examination.

(f) Applicants shall be forthright and open in the provision of information to the Board in the application process. Applicant shall be candid in regards to providing information related to any academic misconduct, malpractice, legal, or disciplinary action. No license shall be issued to an applicant who does not provide the Board with complete, open and honest responses to all requests for information.

(g) All applicants shall complete the licensure process in a diligent and forthright manner.

(1) An application for licensure may be cancelled by the Board for failure to make a legitimate effort to complete the licensure process within 90 days. An applicant(s) licensure process not completed within one year shall be cancelled.

(2) All cancelled applications are null and void and the applicant must begin the entire licensure process again including, but not limited to any applications, fees, and exams required.

535:10-7-10. Pharmacist reinstatement

(a) A pharmacist reinstatement applicant shall be an individual who possesses a pharmacist certificate of registration that was cancelled at request or for failure to renew.

(1) A pharmacist who possesses a revoked certificate is not eligible for reinstatement.

(2) Cancelled pharmacists' records are kept for a limited time. If a pharmacist's record has been destroyed the applicant is not eligible for reinstatement. In this case the applicant shall follow the requirements in 535:10-7 to obtain pharmacist licensure.

(b) A pharmacist reinstatement applicant shall meet the requirements in the Oklahoma Pharmacy Act, this Title, 535:10-7-4, 535:10-7-9 and this section.

(c) A pharmacist reinstatement applicant shall send a written request to the Board.

(d) Reinstatement applicants shall submit a satisfactorily completed Board approved reinstatement application together with the requirements and fees.

(e) Applicants may be required to appear before the Board for interview as described in 535:10-7-4(c).

(f) Applicants may be required to take the ~~Oklahoma~~ Board approved law exam as described in 535:10-7-4(d).

(g) The applicant shall meet any additional requirements that the Board feels are necessary to protect public health.

(h) Reinstatement will be required when the suspension of a non-current pharmacist's certificate ends or when the suspension is placed on probation.

[OAR Docket #10-942; filed 5-27-10]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #10-943]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
535:15-1-1. Purpose [AMENDED]
Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4. Physical requirements for pharmacies [AMENDED]
535:15-3-9. Non-resident pharmacies [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-3. Applicability [AMENDED]
535:15-5-4. Registration [AMENDED]
535:15-5-10. Director of pharmacy responsibilities [AMENDED]
Subchapter 6. Hospital Drug Rooms
535:15-6-1. Purpose [AMENDED]
535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
Subchapter 9. Parenteral Pharmacy Permits
535:15-9-6. Parenteral pharmacy physical requirements [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-5. Supervision of pharmacy technicians [AMENDED]
535:15-13-8. Technician annual permit requirement [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, and 354.

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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revision in 535:15-1.1 adds clarity to the purpose statement. Compliance with the rules of this Subchapter is the responsibility of the pharmacist manager, the pharmacy, and in some cases the pharmacist is added. Revisions in 535:15-3-2 clarifies the responsibilities of the pharmacist and pharmacy manager. The revision also requires the district manager of pharmacies to be licensed as a pharmacist in the state of Oklahoma. The revision in 535:15-3-4 requires pharmacies be located in a commercial location; it clarifies the minimum temperature for hot water; updates the poison and exempt narcotic book requirements; and it clarifies who may make balance exceptions. This revision also removes the requirement that a pharmacy have sterilization equipment. The revision in 535:15-3-9 requires non-resident pharmacies to be in a commercial location.

The revision in 535:15-5-3 updates the applicability statement to improve clarity. The change in 535:15-5-4 adds minimum hours for hospital pharmacies. The revision in 535:15-5-10 clarifies the wording under (d) adverse drug events program and under (j) further describes staffing requirements.

The rule revision in 535:15-6-1 clarifies the rules apply to the drug room, the pharmacist; and/or pharmacist in charge. The revision in 535:15-6-5 allows a drug room with a full-time pharmacist, who more than meets the 52 routine visits to documentation using their daily reports. This rule also requires the establishment and maintenance of effective controls against diversion of prescription drugs.

The change in 535:15-9-6 expands the library selection for parenteral pharmacy permits.

The rule revisions in 535:15-13-5 requires pharmacist, pharmacy managers and the pharmacy to be responsible to supervise and/or assure supervision takes place for pharmacy technicians. The revision in 535:15-13-8 regarding technician annual permit clarifies what the Board must review concerning applicants regarding arrests, charges, etc. and clarifies what suspension and revocation the Board shall consider.
CONTACT PERSON:
Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

535:15-1-1. Purpose

(a) The rules of this Chapter regulate the sale or storage of drugs, medicines, chemicals and poisons and the dispensing of drugs and medicines in all places where drugs and medicines are compounded, dispensed or stored.

(b) The rules of this Chapter concern all places, including premises, equipment, contents and records, where drugs, medicines, chemicals or poisons are sold, stored, vended, given away, compounded, dispensed or manufactured~~.~~, or the profession of pharmacy is practiced.

(c) The rules of this Chapter further describe the Board's authority and duty to take and copy records and the duty to confiscate all drugs, medicines, chemicals or poisons found to be sold, stored, vended, given away, compounded, dispensed or manufactured contrary to the provisions of Title 59 O.S., Section 353 et seq.

(d) The rules of this Chapter prescribe minimum standards with respect to floor space and other physical characteristics of pharmacies, including retail pharmacies with drug supplier and parenteral permits, and Hospital pharmacies, which are necessary to the maintenance of professional surroundings and to the protection of the safety and welfare of the public, and which are required to receive new or renewal licenses or to close a pharmacy.

(e) Compliance with the rules of this Chapter is the responsibility of both the pharmacy and pharmacy manager, and in some cases, the pharmacists working in the pharmacy.

SUBCHAPTER 3. PHARMACIES

535:15-3-2. Pharmacy responsibilities

(a) **Pharmacy staffing responsibility.** Each pharmacy shall employ an adequate number of pharmacists to perform the practice of pharmacy as defined by the Oklahoma Pharmacy Act with reasonable safety.

(b) **Pharmacy manager.** Each pharmacy, in order to obtain and maintain a pharmacy license, must have a registered pharmacist as the pharmacy manager.

(1) A pharmacy manager (i.e. pharmacist in charge) is designated by his signature on the original pharmacy application or by the appropriate notification to the Board as required in 535:15-3-10(a), and is responsible for all aspects of the operation related to the practice of pharmacy. These responsibilities include, but are not limited to the:

(A) supervision of all employees as they relate to the practice of pharmacy;

(B) establishment of policies and procedures for safekeeping of pharmaceuticals that satisfy Board requirements, including security provisions when the pharmacy is closed;

(C) proper record keeping system for the purchase, sale, delivery, possession, storage, and safekeeping of drugs;

(D) proper display of all licenses;

(E) annual controlled drug inventory; and,

(F) maintenance of prescription files;

(2) Failure of the pharmacy to have a pharmacy manager who fulfills these responsibilities is a violation of this code by both the pharmacy and pharmacy manager (PIC).

(~~2~~3) No pharmacist may serve as a pharmacy manager in more than one pharmacy at a time.

(~~3~~4) A pharmacy manager shall work sufficient hours in the pharmacy to exercise control and meet the responsibilities of the pharmacy manager.

(c) **Pharmacy manager's and pharmacy's responsibilities.** The following describe responsibilities of the pharmacy and pharmacy manager.

(1) Where the actual identity of the filler of a prescription is not determinable, the manager of the pharmacy and the pharmacy where the prescription was filled will be the subject of any charges filed by the Board of Pharmacy.

(2) The pharmacy and the pharmacy manager are responsible to establish and maintain effective controls against prescription errors or misfills.

(3) The pharmacy and/or pharmacy manager shall notify the Board immediately by certified mail of the separation of employment of any pharmacist, pharmacy intern, or pharmacy technician for any suspected or confirmed drug or pharmacy related violation. If the pharmacy manager (PIC) is terminated for such reason, the owner or other person in charge of the pharmacy shall notify the Board~~.~~ by certified mail.

(4) Establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(5) The pharmacy, pharmacist and pharmacy manager are responsible for supervision of all employees as they relate to the practice of pharmacy.

(d) **Responsibility for automated pharmacy systems.** This subsection describes the responsibilities of the pharmacy and the pharmacy manager for automated pharmacy systems.

(1) Prior written notice must be provided to the Board of the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to the:

(A) name and address of the pharmacy,

(B) name of pharmacy manager,

(C) name of the manufacturer & model of system.

(2) The system being implemented should conform to Board automated pharmacy system guidelines.

(3) The pharmacy shall monitor the automated pharmacy system with a quality assurance program.

(e) **Responsibilities for personnel identification.** The pharmacy manager and the pharmacy are responsible to assure that the public be able to distinguish pharmacy technicians, auxiliary support personnel, and/or interns from any pharmacist in the pharmacy.

(1) All pharmacy technicians, auxiliary support personnel, and/or interns must wear a designation tag and be distinctly identifiable from a practicing pharmacist.

(2) Designation tags must be clear, readable and lettered with "Rx Tech", "Tech", "Clerk", or "Intern".

(3) All pharmacy interns, technicians or clerks must identify themselves as such on any phone calls initiated or received while performing pharmacy functions.

535:15-3-4. Physical requirements for pharmacies

The following are physical requirements for pharmacies:

(1) **Size.** The prescription department shall occupy no less than 125 square feet, and shall be in a commercial location and not a personal dwelling or residence.

(2) **Sanitary facilities.** There shall be installed the proper sanitary facilities which shall include a sink with hot (minimum 104 degrees F) and cold running water separate from the restroom facilities.

(3) **Balances.** There shall be one set of prescription balances with capacity from 1/10 grain to at least one (1) ounce. If the pharmacy proves to the Board that the practice of pharmacy at this particular site does not require weighing of drugs and/or ingredients, an exception may be made by the Executive Director of the Board to the balances requirement.

(4) **Graduates.** There shall be graduates scaled in both metric and apothecary measure sufficient in size and number to assure proper operation of the prescription department.

(5) **Spatulas.** There shall be spatulas of sufficient size and number to assure its proper operation.

(6) **Mortars and pestles.** There shall be mortars and pestles of sufficient size and number to assure its proper operation.

~~(7) **Sterilization.** There shall be installed sufficient equipment with which to perform all necessary sterilization procedure or heat processes common to the ordinary prescription department.~~

(~~8~~7) **Library.** There shall be the necessary library which has been prescribed and standardized by the Board of Pharmacy in Section 535:15-3-6.

(~~9~~8) **Refrigeration.** There shall be sufficient refrigeration facilities to store all necessary biologicals, injectables, suppositories and other products requiring refrigeration. This refrigerator shall be entirely separate from the storage of any food products in open packages.

(~~10~~9) **Exempt narcotic book.** There shall be a book suitable for the registration of all sales of exempt narcotics~~.~~ if such are sold or dispensed.

(~~11~~10) **Poison Book.** There shall be a book suitable for the registration of all sales of poisons in accordance with applicable laws~~.~~ if such are sold or dispensed.

(~~12~~11) **Filing.** There shall be a system of filing for all prescriptions which shall be kept for a period of not less than five (5) years.

(~~13~~12) **Containers.** There shall be sufficient stock of containers suitable for the dispensing of all prescriptions both for internal and external usage.

(~~14~~13) **Labels.** There shall be sufficient stock of labels both for the dispensing of prescriptions and the sale of medicines and chemicals. Label requirements described in Title 59 O.S. Section 353.13A(C)

535:15-3-9. Non-resident pharmacies

(a) **Definitions. "Non-resident pharmacy"** means a pharmacy, not located in Oklahoma, which ~~that~~ transacts or does business in Oklahoma by soliciting, receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(b) **Licensing requirements.** A non-resident pharmacy shall:

(1) make application and receive an annual non-resident pharmacy license at a fee set by the Board;

(2) maintain in good standing a pharmacy license in its resident state; and,

(3) comply with the Oklahoma Secretary of State requirements for conducting business in this state.

(4) be in a commercial location and not a personal dwelling or residence.

(c) **Laws and regulations.** Oklahoma pharmacy laws and regulations shall apply to the practice of pharmacy for the Oklahoma portion of the nonresident pharmacy's practice or operation.

(1) The pharmacist manager (pharmacist in charge (PIC)) and all other pharmacists performing pharmacist-only functions in Oklahoma licensed non-resident pharmacies must be currently licensed in the state in which they are practicing.

(2) The pharmacist manager (PIC) and/or pharmacy owner(s), or partners, or corporate officer(s) shall be responsible for compliance with Oklahoma laws and regulations pertaining to the provisions of receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(3) The requirement of 535:15-3-9 (c) and (e) shall apply only to the extent that such requirements are consistent with the laws and rules of the pharmacy's resident state.

(d) **Inspections.** Non-resident pharmacies are subject to inspection as follows:

(1) Oklahoma pharmacy inspectors may conduct on-site periodic routine inspections during reasonable business hours; or

(2) The Oklahoma Board may request copies of the resident state Board of Pharmacy's periodic routine inspection reports.

(e) **Records.** Prescription records documenting prescriptions delivered and distributed to Oklahoma residents shall be identifiable, readily retrievable and available for Board review.

(1) Records must be maintained for not less than five years.

(2) Patient records shall comply with 535:15-3-14.

(3) Schedule II, III, and IV prescription records should be sent to the Oklahoma Control Reporting program as set out in Title 63 of the Oklahoma Statutes.

(f) **Counseling services.** Non-resident pharmacies shall provide an accessible toll-free telephone counseling service with a licensed pharmacist for patient drug inquiries during regular working hours. The counseling provided shall comply with the pharmaceutical care requirements listed in OAC 535:10-9.

(g) **Prescription integrity.** A pharmacy shall not increase the quantity of a prescription without the authorization of the prescriber.

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-3. Applicability

The rules of this Subchapter are applicable to all hospitals and hospital pharmacies, as defined by 535:15-5-2 and may, if specified, apply to drug rooms. Compliance with the rules of this Subchapter is the responsibility of the hospital pharmacy, and the Director of Pharmacy, and may be for the individual pharmacist employed in the hospital pharmacy.

535:15-5-4. Registration

(a) **Registration.** All hospital pharmacies shall register annually with the Board of Pharmacy; hospital pharmacy licenses shall be issued only to those hospital pharmacies that satisfy the provisions of Section 353.18(A) of the Oklahoma Pharmacy Act, and all rules of this Title.

(b) **Minimum hours.** A hospital pharmacy shall be staffed with licensed pharmacist and be open for a minimum of four days a week and for a minimum of at least 32 hours per week to the standards listed in 535:15-5-10 (j).

535:15-5-10. Director of Pharmacy responsibilities

(a) **Written procedures.** The Director of Pharmacy shall establish written procedures for the safe and efficient acquisition, distribution, storage, and utilization of pharmaceutical products with any of the federal legends such as "Rx Only" and medications administered or used in the hospital system. Such procedures shall be annually reviewed and a current copy shall be on hand for Board inspection.

(b) **General responsibilities.** The Director of Pharmacy shall be responsible for the safe and efficient purchasing, acquisition, monitoring, distribution, control, security, and accountability of all drugs including, but not limited to, federal legend drug products used in diagnostic procedures, I.V. fluids, or contained in supply kits. The other professional staff of the hospital facility shall cooperate with the Director in meeting this responsibility. The Director shall be responsible for, at a minimum, the following:

(1) Preparing and sterilizing parenteral medications prepared within the hospital facility.

(2) Admixing parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information when the admixture of parenteral products is not accomplished within the hospital pharmacy.

(3) Preparing drug products including unit dose.

(4) Establishing specifications for procurement of all materials, including drugs, chemicals and biologicals used within pharmacy practice, subject to approval of the appropriate committee of the hospital facility.

(5) Participating in the development and maintenance of a formulary for use within the hospital facility.

(6) Filling and dispensing all drugs which are to be administered within the hospital facility.

(7) Maintaining and making available a sufficient inventory of pharmaceuticals, including antidotes and other emergency drugs, for use within the hospital facility. In addition, current references, antidote information, and telephone numbers of regional reference centers such as Poison Centers and Drug Information Centers shall be maintained and readily available throughout the hospital.

(8) Maintaining records of all transactions of the hospital pharmacy required by applicable local, state, and federal law, and necessary to maintain accurate control and accountability for all pharmaceutical materials.

(9) Participating in those aspects of the hospital facility's patient care evaluation programs that relate to pharmaceutical material utilization and effectiveness.

(10) Cooperating fully with teaching and/or research programs in the hospital facility, if any.

(11) Implementing the policies and decisions of the appropriate committees of the hospital, which deal with drug distribution and drug utilization.

(12) Meeting all inspection and other requirements of the Oklahoma Pharmacy Act, and the rules and regulations governing the practice of pharmacy within a hospital facility.

(13) Establishing guidelines for the safe and effective distribution of drugs intended for floor stock, and their subsequent administration.

(14) Initial and continuing training of pharmacy technicians.

(c) **Confidentiality.** The Director of Pharmacy shall have direct responsibility for the security and integrity of any patient pharmacy information, confidential and non-confidential, and must comply with all federal and state laws and regulations applicable to the hospital pharmacy.

(1) Rules regarding confidentiality of patient records are described in 535:15-3-14(e); and,

(2) Responsibilities for confidentiality shall be as set forth in 535:10-3-1.1 and 535:10-3-1.2 and the rules of this Title.

(d) **Adverse Drug Events program.** The Director of Pharmacy shall develop and maintain a program to monitor the actual and potential adverse drug events including pharmacist interventions, medication errors, and adverse drug reactions for all medications utilized in the hospital to include system wide programs if an integrated system is involved.

(1) Policies indicating the tracking, review, and outcome of the adverse drug events shall be kept current and available for Board inspection.

(2) ~~Type 1 Deficiencies assessed by the JCAHO for failure to meet standards in Patient Care Medication Use Standards~~ Sentinel events, direct impact findings, and root cause analyses involving drugs and/or Medication Management Standards of The Joint Commission shall be maintained and be available for Board inspection.

(e) **Investigational drug programs.** The Director of Pharmacy shall maintain a file for review by the Board of all investigational drug protocols open and closed that have been approved by the hospital Investigational Review Board.

(f) **Discontinued drug orders.** The Director of Pharmacy shall develop and implement policies and procedures to insure that discontinued drugs, outdated drugs, and containers with worn, illegible or missing labels are returned to the pharmacy for proper disposition.

(g) **Controlled drug accountability.** The hospital facility shall maintain adequate records regarding the use and accountability of controlled substances and such other drugs as the hospital may designate; and as directed by the Oklahoma State Bureau of Narcotics and the Federal Drug Enforcement Administration. The Director of Pharmacy shall establish effective written procedures to implement this requirement.

(h) **Drug recall procedures.** The Director of Pharmacy shall develop and implement a written recall procedure that can be readily activated which assures that drugs involved, inside or outside of the facility, are returned to the pharmacy for proper disposition. All actions taken in this area are to be properly documented and maintained for 36 months for Board review.

(i) **Records and reports.** The Director of Pharmacy shall maintain and submit, as appropriate, such records and reports as are required to insure patient health, safety and welfare. These should include the following:

(1) Adverse drug reaction reports.

(2) Floor stock inventories of night cabinets and emergency boxes.

(3) Inventory listing of the pharmacy.

(4) Controlled substance inventory.

(5) Ethyl alcohol inventory.

(6) Pharmacy and therapeutic committee minutes.

(7) Reports and records as required by law and/or rules.

(8) Outpatient prescriptions shall contain all information required by pharmacy law and rule.

(j) **Pharmacist staffing.** The Director of Pharmacy shall maintain adequate staffing levels of pharmacist to insure pharmaceutical patient-focused care support. This staffing shall be a sufficient number of additional registered pharmacists as may be required to operate such a pharmacy competently, safely and adequately to meet the needs of the patients of the hospital facility as to meet requirements described in 535:15-5-4.

(k) **Automated dispensing systems.** The Director of Pharmacy shall maintain control to insure that direct pharmacist intervention and responsibility (and certification of medication order) is present and consistent in any cycle of automated dispensing from acquisition of product through the terminal dispensing act prior to administration to the patient of any medication as described in these rules.

(1) The Board must be provided with prior written notice of the installation or removal, or major upgrade that physically changes the operation of automated dispensing systems.

(2) Such notice must include, but is not limited to the:

(A) name and address of the pharmacy;

(B) location of the automated equipment;

(C) identification of the pharmacist-in-charge; and

(D) name of manufacturer and model of system;

(3) Along with such notice, submit a copy of the automated dispensing system quality assurance plan to the Board for review.

(4) The terminal act of automated dispensing must be to a licensed caregiver (nurse or practitioner not intended to include medication technician's or CMA's) in the hospital facility in no more than a 24-hour supply of medication that has been reviewed by a pharmacist.

SUBCHAPTER 6. HOSPITAL DRUG ROOM

535:15-6-1. Purpose

The rules of this Subchapter, as authorized under Title 59 O.S. Section 353.7 and 353.18(a) establish the rules for all hospital drug rooms. Compliance with these rules are the responsibility of the hospital drug room, the pharmacist in charge, and may be for pharmacists working in the drug room.

535:15-6-5. Drug room and PIC responsibilities and duties

(a) **Responsibilities.** Responsibilities of the hospital drug room and PIC include drug purchasing, acquisition, preparation, distribution, monitoring, security, storage and control.

(1) **Written procedures.** The hospital drug room and PIC shall establish written procedures for the safe and efficient acquisition, distribution, and utilization of all medicine products with any of the Federal legends such as "RX only" and medications administered or distributed in the hospital system. A current copy of such procedures shall be available for review by the Board.

(2) **General Responsibility.** The hospital drug room and PIC shall be responsible for the safe and efficient monitoring, distribution, control, purchasing, acquisition and accountability of all drugs including but not limited to Federal legend drug products used in diagnostic procedures, I.V. fluids, or contained in supply kits excluding blood bank products and reagents controlled by the laboratory. The other professional staff of the hospital facility shall cooperate with the pharmacist in meeting this responsibility.

(3) **Confidentiality.** The hospital drug room and PIC shall have responsibility for establishing policies for the security and integrity of any patient information, confidential and non-confidential, and must abide by all relevant State and Federal regulations applicable to the hospital system.

(4) **Adverse Drug Events Program.** The hospital drug room and PIC shall develop and maintain a program to monitor the actual and potential adverse drug events including pharmacist interventions, medication errors, and adverse drug reactions for all medications utilized in the hospital to include system wide programs if an integrated system is involved. Records indicating the tracking, review, and outcome of the Adverse Drug Events shall be kept current and available for Board inspection.

(5) **Investigational drug programs.** The PIC shall establish a policy for investigational drug use.

(6) **Review of medication orders.** The PIC shall cause medication orders to be reviewed by a pharmacist in a timely manner.

(7) **Pharmacists Visits.** The hospital drug room and PIC shall cause and document a minimum of 52 routine in-house visits per year to be made to a hospital with a drug room as required by health department rule OAC 310:667-21-2(a) et seq.

(A) No more than 2 visits in any 7-day period shall be counted towards this minimum.

(B) Visits in any calendar month shall be no less than 2.

(C) The PIC shall submit a report outlining issues encountered and decisions made during visits. A copy of this report shall be available in the hospital drug room for inspection by the Board.

(D) A licensed hospital drug room employing a full-time pharmacist is not required to document the 52 routine in-house visits since daily work is done, interventions are documented, and audit systems are maintained.

(8) **Pharmacy and Therapeutics (P&T) Committee.** The PIC shall be a participating member in the Pharmacy and Therapeutics Committee.

(9) **Effective Controls.** The hospital drug room and PIC shall establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules.

(b) **Duties.** The duties of a PIC in a licensed hospital drug room, at a minimum, shall be the following:

(1) The training duties of the PIC are:

(A) Competency training regarding preparation and sterilization of parenteral medications prepared by appropriate hospital staff;

(B) Competency training of personnel concerning medicine incompatibilities and providing incompatibility information; and

(C) Training personnel in confidentiality of protected health and proprietary information and regarding the compliance with all federal and state laws and regulations applicable to the hospital drug room.

(i) Such rules regarding confidentiality of patient records are described in 535:15-3-14(e), the federal HIPAA regulations; and,

(ii) Such responsibilities for confidentiality shall be as set forth in 535:10-3-1.1 (a) (6) and 535:10-3-1.2 (a) (14) and the rules of this Title.

(D) Conducting initial and continuing competency training of all drug room personnel.

(2) Repackaging drug products including unit dose.

(3) Establishing procedures for procurement of all medicines used within the hospital system subject to approval of the medical and professional staff.

(4) Participating in the development and maintenance of a formulary for use within the hospital system.

(5) Maintaining and making available a sufficient inventory of medicines including antidotes and other emergency drugs approved by the medical and professional staff, for use within the hospital facility. In addition, current references, antidote information, and telephone numbers of regional reference centers such as Poison Centers and Drug Information Centers shall be maintained and readily available throughout the hospital.

(6) Maintaining oversight of the records of all transactions of the drug room required by applicable local, state, and federal law, and necessary to maintain accurate control and accountability for all medications.

(7) Participating in those aspects of the hospital facility's patient care evaluation programs that relate to medicine utilization and effectiveness.

(8) Cooperating fully with teaching and/or research programs in the hospital facility, if any.

(9) Implementing the policies and decisions of the appropriate committees of the medical and professional staff that deal with drug distribution.

(10) Meeting all inspection and other requirements of the Oklahoma Pharmacy Act, and those rules and regulations governing the practice of pharmacy within a hospital facility.

(11) Establishing guidelines for the safe and effective distribution of medicines intended for floor stock, and their subsequent administration.

SUBCHAPTER 9. PARENTERAL PHARMACY PERMITS

535:15-9-6. Parenteral pharmacy physical requirements

(a) **Area.** The parenteral pharmacy shall have an area designated for the preparation of sterile therapeutic preparations. This area must be designed to avoid unnecessary traffic and airflow disturbances from activities within the controlled facility. It shall be used only for the preparation of sterile therapeutic preparations. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper access of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation and security.

(b) **Equipment and supplies.** The parenteral pharmacy shall contain the following equipment and supplies:

(1) Appropriate environmental control devices capable of maintaining at least Class 100 environmental conditions in the work space where critical objects are exposed and critical activities are performed during normal activity. Examples of appropriate devices include laminar airflow hoods and zonal flow of HEPA-filtered air. These products should indicate that they meet Federal Standard 209E et seq.;

(2) Sink with hot and cold running water which is convenient to the compounding area for the purpose of hand scrubs prior to compounding;

(3) Appropriate disposal container for used needles, syringes, etc., and if applicable, appropriate disposal containers for cytotoxic waste from the preparation of chemotherapy agents, and infectious wastes from patients' homes;

(4) When cytotoxic products are prepared, appropriate environmental control which includes appropriate biohazard (biological or Class II) safety cabinet. This cabinet should be certified to meet NSF Standard 49;

(5) Refrigerator/freezer with a thermometer;

(6) Appropriate delivery containers suitable to minimize temperature fluctuation;

(7) Infusion devices, if applicable;

(8) Disposable needles, syringes, and other supplies needed for aseptic admixture;

(9) Disinfectant cleaning solutions; and,

(10) Hand-washing agent with bactericidal action.

(c) **Access.** For security purposes, no one may have access to the parenteral pharmacy in the absence of an Oklahoma registered pharmacist.

(d) **Reference materials.**

(1) The parenteral pharmacy shall have, in addition to the library reference material required for retail licensure, one or more reference materials from the following list:

(A) Handbook of Injectable Drugs (ASHP reports)

(B) King's Guide to Parenteral Admixtures

(C) Procedures for Handling Cytotoxic Drugs (ASHP)

(D) MicroMedex

(E) Lexicomp

(2) The following information is for reference purposes only, these standards are not required to be maintained by or in the pharmacy.

(A) The NSF Standard 49 may be obtained from the National Safety Foundation in Ann Arbor, MI (734) 769-8010.

(B) The Federal Standard 209E et seq. may be obtained from General Services Administration or the Institute of Environmental Sciences, Mount Prospect, IL (708) 255-1561.

SUBCHAPTER 13. PHARMACY SUPPORTIVE PERSONNEL

535:15-13-5. Supervision of pharmacy technicians

(a) All tasks performed by pharmacy technicians must be in a licensed pharmacy in Oklahoma and must be accomplished under the immediate and direct supervision of a pharmacist who is currently licensed by the Board. Failure by the licensed pharmacy and pharmacist manager (PIC) to provide adequate supervision; and failure of a pharmacist to adequately supervise a technician is a violation of these rules. An intern cannot supervise a technician.

(b) A pharmacy technician may perform certain non-judgmental functions of dispensing as enumerated in this Subchapter, provided that whenever the pharmacist leaves the prescription department, other than for in-pharmacy counseling of a patient, all dispensing functions listed shall cease.

(c) A ratio of no more than two pharmacy technicians per supervising pharmacist on duty shall be maintained.
(d) A pharmacy intern working in the pharmacy will not affect or change this ratio.
(e) The pharmacist must certify, by reviewing, the completed prescription for accuracy and completeness before the prescription is released from the prescription department. An intern cannot certify the completion of a technician filled prescription.

535:15-13-8. Technician annual permit requirement

(a) Each pharmacy technician in Oklahoma shall obtain a permit annually before practicing as such. A pharmacy technician must be employed in a licensed pharmacy to be eligible to renew their pharmacy technician permit.

(1) Upon meeting the qualifications listed in 535:15-13-4 and 535:25, applicants shall apply for a pharmacy technician permit on the form provided by the Board accompanied by such fee authorized by the legislature and in the agency fee schedule.

(2) After the pharmacy technician has completed their portion of the application they must submit it to the pharmacy manager or designated pharmacist who has conducted the technician training for review and signature.

(3) The pharmacy manager or designated pharmacist must first verify the applicant's completion of Phase I of the Board approved pharmacy technician training program. The signature by the pharmacist verifying technician training indicates that there is written training verification in the pharmacy available for Board inspection.

(4) Each pharmacy technician who desires to continue to work as a tech shall annually, on or before the last day of the registrants' birth month, send to the Board of Pharmacy such fee authorized by the legislature and in the agency fee schedule, with a completed Board application signed by the supervising pharmacist and the technician. Renewal notice will be sent to the technician's address on file in the Board office either electronically or by mail.

(b) The Board shall, at a minimum, consider the following factors in reviewing qualifications of persons who apply for a pharmacy technician permit within the state:

(1) any ~~drug or alcohol related convictions~~ arrest, charge, plea of nolo contendere, or conviction, or deferred sentence, for any misdemeanor or felony offense of the applicant under any federal, state, or local laws;

(2) the furnishing of any false or fraudulent material in any application made to the Board;

(3) suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant ~~for the distribution of any drugs, including controlled substances~~;

(4) compliance with permitting requirements under previously granted permits, if any; and,

(5) any use or abuse of an illegal CDS substance or a positive drug screen for such CDS substance or its' metabolite; and,

(6) any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(c) The Board shall have the right to deny a permit to an applicant if it determines that the granting of such a permit would not be consistent with the public health and safety.

[OAR Docket #10-943; filed 5-27-10]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 15. PHARMACIES

[OAR Docket #10-944]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Remote Medication Order Procesing (RMOP) for Hospitals and RMOP Pharmacy [NEW]
535:15-4-1. Purpose [NEW]
535:15-4-2. Definitions [NEW]
535:15-4-3. Registration [NEW]
535:15-4-4. Staffing requirements [NEW]
535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]
535:15-4-6. Governing body [NEW]
535:15-4-7. Unlawful acts and violations [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [NEW]
Subchapter 6. Hospital Drug Rooms
535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26, 353.29, and 354.
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Hospital remote order entry rules. The revision in 535:15-5.2 updates hospital pharmacy rules to include the definition of remote medication order processing and remote site for hospital pharmacies. The new rule in

535:15-5-19 adds remote medication order processing rules for hospital pharmacies.

The new rule in 535:15-4-1 adds the purpose statement to the new subchapter for remote medication order processing and remote medication order processing pharmacies. The new rule in 535:15-4-2 adds definitions regarding remote medication order processing in this subchapter. The rules in 535:15-4-3 describes registration requirements and in 535:15-4-4 describes staffing requirements. The rule in 535:15-4-5 describes the responsibilities and duties of RMOP pharmacies and the pharmacy manager [pharmacist-in-charge (PIC)]. The new rule in 535:15-4-6 describes the governing body and in 535:15-4-7 describes unlawful acts and violations.

The revision in 535:15-6.2 updates hospital pharmacy rules to include the definition of remote medication order processing and remote site for hospital drug rooms. The new rule in 535:15-6-20 adds remote medication order processing rules for hospital drug rooms.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 4. REMOTE MEDICATION ORDER PROCESSING (RMOP) AND RMOP PHARMACY FOR HOSPITAL PHARMACIES

535:15-4-1. Purpose

(a) The rules of this Subchapter, as authorized under Title 59 O.S. 353.7, 353.20, 353.24, and 354, establish the rules for Oklahoma licensed hospitals to employ remote medication order processing (RMOP) and provide for the designation and registration of a remote medication order processing pharmacy.

(b) The rules of this Subchapter do not relieve the licensed hospital pharmacy, the licensed hospital drug room, the pharmacy manager or director of pharmacy from their responsibilities under the Oklahoma laws and rules.

535:15-4-2. Definitions

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

"Contract employee" means any person who performs services for a hospital, and whose compensation may or may not be reflected on the payroll records of a hospital, hospital pharmacy, or remote medication order processing pharmacy.

"Remote medication order processing" or **"RMOP"** means the processing of a medication order for a hospital facility by a pharmacist located in a remote medication order processing pharmacy site. Remote medication order processing does not include the dispensing of a drug, but may include receiving, interpreting, evaluating, clarifying and approval of medication orders. Additionally, remote medication order processing may include order entry, other data entry, performing prospective drug utilization review, interpreting clinical data, performing therapeutic interventions, and providing drug information services, and authorizing release of the medication for administration.

"Remote medication order processing pharmacy" means a pharmacy which does not stock, own, or dispense any prescription medications, and whose sole business consists of entry and/or review and/or verification of physicians orders and consulting services under contract for hospitals licensed in Oklahoma or any other state; and which provide services under the direction of a pharmacist in charge or PIC, licensed by the Board.

"Remote pharmacist" means any person licensed to practice pharmacy by the Board, either employed or a contract employee of a hospital, hospital pharmacy, or remote medication order processing pharmacy, processing the medication order from a remote site.

"Remote site" means a site located within the continental United States (US) or District of Columbia (DC) that is electronically linked to the hospital via a computer and/or other electronic communications system as defined in the operations, policies and procedures manual of a hospital pharmacy, hospital drug room or remote medication order processing pharmacy for the purposes of remote medication order processing.

535:15-4-3. Registration

All remote medication order processing pharmacies shall be licensed with the Board. The fee per year for remote medication order processing pharmacies shall be set by the Board. Licenses shall be issued only to those remote medication order processing pharmacies that satisfy the provisions of this Subchapter.

535:15-4-4. Staffing requirements

(a) The pharmacist in charge (PIC) shall be assisted by a sufficient number of additional Oklahoma licensed remote pharmacists to operate such a remote medication order processing pharmacy competently, safely, and adequately to meet the needs of the patients of the hospitals served.

(b) The remote medication order pharmacy, pharmacist manager or pharmacist in charge (PIC) shall notify the Board, in writing, within 10 days of any change of employment of remote pharmacists. This does not remove the requirement that such pharmacist notify within ten days in writing of a change of employment.

535:15-4-5. Responsibilities and duties of RMOP pharmacies and pharmacy manager [pharmacist in charge (PIC's)]

Responsibilities of the PIC and the remote medication order processing pharmacy include:

(1) **Written policies and procedures and operation manuals.** The remote medication order processing pharmacy and PIC shall establish a written policy and procedure manual for the RMOP operation, including but not limited to:

(A) Complying with federal and state laws and regulations;

(B) Establish and maintain minimum technical standards and specifications, e.g. RMOP processes, passwords, encryption and firewalls;
(C) Establish and maintain procedures for handling computer system or connectivity downtime;
(D) Establish and maintain confidentiality, privacy, and security to meet HIPAA standards;
(E) Establish and maintain pharmacist training, orientation and competencies;
(F) Establish and maintain workload balancing and staffing levels e.g. when will RMOP be triggered and how will workload or staff balancing be done;
(G) Establish and maintain access to appropriate drug information resources;
(H) Establish and maintain hospital staff training and orientation to the remote medication order process;
(I) Establish and maintain a process that documents issues or problems which includes issue escalation and problem resolution to resolve such;
(J) Establish and maintain on-call assistance and communication between the hospital and remote site personnel;
(K) Establish and maintain internal quality assurance and medication error reporting systems;
(L) Clarification of medication orders;
(M) Establish and maintain access to either hard-copy or online references as described in 535:15-5-9 (1) (B) and 535:15-5-9 (1) (C).
(N) Establish and maintain access to Hospital policy resources, policies and procedures;
(O) Establish and maintain records and reports;
(P) Establish and maintain annual review of the remote medication order processing and documentation.

(2) **General responsibility.** The remote medication order processing pharmacy and PIC shall be responsible for the provision of services to the hospital(s), including but not limited to establishing and maintaining:
(A) Establishing and scheduling appropriate RMOP pharmacy staffing levels;
(B) Performance of RMOP duties which include establishing and maintaining:
(i) Review of the patient's profile;
(ii) Clarification of medication orders;
(iii) Reporting of potential drug interactions or allergies;
(iv) Order entry and/or order review;
(v) Monitoring of clinical information, lab values, or dosing issues;
(vi) Provision of drug information to the pharmacist(s) performing remote medication order entry, by establishing and maintaining access to either hard-copy or online references as described in 535:15-5-9(1)(B) and 535:15-5-9(1)(C).
(C) Submitting required reports, required by hospital, by procedures manual and by law or rule;
(D) Quality assurance and performance improvement of the RMOP service;

(3) **Confidentiality.** The remote medication order processing pharmacy and PIC shall have responsibility for establishing policies and procedures for the security and integrity of any patient information, confidential and non-confidential and must abide by all applicable state and federal laws and rules. In addition, the following must be met:
(A) Pharmacists performing remote medication order processing entry must adhere to the hospital's confidentiality policy and are responsible for ensuring the confidentiality of patient information as described in 535:10-3-1-1(6) and 535:10-3-1-2.(14); and,
(B) The hospital shall insure that the remote pharmacist shall have individual pharmacist-specific secure electronic access to the hospital pharmacy's patient information system and to other electronic systems that the on-site pharmacist has access to when the hospital pharmacy is open.

(4) **Record keeping.**
(A) The remote medication order processing pharmacy shall ensure that records of any and all orders processed for the hospital are maintained for a minimum of two (2) years, and such records shall be readily available for inspection, copying by, or production of upon request by the Board, its designee, or a representative of the Board upon request, including, but not limited to:
(i) Medication orders reviewed or verified by the remote pharmacist;
(ii) Interventions communicated by the remote pharmacist;
(iii) Requests for clinical or other additional information communicated by the remote pharmacist;
(iv) Name or other unique identifier of the remote pharmacist involved in the processing of the RMOP order.
(B) The records required in Section 535:15:5.5-5 (a) (4) (A) above may be kept at either the remote medication order processing pharmacy or the hospital so long as the records are maintained and readily available.
(C) A hospital utilizing a remote pharmacist shall maintain a record of the name and address of such pharmacist(s), evidence of current pharmacist licensure in Oklahoma, and the address of each location where records of any and all orders processed for the hospital will be maintained.

535:15-4-6. Governing body

The pharmacy and pharmacist will recognize the Board as the governing body of the practice of pharmacy and any violations of pharmacy laws or rules that may come to the attention of the pharmacy and/or pharmacist must be reported to the Board.

535:15-4-7. Unlawful acts and violations

(a) Unlawful acts and violations are described in the Oklahoma Pharmacy Act and this Title.

(b) Remote medication order processing pharmacy rules for conduct, violations of conduct and rules for applicants are found in 535:25.

(c) Rules for conduct and violations of conduct for pharmacists are found in 535:10-3-1.1, 535:10-3-1.2, 535:15-3-2, 535:15-3-4-2; and rules for applicants are found in 535:25.

(d) Remote medication order processing pharmacies are subject to rules in 535:15-3 unless they clearly do not apply to RMOP pharmacies.

(e) Penalties for violations of this Title, the Oklahoma Pharmacy Act and federal and state laws and rules are listed in Title 59 O.S. Section 353.26.

SUBCHAPTER 5. HOSPITAL PHARMACIES

535:15-5-2. Definitions

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

"Automated dispensing systems" means a mechanical system controlled by a computer that performs operations or activities, relative to the storage, packaging, compounding, labeling, dispensing, administration, or distribution of medications, and which collects, controls, and maintains all transaction information.

"Auxiliary supportive personnel" or **"auxiliary supportive person"** means all persons, other than pharmacists, interns and techs, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy that do not require a permit or license (e.g. clerk, typist, delivery, or data entry person, etc.).

"Certified medication order" means a filled prescription that has been reviewed and certified by a pharmacist.

"Certified pharmacy technician" means a pharmacy technician who has a current Board approved pharmacy technician certification in addition to a current Oklahoma pharmacy technician permit.

"Director of Pharmacy" means a pharmacist licensed to engage in the practice of pharmacy in Oklahoma who is thoroughly familiar with the specialized functions of a hospital pharmacy and directs the activities of a hospital pharmacy.

"Drug room" means a secured room where drug inventories are maintained for use in a facility licensed and regulated by the Oklahoma Health Department, and which may be inspected by the Board.

"Hospital employee" means any individual employed by a hospital whose compensation for services or labor actually performed for a hospital is reflected on the payroll records of a hospital.

"Hospital facility" or **"Hospital"** means any institution licensed as a hospital by this state for the care and treatment of patients.

"Hospital pharmacy" means the place or places in which drugs, chemicals, medicines, prescriptions, or poisons are stored, controlled and prepared for distribution and administration for the use and/or benefit of patients in a hospital facility. Hospital pharmacy shall also mean the place or places in which drugs, chemicals, medicines, prescriptions or poisons are compounded and prepared for dispensing to the members of the medical staff, hospital employees, and the members of their immediate families, patients being discharged, and for other persons in emergency situations.

"Medical staff" means a medical practitioner who has privileges to practice in the hospital facility.

"Medication order" means a prescription as defined in Title 59 O.S. Section 353.1(7).

"Pharmacist" means any person licensed to practice pharmacy by the Oklahoma State Board of Pharmacy.

"Pharmacy technician", "Tech", **"Technician"** or **"RxTech"** means a person who has been issued a permit by the Board to assist the pharmacist and performs non-judgmental, technical, manipulative, non-discretionary functions in the prescription department under the pharmacist's immediate supervision.

"Remote medication order processing" or "RMOP" means the processing of a medication order for a hospital facility by a pharmacist located in a remote medication order processing pharmacy site. Remote medication order processing does not include the dispensing of a drug, but may include receiving, interpreting, evaluating, clarifying and approval of medication orders. Additionally, remote medication order processing may include order entry, other data entry, performing prospective drug utilization review, interpreting clinical data, performing therapeutic interventions, and providing drug information services, and authorizing release of the medication for administration.

"Remote site" means a site located within the continental United States (US) or District of Columbia (DC) that is electronically linked to the hospital via a computer and/or other electronic communications system as defined in the operations, policies and procedures manual of a hospital pharmacy for the purposes of remote medication order processing (RMOP) of a remote medication order processing pharmacy.

"Supportive personnel" means technicians and auxiliary supportive persons, who are regularly paid employees of the hospital pharmacy and who work or perform tasks in the hospital pharmacy.

535:15-5-19. Remote medication order processing (RMOP)

(a) Hospitals, the pharmacist manager and the director of pharmacy at the hospital that allow remote medication order processing shall establish and maintain policies and procedures related to remote medication order processing.

(1) Such registrants remain responsible to assure the hospital pharmacy meets requirements under Oklahoma laws and rules.

(2) Such registrants shall be responsible to assure RMOP, if used, is reviewed at least annually and that proper credentialing, review and that oversight is established, maintained and exercised.

(b) Prior to implementation of RMOP services, training shall be provided by the hospital, and the relevant portions of the hospital pharmacy's policy and procedure manual shall be established and maintained on RMOP; and such shall be reviewed by the Pharmacist providing RMOP entry services at least annually.

(c) All pharmacists involved in RMOP entry services are responsible for ensuring the confidentiality, privacy and security of patient health care information. At a minimum, the following conditions must be met:

(1) Pharmacists performing RMOP entry must be licensed by the Board.

(2) Pharmacists performing RMOP entry must adhere to the hospital's confidentiality policy and are responsible for ensuring the confidentiality of patient information as described in 535:10-3-1-1(6) and 535:10-3-1-2.(14).

(3) The hospital shall ensure the pharmacist performing remote medication order processing has individual, pharmacist-specific access to the hospital pharmacy's patient information system and to other electronic systems that on-site pharmacists have access to during the hours of operation of the hospital pharmacy.

(d) The hospital will make available to the pharmacist(s) performing RMOP entry, access to either hard-copy or on-line references as described in 535:15-5-9(1)(B) and 535:15-5-9(1)(C).

(e) The hospital's computer system shall have the ability to audit the activities of each pharmacist(s) remotely processing the RMOP orders.

(f) A hospital pharmacy may allow RMOP for the patient population served under the hospital's pharmacy license by a pharmacist employed by the same licensed hospital pharmacy. Remote medication order processing performed for patients served under a different hospital pharmacy licensure requires a contractual arrangement fulfilling the responsibilities as outlined in 535:15-4-5.

(g) All Pharmacists who engage in RMOP shall ensure the following minimum information technology standards and specifications are met and maintained at the remote site:

(1) Availability of internet, phone, and scan or fax access to the hospital.

(2) Ability to access the hospital facility via the hospital's information system.

(3) To the extent possible, have redundant systems in place to ensure remote medication order processing service availability (e.g. internet connectivity, other information systems used to facilitate remote medication order processing.

(4) Have secure electronic access to the hospital's patient information system and to all other electronic systems that the on-site pharmacist has access to when the pharmacy is open.

(5) Use of a computer workstation e.g. with passwords, firewalls and encryption.

(h) The record of each patient-specific RMOP drug or device order processed pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the review and verification of the order.

(i) Remote medication order processing by a pharmacist shall not relieve the hospital pharmacy from employing or contracting with pharmacist(s) to provide routine pharmacy services within the facility. The activities authorized by this rule are intended to supplement hospital pharmacy services when the pharmacy is closed or additional pharmacist assistance is needed and are not intended to eliminate the need for an on-site hospital pharmacy or pharmacist(s).

(j) Pharmacists performing remote medication order processing shall not be included in the ratio of the pharmacist and technician as outlined in 535:15-5-7.2.(e).

(k) A pharmacist employed by or contracting with a hospital pharmacy for on-site services may also provide remote medication order processing services when the hospital pharmacy is closed or additional pharmacist assistance is needed through a remote medication order processing pharmacy.

SUBCHAPTER 6. HOSPITAL DRUG ROOM

535:15-6-2. Definitions

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

"Adverse Drug Event" or **"ADE"** means an injury from a medicine or lack of an intended medicine.

"Authorized licensed independent practitioner" or **"ALI Practitioner"** or **"Licensed independent practitioner"** means an individual permitted by Oklahoma law and by the hospital to provide care and services, without direct supervision, within the scope of the individual's license and consistent with individually granted clinical privileges. Licensed independent practitioners may include physicians, advanced practice nurses with prescriptive authority, physician assistants, dentists, podiatrists, and optometrists.

"Contract employee" means any person who performs services or labor for a hospital, and whose compensation may or may not be reflected on the payroll records of a hospital. Examples of pharmacy contract employees are consultant D.Ph., relief D.Ph. and/or volunteer D.Ph.

"Drug room" or **"Hospital drug room"** means a secured room where drug inventories are maintained for use in a hospital, with less than 100 licensed beds including bassinets, licensed and regulated by the Oklahoma Health Department and by the Oklahoma State Board of Pharmacy.

"Drug room supervisor" means an Oklahoma registered nurse, licensed practical nurse, or registered pharmacist (D.Ph.) as described in OAC 310:667-21-2 (c).

"Pharmacist-in-Charge" or "PIC" means an Oklahoma licensed pharmacist director or consultant of the hospital drug room, either employed or a contract employee.

"Remote medication order processing" or "RMOP" means the processing of a medication order for a hospital facility by a pharmacist located in a remote medication order processing pharmacy site. Remote medication order processing does not include the dispensing of a drug, but may include receiving, interpreting, evaluating, clarifying and approval of

medication orders. Additionally, remote medication order processing may include order entry, other data entry, performing prospective drug utilization review, interpreting clinical data, performing therapeutic interventions, and providing drug information services, and authorizing release of the medication for administration.

"Remote site" means a site located within the continental United States or District of Columbia that is electronically linked to the hospital site via a computer for the purposes of remote medication order processing to a remote medication order processing pharmacy.

535:15-6-20. Remote medication order processing

(a) Hospitals, the pharmacist manager and the director of pharmacy at the hospital that allow remote medication order processing shall establish and maintain policies and procedures related to remote medication order processing. Such registrants remain responsible to assure the hospital drug room meets requirements under Oklahoma laws and rules.

(1) Such registrants remain responsible to assure the hospital drug room meets requirements under Oklahoma laws and rules.

(2) Such registrants shall be responsible to assure RMOP, if used, is reviewed at least annually and that proper credentialing, review and that oversight is established, maintained and exercised.

(b) Prior to implementation of RMOP services, training shall be provided by the hospital drug room and the relevant portions of the hospital drug room's policy and procedure manual on RMOP entry shall be established and maintained; and reviewed by the Pharmacist providing RMOP entry services at least annually.

(c) All pharmacists involved in RMOP entry services are responsible for ensuring the confidentiality, privacy and security of patient health care information. At a minimum, the following conditions must be met:

(1) Pharmacists performing RMOP entry must be licensed by the Board.

(2) Pharmacists performing RMOP entry must adhere to the hospital's confidentiality policy and are responsible for ensuring the confidentiality of patient information as described in 535:10-3-1-1(6) and 535:10-3-1-2.(14).

(3) The hospital shall ensure the pharmacist performing remote medication order processing has individual, pharmacist-specific access to the hospital drug room's patient information system and to other electronic systems that on-site pharmacists have access to during the hours of operation of the hospital drug room.

(d) The hospital will make available to the pharmacist(s) performing RMOP entry, access to either hard-copy or on-line references as described in 535:15-5-9(1)(B) and 535:15-5-9(1)(C).

(e) The hospital's computer system shall have the ability to audit the activities of the pharmacist(s) remotely processing RMOP orders.

(f) A hospital drug room may allow RMOP for the patient population served under the hospital's drug room license by a pharmacist employed by the same licensed hospital drug room. Remote medication order processing performed for patients served under a different hospital drug room licensure requires a contractual arrangement fulfilling the responsibilities as outlined in 535:15-4-5.

(g) All Pharmacists who engage in RMOP shall ensure the following minimum information technology standards and specifications are met and maintained at the remote site:

(1) Availability of internet, phone, and scan or fax access to the hospital.

(2) Ability to access the hospital facility via the hospital's information system.

(3) To the extent possible, have redundant systems in place to ensure remote medication order processing service availability (e.g. internet connectivity, other information systems used to facilitate remote medication order processing).

(4) Have secure electronic access to the hospital's patient information system and to all other electronic systems that the on-site pharmacist has access to when the pharmacy is open.

(5) Use of a computer workstation e.g. with passwords, firewalls, and encryption.

(h) The record of each patient-specific RMOP drug or device order processed pursuant to this rule shall identify, by name or other unique identifier, each pharmacist involved in the review and verification of the order.

(i) Remote medication order processing by a pharmacist shall not relieve the hospital drug room from employing or contracting with pharmacist(s) to provide routine pharmacy services within the facility. The activities authorized by this rule are intended to supplement hospital drug room services when the pharmacy is closed or additional pharmacist assistance is needed and are not intended to eliminate the need for an on-site hospital drug room or pharmacist(s).

(j) Pharmacists performing remote medication order processing shall not be included in the ratio of the pharmacist and technician as outlined in 535:15-5-7.2.(e).

(k) A pharmacist employed by or contracting with a hospital drug room for on-site services from also providing remote medication order processing services when the hospital drug room is closed or additional pharmacist assistance is needed through a remote medication order processing pharmacy.

[OAR Docket #10-944; filed 5-27-10]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 20. MANUFACTURERS, PACKAGERS AND WHOLESALERS

[OAR Docket #10-945]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Manufacturers
535:20-3-6.3. Security [AMENDED]
Subchapter 5. Packagers
535:20-5-6.3. Security [AMENDED]

Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
535:20-7-9.1. Prohibited conduct [AMENDED]
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-3. Medical gas suppliers [AMENDED]
535:20-9-4. Medical gas distributors [AMENDED]

AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, and 354; and Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210.

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ANALYSIS:

The revisions in 535:20-3-6.3, 535:10-5-6.3, 535:20-7-7.3, 535:20-9-3 and 535:10-9-4 security sections lay out manufacturer, packager, wholesaler, medical gas supplier and medical gas distributor responsibilities to establish and maintain controls to protect against theft, diversion, or counterfeiting; and require the same regarding suspicious order monitoring and require registrants to **not** ship orders they have verified are suspicious.

The revision in 535:20-3-9 prohibited conduct adds failure to maintain a suspicious order monitoring records and failure to notify the Board.

The revisions in 535:20-9-3 and 535:20-9-4 for medical gas suppliers and medical gas distributor security sections lay out responsibilities to establish and maintain controls regarding suspicious order monitoring and require registrants to **not** ship orders they have verified are suspicious.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. MANUFACTURERS

535:20-3-6.3. Security

(a) Each facilities used for manufacturing shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) The outside perimeter of the premises shall be well-lighted.

(3) Entry into areas where drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All manufacturers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. ~~All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion~~. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(d) All manufacturers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(1) The manufacturer must not ship the customer's order if the order is confirmed as suspicious;

(2) Each manufacturer shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(3) Manufacturers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

SUBCHAPTER 5. PACKAGERS

535:20-5-6.3. Security

(a) Each facility used for packaging shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) The outside perimeter of the premises shall be well-lighted.

(3) Entry into areas where drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All packagers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. ~~All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion~~. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(d) All packagers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(1) The packager must not ship the customer's order if the order is confirmed as suspicious; and,

(2) Each packager shall notify the Board, within ten (10) days, if an order is confirmed as suspicious.

SUBCHAPTER 7. WHOLESALERS AND PEDIGREE RULES

535:20-7-7.3. Security and anti-counterfeiting

(a) All facilities used for wholesale drug distribution shall be secure from unauthorized entry.

(1) Access from outside the premises shall be kept to a minimum and be well-controlled.

(2) Entry into areas where prescription drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. ~~All facilities shall be equipped with a security system that will provide suitable protection against theft, counterfeiting, and diversion~~. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(d) All ~~facilities~~ wholesalers shall establish and maintain ~~controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting~~. a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(1) The wholesaler must not ship the customer's order if the order is confirmed as suspicious;

(2) Each wholesaler shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(3) Wholesalers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

(e) If a wholesaler has reason to believe, based on the totality of the facts and circumstance, that any drug purchased is counterfeit, suspected of being counterfeit, mis-branded, or adulterated, the purchasing wholesaler must authenticate the pedigree.

535:20-7-9.1. Prohibited Conduct

The following shall be considered prohibited conduct and be a violation of these rules:

(1) Engaging in the wholesale distribution of drugs

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate pedigree and/or failure to authenticate a pedigree, when required;

(B) and destroying, altering, concealing, or failing to maintain complete and accurate pedigree concerning any drug in their possession, when required;

(C) and having possession of drug pedigree documents required by the board and failing to authenticate the matters contained in the documents as required, and nevertheless distributing or attempting to further distribute drugs;

(D) with intent to defraud or deceive, falsely swearing or certifying that they have authenticated any documents related to the wholesale distribution of drugs;

(E) and forging, counterfeiting, or falsely creating any pedigree, falsely representing any factual matter contained on any pedigree, or knowingly omitting to record material information required to be recorded in a pedigree;

(F) and knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, in wholesale distribution; or,

(G) and selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s) in a wholesale distribution.

(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

(4) Manufacturing, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,

(5) Any violation of the rules of registrant conduct in 535:25:9 is prohibited conduct.

(6) Failing to maintain suspicious order monitoring records in a suspicious order monitoring program; and failing to notify the Board, within ten (10) days, of confirmed suspicious orders.

SUBCHAPTER 9. MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

535:20-9-3. Medical gas suppliers

(a) **Licensing requirement.** Before conducting interstate and/or intrastate transactions in Oklahoma, a medical gas supplier shall register annually with the Board of Pharmacy.

(1) A medical gas supplier permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new medical gas supplier permit.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas supplier permit. A medical gas supplier permit entitles the permit holder to store and supply medical gas (prescription drugs) at the licensed location.

(b) Permits shall be issued only to those medical gas suppliers who satisfy the provisions of:

(1) Title 59, O.S., Section 353.18 (B)(1)(2) et seq.,

(2) All medical gas supplier applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.

(3) Applicants shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to handle medical gas.

(4) The Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or,

(5) Any other applicable federal, state, or local laws and regulations.

(c) **Minimum required information for licensure.** The minimum required information for medical gas supplier licensure shall be as follows, Medical gas supplier applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

(1) The name, full business address, and telephone number;

(2) All trade or business names used by the manufacturer applicant;

(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;

(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);

(5) The name(s) of the owner and/or operator of the manufacturer applicant; and

(6) Any other information the Board deems necessary to protect the public health.

(d) **Minimum qualifications.** Medical gas suppliers must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(1) Medical gas suppliers must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in the supplying of medical gases:

(A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal, state, or local laws;

(C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;

(E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,

(H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

(e) **Personnel.** Personnel employed by medical gas suppliers shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

(f) **Minimum requirements for storage, handling, and records.** Medical gas suppliers must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.

(A) All medical gas suppliers of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.

(B) All medical gas suppliers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.

(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(i) Be licensed by the Board;

(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;

(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(v) Be maintained in a clean and orderly condition; and,

(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Medical gases housed by a medical gas supplier shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(g) **Prescription requirement.** Medical gas suppliers shall not supply medical gas without a drug order. Drug orders may be issued for institutional or licensed medical practitioner office use as well as to a patient.

(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

(h) **Minimum requirements for storage, handling, and records for medical gas.** The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.

(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well-controlled.

(B) The outside perimeter of the premises shall be well-lighted.

(C) Entry into areas where drugs are held shall be limited to authorized personnel.

(D) All medical gas suppliers shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. ~~All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion~~. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(E) All medical gas suppliers shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(i) The medical gas supplier must not ship the customer's order if the order is confirmed as suspicious;

(ii) Each medical gas supplier shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(iii) Medical gas suppliers shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas suppliers shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

(4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas supplier shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas suppliers in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

(5) **Recordkeeping.** Medical gas suppliers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request

by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas supplier should maintain an ongoing list of persons with whom they do business.

(6) **Written policies and procedures.** Medical gas suppliers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(A) Medical gas suppliers shall include in their written policies and procedures the following:

(i) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(I) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(II) Voluntary action by the medical gas supplier to remove defective or potentially defective drugs from the market; or

(II) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(B) A procedure to ensure that medical gas suppliers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(7) **Responsible persons.** Medical gas suppliers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(8) **Compliance with federal, state and local laws.** Medical gas suppliers shall operate in compliance with applicable federal, state, and local laws and regulations.

(A) Medical gas suppliers shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(B) Medical gas suppliers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.

(9) **Salvaging and reprocessing.** Medical gas suppliers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

535:20-9-4. Medical gas distributors

(a) **Licensing requirement.** Before conducting interstate and or intrastate transactions in Oklahoma, a medical gas distributor shall register annually with the Board of Pharmacy.

(1) A medical gas distributor permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new medical gas distributor permit.

(2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)

(3) Each location shall possess a medical gas distributor permit. Medical gas distributor permit entitles the permit holder to store and distribute medical gas (prescription drugs) at the licensed location.

(b) **Permits.** Permits shall be issued only to those medical gas distributors who satisfy the provisions of:

(1) Title 59, O.S., Section 353.18 (B)(1)(2) et seq.,

(2) All medical gas distributor applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.

(3) Applicants shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to handle and wholesale medical gas.

(4) The Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or,

(5) Any other applicable federal, state, or local laws and regulations.

(c) **Minimum required information for licensure.** The minimum required information for medical gas distributors licensure shall be as follows, Medical gas distributor applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

(1) The name, full business address, and telephone number;

(2) All trade or business names used by the manufacturer applicant;

(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;

(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);

(5) The name(s) of the owner and/or operator of the manufacturer applicant; and

(6) Any other information the Board deems necessary to protect the public health.

(d) **Minimum qualifications.** Medical gas distributors must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(1) Medical gas distributors must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in medical gas distribution:

(A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal, state, or local laws;

(C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;

(E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,

(H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

(e) **Personnel.** Personnel employed by medical gas distributors shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

(f) **Minimum requirements.** Medical gas distributors must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.

(A) All medical gas distributors of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.

(B) All medical gas distributors shall conform to the Oklahoma Pharmacy Act and the rules of this Title.

(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(i) Be licensed by the Board;

(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, and space, equipment, and security conditions;

(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(v) Be maintained in a clean and orderly condition; and,

(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Medical gases housed by a medical gas distributor shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(g) **Prescription requirements.** Medical gas distributors shall distribute only to an entity licensed to receive medical gas or upon a practitioner's drug order. A pharmacy, dentist, or licensed practitioner's practice license verifies their authority to receive Rx Only medical gases.

(1) An original or copy of a prescription drug order must be kept at the licensed location distributing the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

(3) Distributors that sell to licensed medical gas suppliers must keep an updated copy of each supplier's license on file.

(h) **Minimum requirements for storage, handling and records for medical gas Rx Only drugs.** The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.

(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well-controlled.

(B) The outside perimeter of the premises shall be well-lighted.

(C) Entry into areas where drugs are held shall be limited to authorized personnel.

(D) All medical gas distributors shall establish and maintain controls and systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting. ~~All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion~~. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(E) All medical gas distributors shall establish and maintain a suspicious order monitoring program for controlled substances and dangerous drugs with a high likelihood of abuse:

(i) The medical gas distributor must not ship the customer's order if the order is confirmed as suspicious;

(ii) Each medical gas distributor shall notify the Board, within ten (10) days, if an order is confirmed as suspicious; and,

(iii) Medical gas distributors shall establish guidelines and procedures for identifying dangerous drugs with a high likelihood of abuse and suspicious orders.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas distributors shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

(4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas distributors shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas distributors in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

(5) **Recordkeeping.** Medical gas distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas distributor should maintain an ongoing list of persons with whom they do business.

(6) **Written policies and procedures.** Medical gas distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(A) Medical gas distributors shall include in their written policies and procedures the following:

(i) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(I) Action initiated at the request of the Food and Drug Administration (FDA) or other

federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(II) Voluntary action by the medical gas distributor to remove defective or potentially defective drugs from the market; or

(III) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(B) A procedure to ensure that medical gas distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

(7) **Responsible persons.** Medical gas distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(8) **Compliance with federal, state and local laws.** Medical gas distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(A) Medical gas distributors shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(B) Medical gas distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.

(9) **Salvaging and reprocessing.** Medical gas distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

[OAR Docket #10-945; filed 5-27-10]

TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY
CHAPTER 25. RULES AFFECTING VARIOUS REGISTRANTS

[OAR Docket #10-946]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Applicants, Registrants and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
Subchapter 9. Violation of the Rules of Registrant Conduct
535:25-9-8. Failure to maintain effective controls [AMENDED]
AUTHORITY:
Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, and 354;Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210.
DATES:
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Gubernatorial approval:
May 10, 2010
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Failure of the Legislature to disapprove the rules resulted in approval on May 26, 2010
Final adoption:
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SUPERSEDED EMERGENCY ACTION:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The revision in 535:25-3-3 corrects grammar. The revision in 535:25-9-8 clarifies that it includes prescription controlled dangerous drugs or substances (CDS); and adds a violation of failure to establish and maintain a suspicious order monitoring program.
CONTACT PERSON:
Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. APPLICANTS, REGISTRANTS AND APPLICATIONS

535:25-3-3. Qualifications and requirements for registrant applicants

(a) The Board shall consider at least the following factors in reviewing the qualifications of registrants or applicants~~, license~~ for licensure e.g.:

(1) Any charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under any federal, state, or local laws relating to drug samples, drug distribution, or distribution of controlled substances;

(2) Any felony charges, convictions, receipt of deferred sentence or deferred prosecution, or pleading of no contest of the applicant or registrant under federal, state, or local laws;

(3) The applicant's or registrant's past experience with prescription drugs, including controlled substances;

(4) The furnishing by the applicant or registrant of fictitious, false, misleading, or fraudulent material in any application (original, new or renewal) or failing to provide information relevant to this application;

(5) The suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant or registrant;

(6) Compliance with licensing requirements under previously granted licenses, if any;

(7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section;

(8) Abuse of alcohol or habit-forming drugs, or use of illegal CDS drugs or positive drug screen for such illegal substance or its' metabolite;

(9) Practicing as a registrant without reasonable skill and safety by reason of use and/or abuse of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition; and,

(10) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(b) The applicant shall be forthright and open in the provision of information to the Board in the application process. No license, permit or certificate shall be awarded to an applicant who does not provide the Board with complete open and honest responses to all requests for information.

(c) The applicant shall be candid in regards to providing information related to any academic misconduct, malpractice, legal, or disciplinary action.

(d) The applicant shall fully and completely disclose ownership of any pharmacy, wholesaler, manufacturer packager, medical gas supplier or medical gas distributor or any other person licensed under Title 59 O.S. Section 353.18.

(e) The Board shall have the right to deny a license to an applicant or registrant if it determines that the granting of such a license would not be consistent with the public health and safety.

SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT

535:25-9-8. Failure to establish and maintain effective controls

(a) Failure to establish and maintain effective controls to prevent prescription errors is a violation of registrant conduct.

(b) Failure to establish and maintain effective controls against the diversion of prescription and/or controlled dangerous drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules is a violation of registrant conduct.

(c) The sale of dangerous drugs to a person or entity not eligible to receive such drugs is a violation of registrant conduct.

(d) The purchase of dangerous drugs from a person or entity not eligible to possess such drugs is a violation of registrant conduct.

(e) Failing to establish and maintain suspicious order monitoring records in a suspicious order monitoring program; and failure to notify the Board of confirmed suspicious orders.

(f) It is a violation to ship orders that are confirmed as suspicious.

[OAR Docket #10-946; filed 5-27-10]

TITLE 545. BOARD OF PODIATRIC MEDICAL EXAMINERS
CHAPTER 15. EXAMINATION/LICENSURE

[OAR Docket #10-949]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 15. Examination/Licensure
545:15-1-2. Examination [AMENDED]
AUTHORITY:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
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n/a

ANALYSIS:

The proposed rule amendments remove the requirement that the examination for licensure be given during the month of March on an annual basis. It also removes the requirement that applicants who fail the exam retake the exam in March of the following year. It will give the Board the flexibility to set the exam and retake dates as needed. Correspondingly, the application deadline has been changed from one annual date to 30 days prior to the exam. Language in the rule is being deleted that is a duplicate of language set out in the statute in 59 O.S. § 144.

CONTACT PERSON:

Kathy Plant, Executive Secretary, 405-848-6841, #122

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

545:15-1-2. Examination

(a) Examination for licensure to practice podiatry in the State of Oklahoma shall be given by the Board.

(b) The Board may give the examination at any special meeting, but it shall not be required to do so.

(1) In general, the examination for licensure shall be given during the month of March on an annual basis on a date set by the Board.

(2) The written portion and oral portion of the exam must be passed within the same calendar year. Any person who fails both the oral and written portions of the exam and who still seeks licensure shall be required to sit for the entire examination ~~in March of the following year~~. Any person who fails the written portion, passes the oral portion and who still seeks licensure may retake the written portion on a date set by the Board.

(c) Applicants shall file a written application for examination as required by the Board and pay, in advance, the fee for examination.

(1) The application must be received ~~no later than the 31st day of January of the year in which~~ at least 30 days prior to the date the exam is to be administered.

(2) The application fee must be submitted in the form of a cashier's check or certified check with the completed application form.

(3) If the application for examination is unacceptable, the fee shall be returned to the candidate along with the application.

(4) If the application is deemed acceptable, the candidate shall be notified of same in writing and scheduled for examination. The application fee shall be deposited with the office of the State Treasurer of the State of Oklahoma and shall at that point become non-refundable.

(d) Any person who is otherwise qualified for licensure shall receive a license to practice podiatry in this State who meets the requirements set out in Title 59 O.S. § 144.~~:~~

~~(1) Takes the examination as administered by the Board and receives a passing score of at least 75% on both the written and the oral portions. Any applicant receiving less than a 75% score on either the written or oral portions of the examination shall be deemed as having failed the entire examination, and~~

~~(2) Satisfactorily completes a podiatric surgical residency, approved by the Council of Podiatric Medical Education of the American Podiatric Medical Association, of not less than three hundred sixty-five (365) days.~~

(e) The examination shall include a written and an oral portion. In addition, it shall be administered in the English language.

(f) The examination shall cover areas in anatomy, podiatric medicine and surgery, pathology, dermatology, pharmacology, biomechanics, anesthesia, radiology, Oklahoma law relating to podiatry and any other areas deemed relevant by the Board.

(g) The Board hereby authorizes examination papers to be graded by one or more of its own members or by any one or more licensed podiatrist it shall select at a meeting of the Board.

(h) The Board further may employ any national examination administered by any person or entity approved by the Council on Podiatric Medical Education to administer any such examination in their behalf.

[OAR Docket #10-949; filed 5-28-10]

TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 15. PROTECTION OF NATURAL RESOURCES

[OAR Docket #10-977]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

630:15-1-14. Ice chest restrictions [AMENDED]

AUTHORITY:

Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

This revision corrects an error in the text of the rule that was inadvertently published last year in the Oklahoma Register as the final rule. This amendment does not change what was adopted last year. The language is what was adopted by the OSRC on March 17, 2009.

CONTACT PERSON:
Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

630:15-1-14. Ice chest restrictions

~~No~~ To prevent littering, no person shall carry an ice chest that is not capable of being secured to prevent spilling its contents or larger than 50-quart capacity on a scenic river.

[OAR Docket #10-977; filed 6-8-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-969]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Public Policy
Part 3. Taxpayer Identification
710:1-3-6 [AMENDED]
AUTHORITY:
68 O.S. § 203, Oklahoma Tax Commission
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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Section 710:1-3-6 has been amended to clarify policy regarding the use of all 9 digits of a taxpayer's social security number on returns, applications, and forms required to be filed with the Oklahoma Tax Commission.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. PUBLIC POLICY

PART 3. TAXPAYER IDENTIFICATION

710:1-3-6. Use of Federal Employer Identification Numbers, Social Security Numbers and other identification numbers mandatory

~~(a)~~ All returns, applications, and forms required to be filed with the Oklahoma Tax Commission (Commission) in the administration of this State's tax laws shall bear the **Federal Employer's Identification Number(s),** the **Social Security Account Number**, the **Taxpayer Identification Number,** and/or other government issued identification number of the person, firm, or corporation filing the item and of all persons required by law or agency rule to be named or listed. If more than one number has been issued to the person, firm, or corporation, then all numbers will be required.

~~(b) The requirement to provide the **Social Security Account Number**, the **Taxpayer Identification Number,** or other government issued identification number of corporate officers required on the Franchise Tax Return and corporate officers and members, who are natural persons, of limited liability companies required on the Business Registration Application can be satisfied by providing only the last four digits of the applicable number in the format 000-00-1234.~~

[OAR Docket #10-969; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #10-970]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Manufacturing Facilities
710:10-7-2.2 [AMENDED]
710:10-7-5 [AMENDED]
710:10-7-11 [AMENDED]
710:10-7-15 [AMENDED]
710:10-7-17 [AMENDED]

AUTHORITY:
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Proposed amendments to **Subchapter 7**, *"Manufacturing Facilities"*, are intended to clarify eligibility and application requirements, to delete obsolete language referring to Standard Industrial Codes and to update statutory citations.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2.2. Exemption requirements for qualified manufacturing and research and development facilities established, expanded or acquired

(a) **Manufacturing.** In order to be approved as a "manufacturing facility," the facility must be engaged in an activity defined as "manufacturing" by ~~the Standard Industrial Classification (SIC) Manual or~~ the North American Industrial Classification System (NAICS), published by the U.S. Office of Management & Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6B of the Oklahoma Constitution.

(b) **Research & Development.** In order to be approved as "research and development" the facility must be engaged in activities defined by 68 O.S. §2902(B)(3).

(c) **Facilities with sales tax exemptions.** The Tax Commission shall recognize all business issued Manufacturers Exemption Permits pursuant to 68 O.S. § 1359.2.

(d) **Definitions.** The following words and terms, when used in this Section shall have the following meanings unless the context clearly indicates otherwise:

(1) ***Manufacturing facilities*** *means facilities engaged in the mechanical or chemical transformation of materials or substances into new products*. 68 O.S. ~~Supp. 2006~~ § 2902(B)(1).

(2) ***Facility or facilities*** *means and includes the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process*. 68 O.S. ~~Supp. 2006~~ § 2902(B)(2).

(3) ***Research & development*** *means activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*. 68 O.S. ~~Supp. 2006~~ § 2902(B)(3).

(4) **Annualized payroll** means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.

(5) **Base-line payroll** means payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. The base-line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.

(e) **Qualification or Statutory Requirements.** Except as otherwise provided in (e)(6) and (e)(7) of this Section of rule, facilities must meet the requirements mandated by statute and summarized in (e)(1) through (e)(5) of this Section of rule:

(1) Facilities must satisfy the requirement of being new, expanded, or acquired.

(2) The investment cost of the construction, acquisition or expansion of the manufacturing facility must be Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Investment Cost shall not include the cost of direct replacement, refurbish, repair or maintenance of existing machinery or equipment.

(3) The net increase in annualized payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons according to the most recent federal decennial census while maintaining or increasing payroll; or at least One Million Dollars ($1,000,000.00) if the facility is located in a county with a population of seventy-five thousand (75,000) or more, according to the most recent federal decennial census while maintaining or increasing payroll.

(A) To determine base-line payroll, the Tax Commission must verify all payroll information through the Oklahoma Employment Security Commission (OESC) utilizing OESC reports for the calendar year

immediately preceding the year for which initial application is made. [See: 68 O.S. § 2902(C)(4)].

(B) The amount of increased payroll may include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section of rule.

(C) A manufacturing facility shall have the option of excluding from its payroll, payments to sole proprietors, members of partnerships, members of a limited liability company or stockholder employees under certain circumstances. Manufacturing facilities electing this option shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. Supp. 2005 § 2902(C)(4)

(D) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Tax Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase of the required annualized payroll.

(4) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility. [**See:** 68 O.S. § 2902(C)(4)(b)] Calculation of the number of employees shall be made in the same manner as required pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(5) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(6) Entities engaged in the generation of electric power by means of wind, as described in the North American Industry Classification System No. 221119, if there is a net increase in annualized payroll at the facility of at least Two Hundred Fifty Thousand Dollars ($250,000.00), or a net increase of Two Million Dollars ($2,000,000.00) or more in capital improvements while maintaining or increasing payroll, and all other requirements of this Section are met.

(7) For applications received after November 1, 2007, establishments primarily engaged in distribution as defined under industry Numbers 49311, 49312, 49313 and 49319 and Industry Sector Number 42 of the NAICS Manual latest revision, must meet all criteria required by statute and outlined in paragraphs (e)(4) and (e)(5) of this Section and the following subparagraphs:

(A) Initial capital investment of at least Five Million Dollars ($5,000,000.00);

(B) Employment of at least one hundred (100) FTE as certified by OESC;

(C) Wages and salaries equal to or exceeding one hundred seventy-five percent (175%) of the federally mandated minimum wage; and

(D) Commencement of construction on or after November 1, 2007, to be completed within three (3) years from the date of commencement of construction. [**See**: 68 O.S. 2007 Supp.§ 2902(B)(1)(e)].

(f) **Review of facility eligibility.** Eligibility subject to review by the Tax Commission. The Tax Commission may request any information from the applicant or verification of any information as required.

(g) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S. Supp. 2003, § 2902(A)].

(h) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

710:10-7-5. Date of qualification; application for exemption

(a) The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.

(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.

(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later that June 15 of the **TAX ~~year~~ YEAR** in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [**See:** 68 O.S. § 2902(F)]

710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection

(a) The county assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law. In determining whether the exemption application is to be approved, the assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law.

(b) The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each completed application received, whether approved or rejected, retain a copy of each application, and shall immediately forward ~~a copy of each~~ the original application, whether approved or rejected, to the Oklahoma Tax Commission Ad Valorem Division. The original of each application, whether approved or rejected, shall be delivered to the County Board of Equalization, on or before the fourth Monday in April each year for its review.

(c) If the manufacturer's first year application is approved, the assessor shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**APPROVED**". It shall then be the duty of the Oklahoma Tax Commission to make a physical inspection of each facility approved for the exemption, determine the fair cash value of the real property, if necessary, and the personal property separately, and to determine the assessed value of each by applying the assessor's assessment percentage to that value. The Tax Commission shall then notify the county assessor of the evaluation.

(d) If the county assessor finds that the exemption should not be allowed by reason of not being in conformity to the law, he shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**DISAPPROVED**", stating the reason for the disapproval, and shall notify the applicant at the address shown in the application. The notice shall be mailed on or before the fourth Monday in April. The assessor shall then immediately proceed to value and assess the property, as provided by law.

710:10-7-15. Review; protest; appeal

(a) **Notice of erroneous exemption; assessment.** If the Tax Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, ~~it~~ shall notify the appropriate county assessor, who shall, after notice to the applicant as required by law has been given, immediately value and assess the property and place the property on the tax rolls for Ad Valorem taxation. [**See:** Attorney General Opinion 03-16]

(b) **Notice to applicant.** The Tax Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the county assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provision of the Uniform Tax Procedure Code. [**See:** 68 O.S. §§ 201, et seq. and the Rules of Practice and Procedure before the Commission, promulgated at 710:1-5-20 through 710:1-5-48 of the **Oklahoma Administrative Code.**]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law.

710:10-7-17. Actual ~~Fair~~ fair cash value

The fair cash value used for exempt manufacturing personal property for ad valorem tax purposes will be the amount determined by the Oklahoma Tax Commission. The fair cash value used for exempt manufacturing real property may be determined by the county assessor with the assistance and review of the Oklahoma Tax Commission.

[OAR Docket #10-970; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #10-967]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Exemptions and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-21 [AMENDED]
710:45-9-24 [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-31 AMENDED]
710:45-9-32.1 [AMENDED]
710:45-9-34 [AMENDED]
710:45-9-35 [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-40 [AMENDED]
710:45-9-41 [AMENDED]
Part 11. Reestablishment of Production from an Inactive Well
710:45-9-51 [AMENDED]
Part 13. Deep Wells
710:45-9-60 [AMENDED]
Part 15. New Discovery Wells
710:45-9-70 [AMENDED]
710:45-9-71 [AMENDED]
710:45-9-73 [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-90 [AMENDED]
710:45-9-92 [AMENDED]
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ANALYSIS:
Proposed amendments to **Subchapter 9**, *"Exemptions and Exclusions"*, have been made to implement the provisions of Senate Bill 313 (52nd Legislature, 1st Regular Session, 2009) which extended the sunset date for certain rebates from July 1, 2009 to July 1, 2012.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-21. Definitions

In addition to terms defined in 710:45-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Angle of deviation" means that angle in which a wellbore may deviate from the vertical.

"Date of completion of an oil well" means the date that the well first produces into the lease tanks through permanent well head equipment.

"Date of completion of a gas well" means the date that gas is capable of being delivered to a pipeline purchaser.

"Effective date" means that the first production must have commenced after July 1, 1995 and before July 1, ~~2009~~ 2012.

"Horizontal displacement" means that distance drilled into the pay zone of a formation at an angle exceeding seventy (70) degrees.

"Horizontally drilled payout" means the point at which gross working interest revenue from the horizontally drilled well equals the cost of drilling and completing such well.

"Horizontally drilled well" means an oil, gas, or oil and gas well drilled or completed in a manner which encounters and subsequently produces from a geological formation at an angle in excess of seventy (70) degrees from the vertical and which laterally penetrates a minimum of one hundred and fifty (150) feet into the pay zone of the formation.

"True vertical depth" means that depth measured from the surface perpendicular to the surface.

710:45-9-24. Time periods for exemption from gross production tax levied on horizontally drilled producing wells

(a) **General provisions.** The exemption for horizontally drilled wells qualified pursuant to this Part shall be determined from the project beginning date until project payback is achieved, and are limited in duration to the time periods set out in this Section.

(b) **Twenty-four (24) month exemptions.** For production described in this subsection, duration of the exemption may not exceed a period of twenty-four (24) months commencing with the date of initial production from the horizontally drilled well.

(1) **Production prior to July 1, 1994.** Any incremental production which results from a horizontally drilled well producing prior to July 1, 1994.

(2) **Production prior to July 1, 2002, which commenced after July 1, 1995.** Any horizontally drilled well producing prior to July 1, 2002, which production commenced after July 1, 1995.

(c) **Forty-eight (48) month exemption.** For a horizontally drilled well producing prior to July 1, ~~2009~~ 2012, which production commenced after July 1, 2002, the duration of the exemption may not exceed a period of forty-eight (48) months commencing with the date of initial production from the horizontally drilled well. [**See:** 68 O.S.Supp.2002, § 1001(E)(1)]

PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

710:45-9-31. Definitions

In addition to terms defined in 710:45-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Base Production amount" means the average monthly amount of production for the twelve (12) month period immediately prior to the project beginning date minus the monthly rate of production decline for the project or property for each month beginning one hundred eighty (180) days prior to the project beginning date.

"Completion date" means the date a well is first capable of being used for the injection of liquids, gases or other matter, or is capable of producing crude oil or other liquid hydrocarbons through permanent wellhead equipment.

"Enhanced recovery project costs" means the incremental project costs that are allowed as payback factors in determining the exemptions from the levy of gross production tax of project incremental production.

"Existing tertiary enhanced recovery project" means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a tertiary enhanced recovery project whose beginning date is prior to October 16, 1987.

"Incremental production" means the amount of crude oil or other liquid hydrocarbons which are produced during an approved enhanced oil recovery operation and which are in excess of the base production amount of crude oil or other liquid hydrocarbons.

"Incremental working interest revenue" means the gross value of the incremental production, less the royalty interest therein.

"Monthly rate of production decline" means a rate equal to the average extrapolated monthly decline rate for the twelve (12) month period immediately prior to the project beginning date as determined by the Commission, based on the production history of the field, its current status, and sound reservoir engineering principles.

"New enhanced recovery project" means, for purposes of the exemption described in 68 O.S. § 1001(D)(1), a secondary or tertiary enhanced recovery project whose beginning date is on or after October 16, 1987.

"Project beginning date" means the date on which the injection of liquids, gas, or other matter begins on an enhanced recovery operation.

"Project payback or payout" means that point at which the incremental working interest revenue from the enhanced recovery project equals the enhanced project costs.

"Secondary recovery projects" means secondary recovery projects approved or having an initial project beginning date on or after July 1, 2000 and before July 1, ~~2009~~ 2012, such that any incremental production attributable to the working interest which results from such secondary recovery property shall be exempt from the gross production tax levied pursuant to 68 O.S. Section 1001 for a period not to exceed five (5) years from the initial project beginning date or for a period ending upon the termination of the secondary recovery process, whichever occurs first.

710:45-9-32.1. Recovery of costs allowed as payback factors

(a) **Enhanced recovery projects with beginning date between October 17, 1987, and June 30, 1990.** For enhanced recovery projects whose beginning dates are October 17, 1987, through June 30, 1990, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses associated with the enhanced recovery project.

(b) **Enhanced recovery project with beginning date between July 1, 1990, and June 30, 1993.** For any enhanced recovery project whose beginning date was July 1, 1990, through June 30, 1993, **allowable enhanced recovery project costs** shall be limited to the incremental capital costs of project start up, including the cost of completing any well necessary to the project and of converting any existing well to handle secondary or tertiary injection of liquids, gas or other matter. No expenditure after the completion date of such wells shall be included.

(c) **Secondary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, 2000.** For any secondary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, 2000, **allowable enhanced recovery project costs** shall include only incremental capital costs and fifty percent (50%) of incremental operating expenses, provided however, that the period for project payback shall not exceed a period of ten (10) years from the project beginning date.

(d) **Tertiary enhanced recovery project with beginning date on or after July 1, 1993, and before July 1, ~~2009~~ 2012.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, ~~2009~~ 2012, **allowable enhanced recovery project costs** shall include only incremental capital costs and incremental operating expenses, excluding administrative expenses and the capital expense of pipelines constructed to transport carbon dioxide to a tertiary recovery project, provided such payback shall not exceed a period of ten (10) years from the project beginning date.

(e) **Excluded costs.** The cost of tank batteries, meters, pipelines or other external equipment shall not be included in allowable enhanced recovery project costs. Allowable costs shall be determined using generally accepted accounting principles such as outlined in the **"Council of Petroleum Accountants Society (COPAS) - Accounting Procedure Form for Joint Operations"** and **"COPAS Bulletin No. 16"**, or subsequent revisions thereto.

710:45-9-34. Summary reports; due dates; final project report

(a) For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, ~~2009~~ 2012, operators of exempt projects will submit to the Oklahoma Tax Commission annual summaries of project operations, on each anniversary of the project's beginning date, showing:

(1) Original capital investment in the enhanced recovery project;

(2) Additional investments in the enhanced recovery project;

(3) Enhanced recovery project operating expense for previous years, when applicable;

(4) Enhanced recovery project operating expense for the current year, when applicable;

(5) Schedule of project production (volume and value) by year of operation;

(6) Royalty payments, by year; and.

(7) Computation of revenue applied to project payback.

(b) The annual summary is to be filed with the Oklahoma Tax Commission on or before the sixtieth (60th) day following each anniversary of the project's beginning date.

(c) A final project report must be filed within sixty (60) days of achieving project payback.

710:45-9-35. Expiration of exemption for incremental production

For secondary recovery projects approved prior to July 1, 2000, and tertiary recovery projects approved prior to July 1, ~~2009~~ 2012, once the gross working interest revenue equals the enhanced recovery project cost, the exemption of incremental production shall end and the Oklahoma Tax Commission shall resume collection of the Gross Production Tax thereon.

PART 9. PRODUCTION ENHANCEMENT PROJECTS

710:45-9-40. Scope of Part 9

Exemption from the levy of gross production tax on the incremental production which results from a production enhancement project with a project beginning date on or after July 1, 1994, and prior to July 1, ~~2009~~ 2012, set out in 68 O.S. § 1001(G) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

710:45-9-41. Definitions

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

"Base production" means the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project or the average monthly amount of production for the twelve-month period immediately prior to the commencement of the project less the monthly rate of production decline for the project for each month beginning one hundred eighty (180) days prior to the commencement of the project. The monthly rate of production decline shall be equal to the average extrapolated monthly decline rate for the twelve-month period immediately prior to the commencement of the project based on the production history of the well. If the well or wells covered by the application had production for less than the full twelve-month period prior to the filing of the application for the production enhancement project, the base production shall be the average monthly production for the months during that period that the well or wells produced.

"Effective date" means the project beginning date for the production enhancement project.

"Exemption period" means a period of twenty-eight (28) months from the date of first sale after completion of the production enhancement project.

"Incremental production" means the amount of crude oil, natural gas or other hydrocarbons which are produced as a result of the production enhancement project in excess of the base production.

"Production enhancement project" means:

(A) For production enhancement projects having a project beginning date prior to July 1, 1997, any workover or recompletion, as those terms are defined in this Section, or fracturing of a producing well.

(B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, any workover or recompletion, as those terms are defined in this Section, any reentry of plugged and abandoned wellbores, or addition of well or field compression.

"Recompletion" means:

(A) For production enhancement projects having a project beginning date prior to July 1, 1997, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geological interval not currently completed or producing in such existing oil or gas well.

(B) For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, any downhole operation in an existing oil well or gas well that is conducted to establish production of oil or gas from any geologic interval not currently completed or producing in such existing oil or gas well within the same or a different geologic formation.

"Workover" means any downhole operation in an existing oil or gas well that is designed to sustain, restore or increase the production rate or ultimate recovery in a geologic interval currently completed or producing in said existing oil or gas well. For production enhancement projects having a project beginning date prior to July 1, 1997, **"workover"** includes, but is not limited to, acidizing, reperforating, fracture treating, sand/paraffin removal, casing repair, squeeze cementing, or setting bridge plugs to isolate water productive zones from oil or gas productive zones, or any combination thereof. For production enhancement projects having a project beginning date on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, **"workover"** includes, but is not limited to, acidizing; reperforating; fracture treating; sand, paraffin, or scale removal or other wellbore cleanouts; casing repair; squeeze cementing; installation of compression on a well or group of wells or artificial lifts on oil, gas, or oil and gas, wells, including plunger lifts, rod pumps, submersible pumps and coiled tubing velocity strings; downsizing existing tubing to reduce well loading; downhole commingling; bacteria treatments; upgrading the size of pumping unit equipment; setting bridge plugs to isolate water production zones; or any combination thereof. "**Workover**" shall not mean the routine maintenance, routine repair, or like-for-like replacement of downhole equipment such as rods, pumps, tubing, packers, or other mechanical devices.

PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

710:45-9-51. Definitions

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

"Effective date" means the date on which the reestablishment of production has occurred.

"Exemption period" means a period of twenty-eight (28) months from the date upon which production from an inactive well is reestablished.

"Inactive well" means a well which can be defined pursuant to one of the following:

(A) A well which, after July 1, 1997, experiences mechanical failure or loss of mechanical integrity, as defined by the Corporation Commission, including, but not limited to, casing leaks, collapse of casing, or loss of equipment in a wellbore, or any similar event which causes cessation of production and results in a workover of the well, as evidenced by the use of a workover rig or other mechanical device being placed over the well to repair the well or equipment.

(B) A well on which work to reestablish production commenced on or after July 1, 1994, and on or before June 30, 1997, that has not produced oil, gas, or oil and gas for a period of not less than two (2) years, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission reflecting the well's status.

(C) A well on which work to reestablish production commenced on or after July 1, 1997, and on or before July 1, ~~2009~~ 2012, that has not produced oil, gas, or oil and gas for a period of not less than one (1) year, as evidenced by the appropriate forms on file with the Oklahoma Corporation Commission, reflecting the well's status.

PART 13. DEEP WELLS

710:45-9-60. Scope of Part 13

(a) **General provisions.** Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells certified as being "Deep Wells" set out in 68 O.S. § 1001(H) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

(b) **Definitions.** For purposes of qualifying for the exemption, "**depth**" means the length of the maximum continuous string of drill pipe utilized between the drill bit face and the drilling rig's kelly bushing.

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(e) **Exemption for wells spudded on or after July 1, 2002.** Deep wells spudded on or after July 1, 2002, shall be eligible for an exemption from the gross production tax which shall begin from the date of first sale, and vary as to duration in relation to the depth of the well.

(1) **12,500 to 14,999 feet and spudded between July 1, 2002 and July 1, ~~2009~~ 2012.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet and spudded between July 1, 2002 and June 30, 2011.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater and spudded between July 1, 2002 and June 30, 2011.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

PART 15. NEW DISCOVERY WELLS

710:45-9-70. Scope of Part 15

Exemption from the levy of gross production tax on the production of gas, oil, or gas and oil from wells spudded or reentered between July 1, 1995 and July 1, ~~2009~~ 2012, which qualify as a new discovery well pursuant to Title 68, Section 1001(I) shall be determined according to the provisions of this Part, which have been jointly adopted by the Oklahoma Corporation Commission and the Oklahoma Tax Commission pursuant to 68 O.S. § 1001(M)(1).

710:45-9-71. Definitions

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

"New discovery" means production of oil, gas, or oil and gas from:

(A) A well, spudded or reentered on or after July 1, 1997, which discovers crude oil in paying quantities, and is located more than one (1) mile from the nearest oil well producing from the same producing formation.

(B) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, which discovers crude oil in paying quantities, and is located more than one (1) mile from the nearest oil well producing from the same producing interval of the same formation.

(C) A well, spudded or reentered prior to July 1, 1997, which discovers crude oil in paying quantities beneath current production in a deeper producing formation, located more than one (1) mile from the nearest oil well producing from the same deeper producing formation.

(D) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, which discovers crude oil in paying quantities beneath current production in a deeper producing interval, located more than one (1) mile from the nearest oil well producing from the same deeper producing interval.

(E) A well, spudded or reentered prior to July 1, 1997, which discovers natural gas in paying quantities, and is located more than two (2) miles from the nearest gas well producing from the same producing formation.

(F) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, which discovers natural gas in paying quantities, and is located more than two (2) miles from the nearest gas well producing from the same producing interval.

(G) A well, spudded or reentered prior to July 1, 1997, which discovers natural gas in paying quantities beneath current production in a deeper producing formation, that is more than two (2) miles from the nearest gas well producing from the same deeper producing formation.

(H) A well, spudded or reentered on or after July 1, 1997, and prior to July 1, ~~2009~~ 2012, which discovers natural gas in paying quantities beneath current production in a deeper producing interval, that is more than two (2) miles from the nearest gas well producing from the same deeper producing interval.

710:45-9-73. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and July 1, ~~2009~~ 2012 ;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(4) If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "New Discovery Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

PART 19. PRODUCTION USING THREE DIMENSIONAL SEISMIC SHOOTS

710:45-9-90. Scope of Part 19

Exemption from the levy of gross production tax on the production of oil, gas or oil and gas from a well, drilling of which is commenced after July 1, 2000, and prior to July 1, ~~2009~~ 2012, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, as set out in 68 O.S. § 1001(J), shall be determined according to the provisions of this Part. [**See:** 68 O.S. § 1001(M)(1); Amended at 21 Ok Reg 1128, eff 5-13-04]

710:45-9-92. Qualification procedure

(a) **General provisions.** The provisions of this Section establish criteria for determining if an operator producing oil, gas or oil and gas from a well, drilling of which is commenced after July 1, 2000, and prior to July 1, ~~2009~~ 2012, located within the boundaries of a three-dimensional seismic shoot and drilled based on three-dimensional seismic technology, has met the required conditions to qualify the production from such a well for the exemption from the Gross Production Tax. [**See:** 68 O.S. § 1001(J)]

(b) **Administrative approval and determination~~:~~.** An operator seeking an exemption of the gross production tax on production from a well located within the boundaries of a three-dimensional seismic shoot and drilled based on such technology, shall make application to the Oklahoma Corporation Commission on a Form 1534 for a determination that the well qualifies for such exemption, as provided in 68 O.S.~~Supp.2000,~~ § 1001(J).

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator shall forward a copy of the approved application to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-88.

(3) Any data, maps and other information submitted with the OCC Form 1534 for determination that a well qualifies for the exemption provided in this paragraph shall be held as confidential information by the Conservation Division and/or Commission, and shall be returned to the applicant or destroyed upon approval of the application.

710:45-9-93. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application, the well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall make its request for refund by letter to the Compliance Division, Oklahoma Tax Commission. Such letter request shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) Corporation Commission order approving such application and containing a determination that the well meets the criteria of the statute insofar that its drilling was commenced after July 1, 2000, and prior to July 1, ~~2009~~ 2012; that it is located within the boundaries of a three-dimensional seismic shoot and was drilled based on such technology; and indicating whether the seismic shoot was shot either prior to, or after July 1, 2000.

(2) A schedule of production, by month, of the gross amounts of oil, gas, or oil and gas produced, and the gross values thereof, from the date of first sale until the date application is made to the Tax Commission.

(3) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission order, a notarized affidavit, signed by the party named in the order must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Three-Dimensional Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

(g) **Method of appeal.** If the refund is denied, the applicant may file an appeal under the provisions of Title 68, Sections 227 and 228 of the Oklahoma Statutes.

[OAR Docket #10-967; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #10-968]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-45 [AMENDED]
710:50-3-46 [AMENDED]
Subchapter 9. Refunds
710:50-9-3 [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 3. Exemptions
710:50-15-35 [NEW]
Part 5. Other Adjustments to Income
710:50-15-47 [NEW]
710:50-15-50 [AMENDED]
710:50-15-53 [AMENDED]

710:50-15-68 [NEW]
Part 7. Credits Against Tax
710:50-15-74 [AMENDED]
710:50-15-81 [AMENDED]
710:50-15-83 [AMENDED]
710:50-15-86 [AMENDED]
710:50-15-87 [AMENDED]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51 [AMENDED]
Part 7. Apportionment and Allocation of Corporate Income and Expense
710:50-17-71 [AMENDED]

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ANALYSIS:
As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the First Regular Session of the 52nd Legislature (2009).

Section 710:50-3-45 has been amended to provide procedures for verification of signatures on returns which are filed electronically.

Section 710:50-3-46 has been amended to conform to current Oklahoma statutory law requiring any tax return preparer who prepared more than fifty (50) Oklahoma tax returns for the previous tax year to file Oklahoma income tax returns prepared for the current year by electronic means. **[68:2385]**

Section 710:50-9-3 has been amended to implement the provisions of Senate Bill 11 which amends the amount of time the Oklahoma Tax Commission has to issue income tax refunds before being required to pay interest on those refunds. **[68:217]**

New Section 710:50-15-35 has been added to implement the provisions of Senate Bill 721 which exempts payments from the Department of Defense, as a result of death in a designated combat zone, from Oklahoma income tax. **[68:2358.1A]**

New Section 710:50-15-47 has been added to implement the provisions of Senate Bill 881 which modifies the Oklahoma military pay deduction. **[68:2358(E)(5)]**

Section 710:50-15-50 has been amended to implement the provisions of Senate Bill 318 which does not allow for certain qualified motor vehicle taxes to be deducted for Oklahoma income tax purposes. **[68:2358]**

Section 710:50-15-53 has been amended to implement the provisions of Senate Bill 318 which modifies the net operating loss carryback provisions.

New Section 710:50-15-68 has been added to implement the provisions of Senate Bill 318 which taxes unemployment compensation exempt from federal income taxation. **[68:2358]**

Section 710:50-15-74 has been amended to implement the provisions of Senate Bill 938 regarding the 21st Century Quality Jobs Incentive Act and House Bill 2067 regarding the Oklahoma Community Development Finance Act.

Section 710:50-15-81 has been amended to implement the provisions of House Bill 1949 which extends the sunset provisions of the clean-burning motor vehicle fuel property conversion credit to December 31, 2014. **[68:2357.22]**

Section 710:50-15-83 has been amended to implement the provisions of Senate Bill 938 which enacted the 21st Century Quality Jobs Incentive Act. **[68:3919]**

Sections 710:50-15-86 and 710:50-15-87 have been amended to clarify the carryover provisions for the Oklahoma Small Business Venture credits and the Oklahoma Rural Small Business Venture credits. **[68:2357.62, 2357.63, 2357.73, 2357.74]**

Section 710:50-17-51 has been amended to implement the provisions of Senate Bill 318 which decouples Oklahoma from the federal bonus depreciation for corporations as well as modifies the net operating loss carryback provisions and the Section 179 expensing amounts. **[68:2358]**

Section 710:50-17-71 has been amended to clarify policy and comply with current statutory authority that income received from the sale of services when the seller performs services in one state and the purchaser is located in another state should be sourced on a market basis. **[68:2358]**

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-45. Verification of signatures on electronically-filed returns

(a) **General provisions.** Section 2368(H) of the Oklahoma Statutes requires that any return must be verified by a written declaration that it is made under penalties of perjury and further, authorizes the Tax Commission to promulgate rules to provide procedures for verification of signatures on returns which are filed electronically.

(b) **Authentication.** For purposes of authenticating a signature for electronic filing, entry of the Taxpayer's Personal Identification Number (PIN) ~~or Customer Service Number (CSN)~~ in the ~~Telefile~~ electronic filing process operated by the Internal Revenue Service shall serve as an "electronic signature" to sufficiently identify and link the taxpayer to a particular return, pursuant to the Oklahoma Income Tax Code. Entry of the taxpayer's PIN as signature will only be allowed on a joint federal/state return or a linked electronically-filed return. Use of a PIN will not be allowed on a state-only or unlinked return.

(c) **Verification.** For purposes of verifying the information provided by a taxpayer filing electronically, as required by Section 2368(H) of the Oklahoma Income Tax Code, completion of the ~~Telefile~~ electronic filing process operated by the Internal Revenue Service, including entry of the Taxpayer's PIN ~~or~~

~~CSN~~ shall serve as verification of the information provided by the taxpayer during the ~~call~~ transmission.

710:50-3-46. Electronic filing requirement for tax return preparers

(a) **Definitions.** For purposes of this ~~section~~ Section, ***"tax return preparer"*** *means any person who prepares, for compensation, any return of tax imposed under Title 68 of the Oklahoma statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The term* ***"tax return preparer"*** *also includes any person who employs one or more persons to prepare, for compensation, any return of tax imposed under Title 68 of the Oklahoma Statutes, including any claim for refund of any tax imposed under Title 68 of the Oklahoma Statutes. The preparation of a substantial part of a return or a claim for refund is deemed to be the preparation of the entire return or claim for refund.*

(b) **General provisions.** *Any tax return preparer who prepared more than fifty (50) Oklahoma tax returns for the previous tax year must file* Oklahoma ~~individual~~ income tax *returns prepared for the current year by electronic means.* The requirement to file returns electronically applies only to those ~~individual~~ income tax returns for which the Tax Commission is set up to accept by electronic means, and *does not apply to any return on which the taxpayer has indicated a desire that the return* ***not*** *be filed electronically.*

(c) **Check-off box.** Oklahoma ~~Individual~~ Income Tax Returns will have a check-off box for use by those taxpayers who wish to designate that their ~~individual~~ income tax return **not** be electronically filed. [68 O.S.Supp.2003, § 2385]

SUBCHAPTER 9. REFUNDS

710:50-9-3. Interest on refunds

(a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.

(b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, thirty (30) days; and,

(2) For all other returns, ~~One Hundred Fifty~~ one hundred fifty (150) days.

(c) **Returns filed after January 1, 2010.** For returns filed after January 1, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, twenty (20) days, and

(2) For all other returns, ninety (90) days.

(d) **Definitions.** For purposes of this Section, time periods shall be determined from the date a processible return is filed or due, whichever is later. To be **"processible"**, all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [**See:** 68 O.S. § 217(H)]

(~~d~~e) **Exceptions.** Alternative statutory provisions apply in the following instances:

(1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [**See:** 68 O.S. § 217(H)]

(2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.

(3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at 6 percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [**See:** 68 O.S.~~1997,~~ § 2373]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-35. Exemption for deceased members and spouses of the Armed Forces

(a) Any payment made by the United States Department of Defense as a result of the death of a member of the Armed Forces of the United States who has been killed in action in a United States Department of Defense designated combat zone shall be exempt from Oklahoma income tax during the taxable year in which the individual is declared deceased by the Armed Forces.

(b) Any income earned by the spouse of a member of the Armed Forces of the United States who has been killed in action in a United States Department of Defense designated combat zone shall be exempt from Oklahoma income tax during the taxable year in which the individual is declared deceased by the Armed Forces.

(c) In any case where income tax has been paid upon any income exempt pursuant to this Section, the tax paid shall be refunded to the person or personal representative of the person.

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-47. Oklahoma military pay deduction

(a) For tax years beginning before January 1, 2010, individual taxpayers can subtract from Oklahoma adjusted

gross income the first One Thousand Five Hundred Dollars ($1,500.00) of salary or compensation earned as a member of any component of the Armed Forces of the United States.

(b) For salary or compensation earned on or after January 1, 2010 and before July 1, 2010 individual taxpayers can subtract from Oklahoma adjusted gross income the first One Thousand Five Hundred Dollars ($1,500.00) of salary or compensation earned as a member of any component of the Armed Forces of the United States.

(c) For salary or compensation earned on or after July 1, 2010 individual taxpayers can subtract from Oklahoma adjusted gross income all salary or compensation earned as a member of any component of the Armed Forces of the United States.

(d) Salary or compensation under this Section does not include retirement benefits.

710:50-15-50. Deductions

(a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.

(b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of $1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed $2,000.00 (if married filing separately, the larger of $500.00 or 15% not to exceed $1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of $3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $2,000.00.

(d) For tax year 2007, taxpayers filing as married joint or surviving spouse will have a standard deduction for Oklahoma of $5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $4,125.00.

(e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of $6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $4,875.00.

(f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of $8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of $6,375.00.

(g) For tax year 2010 and subsequent tax years, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.

(h) Taxpayers will be required to add back the "qualified motor vehicle taxes" which were allowed as an itemized deduction on the Federal return under the provisions of the American Recovery and Reinvestment Act of 2009.

710:50-15-53. Oklahoma net operating loss for individual returns

(a) Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code and will be calculated utilizing Oklahoma Form 511-NOL Schedule A for resident individuals and Form 511-NR-NOL Schedule A for nonresident and part-year individuals.

(b) The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, as follows:

(1) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss carryback shall be for a period of three (3) years;

(2) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss carryback shall be for a period of two (2) years;

(3) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss carryback shall be for a period of one (1) year;

(4) For net operating losses incurred for tax years beginning after December 31, 1995, no loss carryback shall be allowed; and

(5) For net operating losses incurred for tax years beginning on or after January 1, 2001, and before December 31, 2006, the loss carryback shall be for a period as allowed in the Internal Revenue Code.

(6) For net operating losses incurred for tax years beginning on or after January 1, 2007, and before December 31, 2007 the loss carryback shall be for a period of two (2) years.

(c) Resident individuals will use Oklahoma Form 511-NOL Schedule B to compute the amount of the loss absorbed in each intervening year. Nonresident and part-year resident individuals will use Oklahoma Form 511-NR-NOL Schedule B to compute the amount of loss absorbed in each intervening year.

(d) Taxpayers who incur a net operating loss from farming, allowed under IRC § 172 (b)(G), in tax years beginning after December 31, 1999, will be allowed to carry that loss back, in accordance with the carryback provisions of the Internal Revenue Code. However, the amount of the farm net operating loss available for carryback is limited to the lesser of Sixty Thousand Dollars ($60,000) or the loss shown on Federal Schedule F of the Internal Revenue Service Form 1040, reduced by fifty percent (50%) of the income from all other sources, except those included on Federal Schedule F.

710:50-15-68. General provisions applicable to unemployment compensation

For tax years beginning on or after January 1, 2009, unemployment compensation exempted under Section 85 (c) of the

Internal Revenue Code, 26 U.S.C., Section 85(c)(2009) must be included in Oklahoma taxable income.

PART 7. CREDITS AGAINST TAX

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.

(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on the investment or new employees when other qualifications are met. (See OTC Form 506).

(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [**See:** 68 O.S. §§ 2357.4, 2357.5]

(d) **"Processing" defined.** For purposes of this Section, **"processing"** means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.

(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exits between the employer manufacturing or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

(1) The right of the employer to control the details of the employees work;

(2) The employer furnishing the tools and the workplace;

(3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;

(4) The employer's right to discharge the employee; and

(5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.**

(1) No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), ~~or~~ Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. Effective January 1, 2010, this limitation does not apply to the investment / new jobs credit earned under 68 O.S. § 2357.4 (which requires a $40 million investment within a three year time period). Further the entity must pay an annualized wage which equals or exceeds the state average wage. The qualifying entity must also obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate. [**See:** 68 O.S. §§ 3607, 3909 and 3919]

(2) Business entities that benefit from proceeds of obligations issued by the Oklahoma Development Finance Authority from the Economic Development Pool may not claim any investment tax credits during the period of time that withholding taxes attributable to the payroll of said entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Oklahoma Development Finance Authority pursuant to the provisions Oklahoma Community Economic Development Pooled Finance Act.

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, **"motor vehicle"** includes forklifts and other similar self-propelled vehicles. **"Vehicle"** shall

not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(b) **Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S.~~Supp.1993,~~ §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [**See:** 68 O.S. §§3607, 3909]

(c) **Electric vehicle property.** For vehicles placed in service after December 31, 1995, the credit shall also be available for qualified electric vehicle property. **"Qualified electric vehicle property"** means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property" propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go-carts", or other motor vehicles which are manufactured principally for use off the streets and highways.

(d) **Sunset date.** This credit will only be available through tax years beginning before January 1, ~~2010~~ 2015.

710:50-15-83. Limitation of credits allowed by the Oklahoma Quality Jobs Program, ~~and~~ the Small Employer Quality Jobs Incentive Acts and the 21st Century Quality Jobs Incentive Act

No establishment which qualifies under the terms of Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), ~~or~~ Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) and has received or is receiving incentive payments pursuant to those Acts, nor its contractors or subcontractors, shall be eligible to receive, in connection with the activity and establishment for which incentive payments have been, or are being received, the credits described as follows:

(1) The investment credit provided for by 68 O.S. §2357.4. [See: 710:50-15-74]

(2) The credit for investments in qualified venture capital companies provided for by 68 O.S. §2357.7. [See: 710:50-15-77 and 710:50-15-78]

(3) The credit for recycling, reuse, or ultimate destruction of controlled industrial waste or deleterious substances, provided for by 68 O.S. §2357.16. (Amended and recodified at 27A O.S.~~Supp.1993,~~ §§2-11-301 through 2-11-307.) [See: 710:50-15-75]

(4) The credit for clean-burning motor vehicle fuel property, provided for by 68 O.S. §2357.22. [See: 710:50-15-81]

(5) The credit for certain qualified health care plans, provided for by 68 O.S. §2357.31. [See: 710:50-15-79]

(6) The credits provided pursuant to the Oklahoma Research and Development Incentives Act,68 O.S. §§54003, 54006

710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

(a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars ($1,000,000.00). [**See:** 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.

(1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. §2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [**See:** 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to twenty percent (20%) of the qualified investment in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of the qualified investment which is subsequently invested in an Oklahoma small business venture by the qualified Small Business Capital Company.

(3) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward ~~for a period not to exceed three (3) taxable years.~~ subject to the following limitations:

(A) The credit may be carried forward for a period not to exceed three (3) years for investments made on or after November 1, 2006.

(B) The credit may be carried forward for a period not to exceed ten (10) years for investments made prior to June 7, 2006.

(C) The credit may be carried forward for a period not to exceed ten (10) years for investments made on or after June 7, 2006 and prior to November 1, 2006, provided the following conditions are met:

(i) The person or entity claiming the credit obtained a favorable determination letter from the Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the tax credits;

(ii) The qualified investment satisfies a legitimate business purpose of the entity receiving the investment;

(iii) The investor's funds were at risk; and

(iv) The investment was not made chiefly for the purpose of generating tax credits.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Small Business Capital Company is used by an Oklahoma Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company. Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further, the Oklahoma Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the qualified investment in an Oklahoma Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder, member or a partner of the qualified Small Business Capital Company that has made a qualified investment in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of two hundred percent (200%) of the taxpayer's qualified investment in the qualified Small Business Capital Company or two hundred percent (200%) of the qualified investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act.* [68 O.S. § 2357.63A]

710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits

(a) **Qualified Rural Small Business Capital Company.** A Qualified Rural Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Rural Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to rural small business entities in this state. The principal place of business of the qualified Rural Small Business Capital Company must be located within Oklahoma and the capitalization must be at least Five Hundred Thousand Dollars ($500,000.00). The qualified Rural Small Business Capital Company cannot invest more than twenty-five percent (25%) of its funds in any one rural small business entity.

(1) **Credit available.** For taxable years beginning after December 31, 2000, and before January 1, 2008, there is a credit available against the Oklahoma Income Tax levied by 68 O.S. § 2355, and the tax levied on state and national banking associations and credit unions by 68 O.S. § 2370, for investments in a qualified Rural Small Business Capital Company. The credit is also available against the insurance premiums tax. [**See:** 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to thirty percent (30%) of the qualified investment in a qualified Rural Small Business Capital Company, and may only be claimed in the tax year in which the capital company invests funds in an Oklahoma Rural Small Business Venture. The credit is limited to the amount of the qualified investment which is subsequently invested in an Oklahoma rural small business venture by the qualified Rural Small Business Capital Company, and is unavailable for investments made in qualified Rural Small Business Capital Companies made **prior** to January 1, 2001.

(3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward ~~for a period not to exceed three (3) taxable years.~~ subject to the following limitations:

(A) The credit may be carried forward for a period not to exceed three (3) years for investments made on or after November 1, 2006.

(B) The credit may be carried forward for a period not to exceed ten (10) years for investments made prior to June 7, 2006.

(C) The credit may be carried forward for a period not to exceed ten (10) years for investments made on or after June 7, 2006 and prior to November 1, 2006, provided the following conditions are met:

(i) The person or entity claiming the credit obtained a favorable determination letter from the Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the tax credits;

(ii) The qualified investment satisfies a legitimate business purpose of the entity receiving the investment;

(iii) The investor's funds were at risk; and

(iv) The investment was not made chiefly for the purpose of generating tax credits.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Rural Small Business Capital Company is used by an Oklahoma Rural Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified Rural Small Business Capital Company. Further, the credit is not available for investments in which the Small Business Capital Credit has been claimed.

(b) **Oklahoma Rural Small Business Ventures.** An Oklahoma Rural Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Rural Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, and must provide or intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further the Rural Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Rural Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in Oklahoma Rural Small Business Ventures in conjunction with investment by qualified Rural Small Business Capital Company.** Shareholders or partners in a qualified Rural Small Business Capital Company may also make an investment in an Oklahoma Rural Small Business Venture, in conjunction with the investment by the qualified Rural Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to thirty percent (30%) of the qualified investment in an Oklahoma Rural Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Rural Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified Rural Small Business Capital Company:

(A) The investment must be made by a shareholder, member or a partner of the qualified Rural Small Business Capital Company that has made a qualified investment in an Oklahoma Rural Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in the Rural Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Rural Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with qualified Rural Small Business Capital Companies is limited to the lesser of two hundred percent (200%) of the taxpayer's qualified investment in the qualified Rural Small Business Capital Company, or two hundred percent (200%) of the qualified investment made by the qualified Rural Small Business Capital Company in the Rural Small Business Venture.

(d) **Reporting requirements.** Each qualified Rural Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Rural Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Rural Small Business Capital Company in Oklahoma Rural Small Business Ventures.

(e) **Recordkeeping.** Each qualified Rural Venture Capital Company shall also make a written information report available to all investors in the qualified Rural Venture Capital Company. This information report shall show the name of the qualified Rural Venture Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation Incentive Act.* [68 O.S. § 2357.74A]

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, <u>and before December 31, 2006</u> the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(VI) For net operating losses incurred for tax years beginning on or after January 1, 2007, and before December 31, 2007 the loss **carry-back** shall be for a period of two (2) years.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [**See:** 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U.S.obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not

exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. **[See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, ~~or~~ the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, ~~or~~ the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars ($175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

PART 7. APPORTIONMENT AND ALLOCATION OF CORPORATE INCOME AND EXPENSE

710:50-17-71. Apportionment formula factors

Income or loss derived from a unitary business enterprise shall be apportioned to Oklahoma on the basis of the average of three factors consisting of property, payroll and sales or gross revenue. Notwithstanding the general rule on averaging of the three apportionment factors, for corporations that, on or after July 1, 1997, make an initial investment in property or expansion of their property or facilities in Oklahoma and such initial investment cost or expansion investment costs equals or exceed Two Hundred Million Dollars ($200,000,000.00), the three factors shall be apportioned with property and payroll each

comprising twenty-five percent (25%) and sales comprising fifty percent (50%). For such an initial investment or expansion investment occurring after January 1, 2000, a corporation shall qualify for use of the specially-weighted apportionment on or after the time it first incurs any amount or part of such investment cost, if the total amount thereof equals or exceeds Two Hundred Million ($200,000,000.00) within a period not exceeding three (3) years. [**See:** 68 O.S. § 2358(A)(5)]

(1) **Sales factor.**

(A) **Sales factor.** The sales factor shall include only sales and does not include sales or revenue which are separately allocated. [**See:** 68 O.S. § 2358(A)(5)(c)]

(i) Oklahoma does not allow receipts from items other than sales to be included in the formula even though other types of income (royalties, interest, capital gains, and other income) are included in the apportioned income.

(ii) Receipts from the performance of services shall be included in the numerator of the fraction if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. [See 68 O.S. § 2358(A)(5)]. A "**customer within Oklahoma**" means

(I) a customer that is engaged in a trade or business and maintains a regular place of business in Oklahoma, or

(II) a customer that is not engaged in a trade or business whose billing address is in Oklahoma. A "**billing address**" means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed.

(iii) The provisions of (A), ~~and~~ (A)(i) and (A)(ii) of this paragraph apply to the sales factor for most corporations with the exception of gross receipts being used as a basis for a financial organization or other organizations whose sales do not represent their principal activity.

(B) **Throwback of Oklahoma sales.** If taxpayer is not doing business in the destination state of the shipment, then those sales of tangible personal property are considered to have a situs in Oklahoma if the property is shipped from an office, warehouse, factory or other place of storage in Oklahoma.

(C) **Railroad/railway.** The numerator of the fraction shall not be less than the allocation of revenues to this state as shown in its Annual Report to the Oklahoma Corporation Commission. [**See:** 68 O.S. § 2358(A)(5)(c)(2)]

(D) **Airline, truck or bus enterprise or freight car, tank car, refrigerator car or other railroad equipment enterprise.** The numerator of the fraction shall include a portion of revenue from interstate transportation in the proportion that interstate mileage traveled in Oklahoma bears to total interstate mileage traveled. [**See:** 68 O.S. § 2358(A)(5)(c)(3)]

(E) **Oil, gasoline or gas pipeline enterprise.** The numerator of the fraction shall be either the total of traffic units of the enterprise within Oklahoma or the revenue allocated to Oklahoma based on miles moved, at the option of the taxpayer, the denominator of which shall be the total of traffic units of the enterprise or the revenue of the enterprise everywhere as appropriate to the numerator. A "**traffic unit**" is defined as the transportation for a distance of one mile of one barrel of oil, one gallon of gasoline or one thousand cubic feet of natural or casinghead gas, as the case may be. [**See:** 68 O.S. § 2358(A)(5)(c)(4)]

(F) **Telephone or telegraph or other communication enterprise.** The numerator of the fraction shall include both income attributable to interstate operations, and income from intrastate operations. The determination of gross revenues are to be as prescribed by accounting systems and procedures promulgated by the Federal Communications Commission. [**See:** 68 O.S. § 2358(A)(5)(c)(5)]

(2) **Property factor.**

(A) **Original costs (average).** The property factor is the average value at original cost of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period to the total average of all real and tangible personal property owned or rented and used everywhere. [**See:** 68 O.S. § 2358(A)(5)(a)]

(B) **Rolling stock-buses, trucks, trailers, airplanes, automobiles, and other similar equipment.** The numerator of the fraction shall include a portion of the investment in transportation and other equipment having no fixed situs, in the proportion that miles traveled in Oklahoma by such equipment bears to total miles traveled. [**See:** 68 O.S. § 2358(A)(5)(a)(1)]

(C) **Rental property.** Rental property is valued at eight (8) times the net annual rent expense. [**See:** 68 O.S. § 2358(A)(5)(a)(2)]

(D) **Property separately allocated.** Property, the income from which is separately allocated in 68 O.S. § 2358(A)(4), shall not be included in determining the property factor. [**See:** 68 O.S. § 2358(A)(5)(a)(1)]

(3) **Payroll factor.**

(A) **Payroll factor.** The numerator is the total compensation for services rendered in the state during the tax period, and the denominator is the total compensation for services rendered everywhere during the tax period.

(B) **Prior to 1983.** Salaries, wages and other compensation properly classified as general and administrative, are not part of the computation of the payroll factor for years before 1983.

(C) **Officers.** Officers' salaries, wages and other compensation are not part of the computation of the payroll factor, for tax years beginning after December 31, 1982. [**See:** 68 O.S. § 2358(A)(5)(b)]

(D) **Transportation enterprises.** The numerator of the fraction shall include a portion of such

expenditure in connection with employees operating equipment over a fixed route, such as trainmen, airline pilots, or bus drivers, in the proportion that mileage traveled in Oklahoma bears to total mileage traveled by such employees. [**See:** 68 O.S. § 2358(A)(5)(b)(1)]

(E) **Itinerant employees/traveling salesmen.** The numerator of the fraction shall include a portion of such expenditures in connection with itinerant employees in this state only a part of the time, in the proportion that time spent in Oklahoma bears to total time spent in furtherance of the enterprise by such employees. [**See:** 68 O.S. § 2358(A)(5)(b)(2)]

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TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #10-966]

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RULES:
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-10 [AMENDED]
710:60-3-12 [AMENDED]
710:60-3-17 [AMENDED]
710:60-3-18 [AMENDED]
710:60-3-21 [AMENDED]
Part 3. Penalties
710:60-3-30 [AMENDED]
710:60-3-31 [AMENDED]
710:60-3-33 [AMENDED]
710:60-3-34 [AMENDED]
710:60-3-35 [AMENDED]
710:60-3-36 [AMENDED]
Part 9. Commercial Vehicles
710:60-3-91 [AMENDED]
Part 11. Other Vehicles
710:60-3-111 [AMENDED]
Part 13. Manufactured Homes
710:60-3-134 [AMENDED]
Part 14. All-Terrain Vehicles, Off-Road Motorcycles and Utility Vehicles
710:60-3-141 [AMENDED]
710:60-3-142 [AMENDED]
Part 15. Special License Plates
710:60-3-150 [AMENDED]
710:60-3-151 [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 5. [AMENDED]
710:60-5-55 [AMENDED]
710:60-5-62 [NEW]
Part 7. Transfer of Title
710:60-5-71 [AMENDED]
710:60-5-74 [AMENDED]
710:60-5-77 [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91 [AMENDED]
710:60-5-96 [AMENDED]
Part 11. Liens
710:60-5-116 [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
710:60-9-14 [AMENDED]
Part 9. Specific Fiscal Duties
710:60-9-94 [AMENDED]
710:60-9-97 [AMENDED]
Part 13. ~~Special~~ Provisions for Motor License Agent Application~~,~~ ~~Qualification,~~and Appointment ~~and Agency Operation Applicable to Certain Motor License Agents and Agencies~~
710:60-9-130 [REVOKED]
710:60-9-130.1 [NEW]
710:60-9-131 [AMENDED]
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As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the First Regular Session of the 52nd Legislature (2009).

Section 710:60-3-10 has been amended to clarify policy to prohibit the renewal of a vehicle registration prior to the first day of the month of expiration.

Section 710:60-3-12 has been amended to reflect the provisions of Senate Bill 318 which provides that the issuance of monthly vehicle registration expiration decals shall include a two-letter abbreviation corresponding to the county in which the vehicle is registered. **[47:1113].**

Section 710:60-3-17 has been amended to reflect the provisions of House Bill 2013 and Senate Bill 1161 which provides for all insurers, as a condition

of writing motor vehicle liability policies in this state, to comply with the provisions of the on-line verification system. **[47:7-600.2.]**

Section 710:60-3-18 has been amended and new Section 710:60-5-62 has been added to reflect the provisions of Senate Bill 812 which creates the Oklahoma Lemon Law, requiring a manufacturer to either accept a vehicle return and refund the full purchase price to the consumer or replace the vehicle with a vehicle of the same model and features and a comparable model. **[15:901, 901.1]**

Section 710:60-3-21 has been amended to clarify policy of not assessing more for a replacement license plate and/or registration decal than the actual annual registration fee of the plate/decal being replaced.

Sections 710:60-3-30, 710:60-3-31, 710:60-3-33 through 710:60-3-36, 710:60-3-141 and 710:60-3-142 have been amended to reflect the provisions of Senate Bill 658 which changes the penalty for failure to register a vehicle in a timely manner and the penalty for failure to timely pay vehicle excise tax. **[47:1115, 1132, 1141.1, 1151]**

Section 710:60-3-91 has been amended to more properly reflect applicable statutory language.

Section 710:60-3-111 has been amended to clarify policy regarding taxicab eligibility verification and rental vehicle registration rate eligibility.

Section 710:60-3-134 has been amended to clarify policy that a reinstatement of a manufactured home certificate of title does not absolve the owner of any Ad Valorem tax obligation to the county where the manufactured home was or is located.

Sections 710:60-3-150 and 710:60-3-151 have been amended to clarify the Commission's non-offensive content policy for personalized license plates and special license plates.

Section 710:60-5-55 has been amended to clarify policy regarding the review and processing of title cancellations and certificate of ownership transfers.

Section 710:60-5-71 has been amended to reflect a reconfiguration of the Oklahoma title certificate.

Section 710:60-5-74 has been amended to clarify policy and procedure to ensure that an Oklahoma title issued to an out-of-state motor vehicle entering Oklahoma with an odometer discrepancy is properly notated.

Section 710:60-5-77 has been amended to clarify policy and procedure for transfer of a motor vehicle title by a third party using a power of attorney.

Section 710:60-5-91 has been amended to clarify policy and procedure for assigned vehicle identification numbers and that an approval by the Commission of an application for title does not confirm roadworthiness of an assembled vehicle.

Section 710:60-5-96 has been amended to clarify policy regarding eligibility for the ownership affidavit process.

Section 710:60-5-116 has been amended to provide for an NCIC stolen vehicle check in the Title 42 lien filing review process.

Section 710:60-9-14 has been amended to clarify policy and responsibilities of a motor license agent regarding resolution of a field audit balance due the Commission.

Section 710:60-9-94 has been amended to conform to current statutory authority that the purchaser of a vehicle is not required, as a condition for registration of the vehicle, to pay any tax, fee or penalty due resulting from a dishonored check submitted by the previous owner. **[47:1121]**

Section 710:60-9-97 has been amended to conform to current statutory authority that all fees assessed by a motor license agent shall be reflected on the receipt provided to the taxpayer. **[47:1140(E)]**

Proposed amendments to **Part 13,** "*Special Provisions for Application, Qualification, Appointment and Agency Operation Applicable to Certain Motor License Agents and Agencies*" of **Subchapter 9**, "*Motor Vehicle License Agents/Agencies*" reflect the provisions of Senate Bill 888 which eliminates the population threshold relating to appointment procedures for motor license agents. The bill also permits currently appointed motor license agents to continue serving until such agent vacates the position. Senate Bill 888 establishes that the statutorily provided qualifications and requirements set forth in 47 O.S. § 1140 apply to all motor license agent applicants regardless of the population of the applicant's respective city or county.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-10. General registration information

(a) **Motor vehicles to be registered; license tag required; title.** Every motor vehicle, except salvage and junked vehicles, vehicles on used car dealer's lots for sale and vehicles assigned to charitable organizations licensed through the Oklahoma Secretary of State's office, is required to be registered and a license tag displayed on the rear bumper. In most cases, the tag is designed to remain on the vehicle until the Oklahoma Tax Commission authorizes a replacement and is renewed each year by means of a registration decal. The type of registration required depends on the type of vehicle and, in some cases, its use. A vehicle cannot be registered without an Oklahoma title or proof that such Oklahoma title exists and is in the name of the registrant. Proof of previous year's registration must be obtained before renewing registration on any non salvaged vehicle. A current mail-out registration notice is considered proof for either purpose.

(b) **Expiration; renewal; early renewal.** ~~Vehicles should~~ Registration may not be renewed before the first day of the month of expiration. ~~However, certain circumstances may exist which would allow for early renewal. The most common of these would be a person who is leaving the state for an extended vacation before his month of expiration~~.

(c) **Registration and licensing of leased vehicle.** An individual leasing a vehicle may make application for any special tag or registration rate that he or she is entitled to. A copy of the lease agreement, listing the applicant as lessee, must be submitted and attached to the Oklahoma Tax Commission's copy of the paperwork.

(d) **Information required from registrant.** Upon every application for registration of a vehicle in this state, the vehicle owner shall provide to the registering motor license agent the following information:

(1) The driver license number of the vehicle owner, if the owner is an individual; or

(2) The Federal Employer Identification Number of the owner if such owner is not an individual.

(e) **Proper entry of required information.** It shall be the duty of the registering motor license agent to properly enter the driver license number or Federal Employer Identification Number of the vehicle owner in the Motor Vehicle computer file record at time of registration of the vehicle.

710:60-3-12. Staggered registration

(a) **Staggered registration procedures.** All vehicles, except manufactured homes, special mobilized machinery, and vehicles registered by installment, purchased new or brought in

from another state will be registered on a staggered basis. The month of expiration in the following year will be shown on the monthly decal issued with the tag. The registration expires on the last day of the month in which the vehicle was originally purchased or brought into the state, unless otherwise requested by registrant.

(b) **Adjustment of expiration month.** The new owner of a vehicle previously registered in Oklahoma may adjust the expiration month upon their initial registration renewal. The purchaser of a new vehicle or the owner of a vehicle brought in from another state may establish the registration expiration month upon initial registration. A registration may not be issued for less than three months or more than fifteen months.

(c) **Expiration month decal.** Every license plate issued in conjunction with a staggered registration shall display a monthly decal indicating the month of expiration of the registration. Beginning January 1, 2010, all such expiration month decals issued shall also display a two-letter abbreviation corresponding to the county in which the vehicle is registered.

710:60-3-17. Liability insurance

(a) **Insurance ~~verification form~~ information.** The owner of a motor vehicle to be registered or titled in this state must ~~surrender a~~ provide current liability insurance ~~security verification form~~ information to the tag agent prior to the processing of his registration, unless otherwise provided. ~~Photocopies or faxes of current, valid verification forms are acceptable for vehicle registration purposes. The security verification shall contain the following information:~~

~~(1) Name and address of the carrier.~~

~~(2) The name and address where security may be verified, if other than carrier.~~

~~(3) Name of insured.~~

~~(4) Notice that an owner's policy has been issued pursuant to Compulsory Insurance Law.~~

~~(5) Year, make, and at least the last three digits of the VIN of each insured vehicle. (Note: Not required if Owner's form states "Fleet Coverage.")~~

~~(6) Inclusive dates liability policy is in effect.~~

~~(7) A warning to the owner of state law requirements that one copy be surrendered on registration and one copy carried in the vehicle.~~

(b) ~~**Registration in conformity with insurance period.** The registration should be issued only within the inclusive dates shown on the certification form.~~ **Electronic insurance verification.** In cooperation with the Oklahoma Department of Public Safety and the Oklahoma Insurance Department, the Commission shall provide an online electronic liability insurance verification system and instruct motor license agents in its use. No vehicle subject to electronic liability insurance verification shall be registered in this state without current insurance coverage having been verified by that electronic system, unless an exception is warranted per guidelines established by the Commission. Whenever a motor license agent grants an exception to electronic verification, the agent shall maintain in his or her files, for a period of no less than two (2) years, a full record of the reason for that exception and make available for inspection by the Commission, or any other qualified requestor, documentation sufficient to justify that exception.

(c) **Applicable only to motor vehicles; vehicles not in use.** Only motor vehicles are subject to the liability insurance verification process described herein. ~~Trailers or boats are not included in the motor vehicle category and will not require a security verification form.~~ Owners of vehicles not in use at the time of registration may register their vehicle upon ~~signing~~ filing a Non-Use Affidavit ~~(OTC Form 797)~~ in a manner prescribed by the Commission.

(1) The yearly validation decal issued to the owner of a vehicle who has filed a Non-Use Affidavit ~~(OTC Form 797)~~ in lieu of liability insurance verification will be ~~issued~~ a decal of a separate and distinct color from all other yearly decal~~s~~ types. It shall be the owner's responsibility to obtain insurance if such ~~vehicles are~~ vehicle is put into service at a later time.

(2) The owner of the vehicle is not required, upon putting the vehicle back in service, to purchase another registration decal ~~indicating the~~ indicative of liability insurance coverage. If the owner chooses to purchase another registration decal, ~~a valid~~ insurance verification ~~form~~ will be required ~~and~~, as well as payment of a replacement tag/decal fee, and the insurance verification fee.

(d) ~~**Fleet vehicles.** On blanket coverage of fleet vehicles, the year, make and serial number are not required on the certification form. It shall bear the term "Fleet Coverage". This term shall be typed or written on the lower right hand portion of the registration certificate by the tag agent.~~

~~(e)~~ **Exceptions to insurance verification requirements.** The following shall not be ~~required to surrender a security verification form to the tag agent.~~ subject to insurance verification at time of registration.

(1) Any vehicle owned or leased by the Federal or State Government or any agency or political subdivision thereof.

(2) ~~A company owned vehicle bearing the symbol or logo which, according to the records of the Department of Public Safety, reflects a deposit, bond, self insurance, or fleet policy. (These companies will be issued an equivalent form from the Department of Public Safety.)~~ Any vehicle bearing the name, symbol, or logo of a business, corporation or utility on the exterior and which is in compliance with the provisions of the Compulsory Insurance Law according to records of the Corporation Commission which reflect a deposit or fleet policy.

(3) Any vehicle authorized for operation under a permit number from the Interstate Commerce Commission or the Oklahoma Corporation Commission.

(4) Any licensed taxicab.

(5) Any vehicle held for sale by a licensed Used Car Dealer.

(6) Applicant for a duplicate Oklahoma title, provided registration renewal is not required.

(7) Applicant for title (only) to a vehicle to be later registered under the International Registration Plan.

(8) All-terrain vehicles, utility vehicles and off-road motorcycles.

(e) **Exceptions to electronic insurance verification.** The following are subject to insurance verification at time of registration, but exempt from the electronic verification process:

(1) Vehicles covered by commercial or fleet insurance policies.

(2) Vehicles owned by active duty military personnel who are either Oklahoma residents stationed out of state, or out-of-state residents stationed in Oklahoma.

(f) **Processing fee authorized.** The motor license agent is authorized to charge a fee for processing ~~a security~~ insurance verification ~~form~~ or a Non Use Affidavit upon registration of a motor vehicle.

(g) **Military personnel insurance verification.** Members of the United States Armed Forces may furnish a vehicle insurance policy or bond from an out-of-state insurance company indicating compliance with the liability insurance requirements of the Oklahoma Vehicle License and Registration Act. If the service person is an out-of-state resident who is stationed in Oklahoma, the form must be from Oklahoma or from the service person's state of residence, as indicated on the Armed Forces Affidavit (OTC Form 779). If the service person is a resident of Oklahoma, the form must be either an Oklahoma form, or a form from the state in which the service person is currently stationed.

710:60-3-18. Credit for excise tax and registration on theft of vehicle; defective vehicle

(a) **Theft of vehicle.** If a new vehicle is stolen within 90 days of purchase, credit will be allowed on the excise tax and registration fee for a new replacement vehicle. A police report of the theft is required.

(b) **Vehicle certified as defective.** If a new vehicle is certified by the manufacturer as defective within 6 months of purchase, credit will be allowed on the excise tax and registration fee for a new replacement vehicle. A statement from the manufacturer is required. Any manufacturer reacquiring or assisting a dealer or lienholder in reacquiring a motor vehicle registered in this state shall retitle the vehicle pursuant to the guidelines outlined in *OAC* 710:60-5-62.

(c) **Procedure for obtaining credit.**

(1) Credit will be allowed for the full amount paid upon the initial registration of the original vehicle in this State. The credit amount will not be prorated for period of time the original vehicle was in use. Excise tax may be credited down to no charge. Registration fee may be credited down to a minimum charge.

(2) Credit will not be allowed for any late penalties paid.

(3) No refund will be given if credit from original vehicle exceeds amount due on replacement.

(4) Both rules apply only to the original purchaser of a new vehicle. If a transfer of ownership occurs before the vehicle loss, no credit will be allowed. The policies do apply, however, to an original out-of-state purchaser who moves to Oklahoma.

(5) Motor license agents are required to contact the Motor Vehicle Division for authorization before allowing credit on a replacement vehicle. The Division shall ensure any defective vehicle was properly titled pursuant to the guidelines outlined in *OAC* 710:60-5-62.

710:60-3-21. Lost, stolen or mutilated tags and decals

(a) **Procedures upon the loss, theft, or damage to tag or decal.** In the event of loss, mutilation, or destruction of a license plate and/or decal, an "Affidavit for Replacement Tag and/Or Decal" (797D) must be completed by the applicant. The affidavit will not be required if issuing a new tag when renewing an annual registration or when issuing a new tag due to a vehicle class change.

(b) **When additional fee is due.** If a new tag and/or decal is requested at the time of transfer or annual registration renewal and is not needed due to vehicle class change, an additional replacement fee is to be charged.

(c) **Replacement fee.** In no event shall the replacement license plate and/or decal fee be more than the annual registration fee for the license plate and/or decal being replaced.

PART 3. PENALTIES

710:60-3-30. New vehicles purchased by Oklahoma residents

(a) **General provisions.** ~~The maximum penalty allowed by statute is assessed after thirty (30) days from assignment on all vehicles, except manufactured homes, commercial trucks, tractors, and trailers.~~ Delinquent registration penalty begins to apply on the thirty-first (31st) day following assignment of ownership. For most vehicle types, penalty accrues at $1.00 per day, to a maximum penalty assessment of $100.00 (100 days).

(b) **Manufactured homes; commercial trucks and truck tractors.** Manufactured homes, commercial trucks and commercial truck tractors, are assessed a penalty equal to the registration fee less the administrative fee, if not registered within thirty (30) days from the assignment date.

(c) **No penalty on initial registration of commercial trailers.** There is no late registration penalty on the initial registration of a commercial trailer in this state. Penalties do apply, however on the registration fee due upon transfer of ownership and on excise tax.

(d) **Due dates which fall on non-business days.** A waiver may be granted if the 30th day falls on a Saturday, Sunday or a holiday and the vehicle is registered on Monday, or on the next regular business day following a holiday.

710:60-3-31. Used vehicles purchased out-of-state by an Oklahoma resident

If not registered within thirty (30) days of ~~assignment, a daily penalty accrues from the date of entry for thirty (30) days. On the 31st day, the maximum penalty amounts apply as outlined in 710:60-3-30.~~ the vehicle's entry into this state, delinquent registration penalties apply in the amounts described under *OAC* 710:60-3-30(a) and (b).

710:60-3-33. Vehicles with expired Oklahoma license plates purchased from a used car or used travel trailer dealer

~~A daily penalty accrues beginning the 31st day after assignment and continues accruing until the vehicle is registered or until the maximum penalty is reached. The penalty may not, however, exceed the registration fee due. The maximum on this particular penalty applies to all vehicle classifications.~~ Delinquent registration penalty begins to apply on the thirty-first (31st) day following assignment of ownership, in the amounts described under *OAC* 710:60-3-30(a) and (b). If a transfer of ownership fee is also due, only the delinquent penalty outlined in *OAC* 710:60-3-34 is to be assessed. Delinquent excise tax penalty, when applicable, is also to be assessed.

710:60-3-34. Transfer of ownership fee

(a) **Penalty~~; maximum amount.~~** ~~A daily penalty shall be assessed beginning the 31st day from the date of assignment but shall not exceed the maximum penalty allowed by statute.~~ Delinquent penalty begins to apply on the thirty-first (31st) day following assignment of ownership, in the amounts described under *OAC* 710:60-3-30(a). If the vehicle was purchased from an Oklahoma dealer with expired Oklahoma registration (*OAC* 710:60-3-33), only this transfer of ownership fee penalty is to be assessed. Delinquent excise tax penalty, when applicable, is also to be assessed.

(b) **Commercial trailers.** Upon the transfer of ownership of an Oklahoma registered commercial trailer, a new plate and registration fee is due.

710:60-3-35. Renewal registrations

(a) **General renewal provisions; grace period; due dates; maximum amount.** All registrations expire the last day of the month shown on the registration. ~~The~~ For the purpose of registration renewal, the following month is considered a grace month during which no penalty accrues. ~~After the grace month, on vehicles other than commercial trucks and truck tractors with a declared laden weight in excess of 8,000 lbs., a daily penalty accrues for three (3) months. On the first (1st) day of the following month, the maximum penalty will apply. The penalty may not exceed the registration due.~~ For most vehicle types, delinquent registration penalty begins to accrue the 1st day of the following month, in the amount described under 710:60-3-30(a).

(b) **Commercial trucks and tractors above 8,000 lbs. declared laden weight.** Commercial trucks and tractors with a declared laden weight in excess of 8,000 lbs., shall become delinquent one month after their expiration date. A daily penalty accrues for one month. Thereafter, the penalty will equal 30% of the annual fee or the minimum as set forth by statute, whichever is greater.

710:60-3-36. Manufactured homes on used dealers' lots

A manufactured home on a used dealer's lot on January ~~1st~~ 1st of any year ~~will be~~ is exempt from Ad Valorem assessment but must be titled and registered for the full year. Failure to do so before February ~~1st~~ 1st of that year results in a ~~daily penalty for three months, after which a maximum penalty applies.~~ delinquent registration penalty assessment in the amount described under *OAC* 710:60-3-30(a).

PART 9. COMMERCIAL VEHICLES

710:60-3-91. Commercial trucks and truck tractors

(a) **Basis of registration.** Commercial Trucks and Truck Tractors are registered on the basis of ~~declared gross~~ combined laden weight. Commercial trucks registered for 15,000 lbs. or less are registered on a combination of age and ~~declared gross~~ combined laden weight of the vehicle. ~~Declared~~ Combined laden weight is the combined weight of a vehicle when fully equipped for use and the cargo or payload transported thereon. The combined laden weight declared for the purposes of registration is at the discretion of the registrant, provided that in no event may the figure be less than the unladen weight of the vehicle fully equipped for use ~~plus the manufacturers rated carrying capacity~~.

(b) **Minimum weight for truck tractors; minimum fee.** The minimum weight allowed on a truck tractor is 15,000 lbs., with no reduction in the annual registration fee for number of years registered.

(c) **Display of commercial status; inspections.** All commercial trucks and truck tractors must have the name of the commercial establishment or the words "Commercial Vehicle" permanently and prominently displayed upon the outside of the vehicle in letters not less than 2" high. The letters must be in contrast to their background in order to be legible from a distance of 50 feet when the vehicle is not in motion. Vehicles registering at 15,000 lbs. or less must also meet additional requirements.

PART 11. OTHER VEHICLES

710:60-3-111. Miscellaneous vehicles; definitions

(a) **Farm trucks. "Farm truck"** means pickup, truck, or truck tractor used primarily for agricultural purposes. For purposes of farm truck registration eligibility **"pickup" means a small, light truck with an open back or box used for hauling and designed primarily for the carrying of property, rather than people and "truck" means a motor vehicle designed or converted primarily for carrying or hauling farm commodities, property, livestock, or equipment, rather than people.** To qualify for farm truck registration, the applicant must provide either a copy of Schedule F (or comparable form) of the previous year's Federal Income Tax Return, or an agricultural exemption permit (SMX number) assigned by the Oklahoma Tax Commission. Any person registering a farm truck, other than a pickup, must also complete and submit a "Declaration of Gross Vehicle Weight for Vehicle Registered with a Farm Tag" (OTC Form 786). If a laden weight of 55,000 pounds or more is listed, the owner must provide I.R.S. Form 2290 and a Schedule 1.

(b) **Farm trailers.** Farm trailers are not required to be registered. An optional farm trailer tag is available. These tags are for registration purposes only and a title may not be issued for them. If a serial number is stamped on the trailer, it will be used for the VIN on the registration. Otherwise, the Social Security number of the owner will be used. A monthly and yearly decal will be issued to expire one year from date of registration.

(c) **Buses.** Buses are classified as either Inter-City or Intra-City. The Inter-City buses operate between different cities. The Intra-City buses operate within a given city. The rates for such vehicles are based on the seating capacity. All buses in these classifications must be licensed by the Oklahoma Corporation Commission.

(d) **Private school buses.** Private school buses are those privately owned buses used exclusively to transport school children.

(e) **Taxicabs.** Taxicabs are motor vehicles ~~designed to carry not more than ten (10) people.~~ for hire, designed to carry ten (10) persons or less, operated upon any street or highway, or on call or demand, accepting or soliciting passengers indiscriminately for transportation for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported. In order to register as a taxicab, the owner shall be required to validate proper taxicab operating authority. Validation shall normally constitute presentation of a photocopy of the license issued by the applicable municipality in which the taxicab operates, or a photocopy of the For Hire Carrier License issued by the Oklahoma Corporation Commission.

(f) **Rental vehicles.** Rental vehicles are vehicles acquired by rental companies not to be rented for more than ninety (90) days at a time. Rental passenger vehicles and light trucks (pickups, vans, sport utility vehicles) ~~Such vehicles~~ are entitled to special registration fees as set forth by statute. Larger trucks utilized in a rental capacity are to be registered commercially.

(g) **Private trailers.** Private trailers are not required to be registered. An optional private trailer registration and license plate is available to owners of noncommercial boat and utility type trailers not being utilized in a commercial capacity. The fee is established by statute. This is an optional registration only transaction and no certificate of title may be issued. If a serial number is stamped on the trailer, it will be used for the vehicle identification number (VIN) on the registration record. Otherwise, the driver license number of the owner will be utilized. A monthly and yearly decal will be issued to expire one year from date of registration. As registration is optional, no delinquent registration fees or penalties are to be assessed.

(h) **Mini-truck. "Mini-truck"** means a foreign-manufactured import or domestic-manufactured vehicle powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters (1,000 cu cm) or less, which is sixty-seven (67) inches or less in width, with an unladen dry weight of three thousand four hundred (3,400) pounds or less, traveling on four or more tires, having a top speed of approximately fifty-five (55) miles per hour, equipped with a bed or compartment for hauling, and having an enclosed passenger cab. Any vehicle meeting that description is required to be titled and registered, as of November 1, 2008. Excise tax is not assessed on mini-trucks purchased prior to November 1, 2008.

(i) **Registration and titling guidelines.** Mini-trucks may be registered in the same manner and under the same classification guidelines as any other light truck. Mini-trucks are subject to the same titling and lien filing guidelines as other light trucks, with the exception of required documentation at time of initial titling. Those general titling documentary guidelines are as follows:

(A) **New mini-trucks purchased on or after November 1, 2008.** A properly assigned Manufacturer's Statement of Origin (MSO) and dealer's invoice (to establish purchase price) is required to apply for an Oklahoma title.

(B) **All other mini-trucks.** A properly assigned certificate of title or Manufacturer's Statement of Origin (MSO) is to be submitted, if available. If not available, the Commission may accept a notarized bill of sale, or other similar ownership instrument, as an alternative.

PART 13. MANUFACTURED HOMES

710:60-3-134. Reinstatement of cancelled manufactured home title

Owner of a manufactured home upon which the certificate of title has previously been cancelled due to attachment to real estate may apply to the Oklahoma Tax Commission or a motor license agent for reinstatement and issuance of a new original certificate of title.

(1) The reinstatement application is to be completed by the owner of record. There are two (2) documentary requirements on the application for reinstatement:

(A) The homeowner must attest ownership of the manufactured home and the nonexistence of any security interest or lien of record in the manufactured home; and

(B) The homeowner shall provide a title opinion by a licensed attorney, declaring that the owner of the manufactured home has a marketable title to the real property upon which the manufactured home is located and that no documents filed of record in the county clerk's office concerning the real property contain a mortgage, recorded financial statement, judgment, or lien of record. The opinion must be signed by the issuing attorney, on his/her letterhead and be executed, or updated, within thirty (30) days of the application date.

(2) A properly completed application for reinstatement may be submitted to the Oklahoma Tax Commission or a motor license agent. Reinstatement applications submitted to a motor license agent shall be forwarded to the Oklahoma Tax Commission for approval.

(3) Upon approval by the Tax Commission, a new original certificate of title shall be issued and registration fees collected for the balance of the calendar year.

(4) Reinstatement of a manufactured home certificate of title does not absolve the owner of any Ad Valorem tax obligation to the county where the manufactured home was or is located.

PART 14. ALL-TERRAIN VEHICLES, OFF-ROAD MOTORCYCLES AND UTILITY VEHICLES

710:60-3-141. Titling of all-terrain vehicles, off-road motorcycles and utility vehicles

(a) **General.** Only standard type titles, as referenced under 710:60-5-2, will be issued to ATV's, ORM's or utility vehicles.

(b) **Information or processes not required.** The following do not apply to ATV's, ORM's or utility vehicles:

(1) Salvage, Rebuilt and Junk title issuance or procedures

(2) Odometer disclosure requirements

(3) Out-of-state vehicle V.I.N. / Odometer inspection & Declaration of Damage or Theft

(4) Liability insurance verification

(5) Submission by owner of driver license number or federal employer's identification number

(6) Payment of waste tire fee at time of initial registration.

(7) Transfer of ownership registration fee.

(c) **Titling documents required on new ATV's or ORM's purchased on or after July 1, 2005 and utility vehicles purchased on or after July 1, 2008.**

(1) A properly assigned Manufacturer's Statement of Origin (MSO), or other acceptable ownership document as determined by the Oklahoma Tax Commission.

(2) Completed Application for Oklahoma Title (701-6).

(3) A dealer invoice or other acceptable purchase price documentation, as determined by the Oklahoma Tax Commission.

(d) **Titling documents required on used or new ATV's or ORM's purchased prior to July 1, 2005 and utility vehicles purchased prior to July 1, 2008.**

(1) Assigned title/MSO; or

(2) A completed Application for Oklahoma Title (701-6) and a bill of sale listing the purchase price, or a completed Declaration of Vehicle Purchase Price (OTC Form 722-1). In this application, the bill of sale is not required to be notarized.

(e) **Exemptions from titling.** Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 were exempt from ATV and ORM titling requirements before July 1, 2008. Until that date, such permit holders could transfer ownership of ATV's or ORM's by bills of sale. As set forth by statute, holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are no longer exempt from titling and registration requirements on ATV's or ORM's that are purchased, or change ownership, on or after July 1, 2008. Permit holders remain exempt from the assessment of excise tax on such transactions.

(f) **Chain of title ownership not required.** Due to ATV's and ORM's owned by agricultural permit holders being exempt from titling and registration requirements until July 1, 2008, breaks in the title document chain of ownership may occur. As a result, there is no requirement that an assigned Oklahoma title be presented to transfer ownership of an ATV or ORM, provided documentation outlined in (d) above is submitted, even when an Oklahoma title record for a previous owner exists.

(g) **Excise tax assessment and exemptions.**

(1) **Assessment.** As set forth by statute, excise tax is to be assessed on new and used ATV's and ORM's purchased on or after July 1, 2005 and new and used utility vehicles purchased on or after July 1, 2008. Excise tax will be assessed on the actual purchase price presented by the purchaser, excluding credit for any trade in, either from a bill of sale or a Declaration of Vehicle Purchase Price (OTC form 722-1). The minimum excise tax amount is set by statute. Failure to obtain title and pay the corresponding levy of excise tax within thirty (30) days of acquiring ownership will result in the assessment of a delinquent excise tax penalty in the amount of ~~$.25~~ $1.00 per day, accruing until paid or until equal to the tax amount due.

(2) **Exemptions.** Standard vehicle excise tax exemptions, outlined in *OAC* 710:60-7-3(b), apply to ATV's ORM's and utility vehicles. In addition, agricultural permit holders are exempt from excise tax, when titling their ATV, ORM or utility vehicle, upon presentation of a valid agricultural permit.

(h) **Lien filing.** Lien filing procedures on ATV's, ORM's and utility vehicles are generally identical to vehicle lien filings referred to in Subchapter 5 Part 11 of the Oklahoma Tax Commission Rules Title 710, Chapter 60. Liens on ATV's, ORM's or utility vehicles may be filed with only the previously outlined ownership documentation. Until July 1, 2008, any lien/security interest in an ATV or ORM that was perfected before July 1, 2005, and that has not been terminated shall remain perfected, and shall take priority over subsequently perfected lien/security interest in the same ATV even if a certificate of title has been issued on the same ATV on or after July 1, 2005 with a lien recorded.

710:60-3-142. Registration of all-terrain vehicles, off-road motorcycles and utility vehicles

(a) **General.** A registration fee as set forth by statute is assessed upon issuance of every original or transfer title to an ATV, ORM or utility vehicle. Upon payment of the registration fee, an ATV, ORM or utility vehicle registration decal will be issued to be affixed in clear view to the front of the ATV, ORM or utility vehicle, or to the front fork of the ORM. Renewal of the registration by the same owner is not required. The registration fee is assessed again only upon any transfer of ownership.

(b) **Exception to registration.** Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are exempt from ATV and ORM titling requirements until July 1, 2008. As set forth by statute, holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are no longer exempt from titling and registration requirements on ATV's or

ORM's that are purchased, or change ownership, on or after July 1, 2008.

(c) **Optional Registration.** The following owners shall have the option of purchasing a nonrecurring registration.

(1) Until July 1, 2008, as outlined above, owners that possess valid agricultural permits issued pursuant to 68 O.S. § 1358.1

(2) Owners of ATV's and ORM's, purchased prior to July 1, 2005.

(d) **Registration penalties.** A delinquent registration penalty of $1.00 per day, to a maximum of $100.00 (100 days), begins to accrue on the thirty-first (31st) day following ownership assignment of ~~The following registration penalty assessments apply to those~~ ATV's and ORM's purchased on or after July 1, 2005 and utility vehicles purchased on or after July 1, 2008~~:~~.

~~(1) New ATV/ORM/utility vehicle: The maximum penalty allowed by statute applies on the 31st day following ownership assignment.~~

~~(2) Used ATV/ORM/utility vehicle: A penalty of Twenty-five Cents ($.25) per day applies beginning the 31st day following ownership assignment and accruing to the maximum penalty allowed by statute.~~

PART 15. SPECIAL LICENSE PLATES

710:60-3-150. Special license plates

(a) **General provisions.** Applications for ordering all types of personalized and special license plates, authorized by statute, may be obtained from the Oklahoma Tax Commission or from any motor license agency.

(b) **Leased vehicles.** An eligible individual leasing a vehicle may make application for any special tag or registration rate. A copy of the lease agreement, listing the applicant as lessor, must be submitted and attached to the Oklahoma Tax Commission copies of the paperwork.

(c) **No conflict policy.** No special license plate can be issued which conflicts with the regular plate numbering system.

(d) **Non-offensive content policy.** No special license plate will be issued ~~which~~ if the proposed message may be deemed offensive to the general public~~.~~, in the context of display of the message on a state-issued license plate, under the guidelines in 710:60-3-151(c).

(e) **Fees.** Special license plate fees are set by statute and, with certain statutory exceptions, are collected in addition to annual registration fees required by the Oklahoma Vehicle License and Registration Act. If a special license plate or decal is mailed, a mailing fee for a metal plate or decal will also be collected.

(f) **Renewal.** Renewal decals may be obtained from either a motor license agent or the Oklahoma Tax Commission for all special license plates except Physically Disabled, Hearing Impaired/Deaf, Amateur Radio, Vintage and Municipal Official plates which may be renewed only through the Commission. Special license plates are issued on a staggered expiration system, except for amateur radio plates and vintage decals.

(g) **Discontinuance of a special license plate.** As set forth by statute, certain types of special license plates have minimum issuance requirements and provisions for the discontinuance of plate types that do not meet those requirements.

(h) **Authorization of new special license plates.** The Oklahoma Tax Commission is authorized to design and issue new special license plate types to any person that applies to the Commission for the creation of a special license plate and meets the conditions and minimum standards outlined by statute.

710:60-3-151. Personalized license plates

(a) **No conflict policy.** No personalized license plate that conflicts with the system of numbering for non-personalized plates set out in 47 O.S. § 1113 will be issued.

(b) **Fees.** Remittance must accompany the application for the plate and is in addition to the annual license fee.

(c) **Non-offensive content policy.** The Commission shall review personalized license plate applications that are not automatically rejected when compared to a database of prohibited or previously issued personalized plates. The Commission shall deny a request if an objective, reasonable person would find that the proposed combination of letters and/or numbers listed on the application falls into at least one of the following categories:

(1) carries a sexual connotation;

(2) expresses contempt, ridicule or superiority based on race, gender, politics, ethnic heritage, or religion;

(3) is vulgar, derogatory, profane or obscene;

(4) refers to bodily functions, bodily fluids, or intimate body parts;

(5) refers to alcohol, drugs or drug paraphernalia, illegal activities or gangs; or

(6) would otherwise be inappropriate for display on a state-issued license plate.

(d) **Other criteria.** The criteria in this paragraph are not exhaustive. Dictionaries and compilation of offensive words, terms or letter/number combinations, in any language, gathered from the experience of Oklahoma and other states may also be used as a guide.

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 5. CERTIFICATES OF TITLE

710:60-5-55. Junked titles

(a) **Junked title defined.** A junked vehicle is any vehicle which is incapable of operation or use on the highway, has no resale value except as a source of parts or scrap and has an eighty percent (80%) loss in fair market value.

(b) **Out-of-state junked titles; junked title permanent classification.** Any vehicle which is a junked vehicle or is specified as a junked vehicle or the equivalent thereof on a certificate of title from another state is to receive an Oklahoma Junked Title. Once a Junked Title is issued on a vehicle, it will remain as such permanently.

(c) **Procedure for cancellation of title for junked vehicle.** The owner of any vehicle which is incapable of operation or use on the public roads and has no resale value except as parts, scrap or junk, may deliver the certificate of title to the Oklahoma Tax Commission, accompanied by an Affidavit for Cancellation of Oklahoma Title (OTC Form 701-8). Upon verification that any perfected lien against the vehicle has been released and the registration is current, the certificate of title shall be cancelled. There is no charge to the vehicle owner for this cancellation. If unable to cancel the title, an explanation will be returned to the submitting owner.

(d) **Subsequent transfer of ownership of vehicle for which title has been cancelled.** Once a title is cancelled, no subsequent title or registration may be issued. Any subsequent transfers of ownership will be done so on a certificate of ownership (OTC Form 766). The format of this certificate is prescribed by the Oklahoma Tax Commission and furnished to all motor license agencies. Any form which contains all the information listed on the Oklahoma Tax Commission form will be acceptable.

(e) **Inspection for absence of vehicle identification number.** If there is no public VIN on the vehicle, it shall be inspected by a law enforcement officer to verify the absence of the number and the corresponding statement shall be signed by the officer on the certificate of ownership.

(f) **Transfer of ownership for vehicles over ten model years old for which title is lost, cancelled or not available.** Any vehicle over ten model years old which is not roadworthy and not capable of repair for operation or use on the roads and highways and on which the certificate of title has been lost, cancelled or otherwise not available, shall also transfer ownership by use of the certificate of ownership. Use of this transfer of ownership form will result in cancellation of the Oklahoma title, if it has not already been done. If the vehicle is ten (10) model years or newer, a certificate of ownership may not be utilized unless the title has previously been cancelled.

(g) **Procedure for transfers by use of certificate of ownership.** This certificate of ownership will be a three part form. The buyer and seller shall each retain a copy and within thirty (30) days of the transaction, the seller shall submit one copy to the Oklahoma Tax Commission or a motor license agent with the applicable fee. All requests for ownership transfer via certificate of ownership must be reviewed and approved by the Commission before processing. The Commission shall review the documentation and vehicle record to ensure the owner of record has submitted a properly completed certificate on an eligible vehicle. The record will be checked against NCIC files for the presence of a stolen vehicle record. If a stolen vehicle report is on file, the appropriate law enforcement agency will be contacted and the transaction will remain on hold, pending that agency's response. If an active lien is on file and the transaction is approved, the lienholder will be notified of the certificate of ownership transfer. If the transaction is not approved, an explanation will be returned to the submitting buyer and seller.

710:60-5-62. Lemon law buyback title brand

Any manufacturer reacquiring or assisting a dealer or lienholder in reacquiring a motor vehicle registered in this state shall, prior to any sale, lease or transfer of the vehicle in this state, or prior to exporting the vehicle to another state, shall retitle the vehicle in the name of the manufacturer and the certificate of title shall be branded with the notation "Lemon Law Buyback".

PART 7. TRANSFER OF TITLE

710:60-5-71. General provisions; assignments; liens; registration; notice of transfer

(a) **Transfer of title.** In most instances, an Oklahoma transfer title is issued upon receipt of a properly assigned and notarized Oklahoma title and proof of liability insurance. Other instances where a transfer title may be issued are covered in the following subsections.

(b) **Use of assignment space provided on title document.** The first assignment space on ~~the reverse side of~~ an Oklahoma title is to be used by the owner on the face of the title to assign ownership. The subsequent reassignment spaces may be used by appropriately licensed Oklahoma ~~used motor vehicle~~ dealers only.

(c) **Liens transfer.** Any active liens indicated on the face of an assigned Oklahoma title will be carried forward to the transfer title being issued unless a lien release is presented.

(d) **Current registration required; exceptions.** Registration must be current on a vehicle before a transfer title may be issued, unless the vehicle is in a salvage or junked status. Licensed used motor vehicle dealers are exempt from this requirement when transferring to other licensed dealers, provided the vehicle was currently registered, or in the registration expiration grace month, when it was assigned to the first dealer. Salvage dealers are exempt from registration requirements when obtaining salvage or junked titles.

(e) **Actual sales price documentation.** The actual sales price is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The actual sales price is commonly referred to as the "purchase price". One of the following documents is required to establish the actual sales price:

(1) A purchase contract;

(2) A bill of sale;

(3) A "Declaration of Vehicle Purchase Price" (OTC Form 722-1); or

(4) Oklahoma title certificate, with a purchase price entry listing where indicated;

(5) A purchase contract or bill of sale offered only to establish purchase price pursuant to this subsection, and not to convey ownership, need not be notarized.

(f) **Notice of Transfer of Ownership of a Vehicle.** The seller or buyer of a motor vehicle may file a Notice of Transfer of Ownership of a Vehicle (OTC Form 773) to record the assignment of ownership in the Oklahoma Tax Commission Motor Vehicle Division computer system. The filing of Notices of Transfer is optional. The filing of the Notice

of Transfer does not constitute a transfer of ownership and does not alleviate the buyer/new owner of the responsibility of properly and timely transferring title and paying all applicable taxes and fees. To be acceptable, notices must be submitted containing all required information. Incomplete forms will not be filed. There are two (2) acceptable types of notice:

(1) Seller or buyers may submit a **Notice of Transfer of Ownership of a Vehicle (OTC form 733)** and the appropriate statutory filing fee to the Oklahoma Tax Commission or a motor license agent.

(2) Effective January 2006, a removable tear-off tab, **Oklahoma Certificate of Title Tear-Off Notice of Transfer Tab,** was incorporated on Oklahoma vehicle title certificates. This tab, properly completed, is to be accepted and processed in the same manner as the Notice of Transfer of Ownership of a Vehicle Form (OTC form 733).

710:60-5-74. Odometer brands

(a) **Types of odometer brands.** There are four (4) brands utilized on the face of a title to characterize the odometer reading. They are as follows:

(1) Actual
(2) Not Actual
(3) Exceeds mechanical limits, and
(4) Odometer discrepancy

(b) **Use of odometer brands.** The odometer discrepancy is to be used if the mileage figure verified in the odometer disclosure statement is less than the mileage depicted on the title to be transferred. When utilized, this brand will be in addition to whatever brand results from the odometer disclosure statement (actual, not actual, exceeds mechanical limits). For example, if the buyer and seller indicate on the odometer disclosure statement that the mileage listed on it is the actual mileage of the vehicle, even though the figure listed on the disclosure statement is less than that depicted on the assigned title, the brand of "Actual" will be listed on the face of the new title. However, in that situation, it is the responsibility of the motor license agent to also encode the additional brand of "Odometer Discrepancy." The resulting title would have both odometer brands, "Actual" and "Odometer Discrepancy" listed on it.

(c) **Vehicle inspection considered disclosure.** The inspection required in Title 47 O.S. § 1105(L) shall be considered a disclosure statement for the purpose of employing the "Odometer Discrepancy" brand on vehicles less than ten (10) model years old. If the inspected mileage is less than that depicted on the face of the surrendered out-of-state title, the brand "Odometer Discrepancy" is to be listed on the face of the Oklahoma title issued.

710:60-5-77. Transfer of title upon death

(a) **Intestacy; transfer to surviving spouse.** If a person dies intestate leaving an automobile, that auto shall become the property of the surviving spouse. If title was held by the deceased to more than one vehicle, the surviving spouse may choose one automobile. The others are to be distributed by the law of descent.

(b) **Transfer by third party; required authorization.** An assigned title which has been assigned by some person other than the person shown on the face of the title must be accompanied by some form of authorization for assignment. This may be a Power of Attorney, Court Order or authorization by an Executor or an Administrator of an estate.

(1) **Transfer by power of attorney.** When transferring a title where assignment has been made by Power of Attorney, the Power of Attorney (POA) must be ~~stapled to~~ surrendered with the assigned title.

(A) An original copy must be presented. Faxes or photocopies are unacceptable.

(B) The POA must be notarized, if from a notary state

(C) If a general POA (not restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be presented to the motor license agent. The motor license agent may make a photocopy of the original for submission to OTC.

(D) If a specific POA (restricted to a specific vehicle or transaction), the original, or a certified copy of the original, must be surrendered and submitted to OTC.

(E) A POA may not be utilized if the grantor is deceased.

(2) **Transfer by court order.** When transferring a title when assignment is completed by the administrator or executrix of an estate, a Court Order must be presented authorizing the sale of the motor vehicle being transferred.

(c) **Estate valued at no more than $20,000.00** When a decedent has left a will, but the value of the estate does not exceed Twenty Thousand Dollars ($20,000.00), no probate is required before transferring ownership of any vehicle(s) bequeathed in the decedent's will. Ownership may be transferred to the successor of interest by completing a Small Estate Affidavit. In addition to the Affidavit, the following must be submitted:

(1) A copy of the decedent's death certificate.

(2) A copy of the decedent's unprobated will, naming the applicant as beneficiary of the vehicle.

(3) Either the title certificate in the decedent's name, or evidence from the Tax Commission vehicle title files that such a title record exists.

PART 9. AFFIDAVITS FOR USE IN TITLES

710:60-5-91. Affidavit of assembly and ownership

(a) **When Affidavit of Assembly and Ownership is required.** An Affidavit of Assembly and Ownership is required:

(1) When major components from two or more vehicles or motorcycles are being incorporated into a single unit.

(2) In applying for an Oklahoma title for a kit car that comes with a Manufacturer's Statement of Origin and an invoice.

(3) When a combination of new components with original (notarized) Manufacturer's Statements of Origin and

used components with bills of sale, invoices or receipts are used to make one vehicle or motorcycle.

(b) **Documentation required.** Documentation required to support application for Oklahoma title using an Affidavit of Assembly and Ownership includes:

(1) **A completed Affidavit of Assembly and Ownership (OTC Form 761 or 761MC).** The applicant must complete the Affidavit of Assembly and Ownership (OTC Form 761 or 761MC) and supporting documentation. Title or notarized bills of sale for all major components included on the Affidavit must be submitted, listing the vehicle identification number (VIN) of the vehicle from which the part was removed.

(2) **A completed Application for Oklahoma Certificate of Title (OTC Form 701-6).** The applicant must complete the Application for Oklahoma Certificate of Title (OTC Form 701-6), as follows:

(A) The **year** to be listed on the certificate of title will be the year of the body or cab of the vehicle which is reconstructed.

(B) The **make** of the vehicle will be noted as: "AV", followed by a two (2) character year designation and two (2) character make designation.

(C) The **model** of the vehicle will be the three (3) or (4)-letter code reflected on the Oklahoma Certificate of Title of the appropriate component vehicle.

(D) The **body type** of the vehicle will reflect the current body type of the vehicle. Example: 2DR

(E) The Total Purchase Price will be the combined purchase price for all components, less those parts on which sales tax was paid.

(F) Excise **taxes due** on the assembled vehicle will be determined as follows:

(i) Excise tax will not be collected if the title was in the registrant's name on each of the major components used to build the current vehicle.

(ii) Excise tax will be due upon transfer if the title was not in the registrant's name on each of the major components used to build the current vehicle.

(G) The **year** of an assembled motorcycle is the current year (completion date).

(H) The **make** of the Assembled Motorcycle will be "ASVE".

(I) The **model** will be "O".

(J) The **body** type will reflect "MC".

(c) **Approval required.** Any application for title using the Affidavit of Assembly and Ownership must be approved by the Motor Vehicle Division. Such approval relates only to the issuance of an Oklahoma title and registration to the assembled vehicle. No attestation or confirmation of the roadworthiness of the vehicle is expressed or implied by the Division's approval.

(d) **Inspection required.** Following approval of the application for title by the Motor Vehicle Division, the assembled vehicle or motorcycle must be inspected by a motor license agent to confirm the vehicle identification number (VIN).

(e) **Oklahoma assigned number.** An Oklahoma Assigned Number, when required for an assembled vehicle or motorcycle, shall be ~~and~~ assigned by the Motor Vehicle Division~~, will be the valid vehicle identification number (VIN) for the assembled vehicle or motorcycle~~. In addition, upon receipt of a formal written request from an authorized state or federal law enforcement agency, an Oklahoma Assigned Number shall be assigned to any vehicle by the Motor Vehicle Division. Once assigned, the Oklahoma Assigned Number will be considered the valid vehicle identification number (VIN) for that vehicle and is to be affixed to the vehicle in a manner and location determined by the Division.

(f) **Active liens.** If a lien is active on any vehicle identification number (VIN) used to build a vehicle~~,~~ or motorcycle on which an Oklahoma Assigned Identification Number has been assigned and is now displayed, the paperwork must be returned to the Motor Vehicle Division, and the following procedure will apply:

(1) The Lien Department of the Motor Vehicle Division will issue a corrected Lien Entry Form, reflecting the new Oklahoma assigned number.

(2) The Lien Department of the Motor Vehicle Division will then notify any lienholder of the new vehicle identification number (VIN).

(g) **No active liens.** If no liens are active on any vehicle identification number (VIN) used to build the vehicle or motorcycle, the approved Oklahoma Tax Commission Application for Title (OTC Form 701-6), Assembly and Ownership Affidavit (OTC Form 761 or 761 MC), all original receipts and notarized bills of sale associated with the transaction~~,~~ may be submitted to an Oklahoma Motor License Agency for processing.

(h) **Issuance of title; tag and decal, if applicable.** At the time the Oklahoma Certificate of Title is issued, a current tag and decal will be issued also, if applicable. All plates and/or registration decals issued to any original vehicle or motorcycle used as a component for the rebuilt vehicle become invalid.

(i) **Major component.** For purposes of this Section, "**major component**" means a body or cab, frame, and front end or rear end clip, if the public VIN is changed.

710:60-5-96. Ownership affidavit (OTC Form 753)

(a) **When Ownership Affidavit is used.** The Ownership Affidavit may be used upon Oklahoma Tax Commission approval, in situations where a title applicant is lacking normally required titling documentation, such as an assigned certificate of title, and no other party or lienholder can be identified as to ownership or claim. To employ the Ownership Affidavit process described herein, the vehicle must have been purchased by, or from, an Oklahoma resident.

(b) **Documentation required.** Unless otherwise authorized by the Oklahoma Tax Commission, an applicant using an Ownership Affidavit must present proof of purchase, not to exclude the Federal Odometer Disclosure Statement, if applicable. The proof of purchase must include the following:

(1) Complete description of the vehicle, to include the year, make, and the complete vehicle identification number;

(2) Seller's notarized signature;
(3) Buyer's name and address; and
(4) Date of sale (not the notary date).

(c) **Approval required.** Except for those specific procedural instances where pre-approval is not required, utilization of ownership affidavits must be approved by the Motor Vehicle Division of the Oklahoma Tax Commission. Upon receipt of a completed Affidavit and supporting documentation, the Motor Vehicle Division will confirm the absence of an ownership and/or lienholder record. If such a record is located, titling by Ownership Affidavit alone will not be approved. If no record is located and the Affidavit approved, a physical inspection and confirmation of the vehicle's identification number must be performed by the Division, or a motor license agent, before an Oklahoma title will be issued.

PART 11. LIENS

710:60-5-116. Possessory liens under Title 42 of the Oklahoma Statutes

(a) **Prior approval required.** Any person who wishes to claim a possessory lien and sell a vehicle for storage fees or work done for which they have not been compensated must comply with the applicable lien filing provisions of Title 42 of the Oklahoma Statutes and submit proper documentation to the Tax Commission for approval. As part of the approval review process, the record will be checked against NCIC files for the presence of a stolen vehicle record. If a stolen vehicle report is on file, the application will be denied and the filer advised of the law enforcement agency responsible for the NCIC report.

(b) **Forms and instructions available.** A packet of instructions and required forms may be obtained from the Motor Vehicle Division of the Tax Commission or online at www.oktax.state.ok.us. There are two (2) types of possessory lien filings applicable to vehicles under Title 42 of the Oklahoma Statutes:

(1) One process applies to vehicles, all-terrain vehicles, off-road motorcycles, manufactured homes, commercial trailers, boats and outboard motors titled in the State of Oklahoma, or with a federally recognized Indian tribe, and on which an active lien is recorded and for which the lien filers are not either licensed Class AA Wrecker Services or Salvage Pools, as defined in 47 O.S. § 591.2. Excepting manufactured homes, if an active lien is present, but is over fifteen (15) years old, the provisions of #2 below apply.

(2) One process applies to vehicles, all-terrain vehicles, off-road motorcycles, manufactured homes, commercial trailers, boats and outboard motors titled in another state, or which do not have a certificate of title or have a certificate of title on which an active lien is not recorded, or are excluded from the process described under #1 above by 42 O.S. § 91(D), or on which the lien is filed by either a licensed Class AA Wrecker Service or a Salvage Pool, as defined in 47 O.S. § 591.2.

(c) **Procedure for completion and submission of forms.** Incomplete or altered forms will not be accepted. The forms will provide the applicant with a designated area in which to enter any desired identifying information.

(d) **Persons qualified to file possessory liens.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due such person from the owner for such service.

(e) **Manner of foreclosure.** Said lien may be foreclosed by a sale of such personal property, following proper notification to the record owner and all interested parties.

(f) **Notice requirements.**

(1) **General requirements.** The type and extent of the notices are outlined by statute and depend upon the status of the vehicle and the lien claimant. All require notification of the record owner and all interested parties. All require the completion and proper posting of a Notice of Sale (OTC 752-A), although some specific information on the Notice is not required under all lien filing situations. Certain situations also require the filing of a Notice of Possessory Lien (OTC 752-D).

(2) **Ownership/Lienholder determination for notification purposes.** Record ownership and the existence of any lienholders on file with the Oklahoma Tax Commission/Motor Vehicle Division, or the equivalent office in another state, may be established as follows:

(A) If the property has an Oklahoma tag number, any Oklahoma tag agency may be contacted for ownership/lienholder information. Provided the information is available in the computer file, the filer will be asked to complete a Vehicle Information Request (OTC Form 769) and pay the applicable fee.

(B) If there is no current ownership record on file, a Vehicle Information Request (Form OTC 769), requesting a title search for the last record owner is to be completed and submitted to the Oklahoma Tax Commission/Motor Vehicle Division Title Research Section, along with the applicable fee.

(C) If the Research Section has no record on file, interested party notice may be accomplished by publication. Refer to **Notice when owner is unknown.**

(D) If the property is from another state or an Indian Tribe, the Motor Vehicle Department of that state must be contacted for ownership/lienholder information. Letters or computer file printouts from other states' Motor Vehicle Departments providing that information are acceptable. Teletype printouts from law enforcement agencies are not acceptable.

(E) When the jurisdiction of titling is unknown and the property, unless a manufactured home, is five (5) model years or newer, or, if a manufactured home, is fifteen (15) model years or newer, the claimant or their agent shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle Division ascertain the jurisdiction of titling. Within fourteen (14) days of receipt of the request, the Division will provide either

the titling jurisdiction, or notice that no determination was made. If a titling jurisdiction is determined, the claimant must contact that state's Motor Vehicle Division, or equivalent, for information. If no titling jurisdiction determination is made, as confirmed by the Division, notice by publication is required.

(F) When the jurisdiction of titling is unknown and the vehicle/ATV/commercial trailer boat or motor is over five (5) model years old, or manufactured home is over fifteen (15) model years old, notice by publication is required.

(3) **Notice when owner is unknown.** In the event all applicable ownership/lienholder determination procedures have been followed and resulted in no record found, notice by publication in an authorized newspaper must be performed as follows:

(A) The newspaper must be authorized to publish legal notices pursuant to the provisions of 25 O.S. § 106 and must be published in the county in which the vehicle is located. If no newspaper authorized by law to publish legal notices is published in that county, the notice is to be published in some such newspaper of general circulation which is published in an adjoining county. Eligible newspapers may be verified by contacting the Oklahoma Tax Commission Motor Vehicle Division.

(B) The newspaper notice must identify the vehicle by identification number, year, and make.

(C) The notice must include the name of an individual who may be contacted in reference to the sale, including their telephone number or the address where the property is located.

(D) The notice must run at least (1) day per week for (3) consecutive weeks. The first date available for public sale of the property is the day following publication of the final notice.

(E) Upon completion of the newspaper notification process, an Affidavit of Publication (OTC Form 752-E) must be completed and included with the Title 42 documentation submitted to the Oklahoma Tax Commission / Motor Vehicle Division.

(g) **Sale and distribution of proceeds of sale.** When the vehicle is sold, the special (possessory) lien holder, upon satisfying the amounts due to him/her must make arrangements for the payment in excess of the amounts due to him to be paid to the secured party or parties and to the owner of the vehicle.

(h) **Effect of foreclosure on purchaser's title.** The purchaser of the vehicle will receive a Certificate of Title without any liens indicated. [**See:** 42 O.S. § 91 et seq.]

(i) **Abandoned vehicle auction.** Any vehicle offered at an abandoned vehicle auction performed by a Class AA wrecker service or lien claimant is exempt from all prior year registration fees, title fees, stop flag fees, and any other fees imposed by the state resulting from the prior ownership of the vehicle. However, if the purchaser is the registered owner of the vehicle prior to towing, any outstanding prior years' fees will be due.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 1. GENERAL REQUIREMENTS, DUTIES AND RESPONSIBILITIES OF MOTOR LICENSE AGENTS

710:60-9-14. Responsibility for agency shortages

(a) A motor license agent shall be responsible for paying any balance determined to be due as a result of a field audit conducted by the Commission.

(b) Upon demand for payment, the motor license agent must, within 15 days, remit the full amount of any shortage determined to be due, or if unable to pay the full amount, the agent may make a written request to the Commission for consideration of an extension of time to remit monies due. Such request shall include an explanation of the reason(s) for the shortage and the corrective actions initiated by the agent. Should the Commission accept a payment time extension, it shall be incumbent upon the agent to fully adhere to the terms of that agreement. Any failure on the agent's behalf to adhere to that agreement, or accrual of any additional balance due the Commission, may result in a demand for immediate payment of the entire outstanding balance.

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-94. Procedures for reporting and collecting returned checks on OTC transactions

The following procedures should be followed in the event a check deposited by a motor license agent is returned unpaid.

(1) **Notice of returned check.** The bank should notify the agent that they are holding an unpaid item. The agent must make two (2) attempts to redeem the check through the depository bank. Should the bank refuse to accept the dishonored check a second (2nd) time, it shall be treated as if two (2) attempts had been made. The agent, in turn, has the option of picking up the check with cash or reducing the amount of his next deposit. The check should be picked up from the bank as soon as notification is received. Form 774-A is to be completed and immediately sent to the maker of the dishonored check.

(2) **Procedure for collection of returned check; applicable penalties; taxpayer liability.** An initial returned check fee of $25.00 is to be charged to the maker of a returned check, after an attempt has been made to deposit the check twice. Should payment for the check be subsequently collected by any motor license agent, that agent may retain the $25.00 returned check fee. Any accrued penalty to date of collection is to be assessed. The taxpayer is notified to immediately remit payment to the tag office. The insufficient check, agent's file copies of documents on which the check was issued, and a copy of the notification to the taxpayer is to be sent to the Oklahoma Tax Commission if the agent cannot collect the check. The security verification form is to be retained in

the tag office along with photocopies of all documents issued. In the event the taxpayer returns all items issued by the motor license agent, the insufficient check is not to be returned to the taxpayer. Return of these items does not relieve the taxpayer of responsibility to remit the proper fees to the State of Oklahoma.

(3) **Procedure to obtain credit to agent's account; subsequent tender of payment.** The Tax Commission will then issue credit to the agent's account in the full amount of the transaction(s) for which the check was remitted. After documents and the insufficient check have been sent in for credit, payment is not to be accepted from the registrant without calling the Motor Vehicle Division for instructions. The returned check and the copies of the documents on which the check was issued will be processed and forwarded to the Collections Division for collection. The statutes require that an agent accept a check one time. Statutes further stipulate that an agent is not required to take a check when the applicant is within a penalty period. Postdated checks are not to be accepted.

(4) **Tag or decal may be held.** The motor vehicle agent may hold a tag or decal until the taxpayer's check has cleared the bank.

(5) **Insufficient checks to be forwarded to the Oklahoma Tax Commission; time limits.** All insufficient checks for which payment is not received are to be sent into the Oklahoma Tax Commission no later than thirty (30) days after the date picked up from the bank. Further delays in processing may prevent collection.

(6) **Purchaser not responsible.** The purchaser of a vehicle shall not be required, as a condition for registration of the vehicle, to pay any tax, fee or penalty due resulting from a dishonored check submitted by the previous owner.

710:60-9-97. Allowable fees and charges

(a) **Allowable fees and charges limited by statute.** The Oklahoma Statutes designate all fees which motor license agents are allowed to collect and retain from a taxpayer. No other fees may be charged to a taxpayer for any service rendered pertaining to the issuance of titles, registrations, permits or any other document required by the Motor Vehicle Division. All fees assessed a taxpayer are to be entered into the OTC computer system to be reflected on the affiliated system-generated transaction receipt. All fees assessed a taxpayer must be documented in the agent's records so they may be identified as to type upon inquiry by the affected taxpayer or the Tax Commission. A general, non-specific category such as "Miscellaneous Fee" is not sufficient. The fee must be clearly identifiable.

(b) **Procedure for collection of costs of long-distance telephone charges.** The cost of a long distance phone call made to the Department of Public Safety or the Oklahoma Tax Commission (non-toll-free), made at the request of a taxpayer, may be charged back to the taxpayer, if agreed to in advance. Only the actual cost of the phone call may be charged.

(c) **Requiring mail delivery prohibited.** A motor license agent shall not require the taxpayer to accept mail delivery of any issued item or receipt.

(d) **Accountability for additional services fees.** When assessing a fee for an additional service that is not covered by statute, but is directly related to a motor license agency OTC or DPS transaction (i.e. providing a fax service for required documentation to complete a registration transaction), motor license agents are to:

(1) Explain to the taxpayer that the service being provided is an additional service (not a required service) offered by the agency, at an amount established by the MLA. The taxpayer is then free to accept or reject that additional service.

(2) Document each such fee in the agency records, so that it may be identified as to type upon inquiry by the affected taxpayer, or OTC. A general, non-specific category such as "Miscellaneous Fee" is not sufficient. The fee must be clearly identifiable.

PART 13. ~~SPECIAL~~ PROVISIONS FOR MOTOR LICENSE AGENT APPLICATION~~, QUALIFICATION,~~ AND APPOINTMENT ~~AND AGENCY OPERATION APPLICABLE TO CERTAIN MOTOR LICENSE AGENTS AND AGENCIES~~

710:60-9-130. Appointment/operation of motor license agents/agencies in municipalities having a population in excess of 8,500, located in a county having a population in excess of 130,000 [REVOKED]

~~In municipalities having a population in excess of Eight Thousand Five Hundred (8,500), located in a County having a population in excess of One Hundred Thirty Thousand (130,000), the appointment of Motor License Agents and the operation of Motor License Agencies shall be subject to additional requirements set out in Part 13 of this Subchapter.~~

710:60-9-130.1. Purpose

The provisions of this Part have been promulgated to facilitate the application and appointment guidelines for motor license agents appointed on or after July 1, 2009, pursuant to the Oklahoma Vehicle License and Registration Act (47 O.S. § 1140 et seq.), which are in addition to all other requirements and restrictions set forth in this Subchapter.

710:60-9-131. Application for the position of a motor license agent

(a) The applicant must not have been convicted of a felony and/or no felony charges may be pending against the applicant.

(b) The applicant must submit an authorization for release of criminal history and credit history along with a personal financial statement in a manner prescribed by the Tax Commission.

(c) The applicant must be in compliance with all tax laws of the state of Oklahoma.

(d) Prior to appointment as a ~~Motor License Agent~~ motor license agent, applicants for an appointment must submit an estimated budget, including the number of agency employees, for approval by the Oklahoma Tax Commission.

(~~d~~e) As a condition precedent to appointment as a ~~Motor License Agent~~ motor license agent, applicant must obtain a faithful performance surety bond as provided by law. The applicant is to contact the Oklahoma Tax Commission for the amount of the bond required for the location of the agency. A commitment by the bonding company to issue the required bond in the amount specified by the Oklahoma Tax Commission or an affidavit that the applicant will provide a cash bond, must be attached to the applicant for the appointment as a ~~Motor License Agent~~ motor license agent.

(~~e~~f) The application ~~with a~~ and the non-refundable statutory application fee is to be submitted to the Motor Vehicle Division of the Oklahoma Tax Commission.

710:60-9-133. Primary source of income

~~The~~ Effective July 1, 2009, the compensation from the agency must be the primary source of income for all appointed motor license agents. The ~~Motor License Agent~~ motor license agent shall annually submit an affidavit that the income from the agency is ~~his or her~~ the motor license agent's primary source of income. The Commission may confirm the accuracy of that affidavit by examining income information from Commission files, or from an outside state or federal agency. By accepting appointment as a motor license agent, the appointee expressly grants consent to the Commission to examine the appointee's tax records, and other appropriate income-related information, for this purpose.

710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours

(a) The location of the applicant's agency shall not be within a three (3) mile radius of an existing agency unless the applicant assumes the location of an existing agency. The Oklahoma Tax Commission may, at its discretion, approve the relocation of an existing agency within a three mile radius of another existing agency only if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three (3) miles of roadway by the most direct route.

(b) No motor license agent shall select a location owned by a member of the Oklahoma Legislature or to any person related to a member of the Oklahoma Legislature within the third degree of consanguinity (by blood relation) or affinity (by marriage).

(c) The number of agency employees is to be determined by the motor license agent subject to the Oklahoma Tax Commission's approval.

(d) The motor license agent shall maintain adequate equipment to accommodate the employees of the agency and sufficient seating arrangements for the taxpayers as determined by the Oklahoma Tax Commission.

(e) The Oklahoma Tax Commission shall determine the amount of office space the motor license agent shall maintain to provide a working area for the employees which is separate from the waiting area of the public. However, the amount of such office space shall not be less than Eight Hundred (800) square feet.

(f) The Oklahoma Tax Commission shall determine the amount of public parking the motor license agent shall maintain. However, the number of parking spaces shall not be less than five (5) with at least one (1) space reserved for disabled persons. It shall be the responsibility of the motor license agent to ensure compliance with all applicable local and ADA (Americans with Disabilities Act) parking and customer access requirements.

(g) ~~Motor~~ All requests for relocation of an existing motor license agency must be approved by the Tax Commission. Existing motor license agents shall be responsible for all costs incurred by the Tax Commission when relocating an existing agency. Such payment may be waived by the Tax Commission in case of emergency or unforeseen business conditions beyond the control of the agent.

(h) The motor license agent shall provide and maintain, within the agency, a personal computer with internet access for use during normal business hours. The personal computer equipment provided by the motor license agent must satisfy the technical requirements established for such equipment by the Commission. Should those technical requirements change, it shall be the responsibility of the motor license agent to upgrade or replace their personal computer equipment as necessary to remain in continuous compliance.

710:60-9-135. Minimum office hours [REVOKED]

~~The Motor License Agent shall operate the Motor License Agency forty (40) hours a week of which at least four (4) hours are after normal business hours or on Saturday. The number of operating hours, may be reduced by the Oklahoma Tax Commission upon written application by the Motor License Agent.~~

710:60-9-137. Appointment

(a) Based upon the findings of a feasibility study performed by the Commission and other information as may be deemed applicable, the Administrator of the Commission may, at the Administrator's discretion, make motor license agent appointment recommendations to the Commission.

(~~a~~b) The successful applicant will be furnished a letter of appointment ~~after the interview has been conducted and the Oklahoma Tax Commission has received all the required information and documentation.~~

(~~b~~c) If the applicant is rejected, the applicant will be forwarded a notification of rejection ~~within ten (10) days~~ along with the reason for rejection.

(~~c~~d) The successful applicant must accept or reject the appointment, in writing, within thirty (30) days of the appointment letter.

(~~d~~e) If the applicant accepts the appointment, ~~he/she~~ the applicant will be required to open ~~his/her~~ the agency within

fifteen (15) days after acceptance of the appointment, unless a time extension is granted by the Commission.

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TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 65. SALES AND USE TAX

[OAR Docket #10-975]

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PERMANENT final adoption
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Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-8 [AMENDED]
Part 3. Records and Recordkeeping
710:65-3-32 [AMENDED]
710:65-3-33 [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-13 [AMENDED]
710:65-7-16 [AMENDED]
710:65-7-21 [NEW]
710:65-7-22 [RESERVED]
710:65-7-23 [RESERVED]
710:65-7-24 [RESERVED]
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Subchapter 9. Permits
710:65-9-8 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 7. Churches
710:65-13-33 [AMENDED]
710:65-13-40 [AMENDED]
Part 10. Coal
710:65-13-55 [AMENDED]
Part 13. Contractors Refund; Change of Rates
710:65-13-70 [AMENDED]
Part 15. Hazardous Wastes
710:65-13-80 [AMENDED]
Part 23. Gas and Electricity
710:65-13-120 [AMENDED]
Part 25. Governmental Entities
710:65-13-130 [AMENDED]
710:65-13-133 [AMENDED]
Part 29. Manufacturing
710:65-13-150.1 [AMENDED]
710:65-13-157 [AMENDED]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-169 [AMENDED]
710:65-13-172 [AMENDED]
710:65-13-173 [AMENDED]
710:65-13-174 [AMENDED]
710:65-13-175 [AMENDED]
710:65-13-177 [AMENDED]
Part 35. Newspapers; Periodicals; Programs; Media
710:65-13-194 [AMENDED]
Part 37. Sales for Resale
710:65-13-200 [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210 [AMENDED]
710:65-13-220 [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-334 [AMENDED]
710:65-13-335 [AMENDED]
710:65-13-336 [AMENDED]
710:65-13-337 [AMENDED]
710:65-13-338 [AMENDED]
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710:65-13-340 [AMENDED]
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710:65-13-342 [AMENDED]
710:65-13-343 [AMENDED]
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710:65-13-345 [AMENDED]
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710:65-13-355 [AMENDED]
710:65-13-357 [AMENDED]
710:65-13-359 [AMENDED]
710:65-13-360 [AMENDED]
710:65-13-361 [RESERVED]
710:65-13-362 [NEW]
Part 55. Trust Authorities
710:65-13-550 [AMENDED]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-5 [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 5. "C"
710:65-19-52 [AMENDED]
Part 7. "D"
710:65-19-72 [AMENDED]
710:65-19-74 [AMENDED]
Part 11. "F"
710:65-19-114 [AMENDED]
Part 17. "I"
710:65-19-156 [AMENDED]
Part 31. "P"
710:65-19-259 [AMENDED]
Part 39. " T "
710:65-19-328 [AMENDED]
710:65-19-329 [AMENDED]
Part 41. "U"
710:65-19-341 [AMENDED]
Subchapter 21. Use Tax
710:65-21-2 [AMENDED]
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Superseded rule:
Subchapter 18. Sourcing Pursuant To the Streamlined Sales and Use Tax Administration Act
710:65-18-5 [AMENDED]
Gubernatorial approval:
October 2, 2009
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27 Ok Reg 129
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09-1287
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Sales Tax rules have been made to implement recent legislation. All legislative references are to the First Regular Session of the 52nd Legislature (2009) unless otherwise indicated.

Section 710:65-7-13 has been amended to clarify the properly completed documentation that a vendor is required to obtain when making sales to subcontractors claiming a sales tax exemption provided for in the Oklahoma Sales Tax Code in order for the vendor to be relieved of liability for the sales tax.

New Section 710:65-7-21 has been adopted to provide for the Streamlined Sales and Use Tax Exemption Certificate for vendor relief of liability purposes.

New Section 710:65-7-25 has been adopted to provide for the circumstances upon which a purchaser is relieved of liability for certain penalties in accordance with the Streamlined Sales and Use Tax Agreement.

Section 710:65-13-130 has been amended to reflect the current provisions of the GSA SmartPay® 2 program.

Section 710:65-13-157, relating to the sales tax exemption for persons engaged in the extraction and manufacturing of crushed stone and sand has been amended in accordance with Laws 2006, 2nd Ex. Sess., c.44 §8.

Section 710:65-13-173 has been amended to reflect current Commission policy regarding the treatment of tens units worn on the body as prosthetic devices for purposes of Section 1357(22) of Title 68 and to clarify the sales tax refund claim procedure for medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients.

Section 710:65-13-200 has been amended to add the Streamlined Sales and Use Tax Exemption Certificate as accepted certification of the sale for resale sales tax exemption.

Sections 710:65-13-337 and 710:65-13-338 have been amended consistent with Laws 2000, c.6 § 15 and to update the sales tax exemption application process.

New Section 710:65-13-362 has been adopted to set forth the sales tax exemption afforded certain Boys and Girls Club affiliates and to set forth the application process for sales tax exemption qualification purposes.

Section 710:65-18-5 has been amended to reflect the Streamlined Sales and Use Tax Administration Act which provides for the sale of an ancillary telecommunication service to be sourced to the customer's place of business.

Section 710:65-19-52 has been amended to include definitions relating to software maintenance contracts for purposes of compliance with the Streamlined Sales and Use Tax Agreement.

Section 710:65-19-156 has been amended to set forth Commission policy regarding the sales taxability of digital goods transferred electronically.

Section 710:65-19-329(c) has been amended to eliminate the exemption for labor charges for the construction, installation, movement, servicing repair or maintenance of any equipment such as antennas or dishes that have a connection with the transmission of a message or image from cellular towers that are used for the transmission of telecommunications in accordance with Laws 2007, c. 155 §5.

Sections 710:65-13-33, 710:65-13-40, 710:65-13-55, 710:65-13-80, 710:65-13-133, 710:65-13-172, 710:65-13-174, 710:65-13-175, 710:65-13-177, 710:65-13-194, 710:65-13-210, 710:65-13-220, 710:65-13-334, 710:65-13-335, 710:65-13-336, 710:65-13-339, 710:65-13-340, 710:65-13-341, 710:65-13-342, 710:65-13-343, 710:65-13-344, 710:65-13-345, 710:65-13-346, 710:65-13-348, 710:65-13-350, 710:65-13-351, 710:65-13-352, 710:65-13-353, 710:65-13-354, 710:65-13-355, 710:65-13-357, 710:65-13-359, 710:65-13-550, and 710:65-13-360 have been amended to update the application process for sales tax exemption qualification purposes.

Sections 710:65-1-2. 710:65-1-8, 710:65-1-9, 710:65-3-8, 710:65-3-32, 710:65-3-33, 710:65-7-16, 710:65-9-8, 710:65-13-70, 710:65-13-120, 710:65-13-150.1, 710:65-13-169, 710:65-19-72, 710:65-19-74, 710:65-19-114, 710:65-19-259, 710:65-19-328, 710:65-19-341 and 710:65-21-2 were amended to update statutory citations.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-2. Definitions

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

"Business" means any activity with the potential to generate a profit even if the business actually operates at a loss. This category also includes non-profit, religious and other organizations and persons who are otherwise exempt when they are conducting activities for a profit in competition with other businesses.

"Bundled Transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable, and the products are sold for one nonitemized price. A **"bundled transaction"** does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. As used in this paragraph:

(A) **"distinct and identifiable products"** does not include:

(i) packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof, including but not limited to, grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) a product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge, or

(iii) items included in the definition of gross receipts or sales price, pursuant to this Section

(B) **"one nonitemized price"** does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to an

invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list,

(C) A transaction that otherwise meets the definition of a **bundled transaction** shall not be considered a **bundled transaction** if it is:

(i) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) the retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service;

(iii) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. For purposes of this ~~section~~ Section, "de minimis" means the seller's purchase price or sales price of taxable products is ten percent (10%) or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis. Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) the retail sale of exempt tangible personal property and taxable tangible personal property where:

(I) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices or medical supplies, and

(II) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent (50%) or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent (50%) determination for a transaction.

"Consumer" or **"user"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

"Consideration" means and includes, but is not limited to:

(A) The price arrived at between purchaser and vendor.

(B) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(C) No deduction from gross receipts is permitted for services performed or work done on behalf of the vendor prior to transfer of such tangible personal property. [**See:** 68 O.S. § ~~1352(11)~~ 1352(12)]

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. **"Delivery charges"** does not include charges for the delivery of **"direct mail"** if the charges are separately-stated on an invoice or similar billing document given to the purchaser.

"Gross receipts", "gross proceeds", or "sales price" *means the total amount of consideration including cash, credit, property, and services, for which personal property or services are sold, leased, or rented; valued in money, whether received in money or otherwise, without any deduction for the following:*

(A) *The seller's cost of the property sold;*

(B) *The cost of materials used, labor, or service cost;*

(C) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*

(D) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

(E) *Delivery charges and installation charges, unless separately stated on the invoice, billing, or similar document given to the purchaser; or,*

(F) *Credit for any trade-in.*

"Gross receipts", "gross proceeds", or "sales price" shall not include:

(A) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*

(B) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or*

(C) *Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.* [68 O.S.~~Supp.2003,~~ § ~~1352(11)~~ 1352(12)]

"Gross receipts", "gross proceeds", or "sales price" shall include consideration received by the seller from third parties if:

(A) *The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;*

(B) *The seller has an obligation to pass the price reduction or discount through to the purchaser;*

(C) *The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchase; and*

(D) *One of the following criteria is met:*

(i) *The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;*

(ii) *The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or*

(iii) *The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.*

"Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) **"Lease or rental"** does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of One Hundred Dollars or one (1) percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this unit, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) **"Lease or rental"** does include agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined by 26 U.S.C. § 7701(h)(1).

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provisions of federal, state, or local law.

"Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

"Sale" means *the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state.* All consideration received for the sale is included in gross receipts subject to tax.

(A) ***"Sale"*** *does include but is not limited to:*

(i) *The exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property;*

(ii) *The disposition for consumption or use in any business or by any person of all goods, wares, merchandise, or property which has been purchased for resale, manufacturing, or further processing;*

(iii) *The sale, gift, exchange, or other disposition of admission, dues, or fees to clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities;*

(iv) *The furnishing or rendering of services taxable under the Oklahoma Sales Tax Code; and*

(v) *Any use of motor fuel or diesel fuel by a supplier, as defined in Section 500.3 of this title, upon which sales tax has not previously been paid, for purposes other than to propel motor vehicles over the public highways of this state. Motor fuel or diesel fuel purchased outside the state and used for purposes other than to propel motor vehicles over the public highways of this state shall not constitute a sale within the meaning of this paragraph.*

(B) ***"Sale"*** *does not include sale and leaseback.*

"Sales tax" means all applicable state, city and county sales tax.

"Sales value" means:

(A) In the case of a manufacturer, the sum of the manufacturer's cost of raw materials and the proportionate share of both the cost of machinery and equipment used and the cost of items consumed in the direct process of the manufacturing of the product, all of which were purchased exempt from sales tax for use in the process of manufacturing; or

(B) In the case of a person holding a mixed beverage tax permit or other permit issued in accordance with 37 O.S. § 577, the total retail sales price for sales of alcoholic beverages only, calculated pursuant to *OAC* 710:20-5-4; or

(C) In the case of sales of prepared food, the sales value of a free, reduced price, or complimentary meal is presumed to be the greater of the consideration received for the meal, if any, or the cost paid by the vendor of the food for the food items included in the free, reduced price, or complimentary meal; or

(D) In the case where an inventory of goods, originally purchased exempt for resale, is being held for

rental or leasing purposes, the regular rental charges which would be charged to the vendor's best customer, if the goods are to be returned to inventory. Where the goods are not to be returned to inventory held for rental or leasing purposes, the lesser of the original purchase price of the goods, or the current market price will be presumed to be the sales value; or

(E) Otherwise, **"sales value"** means the larger of either the vendor's cost at the time the exempt purchase of goods was made, or the price at which it would be sold to the vendor's best customer in the ordinary course of business.

"Tangible personal property" means *personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. For purposes of the Oklahoma Sales Tax Code, "**tangible personal property**" includes electricity, water, gas, steam and prewritten computer software.* [68 O.S.~~Supp.2003,~~ § ~~1352(23)~~ 1352(24)] The term does not include real property, such as land and buildings, tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, or tangible personal property which is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property. **"Tangible personal property"** does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit, or uncancelled United States postage or revenue stamps sold for postage or revenue purposes. [**See:** 68 O.S. § 1352; 68 O.S. § 1354; See Also: 60 O.S. §§ 7, 8]

"Tax" means all state, applicable city and applicable county tax.

"Use tax" means all applicable state and city use tax.

"User" or **"consumer"** means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

710:65-1-8. Established place of business; maintaining a place of business

(a) **"Established place of business" defined.**

(1) An **"established place of business"** means a location at which:

(A) Any person regularly engages in, conducts, or operates a business:

(i) in a continuous manner,

(ii) for any length of time,

(iii) that is open to the public during hours customary for the type of business; and

(B) Merchandise for resale is maintained, and not exempted by law from attachment, execution, or other species of forced sale barring any satisfaction of any delinquent sales tax liability.

(2) A location used in conducting a hobby is not considered an **"established place of business"** even though occasional taxable sales are made from the location; i.e., a garage set up as a wood working shop. The occasional sales are taxable and are to be reported by the seller on a sales tax report as casual sales.

(b) **"Maintaining a place of business" defined. "Maintaining a place of business in this state"** means and includes the following:

(1) Having or maintaining in this state, directly or through subsidiary:

(A) an office (to include a home office),

(B) a distribution house,

(C) a sales house (such as a shop or store),

(D) a warehouse (could be in a home's garage), or

(E) any other physical place of business (a hot dog stand on wheels, a barbecue wagon parked on the roadside, or an ice cream truck ~~travelling~~ traveling a route); or

(2) Having agents operating in this state such as salesmen, brokers, or wholesale buyers; or

(3) Whether the place of business, or agent is within this state temporarily (traveling salesman, buyers for out-of-state firms) or permanently (shop or store in a mall); or

(4) Whether the person is authorized to do business within this state. Example: A broker, who is self-employed, operates his business from an office he has established in a spare bedroom of his home in this state. He does not have an "established place of business" but he does "maintain a place of business in this state." [**See:** 68 O.S. §§ ~~1352(9),(12)~~ 1352(10), (13); 1401(10)]

710:65-1-9. Gross receipts, gross proceeds, and sales price

(a) **General provisions.** The gross proceeds, gross receipts, or sales price reported by the taxpayer must include the total receipts from all sources, including cash from sales, charge sales, credits, services, and property other than cash accepted as consideration. Sales tax reports are to be filed on an accrual accounting basis. Sales tax should be reported and remitted for the month that the sale is made regardless of whether payment is received, charged, deferred, or otherwise to be made in the future, and regardless of the time or manner of payment.

(b) **Scope of "gross receipts", "gross proceeds",** or **"sales price".** *"**Gross receipts**", "**gross proceeds**", or "**sales price**" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:*

(1) *The seller's cost of the property sold;*

(2) *The cost of materials used, labor, or service cost;*

(3) *Interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;*

(4) *Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;*

(5) *Delivery charges and installation charges, unless separately-stated on the invoice, billing, or similar document given to the purchaser; and,*

(6) *Credit for any trade-in.*

(c) **Excluded items and transactions. "gross receipts"**, **"gross proceeds"**, or **"sales price"** *shall not include:*

(1) *Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;*

(2) *Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately-stated on the invoice, bill of sale, or similar document given to the purchaser; and,*

(3) *Any taxes legally imposed directly on the consumer that are separately-stated on the invoice, bill of sale, or similar document given to the purchaser.* [68 O.S.~~Supp.2003,~~ § ~~1352(11)~~ 1352(12)]

(d) ***"Gross receipts", "gross proceeds",*** or ***"sales price"*** *shall include consideration received by the seller from third parties if:*

(1) *The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;*

(2) *The seller has an obligation to pass the price reduction or discount through to the purchaser;*

(3) *The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and*

(4) *One of the following criteria is met:*

(A) *The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;*

(B) *The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, a "preferred customer" card that is available to any patron does not constitute membership in such a group; or*

(C) *The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.*

(e) **Examples and illustrations.** Examples and illustrations of common situations and transactions are set out in this subsection, with information as to how gross receipts, gross proceeds, or sales price should be determined in each instance:

(1) **Trade-ins.** The value of trade-ins accepted by a taxpayer in lieu of money or other consideration may not be deducted from the gross proceeds.

(2) **Sales value.** The gross proceeds must also include the sales value, as defined in *OAC* 710:65-1-2, of any goods, wares, merchandise or property withdrawn or used from the established place of business or from the stock in trade.

(3) **Charge accounts.** Sales tax applies to credit sales at the time the sale is made, regardless of the time or manner in which payment is to be made. Sales tax is due upon transfer of title or possession regardless of method or time of payment.

(4) **Conditional sales.** The tax applies to conditional sales of tangible personal property and taxable services. The gross proceeds reported by the taxpayer must include all conditional sales made during the month for which the report is filed.

(5) **Coupons.** The procedure regarding the use of coupons used to purchase tangible personal property will be as follows:

(A) If the coupon is redeemable by a manufacturer or another third party, the original price of the item, before the allowance offered by the coupon, is subject to tax.

(B) If the coupon offering a reduced price is issued by the retailer, it is a method of promotion and the reduced price is subject to tax.

(C) The purchase of the right to receive specific manufacturer's coupons, which coupons can then be redeemed at a retailer when purchasing the item(s) described in the coupon, is not subject to sales tax.

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-8. Change in tax period

(a) A vendor wanting to report on other than the calendar period prescribed by statute must first obtain approval from the Commission. To obtain approval, the vendor must, in writing, notify the Commission of the days on which taxpayer's fiscal period will begin and end for the succeeding twenty-four (24) months. Once approval is obtained, the taxpayer must continue to notify the Commission of the days on which taxpayer's fiscal period begins and ends. Failure to notify the Commission of taxpayer's fiscal period ending date in advance of the fiscal period will result in taxpayer's approval to use a fiscal period in lieu of a calendar period being revoked. [**See:** 68 O.S. §~~1352(25)~~ 1352(26)]

(b) Once approved, the taxpayer is required to put the beginning and ending dates of the fiscal period on each report filed.

PART 3. RECORDS AND RECORDKEEPING

710:65-3-32. Authorization to destroy records sooner than would otherwise be permissible

In all cases, the Commission may, in writing, authorize the destruction of books and records and other papers prior to the expiration of the three year period of time which the taxpayer, except for such written authorization from the Commission, is required to keep his books and records. The Commission will

not authorize destruction of records unless the records are preserved in microfilm, microfiche or ADP and meet conditions as prescribed. [**See:** 68 O.S. §~~1365(C)~~ 1365(F)]

710:65-3-33. Records required to support deductions from gross receipts for purposes of calculating sales tax

(a) **Supporting records required.** Where the nature of a business is such that charge and time sales are made, or where the nature of the business is such that a portion of its sales are for resale, or are within the protection of the Commerce Clause of the Constitution of the United States, or consist of nontaxable services, or are exempt under any provision of the Oklahoma Sales Tax Code, then such records as will clearly indicate the information required in filing returns must be kept.

(b) **Complete and detailed records required.** To support deductions made on the tax return, the vendor's records for each transaction for which exemption is claimed shall be in detail sufficient to show:

(1) The name and address of the customer,

(2) The character of the transaction,

(3) The date,

(4) The amount of gross receipts or gross proceeds; and

(5) Such other information as may be necessary to establish the nontaxable character of such transaction under the Sales Tax Code.

(c) **Purchaser resale number requirement.** Anyone claiming a sale for resale exemption shall also keep a record of the purchaser's resale number issued by the Commission. The failure to obtain and keep a record of the purchaser's resale number shall create a presumption that the sale as not a sale for resale. The vendor may, however, present other documentary evidence from its books and records to overcome this presumption. More detail regarding duties and liabilities may be found in Subchapter 7 of this Chapter. [**See:** 68 O.S. § ~~1365(E)~~ 1365(F)]

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-13. Vendors' responsibility - sales to contractors

(a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.

(b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [**See:** *OAC* 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [**See:** 68 O.S. §1356(41)]

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction

contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax. Contractors claiming exemption for purchases to be used in a qualified rural electric cooperative project shall follow the procedures set out in *OAC* 710:65-13-124.

(8) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), (b)(3), (b)(6) or (b)(8) of this Section, the vendor must obtain:

(1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this ~~subsection~~ Section;

(2) Documentation indicating the contractual relationship between the contractor and the entity; and,

(3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

710:65-7-16. Vendors' reliance on erroneous information

(a) Vendors shall be relieved of any liability for having charged and collected an incorrect amount of sales or use tax resulting from having relied on erroneous data provided by the Tax Commission as to tax rates, boundaries, or taxing jurisdiction assignments.

(b) For purposes of source telecommunications transactions, vendors shall not be relieved from liability for errors resulting from the reliance on the information provided pursuant to any "zip-code" database, if the Tax Commission has provided an address-based system which meets the requirements of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 119. [**See:** 68 O.S.~~Supp.2003,~~ § ~~1354.32(5)~~ 1354.32(7)]

710:65-7-21. Streamlined Sales and Use Tax Exemption Certificate

The Streamlined Sales and Use Tax Exemption Certificate, SSTGB Form F0003, is a multistate form which may be used to claim any sales or use tax exemption provided under Oklahoma law. When issuing this certificate, purchasers should use caution, since it contains various exemptions that are not applicable in Oklahoma and only apply in other states. Purchasers are responsible for knowing if they qualify for the exemption they are claiming in the state in which the exemption is being claimed. The purchaser will be held liable for any tax, interest, and penalties that result from the purchaser claiming an exemption for which they are not eligible.

710:65-7-22. [RESERVED]

710:65-7-23. [RESERVED]

710:65-7-24. [RESERVED]

710:65-7-25. Purchaser's relief from certain liability

(a) A purchaser will be relieved from liability for penalty for having failed to pay the correct amount of sales or use tax in the following circumstances:

(1) A purchaser's seller or CSP relied on erroneous data provided by the Tax Commission on tax rates, boundaries, taxing jurisdiction assignments or in the taxability matrix completed by the Tax Commission;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by the Tax Commission on tax rates, boundaries, taxing jurisdiction assignments or in the taxability matrix completed by the Tax Commission;

(3) A purchaser relied on erroneous data provided by the Tax Commission in the taxability matrix completed by the Tax Commission; or

(4) A purchaser using databases pursuant to subsections (F), (G) and (H) of Section 305 of the SSUTA (Local Rate and Boundary Changes) relied on erroneous data provided by the Tax Commission on tax rates, boundaries or taxing jurisdiction assignments. After providing adequate notice as determined by the Governing Board, the Tax Commission may provide an address-based database for assigning taxing jurisdictions pursuant to Section 305 of the SSUTA, subsection (G) or (H) and may cease providing liability relief for errors resulting from the reliance on the database provided by the Tax Commission.

(b) Except where prohibited by the Oklahoma Constitution, the Tax Commission will also relieve a purchaser from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the circumstances described in (a) of this Section, provided that, with respect to reliance on the taxability matrix completed by the Tax Commission, such relief is limited to the Tax Commission's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price" or "excluded from sales price" or "included in the definition" or "excluded from the definition."

(c) For purposes of this Section, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful or intentional, which is in addition to the correct amount of sales or use tax and interest.

SUBCHAPTER 9. PERMITS

710:65-9-8. Special event permits and reporting

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

(1) **"An event held on an irregular basis"**, for purposes of this Section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "an irregular basis" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.

(2) ***"Person"*** *means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.* [68 O.S. § ~~1352(12)~~ 1352(18)]

(3) ***"Promoter"*** *or* ***"organizer"*** *means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes by special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(4) ***"Special event"*** *means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold.* ***"Special event"*** *shall include, but not be limited to gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits.* ***"Special event"*** *shall not include any county, district or state fair or public or private school or university-sponsored event or an event sponsored by a church organization exempt from taxation pursuant to 501(c)(3) of the Internal Revenue Code.* ***"Special event"*** *shall not include an event sponsored by a city or town that includes less than ten special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(5) ***"Special event vendor"*** *means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes at a special event within this state and who is not permitted under Section 1364 of Title 68 of the Oklahoma Statutes.* [68 O.S.Supp.2003 § 1364.2]

(b) **Application for special event permit.** Every promoter or organizer of a special event shall file an application for a special event permit with the Taxpayer Assistance Division, Oklahoma Tax Commission at least 20 days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one application, and a separate permit will be issued for each event. Each permit will include the dates of the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events. The application form for a special event permit may be obtained from the Compliance Division, Oklahoma Tax Commission, 409 N.E. 28th Street, Oklahoma City, OK 73194, or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov.

(c) **Fee.** There is a fee of fifty dollars ($50.00) for each application filed, which must be remitted with the application.

(d) **Promoter or organizer to distribute vendors' reporting forms.** Special event promoters and organizations are required to provide sales tax report forms to special event vendors that will be selling tangible personal property and taxable services at the event.

(e) **Promoter or organizer to collect reports and tax from special event vendors.** At the end of the event, special event promoters are required to collect the sales tax reports, along with the sales tax due from each special event vendor.

(f) **Promoter or organizer to report and remit sales tax.** Promoters or organizers of special events must file sales tax reports and remit taxes collected from special events, as follows:

(1) Promoters and organizers are required to file the sales tax reports within fifteen days following the last day of a special event.

(2) Payment of the total tax due is required at the time the sales tax report is filed. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed; and,

(3) The organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 O.S. § 1364. The list shall include the vendor's name, address, telephone number, and sales tax permit number.

(4) Promoters and organizers are only liable for the failure to report and remit the sales taxes that have been collected by them from special event vendors.

(g) **Limitation of responsibilities of promoters or organizers.** Promoters or organizers of a special event that is held on an annual basis during the same thirty-day period each year may request that the Tax Commission limit their responsibilities to the following:

(1) Submitting of an application for a special event permit as provided in ~~subsection A~~ (b) of this ~~section~~ Section;

(2) Providing report forms to special event vendors as provided in ~~subsection C~~ (d) of this ~~section~~ Section; and,

(3) Within fifteen (15) days following the conclusion of the special event, submitting a list of special event vendors at each event, including the vendor's name, address, and telephone number.

(h) **Denial of limitation.** Requests submitted pursuant to (g) of this Section may be denied by the Tax Commission for reasons including, but not limited to, failure by the promoter to

comply with the requirements of this ~~section~~ Section or failure by vendors of the promoter's previous special events to comply with the provisions of (i) of this Section.

(i) **Vendor reporting and remitting pursuant to subsection (g).** A special event vendor who has participated in a special event approved under subsection (g) shall remit the tax along with a sales tax report directly to the Tax Commission within fifteen (15) days following the conclusion of the special event. Sales taxes shall be considered delinquent and interest as provided by law will be charged if payment is not received or postmarked by the fifteenth (15th) day following the event.

(j) **Reporting and remitting tax when event lasts 30 days or longer.** When the special event will last thirty (30) days or longer, a sales tax report is required to be filed for each calendar month by the 15th day of the following month.

(k) **Remuneration.** Provided that the required sales tax reports are timely filed and the tax due remitted, promoters and organizers to whom special event permits have been issued may deduct the applicable remuneration allowed by 68 O.S. § 1367.1.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 7. CHURCHES

710:65-13-33. Children's homes and youth camps

(a) **Qualification for the exemption for children's homes located on church-owned property.** The sale of tangible personal property or services to children's homes located on church-owned property and operated by a qualified organization is exempt from sales tax. **"Qualified organization"** means, for purposes of this Section, an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3). [**See:** 68 O.S. ~~Section 1357(13)~~ § 1357(15)]

(b) **Qualification for the exemption for certain children's homes supported by one or more churches.** The sale of tangible personal property or services to children's homes supported or sponsored by one or more churches, whose members serve as trustees of the children's home, is exempt from sales tax. [**See:** 68 O.S.§ 1356(27)]

(c) **Qualification for the exemption for certain youth camps.** The sale of tangible personal property or services to youth camps supported or sponsored by one or more churches, whose members serve as trustees of the youth camp, is exempt from sales tax. [**See:** 68 O.S.§ 1356(29)]

(d) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with the applicable documentation set forth in (e) of this Section:

(e) **Supporting documentation required.**

(1) **Children's homes on church property.** Children's homes on church property must submit the following documentation:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(B) Documentation evidencing church ownership of the property where the children's home is located.

(2) **Children's homes supported by churches.** Children's homes supported or sponsored by churches must submit the following documentation:

(A) The name(s) of the church(es) which support or sponsor the home;

(B) The names of the members who serve as trustees of the home; and

(C) The amount that each church contributes each year.

(3) **Youth camps.** Youth camps must submit the following documentation:

(A) The name(s) of the church(es) which support or sponsor the camp; and

(B) The names of the church members who serve as trustees of the camp.

710:65-13-40. Sales by churches; sales to churches

(a) **Sales "by" churches.** Sales by churches are not subject to sales tax when it can be said that such selling is noncompetitive with business establishments.

(1) The following are tests for determining that such selling is noncompetitive:

(A) The transactions are conducted by members of the church and not by any franchisee or licensee.

(B) All of the proceeds must go to the church organization.

(C) The transaction must not be a continuing one but rather should be held whether annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative decision, to be made by the Commission.

(D) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the church.

(2) In addition, there are these further considerations as guides to the resolution of questions raised by each individual situation:

(A) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.

(B) The character of the particular sale, and the real practical effect upon putative competition. [**See:** 68 O.S. § 1356(7)]

(b) **Sales "to" churches.** Generally, sales made directly to a church are exempt from sales and use tax. Only sales purchased by the church, invoiced to the church, and paid for by funds or check directly from the church, will qualify for the

exemption. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC* 710:65-7-6 and 710:65-7-15.

(c) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor with whom a church has duly entered into a construction contract, or to any subcontractor to such construction contract, are exempt provided they are necessary for carrying out the contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of *OAC* 710:65-7-13.

(d) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) Documentation which shows that the church consists of a body of believers which holds religious services and public notification of the place and time of those services such as a copy of a newspaper or yellow pages ad, newsletter or bulletin sent to regular attendees or distributed during a service.

PART 10. COAL

710:65-13-55. Exemption for coal mining

(a) **Qualification in general.** Sales of machinery, electricity, fuels, explosives and materials, excluding chemicals, used in the mining of coal in this state are exempt from sales or use tax.

(b) **Application process.** Application ~~must be in the form of a letter requesting recognition that the applicant is engaged in the mining of coal in Oklahoma and is therefore eligible to claim the exemption.~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application letter~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 and online at www.tax.ok.gov along with supporting documentation as follows:

(1) The applicant's name, mailing address and federal taxpayer's identification number; and

(2) A statement that the entity is engaged in mining coal in Oklahoma and setting out any coal mining permit numbers issued to the entity or, if the applicant is a contractor to a mine owner, the coal mining permit numbers issued to the mine owner, by the Oklahoma Department of Mines or other applicable regulatory agency.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the qualifying entity, invoiced to that entity and paid for by funds or check directly from the qualifying entity will be eligible for the exemption described in this Section.

PART 13. CONTRACTORS REFUND; CHANGE OF RATES

710:65-13-70. Refund to contractor due to change of sales tax rate

(a) **Terms and limitations.** Any contractor who becomes liable for additional sales tax because of an increase in the rate of state, municipal, or county sales tax subsequent to the date a contract is executed is entitled to a refund of the additional sales taxes paid on property, equipment and services necessary to complete the contract due to the increase in rate. Provided however:

(1) The contractor must have a contract for the development or improvement of real estate which requires the purchase of materials, supplies, and equipment by the contractor to complete the contract.

(2) The contract must be a lump sum contract rather than a contract which provides for or permits the pass through of the additional tax to contracting entity.

(3) Subsequent to the date the contract was executed a state law increasing the rate of sales tax imposed by Sales Tax Code or an ordinance increasing the sales tax levy of a political subdivision becomes effective.

(4) The contractor makes purchases of materials, supplies and equipment required under the contract paying the increased rate of sales tax.

(5) Only those purchases of materials, supplies and equipment required to be made to complete the contract and affixed to or used to improve the real estate will qualify for the refund.

(b) **Rates in effect.** The rates in effect at the time the contract is entered will be applicable to purchases made pursuant to the contract or any change order under the contract until the earlier of:

(1) The contract or any change order has been completed, accepted and the contractor has been discharged from any further obligation under the contract or change order; or

(2) Two (2) years from the date on which the contract was entered.

(c) **Application.** In order to receive a refund the contractor, within the time prescribed in Section 227 of Title 68, must file the "Contractor's Application for Sales Tax Refund" on forms available from the Commission. The form may be submitted on an annual basis for purchases made the preceding year or upon completion of the contract. The following documentation must be supplied:

(1) A copy of the contract which qualifies the contractor for the lower sales tax rate.

(2) A separate schedule for each vendor detailing purchases made by invoice date, number, amount, and distribution of tax paid certified by the vendor.

(3) A summary sheet certified by the contractor which details those invoices on which the higher sales tax rate was paid.

(d) **Computation.** All vendor's remittances will be considered timely filed, therefore, the contractor's refund will be reduced by the remuneration in effect at the time the sale was made.

(e) **Documentation, forms, certification.** Before the Commission will process any refund due to change of rate, the contractor must supply all forms and documentation required by the Commission. Each vendor must complete the certification for property, materials and supplies the vendor sold to the contractor. The contractor must complete the certification pertaining to all purchases to which the refund provisions are applicable. [**See:** 68 O.S. § ~~1354(U)~~ 1354(21)]

(f) **Time limitations.** The contractor shall file a claim for said refund before the expiration of three (3) years from the date of completion of the contract or five (5) years after the contract was entered into, whichever date is earlier.

PART 15. HAZARDOUS WASTES

710:65-13-80. Exemption for purchases to reduce hazardous waste

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

(1) **"Directly used or consumed in the process of treatment"** means either the tangible personal property is:

(A) **"Directly used"** in the step-by-step processes by which hazardous waste is treated. Any tangible personal property or any services which are only indirectly related to the process of treatment are not included; or

(B) **"Consumed"** as in destroyed, used up, or worn out to the degree or extent that such property cannot be repaired, reconditioned, or rendered fit for further use. **"Consumed"** does not mean or include mere obsolescence.

(2) **"Equipment"** means the implements used in the direct process of treatment.

(3) **"Hazardous waste"** means waste materials and by-products, either solid or liquid, which are to be discarded by the generator, and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary landfills, waste or sewage treatment facilities. Hazardous waste may include, but is not limited to, explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste, and excludes domestic sewage. For purposes of the sales and use tax exemption, the term "**hazardous waste**" may include low-level radioactive waste.

(4) **"Incorporated into"** means directly used or consumed in the process of treatment.

(5) **"Machinery"** means mechanically, electrically, or electronically operated devices used for performing the tasks of remediation of hazardous waste.

(6) **"Other materials"** means other items of tangible personal property which are used in the direct process of treatment of hazardous waste, but which are not machinery, equipment, fuel, or chemicals. For purposes of this Section, electricity is included in the category "other materials".

(b) **Exemption limited to eligible, properly documented transactions.** Only purchases of machinery, equipment, fuel, and chemicals or other materials incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume of harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Management Act and operated at the place of waste generation, or facilities approved by the Department of Environmental Quality for the clean up of a site of contamination are exempt. Only purchases made by persons engaged in the process of treatment, invoiced to those persons, and paid for by such persons are exempt.

(c) **Application process.** Application ~~shall be made by letter, addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed :~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address of the facility at which treatment is to be conducted;~~

~~(4) Federal employer's identification number;~~

~~(5) Names and current mailing addresses of all responsible officers;~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(~~6~~1) A written description of the process in which the person will be engaged;

(~~7~~2) Information regarding the permit or approval under which the person is operating;

(~~8~~3) Documentation that any nonresident contractor or subcontractor is in compliance with the registration requirements found at 68 O.S. § 1701 et.seq.; and

(~~9~~4) Such additional information as the Commission may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption allowed will be forwarded to the applicant.

(e) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied,

cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

(f) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(g) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

PART 23. GAS AND ELECTRICITY

710:65-13-120. Sales tax exemption for residential use

(a) **Definition.** The sale of natural or artificial gas and electricity, when sold exclusively for residential use is exempt from state sales tax, but remains subject to any applicable municipal and county sales taxes in effect at the time of sale. The term **"residential use"** means the use of gas or electricity by the individual customer exclusively for domestic purposes such as lighting, refrigeration, cooking, water, heating, space heating and air conditioning, in a private home or individual living unit served through a single meter or a master metered multi-unit apartment, condominium, or townhouse used exclusively for domestic purposes. Residential use includes service to buildings appurtenant to the residence, including garages, barns, and other minor buildings, for use of the residents served through the residential meter. Residential use does not include use in travel trailers, motor homes or other recreational vehicles.

(b) **Private homes or individual living units.** Users in a private home or individual living unit, such as apartments, condominiums and townhomes, who are served through a single meter and whose rate has been classified by statute or regulations as residential are automatically exempt.

(c) **Multiple unit dwellings.** Users in multi-unit apartments, mobile trailer home parks or condominium and townhouse associations who are billed through a master meter, i.e. a single meter for the entire complex, and are taking service under a commercial rate may nevertheless qualify for this exemption providing the gas or electricity is used exclusively for residential use as defined in (a) of this Section. [**See:** 68 O.S.~~Supp.2003,~~ § ~~1357(6)~~ 1357(8); 68 O.S.Supp.2004, § 1354]

PART 25. GOVERNMENTAL ENTITIES

710:65-13-130. Sales to and by the government; taxable and exempt transactions

(a) **Sales "to" governmental entities.** Sales of tangible personal property or services to this State, its institutions or political subdivisions, and to the United States, including its agencies and instrumentalities are exempt from sales tax. Sales to other states' governments, political subdivisions, institutions, or agencies are not exempt, unless the state is one which borders Oklahoma and grants a like exemption from taxes on similar sales of items to Oklahoma or its political subdivisions.

(1) **Records required.** The books and records of the vendor must show that the purchase was billed to and paid by the government agency.

(2) **Sales to government employees.** Sales to individuals who are employees of this State, its institutions and subdivisions, or of the United States government, are not exempt from tax unless the sale is billed directly to the appropriate government agency or the purchase is by means of properly completed government purchase order or credit card. Sales made on credit cards bearing an employee's name and the name of the government agency for which the employee works will qualify for exemption only if the card is issued to the Federal Government, rather than to the individual, and is paid directly by the Federal Government. The credit cards that currently meet ~~this~~ these criteria are those issued through the GSA SmartPay card program:

(A) **Fleet cards.** All Federal Government **fleet cards** are centrally-billed. This means that all charges are billed directly to the Federal Government and paid directly by the Federal Government. Charges made using an authorized **fleet card** are therefore, exempt from the levy of Oklahoma sales tax. Authorized **fleet cards** must meet all the requirements set out in this paragraph:

(i) The **fleet card** prefix (first 4 digits) must be ~~8699 or 5568;~~ 4486, 4614, 4716, 5565, 5568 or 8699;

(ii) The **fleet card** platform must be Voyager, ~~or~~ MasterCard~~; and~~, Wright Express, or Visa; and

(iii) The Voyager **fleet card** must be issued by Citibank~~, NationsBank~~, or U.S. Bank; the MasterCard **fleet card** must be issued by Citibank, ~~First National Bank of Chicago, NationsBank~~ JP Morgan Chase or U.S. Bank; the Wright Express fleet card must be issued by Citibank.

(B) **Purchase cards.** All Federal Government **purchase cards** are centrally-billed. This means that all charges are billed directly to the Federal Government and paid directly by the Federal Government.

Charges made using an authorized **purchase card** are therefore, exempt from the levy of Oklahoma sales tax. Authorized **purchase cards** must meet all the requirement set out in this paragraph:

(i) The **purchase card** prefix (first 4 digits) must be 4486, ~~4716, or 5568;~~ 4614, 4716, 5565 or 5568;

(ii) The **purchase card** platform must be Visa or MasterCard; and

(iii) The Visa **purchase card** must be issued by Citibank, ~~NationsBank~~, JP Morgan Chase or U.S. Bank; The MasterCard **purchase card** must be issued by Citibank, ~~First National Bank of Chicago, NationsBank, Mellon Bank, or U.S.Bank.~~ JP Morgan Chase, or U.S. Bank;

(C) **Travel cards.** Federal Government **travel cards** may be centrally-billed or individually billed. Individually-billed charges are billed to and paid by the federal **employee**, and then reimbursed by the Federal Government. Individually-billed charges made using a **travel card** are **subject to** the levy of Oklahoma sales tax. Only centrally-billed charges made using an authorized **travel card**, because they are billed directly to and paid directly by the Federal Government, are exempt from the levy of Oklahoma sales tax. Authorized **travel cards** must meet all the requirements set out in this paragraph:

(i) The **travel card** prefix (1st four (4) digits) must by 4486 ~~or 4716, or 5568;~~ 4614, 5565 or 5568;

(ii) The sixth (6th) digit of the account numbering structure will denote whether the travel card is centrally-billed or individually-billed:

(I) A sixth digit of 0, 6, 7, 8, or 9 denotes that the **travel card** is centrally-billed;

(II) A sixth digit of 1, 2, 3, or 4 indicates that the **travel card** is individually-billed;

(iii) The **travel card** platform must be Visa or MasterCard; and

(iv) The **travel card**, whether Visa or MasterCard, must be issued by Citibank, ~~First National Bank of Chicago, NationsBank, or~~ U.S.Bank, or JP Morgan Chase.

(D) **Integrated cards.** Federal Government **integrated cards** may include **fleet**, **travel**, or **purchase card** functionality and offer the Federal Government a single card for all purchases. All **fleet and purchase type transactions** made on an **integrated card** are centrally-billed, and therefore exempt from the levy of Oklahoma sales tax, regardless of the sixth digit on the card. **Travel card** type functionality may be centrally-billed or individually-billed. Authorized **integrated cards** must meet all the requirements set out in this paragraph:

(i) The prefix (first four (4) digits) of an **integrated card** must be 4486, ~~4716, or 5568;~~ 4614, 4716, 5565 or 5568;

(ii) For travel functionality **only**, the sixth digit of the **integrated card** will denote whether the card is centrally or individually billed:

(I) A sixth digit of 0, 6, 7, 8, or 9 denotes that the **integrated card** being used for travel functionality is centrally-billed;

(II) A sixth digit of 1, 2, 3, or 4 indicates that the **integrated card** being used for travel functionality is individually-billed;

(iii) The **integrated card** platform must be Visa or MasterCard; and

(iv) The **integrated card**, whether Visa or MasterCard, must be issued by Citibank, ~~First National Bank of Chicago, NationsBank, or~~ U.S.Bank or JP Morgan Chase.~~; and~~

(3) **Sale to contractors.** Sales to contractors in connection with the performance of any contract with the United States government are not exempt unless the ownership and possession of the property purchased by the contractor or agent transfers immediately to the United States government. [**See:** 68 O.S. §§1356(1), 1356(2)]

(b) **Sales by a lease or lease-purchase agreement with a municipality or county.** ~~As of July 1, 1999, the~~ The sale of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district is exempt from sales tax.

(c) **Sales "by" governmental entities.** Except as specifically exempt by statute, the State of Oklahoma, its agencies and instrumentalities, all counties, townships, and municipal corporations, their respective agencies and instrumentalities, and all other state governmental entities and subdivisions, including state colleges and universities, shall collect, report and remit sales tax on taxable sales of tangible personal property and services. For example, sales of city maps, sales of gifts and souvenirs, sales of food from city operated concessions at stadiums, ballparks, auditoriums, etc., are subject to tax.

(d) **Purchases by contractors.** Except where specifically authorized by statute, purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for a governmental entity may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a governmental entity.

710:65-13-133. State parks

(a) **General provisions.** Sales of tangible personal property or services, directly used in or for the benefit of a state park, and made to an organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., § 501(c)(3) and organized primarily for the purpose of supporting one or more state parks located in this state, are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online

at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of Incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

PART 29. MANUFACTURING

710:65-13-150.1. Manufacturing exemption; taxable and exempt transactions

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

(1) **"Administration"** means activities performed in the areas of general management, communications, security, employee training, personnel administration, including time-keeping, general accounting and purchasing, employee benefit activities and employee recognition, legal services, public relations, and the establishment, maintenance, billing and collection of accounts.

(2) **"Distribution"** means those activities involved in the movement of manufactured items by vehicles, aircraft, watercraft, railroads or pipelines from a manufacturing site to a customer's location.

(3) **"Incidental use"** means that the property or service is used infrequently or for a minor portion of the total time it is used.

(4) *"**Manufacturing**" means and includes the activity of converting or conditioning tangible personal property by changing the form, composition, or quality of character of some existing material or materials, including natural resources, by procedures commonly regarded by the average person as manufacturing, compounding, processing or assembling, into a material or materials with a different form or use. "**Manufacturing**" does not include extractive industrial activities such as mining, quarrying, logging, and drilling for oil, gas and water, nor oil and gas field processes, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration and compression.* [68 O.S.S~~upp.2003,~~ § ~~1352(13~~ 1352(14)]

(5) *"**Manufacturing operation**" means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. "**Manufacturing operation**" does not include administration, sales, distribution, transportation, site construction, or site maintenance. Extractive activities and field processes shall not be deemed to be a part of a manufacturing operation even when performed by a person otherwise engaged in manufacturing.* [68 O.S.~~Supp.2003,~~ § ~~1352(14)~~ 1352(15)]

(6) *"**Manufacturing site**" means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer.* [68 O.S.~~Section 1352(15)~~ § 1352(16)] It is not required that the building or structures owned, leased, or controlled by a manufacturer be located on a single tract of land or on contiguous tracts of land.

(7) **"Predominant or predominantly"** means the most frequent or for the most part.

(8) **"Sales"** means the activities involved in selling a manufacturer's goods to others, and includes advertising or marketing, printing, preparation, and distribution of catalogs and flyers, and product exhibition and promotion.

(9) **"Site construction"** means the construction of buildings and other structures and improvements to real property. The term includes land preparation, new construction, reconstruction, remodeling, renovation, repair, upgrading and making alterations and additions to the real property, whether the work is done by the manufacturer or by other firms.

(10) **"Site maintenance"** means the provision of facilities support services as defined in the North American Industry Classification System, Code 561210. **"Site maintenance"** does not include items used in the manufacturing operation, as defined in this Section, or in waste disposal activities resulting from the manufacturing operations.

(11) **"Transportation"** means to move or carry tangible personal property to a manufacturing site, prior to the time it enters into the manufacturing process, and to move or carry, tangible personal property from a manufacturing site, after such property leaves the manufacturing operation. The term "transportation" includes the purchase, maintenance, repair, overhaul, rebuilding, storage and operation of vehicles and transportation equipment.

(b) **Activities included in manufacturing operations.** Purchases by a manufacturer of tangible personal property or services for use in a manufacturing operation are exempt from sales and use taxes in Oklahoma. Operations performed by a sub-contractor to the manufacturer may also qualify as a manufacturing operation if the contractor is performing sub-assembly work leading to completion of the finished product. Activities included in a manufacturing operation include the following:

(1) **Product development.** Examples of property used in product development include raw materials, machinery, and equipment utilized in designing and making prototypes.

(2) **Production.** Production includes those processes and activities consisting of manufacturing, compounding, processing, assembling, or preparing of articles for sale as tangible personal property.

(A) **Production supplies.** Examples of production supplies include items used in the production process, such as:

(i) Raw materials.

(ii) Coal, fuel, oil, electricity, natural gas, artificial gas, steam and refrigeration, when used in the production process or when used to generate power or to create or maintain a temperature necessary for the production process.

(iii) Miscellaneous supplies that are consumed in the production process, such as lubricating oils and greases used on machinery and equipment.

(B) **Manufacturing supplies.** Examples of manufacturing supplies include items used to service and operate manufacturing equipment, such as:

(i) Work clothing, such as coveralls and uniforms; safety goggles; face masks; helmets, gloves, aprons, shoe and sleeve protectors.

(ii) Static mats.

(iii) Surge protectors.

(C) **Manufacturing tools.** Manufacturing tools eligible for exemption when purchased for use in a manufacturing operation are those tools used in the manufacturing process, such as:

(i) Scales to measure raw materials.

(ii) Knives, staple guns, tape guns.

(iii) Hand tools used on the product or in the maintenance of exempt machinery.

(D) **Manufacturing equipment and machinery.** Examples of manufacturing equipment and machinery eligible for exemption when purchased by a manufacturer include:

(i) Manufacturing equipment, machinery, and associated repair or replacement parts.

(ii) Dust collector equipment.

(iii) Paint booths.

(iv) Conveyors.

(v) Forklifts.

(3) **Testing or quality control.** Equipment and supplies used in testing or quality control, or both, may qualify for the exemption when purchased by a manufacturer for use in a manufacturing operation.

(4) **Production waste disposal.** Equipment and supplies purchased by a manufacturer to be used in production waste disposal at a manufacturing site may qualify for the exemption.

(5) **Warehousing supplies and equipment.** Examples of warehousing supplies and equipment eligible for exemption when purchased by a manufacturer include:

(A) Flow racks.

(B) Tables.

(C) Storage units.

(D) Wrapping, packing, or packaging supplies, used to further the sale of a product.

(E) Labels and label-makers.

(F) Inventory control items.

(6) **Shipping.** Examples of shipping supplies eligible for exemption when purchased by a manufacturer include:

(A) Boxes, scales, inserts.

(B) Tape dispensers.

(c) **Non-exempt uses.** The following items and uses will result in the taxability of the transaction:

(1) Items purchased for use, or manufactured and withdrawn from inventory and used, in the areas of administration, distribution, sales, site construction, site maintenance, or transportation, are subject to sales tax if the items are purchased or withdrawn from an inventory in Oklahoma. If tangible personal property is purchased or withdrawn from inventory outside Oklahoma, to be used in Oklahoma for these non-exempt purposes, it is subject to use tax. The amount of tax due is computed based upon the "**sales value**," of the goods withdrawn, as defined in *OAC* 710:65-1-2.

(2) *Goods, wares, merchandise, property, machinery and equipment, used in a non-manufacturing activity or process as set forth in paragraph 13 of Section 1352* of Title 68 of the Oklahoma Statutes *shall not be eligible for the exemption* described in this Section *by virtue of the activity or process being performed in conjunction with or integrated into a manufacturing operation*. [68 O.S.Supp.2003, § 1359(1)]

(d) **Predominant use.** Incidental use of otherwise qualifying items or machinery **predominantly** used in the manufacturing operation will not result in disqualification:

(1) Where an item is predominantly used in the manufacturing operation, any non-exempt use will be considered incidental, and will not disqualify the item from the exemption.

(2) Where electricity or natural gas is metered through a single meter, and the predominant use is in the manufacturing operation, any remaining usage will be considered incidental, and will be exempt.

(e) **Applicability of examples.** Items enumerated in ~~Subsections~~ (b) and (c) of this Section are examples and illustrations only, and are not intended to be exclusive or exhaustive.

710:65-13-157. Exemption for persons engaged in the extraction and manufacturing crushed stone and sand

(a) **General rule.** The extraction and manufacturing of crushed stone and sand are manufacturing operations and the persons engaged in these operations, upon application will be issued Manufacturer Exemption Permits which will allow them to make purchases exempt from sales or use tax of tangible personal property or services to be used or consumed in all phases of the extraction and manufacturing of crushed stone and sand.

(b) **Activities included in exempt operations.** The exemption includes but is *not limited to site preparation, dredging, overburden removal, explosive placement and detonation, onsite material hauling and/or transfer, material washing, screening and/or crushing, product weighing and site reclamation.*

(c) **Administration.** Persons claiming exemption from sales or use tax under this Section should claim exemption

from sales or use tax from their vendors when making purchases and provide their vendors a copy of their Manufacturer Exemption Permit as set out in *OAC* 710:65-7-9 to support their claimed exemption.

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-169. Definitions

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

*"**Drug**" means a compound, substance or preparation, and any component of a compound, substance or preparation:*

(A) *Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;*

(B) *Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or,*

(C) *Intended to affect the structure or any function of the body.* [68 O.S.~~Supp.2003,~~ §~~1352(7)~~ 1352(8)]

"Durable medical equipment" means equipment, *including repair and replacement parts for same,* which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, *is not worn in or on the body,* and is appropriate for use in the home. *"**Durable medical equipment**" does not include "mobility enhancing equipment".* [68 O.S.Supp.2003, § 1357.6(D)]

"Medical appliance, device, or equipment" includes corrective eyeglasses, hearing aides, contact lenses, prosthetic devices, durable medical equipment, and mobility enhancing equipment.

*"**Mobility enhancing equipment**" means equipment, including repair and replacement parts for same, which:*

(A) *Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;*

(B) *Is not generally used by persons with normal mobility; and,*

(C) *Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.*

*"**Mobility enhancing equipment**" does not include "**durable medical equipment**"* as defined in this Section. [68 O.S.Supp.2003, § 1357.6(E)]

*"**Over-the-counter drug**" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R., Section 201.66. The over-the-counter-drug label includes:*

(A) *A "Drug Facts" panel, or*

(B) *A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance or preparation.* [68 O.S.~~Supp.2003,~~ § ~~1352(16)~~ 1352(17)]

"Practitioner" means a physician, osteopathic physician, surgeon, podiatrist, chiropractor, optometrist, pharmacist, psychologist, ophthalmologist, nurse practitioner, audiologist or hearing aid dealer or fitter who is licensed by the state as required by law.

"Prescription" means *an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed "practitioner",* as defined by 68 O.S. § 1357.6. [68 O.S.~~Supp.2003,~~ § ~~1352(18)~~ 1352(19)]

"Prosthetic device" means *a replacement, corrective or supportive device, including repair and replacement parts for same, worn on or in the body to:*

(A) *Artificially replace a missing portion of the body;*

(B) *Prevent or correct physical deformity or malfunction; or,*

C) Support a weak or deformed portion of the body.

"Prosthetic device" *shall not include corrective eyeglasses, contact lenses, or hearing aids.* [68 O.S.~~Supp.2004,~~ §§ ~~1357(20)~~ 1357(22), 1357.6(C)

710:65-13-172. Exemption for community health centers, migrant health centers, indigent health care clinics, certain community-based health care centers, and community mental health centers

(a) **Qualification for the exemption for community health centers, migrant health centers, indigent health care clinics and certain community-based health care centers.** Sales tax does not apply to the sale of tangible personal property or taxable services when sold to:

(1) Any federally qualified community health center as defined in Section 254c of Title 42 of the United States Code;

(2) Any migrant health center as defined in Section 254b of Title 42 of the United States Code;

(3) Any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statues;

(4) Any community-based health center which provides primary care services at no cost to the recipients, **and** is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). For purposes of this Section, **"primary care services"** means health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians, and where appropriate, physician assistants, nurse practitioners, or other licensed medical professionals; or

(5) Any community mental health center as defined in Section 3-302 of Title 43A of the Oklahoma Statutes. For purposes of this Section, "**community mental health center**" means *a facility offering:*

(A) *A comprehensive array of community-based mental health services, including, but not limited*

to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and

(B) *Certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and after-care, training programs, and research and evaluation programs.*

(b) **Application process.** Application ~~shall be made by letter addressed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address; and~~

~~(4) Federal employer's identification number~~ for exemption is made by submitting to the Taxpayer Assistance Division , Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with the applicable documentation set forth in (c) of this Section:

(c) **Supporting documentation required.**

(1) **Federally qualified community health centers or migrant health centers.** Federally qualified community health centers or migrant health centers, must submit the letter of notification from the U.S. Department of Health and Human Services, recognizing that the center qualifies under the terms of the relevant statute.

(2) **Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund.** Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund must submit a copy of the letter or disbursement voucher from the Fund, showing the date the funds were disbursed.

(3) **Community-based health centers.** Community-based health centers must submit the documentation described in (A) through (C) of this paragraph:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(B) A written description of the primary care services provided must be submitted, stating the activities of the organization, and evidenced by copies of the following, as applicable:

(i) By-laws;

(ii) An audit or other financial statement, showing the types and amounts of revenue received; and

(iii) take documents or other forms used to obtain information from clients and which specifically reflect that the primary care services were being provided at no cost to the recipients.

(C) For the purposes of this paragraph, **"at no cost to the recipient"** means at no cost to either the recipient or any unit of government, or any insurance company, or any other person or entity. Centers which provide primary care services on a "sliding scale" fee schedule do **not** qualify for the exemption.

(4) **Community mental health centers.** Community mental health centers must submit to the Commission, as part of its application, proof of recognition by the Oklahoma Department of Mental Health and Substance Abuse Services that applicant qualifies as a Community Mental Health Center, along with a written description of the comprehensive array of community-based mental health and other optional services the facility offers, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property and services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying health care organizations exempt from sales tax.

710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to ~~medicare/medicaid~~ Medicare/Medicaid program recipients

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

(1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.

(2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and

(3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order;

(3) A copy of the eligible recipient's Medicare card; and

(4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items. The documentation set out in (1) through (3) of this subsection must be obtained as part of the claimant's records to substantiate the exemption claimed:

(1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;

(2) A copy of the prescription or work order; and

(3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(e) **Examples of medical appliances, medical devices, and medical equipment.** A nonexclusive list of **medical appliances, medical devices, and medical equipment** is as follows:

(1) **IPPB, circuits, devices and supplies.**

(A) Air oxygen mixers
(B) Emergency oxygen delivery units
(C) Manual resuscitators
(D) Nebulizers, tubing

(2) **Oxygen equipment.**

(A) Cylinder stands, support devices
(B) Cylinder transport devices (sheaths, carts)
(C) Face masks
(D) Liquid oxygen base dispenser
(E) Liquid oxygen portable dispenser
(F) Nasal cannulas
(G) Oxygen concentrators
(H) Oxygen cylinders
(I) Oxygen fittings, accessories
(J) Oxygen humidifiers
(K) Oxygen tubing
(L) Regulators, flowmeters
(M) Tank wrench

(3) **Respiratory therapy equipment.**

(A) Aerosol compressors (stationary and portable)
(B) Aspirators
(C) Percussors, vibrators
(D) Room humidifiers (with script)
(E) Ultrasonic nebulizers
(F) Volume ventilators, respirators and related device supplies

(f) **Other examples.** The following nonexclusive list contains other examples of **medical appliances, medical devices, and medical equipment** that qualify for the exemption described herein:

(1) Adhesive bandages
(2) Alternating pressure mattresses
(3) Alternating pressure pads
(4) Alternating pressure pads
(5) Anesthesia trays
(6) Aneurysm clips
(7) Arterial bloodsets
(8) Artificial sheepskin
(9) Aspirators
(10) Atomizers
(11) Autolit
(12) Back cushions
(13) Bathing aids
(14) Bathing caps
(15) Bathtub grab bars
(16) Bathtub lifts
(17) Bathtub seats
(18) Bed pans
(19) Bed rails
(20) Bedside commodes
(21) Bedside rails
(22) Bedside tables
(23) Bedside trays
(24) Bedwetting prevention devices
(25) Belt vibrators
(26) Biopsy needles
(27) Biopsy trays
(28) Blood administering sets
(29) Blood cell washing equipment
(30) Blood pack holders
(31) Blood pack trays
(32) Blood pack units
(33) Blood pressure meters
(34) Blood processing supplies
(35) Blood tubing
(36) Blood warmers
(37) Bone fracture therapy devices
(38) Breast pumps
(39) Breathing machines
(40) Canes
(41) Cannula systems
(42) Cardiac electrodes
(43) Cardiac pacemakers
(44) Cardiopulmonary equipment
(45) Catheter trays
(46) Cervical pillows
(47) Chair lifts
(48) Clamps
(49) Commode chairs
(50) Communication aids for physically impaired
(51) Connectors
(52) Contact lens cases

(53) Contact lenses
(54) Contact solution
(55) Convoluted pads
(56) Corrective eyeglasses
(57) Cotton balls
(58) Crawlers
(59) Crutch cushions
(60) Crutch handgrips
(61) Crutch tips
(62) Crutches
(63) Crutches
(64) Crutches, crutch pads, tips
(65) Decubitus prevention devices
(66) Decubitus seating pads, bed pads
(67) Dentures
(68) Dialysis chairs
(69) Dialysis machines
(70) Dialysis supplies
(71) Dialyzers
(72) Dietetic scales
(73) Disposable diapers
(74) Disposable gloves
(75) Disposable underpads
(76) Donor chairs
(77) Drainage bags
(78) Dressing aids, button loops, zipper aids, etc.
(79) Dressings
(80) Drug infusion devices
(81) Dry aid kits for ears
(82) Earmolds
(83) Eating and drinking aids
(84) EKG paper
(85) Elastic bandages
(86) Elastic supports
(87) Electrodes
(88) Emesis basins
(89) Endo trach tubes
(90) Enema units
(91) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
(92) Exercise devices
(93) Eyeglasses
(94) First-aid kits
(95) Fistula sets
(96) Fitted stroller
(97) Foam seating pads
(98) Foam slant pillows
(99) Foam wedges
(100) Gauze bandages
(101) Gauze packings
(102) Gavage containers
(103) Geriatric chairs
(104) Geriatric chairs
(105) Grooming aids
(106) Grooming aids, dental aids
(107) Hand exercise equipment putty
(108) Hand sealers
(109) Head halters
(110) Hearing aid carriers
(111) Hearing aid repair kits
(112) Hearing aids
(113) Heart stimulators
(114) Heat lamps
(115) Heat pads
(116) Hemodialysis devices
(117) Hemolators
(118) Hospital beds
(119) Hospital beds
(120) Hot water bottles
(121) Household aids for the impaired
(122) Hydraulic lifts
(123) Hydro-collators
(124) Hydro-therm heating pads
(125) Hypodermic syringes and needles
(126) I.V. administering sets
(127) I.V. connectors
(128) I.V. stands
(129) I.V. tubing
(130) Ice bags
(131) Ident-a-bands
(132) Incontinent garments
(133) Incubators
(134) Infrared lamps
(135) Inhalators
(136) Insulin infusion devices
(137) Invalid rings
(138) Iron lungs
(139) Irrigation apparatus
(140) Irrigation solutions
(141) Karaya paste
(142) Karaya seals
(143) Kidney dialysis machines
(144) Knee immobilizers
(145) Laminar flow equipment
(146) Latex gloves
(147) Leg weights (rehab. related)
(148) Leukopheresis pumps
(149) Lift recliners
(150) Lithotripter
(151) Lumbosacral supports
(152) Lymphedema pumps
(153) Manometer trays
(154) Massagers
(155) Maternity belts
(156) Medigrade tubing
(157) Modulung oxygenators
(158) Moist heat pads
(159) Muscle stimulators
(160) Muscle stimulators
(161) Myelogram trays
(162) Myringotomy tubes
(163) Nebulizers
(164) Needles
(165) Nerve stimulators
(166) Neuromuscular electrical stimulators [when not worn on the body]

(167) Overbed tables
(~~167~~168) Oxygen equipment
(~~168~~169) Page turning devices
(~~169~~170) Pap smear kits
(~~170~~171) Paraffin baths
(~~171~~172) Patient lifts
(~~172~~173) Patient lifts slings
(~~173~~174) Patient safety vests
(~~174~~175) Patient transport devices, boards
(~~175~~176) Physicians instruments
(~~176~~177) Pigskin
(~~177~~178) Plasma extractors
(~~178~~179) Plasmapheresis units
(~~179~~180) Plaster (surgical)
(~~180~~181) Plastic heat sealers
(~~181~~182) Post-surgical bust forms
(~~182~~183) Posture back supports
(~~183~~184) Posture back supports for seating
(~~184~~185) Prescribed device repair kits
(~~185~~186) Pressure pads
(~~186~~187) Raised toilet seats
(~~187~~188) Reaching aids
(~~188~~189) Respirators
(~~189~~190) Restraints
(~~190~~191) Resuscitators
(~~191~~192) Sauna baths
(~~192~~193) Security pouches
(~~193~~194) Servipak dialysis supplies
(~~194~~195) Shampoo trays
(~~195~~196) Shelf trays
(~~196~~197) Shoulder immobilizers
(~~197~~198) Shower chairs
(~~198~~199) Shower grip bars
(~~199~~200) Shower seating
(~~200~~201) Side rails
(~~201~~202) Sitting and sleeping cushions
(~~202~~203) Sitz bath kit
(~~203~~204) Small-vein infusion kits
(~~204~~205) Specialized seating, desks, work stations
(~~205~~206) Specially built hospital beds
(~~206~~207) Specially designed hand utensils
(~~207~~208) Specimen containers
(~~208~~209) Spinal puncture trays
(~~209~~210) Sponges (surgical)
(~~210~~211) Stairglides, lifts in home
(~~211~~212) Stairway elevators
(~~212~~213) Standing frames, devices and accessories
(~~213~~214) Steri-peel
(~~214~~215) Stethoscope
(~~215~~216) Stools
(~~216~~217) Stopcocks
(~~217~~218) Strap-on urinals
(~~218~~219) Suction equipment
(~~219~~220) Sun lamps
(~~220~~221) Surgical bandages
(~~221~~222) Surgical equipment
(~~222~~223) Suspensories
(~~223~~224) Sutures
(~~224~~225) Thermometers
(~~225~~226) Toilet aids
(~~226~~227) Toilet safety frames
(~~227~~228) Toilet seat rails
(~~228~~229) Toilet seat risers
(~~229~~230) Tourniquets
(~~230~~231) Trach tubes
(~~231~~232) Traction equipment
(~~232~~233) Traction stands, pulleys, etc.
(~~233~~234) Transcutaneous electrical nerve stimulators (tens unit) [when not worn on the body]
(~~234~~235) Transcutaneous nerve stimulators
(~~235~~236) Transfer boards
(~~236~~237) Transfusion sets
(~~237~~238) Trapeze bars-bar stand
(~~238~~239) Trapezes
(~~239~~240) Tub sealers
(~~240~~241) Underpads
(~~241~~242) Urinals
(~~242~~243) Vacutainers
(~~243~~244) Vacuum units
(~~244~~245) Vaporizers
(~~245~~246) Venous blood sets
(~~246~~247) Vibrators
(~~247~~248) Walker accessories
(~~248~~249) Walkers
(~~249~~250) Walkers, including walker chairs
(~~250~~251) Walking bars
(~~251~~252) Walking canes, quad canes, accessories
(~~252~~253) Water beds
(~~253~~254) Wheel walkers
(~~254~~255) Wheelchairs
(~~255~~256) Whirlpools
(~~256~~257) Writing and speech aids for the impaired
(~~257~~258) X-ray film

(g) **Prosthetic devices.** A nonexclusive list of **prosthetic devices** is as follows:

(1) Abdominal belts
(2) Anti-embolism stockings
(3) Arch supports
(4) Arm slings
(5) Artificial arteries
(6) Artificial breasts
(7) Artificial ears
(8) Artificial eyes
(9) Artificial heart valves
(10) Artificial implants
(11) Artificial larynx
(12) Artificial limbs
(13) Artificial noses
(14) Athletic supporters
(15) Bone cement
(16) Bone nails
(17) Bone pins
(18) Bone plates
(19) Bone screws
(20) Bone wax
(21) Braces

(22) Cast heels
(23) Casts
(24) Catheter devices and supplies
(25) Catheters
(26) Cervical braces
(27) Cervical collars
(28) Clavicle splints
(29) Colostomy devices
(30) Colostomy supplies and devices
(31) Corrective braces
(32) Corrective pessaries
(33) Corrective shoes
(34) Cosmetic gloves
(35) Dorsolumbar belts
(36) Dorsolumbar supports
(37) Eyelid load prosthesis
(38) Heart valves
(39) Hernia belts
(40) Ileostomy devices
(41) Iliac belts
(42) Mastectomy pads
(43) Neuromuscular electrical stimulators [when worn on the body]
(44) Organ implants
(~~44~~45) Orthopedic implants
(~~45~~46) Orthopedic shoes
(~~46~~47) Orthotic supports (Bandages, belts, and similar supplies)
(~~47~~48) Ostomy devices
(~~48~~49) Pacemaker equipment
(~~49~~50) Pacemakers
(~~50~~51) Penile implants
(~~51~~52) Rib belts
(~~52~~53) Rupture belts
(~~53~~54) Sacroiliac supports
(~~54~~55) Sacrolumbar belts
(~~55~~56) Sacrolumbar supports
(~~56~~57) Space shoes
(~~57~~58) Splints
(~~58~~59) Splints, holders
(~~59~~60) Stoma appliances (colostomy, ileostomy, ureterostomy, catheters)
(~~60~~61) Stoma bags
(~~61~~62) Transcutaneous electrical nerve stimulators (tens unit) [when worn on the body]
(~~62~~63) Trusses
(~~63~~64) Ureostomy devices

710:65-13-174. Exemption for tax-exempt, independent, nonprofit biomedical research foundations

(a) **Qualification for tax-exempt, independent, nonprofit biomedical research foundations.** Sales of tangible personal property or taxable services to independent, nonprofit biomedical research foundations who are entities qualified pursuant to 26 U.S.C. 501(c)(3) and who provide educational programs for Oklahoma science students and teachers will be exempt from sales tax.

(b) **Application process.** Application ~~must be in the form of a letter requesting recognition and must provide the legal name of the entity seeking exemption, a current mailing address, the entity's federal employer's identification number, and the supporting documentation described in subsection (c).~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) A written description of the qualifying activities of the foundation, as may be evidenced by copies of:

(A) Articles of incorporation;
(B) By-laws;
(C) Brochure; and
(D) Notarized letter from the President or Chairman of the foundation.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the foundation, and paid for by funds or check directly from the foundation, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for foundations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified foundations.

710:65-13-175. Exemption for tax-exempt, independent, nonprofit community blood banks headquartered in this state

(a) **Qualification in general.** Sales of tangible personal property or taxable services to tax-exempt, independent, nonprofit community blood banks headquartered in this state are exempt from sales tax.

(b) **Application process.** Application ~~must be in the form of a letter requesting recognition which must provide the legal name of the entity seeking exemption, a current mailing address, the entity's federal employer's identification number, and the supporting documentation described in subsection (c).~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained

in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) A written description of the qualifying criteria that the organization meets, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; and

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying community blood banks exempt from sales tax.

710:65-13-177. Construction projects for organizations providing end-of-life care and hospice service

(a) **Qualification for exemption.** Sales of tangible personal property and services for use solely on construction projects for organizations exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. 501(c)(3) whose purpose is to provide low income individuals who live in a facility owned by the organization end-of-life care and access to hospice services.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available ~~from the Division~~ telephonically at (405) 521-3160 or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov, along with the following information:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Sales to qualified organization limited to eligible, properly-documented transactions.** Only sales of goods or services for use solely on construction projects actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC* 710:65-7-6 and 710:65-7-15.

(~~e~~d) **Sales under contract.** Sales to any person, including contractors and subcontractors, with whom a qualifying organization has duly entered into a construction contract necessary for carrying out such contract are exempt from sales tax.

(~~f~~e) **Documentation and certification required.** In the case of sales to a person including contractors and subcontractors claiming exemption pursuant to this Section, the vendor must obtain:

(1) A copy of the exemption letter or card issued to the qualified organization;

(2) Documentation indicating the contractual relationship between the purchaser and the qualified organization; and

(3) Certification by the purchaser, on the face of each invoice or sales ticket, setting out the name of the exempt organization, that the purchases are being made for and on behalf of the organization, and that they are necessary for the completion of the contract.

PART 35. NEWSPAPERS; PERIODICALS; PROGRAMS; MEDIA

710:65-13-194. Exemption for sales of tangible personal property and services to a motion picture or television production company to be used or consumed in connection with an eligible production

(a) **General provisions.** The sale of tangible personal property and services to a motion picture or television production company are exempt from sales and use taxes in Oklahoma, if used or consumed in connection with an eligible production.

(b) **Definitions.** Pursuant to 68 O.S. ~~Section 1357(21)~~ §1357(23), **"Eligible production"** means "*a documentary, special, music video, or a television commercial or television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series, filmed or taped for network or national or regional syndication; or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast.* **"Qualified purchaser"** means a motion picture or television production company making purchases of tangible personal property and services for use in producing an eligible production, which has received an exemption letter for its eligible production.

(c) **Examples of exempt items.** Items that may be purchased exempt from sales tax by a qualified purchaser include, but are not limited to:

(1) Accommodations and meals.

(2) Production equipment purchases and rentals.

(3) Set construction and rigging materials.

(4) Production office equipment and supplies.

(5) Prop and wardrobe purchases and rentals.

(6) Utilities used by the production company on location and in the production office.

(d) **Application process.** Application ~~shall be addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue an exemption letter certifying an exemption under this Section, the following information is required to substantiate the qualification for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Name of the production;~~

~~(4) Federal employer's identification number;~~

~~(5) A statement whether the production is a documentary, a music video, a television commercial, a television program or instead, is a full length motion picture;~~

~~(6) The projected dates of production activity in Oklahoma. The exemption letter will be valid during this period;~~

~~(7) The address at which records will be available for review;~~

~~(8) If the production is a television program, whether it is a pilot or if it will be a segment of a series;~~

~~(9) A statement whether the production being taped or filmed is for theatrical release, network broadcasting, national release or regional syndication; and~~

~~(10) Such additional information as the Commission may require to confirm eligibility~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-88, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

(e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying that the exemption is allowed will be forwarded to the applicant.

(f) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue an exemption letter pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

(g) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter or card certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(h) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

PART 37. SALES FOR RESALE

710:65-13-200. Exemption on sales for resale

The gross proceeds derived from sales of goods, wares, merchandise, and telecommunications services by vendors, for resale, to persons having a valid sales tax permit who are regularly engaged in reselling the articles or services purchased are exempt from sales tax. If the purchaser is an Oklahoma resident, he must provide the vendor with his Oklahoma sales tax permit number if the sale is made in Oklahoma. In addition to furnishing his sales tax permit number to the vendor, the purchaser must certify in writing to the vendor that said purchaser is engaged in the business of reselling the articles purchased. Failure to so certify, or to falsely certify, with the knowledge that the items purchased are not for resale, shall be sufficient grounds upon which the Commission may cause the purchaser's sales tax permit to be canceled. The seller will be held liable for sales tax due on any sales where an exemption certificate is found to be invalid, for whatever reason. [**See:** 68 O.S. § ~~1365(D)~~ 1365(G)]

(1) The required certification may be made on the bill, invoice or sales slip retained by the vendor or by furnishing a certification letter to the seller. The Multi-State Tax Commission Certificate, the Streamlined Sales and Use Tax Exemption Certificate, an Oklahoma Exemption Certificate, BT107, or a reasonable facsimile may be used.

(2) The vendor should obtain the information set out in 710:65-7-6 and 710:65-7-8.

PART 39. SCHOOLS AND HIGHER EDUCATION

710:65-13-210. Exemption for public and private schools and institutions of higher education

(a) **Sales to schools.** Sales of tangible personal property or services to the following entities are exempt from taxation:

(1) Private institutions of higher education.

(2) Private elementary and secondary schools.

(3) Members of the Oklahoma system of higher education.

(4) Public school districts.

(b) **Scope of exemption.** The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher education which are exempt from taxation pursuant to 26 U.S.C.A § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and

equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) **Sales by a lease or lease-purchase agreement with a school district.** Sales of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district are exempt from sales tax.

(d) **Sales under public contract.** Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) **Certification required.** Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in ~~subsection~~ (a) of this Section. The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) **Campus or school construction.** Sales for use on campus or school construction projects for the benefit of either the institutions of the Oklahoma system of higher education, private institutions of higher education accredited by the Oklahoma State Regents for Higher Education, or for public schools or school-districts, are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus or school construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Taxpayer Assistance Division. Along with the request, the following must be supplied:

(1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.

(2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:

(1) separately stated on the admission ticket; and

(2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent organizations.** Private schools, public schools, public school boards, public school districts, and public school student organizations (to include parent organizations) can make sales of tangible personal property, including admission tickets and concessions at athletic events, for fund-raising projects to benefit the school or the organization without collecting and remitting sales tax. [**See:** 68 O.S. ~~§§ 1356(13),(14)~~ § 1356(13)]

(l) **Sales to, or by, parent-teacher organizations.** Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes. ~~Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194 a completed Form 13-16-A along with an Internal Revenue Service determination letter recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3). Form 13-16A may be obtained from the Taxpayer Assistance Division or online at www.oktax.state.ok.us.~~

(m) **Sales to, or by, nonprofit local public or private school foundations.** Nonprofit local public or private school foundations which solicit money or property in the name of any public or private school or public school district may make purchases and sales of tangible personal property exempt from sales tax. ~~Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at www.oktax.state.ok.us, along with the following information:~~

~~(1) A letter from the Internal Revenue Service (IRS) recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and~~

~~(2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By-laws;~~

~~(C) Brochure; and~~

~~(D) Notarized letter from the President or Chairman of the foundation~~.

(n) **Sales to career technology student organizations.** Career technology student organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education may make purchases exempt from Oklahoma sales and use taxes and local sales and use taxes.

(o) **Application process.** The entities set forth in (l) through (n) of this Section may make application for exemption by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd. Oklahoma City,

OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 and online at www.tax.ok.gov along with the applicable documentation outlined in (p) of this Section.

(p) **Supporting documentation required.**

(1) **Parent-Teacher Associations or Organizations.** Parent-Teacher Associations or Organization must submit the Internal Revenue Service determination letter recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. 501(c)(3).

(2) **School foundations.** School foundations must submit the documentation described in (A) and (B) of paragraph (2).

(A) A letter from the Internal Revenue Service recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. 501(c)(3);

(B) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:

(i) Articles of Incorporation;

(ii) By-laws;

(iii) Brochure; and

(iv) Notarized letter from the President or Chairman of the foundation.

(3) **Career Technology School Organizations.** Career Technology School Organizations must submit documentation that the organization is under the direction and supervision of the Oklahoma Department of Career and Technology Education.

710:65-13-220. Exemption for child care facilities which provide on site universal pre-kindergarten education

(a) **Qualification for child care facilities which provide on site universal pre-kindergarten education exemption.** Sales of tangible personal property and services to a child care facility, licensed pursuant to the Oklahoma Child Care Facilities Licensing Act which possesses either a 3-star rating from the Department of Human Services Reaching for the Stars Program or a national accreditation and provides on site universal pre-kindergarten education to four-year-old children through a contractual agreement with any public school or school district are exempt from sales tax.

(b) **Application process.** Application ~~shall be made by letter directed to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address; and~~

~~(4) Federal employer's identification number.~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A copy of the Oklahoma Child Care Facility License;

(2) A copy of the 3-star rating Certificate from the Department of Human Services Reaching for the Stars Program or documentation which shows that the entity has a national accreditation; and

(3) A copy of a current year contractual agreement with a public school or school district for provision, by the child care facility, of on site universal pre-kindergarten education to four-year-old children.

(~~d~~c) **Sales to child care center limited to eligible, properly-documented transactions.** Only sales of goods or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC* 710:65-7-6 and 710:65-7-15.

(~~e~~d) **Sales under contract.** Sales to any person, including contractors and subcontractors, with whom a child care center has duly entered into a contract for construction and improvement of buildings and other structures owned by the child care center and operated for education purposes are exempt from sales tax.

(~~f~~e) **Documentation and certification required.** In the case of sales to a person including contractors and subcontractors claiming exemption pursuant to this Section, the vendor must obtain:

(1) A **copy** of the exemption letter or card issued to the qualified child care center;

(2) Documentation indicating the contractual relationship between the purchaser and the qualified child care center; and

(3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-334. Exemption for qualified museums

(a) **General provisions.** Museums or other entities accredited by the American Association of Museums are exempt from the levy of sales tax on their purchases of tangible personal property and services, and provided that the museum is

in compliance with (d)(2) of this Section, on the sales of tickets for admission.

(b) **Certification required for purchases.** Certification, in which the name of the museum or other accredited entity is set out on the face of the invoice or sales receipt to be obtained and retained by the vendor, is required of persons making purchases on behalf of a qualifying museum or other accredited entity, in order to support the exemption pursuant to *OAC* 710:65-3-30 and 710:65-3-33.

(c) **Application procedure.** Application for the exemption ~~on purchases shall be made to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, the information described in this subsection must be submitted:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and,~~ is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16A, contained in Packet E available from the Division at (405) 521-3160 or online at www.tax.ok.gov along with

~~(5) Written~~ written confirmation that the applicant is currently accredited by the American Association of Museums.

(d) **Exemption limited to eligible, properly-documented transactions.**

(1) Only those purchases actually purchased by the museum or other accredited entity, invoiced to the museum or entity, and paid for by funds or check directly from the museum or other accredited entity, will qualify for the exemption on purchases.

(2) To qualify for the exemption on sales of admission tickets, the museum must separately state an amount equivalent to the tax which would otherwise have been required to be collected on the face of the admission ticket and must use the amount so stated and so collected solely for the purpose of servicing debt incurred by the museum in the construction, enlargement, or renovation of facilities used or to be used for the entertainment, edification, or cultural cultivation of persons admitted to the museum or facility. The museum or other accredited entity must maintain records adequate to show that the proper amount was collected in lieu of the tax and that those funds were used for purposes of servicing qualifying projects.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to museums and other accredited entities.

710:65-13-335. Limited exemption for organizations which sponsor and promote educational, charitable, and cultural events for disadvantaged children

(a) **Qualification for educational, charitable, and cultural events for disadvantaged children exemption.** The first $15,000.00 of each calendar year's sales, to or by, organizations which were established to sponsor or promote educational, charitable, or cultural events for disadvantaged children, are exempt from sales tax.

(b) **Application process.** Application ~~must be in the form of a letter requesting recognition which should provide the legal name of the entity seeking exemption, a current mailing address, the entity's federal employer's identification number,~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov and the supporting documentation described in ~~subsection~~ (c) of this Section.

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) Documentation showing that the organization was established to sponsor and provide educational, charitable, and cultural events for disadvantaged children, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; ~~and~~ or,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only the first $15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this ~~section~~ Section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

710:65-13-336. Exemption for Disabled American Veterans, Department of Oklahoma, Inc. and subordinate chapters

(a) **General provisions.** Disabled American Veterans, Department of Oklahoma, Inc. and its subordinate chapters are exempt from the levy of sales tax on purchases of tangible personal property and services.

(b) A**pplication procedure.** Application for exemption ~~shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and,~~

~~(5) Written~~ is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 and online at www.tax.ok.gov along with written confirmation that the applicant is a currently recognized chapter of the Disabled American Veterans, Department of Oklahoma, Inc.

710:65-13-337. Qualifications for "Meals on Wheels" exemption

(a) **Qualification for Meals on Wheels exemption.** Sales tax does not apply to the sale of food, food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S. §1357(11)(a), and which are commonly referred to as "Meals on Wheels," "Mobile Meals," and the like.

(b) **Application process.** Application ~~shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and,~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly documented transactions.** Only sales of food ~~or~~, food products, or any equipment or supplies used in the preparation of the food or food products purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying "Meals on Wheels," "Mobile Meals," and similar programs enumerated in 68 O.S. §1357(11)(a) exempt from sales tax.

710:65-13-338. Qualifications for "Older Americans Act" exemption

(a) **Qualification for the Older Americans Act exemption.** Sales tax does not apply to the sale of food or food products, or any equipment or supplies used in the preparation of the food or food products, to or by organizations enumerated in 68 O.S. §1357(11)(b), and which receive federal funding pursuant to the Older Americans Act of 1965, for purposes of providing nutrition programs for the care and benefit of elderly persons.

(b) **Application process.** Application ~~shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and,~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization; and,

(3) Copy of notification letter approving the organization for funding under the Older Americans Act of 1965.

(~~d~~c) **Exemption limited to eligible, properly documented transactions.** Only sales of food or food products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying "Older Americans Act" organizations exempt from sales tax.

710:65-13-339. Qualifications for "Collection and Distribution Organization" exemption

(a) **Qualification for Collection and Distribution Organization exemption.** Sales tax does not apply to the sale of tangible personal property or services to or by organizations exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and;

(1) are primarily involved in the collection and distribution of food and household products to other organizations that facilitate the distribution of such products to the needy and such distributee organizations are exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) or

(2) facilitate the distribution of such products to the needy.

(b) **Application process.** Application ~~shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and,~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization; and,

(3) For organizations described in (a)(1) a list of organizations, including federal employee identification numbers, to which items were distributed for the previous calendar year must also be provided.

(~~d~~c) **Exemption limited to eligible, properly documented transactions.** Only sales of food, food products, and household products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(~~e~~d) **Other limitations.** The exemption set out in this Section does not apply to sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business.

(~~f~~e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352 are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying "Collection and Distribution Organizations" exempt from sales tax.

710:65-13-340. Exemptions for volunteer fire departments

(a) Sales to volunteer fire departments which are organized under 18 O.S. § 592 are exempt from sales tax. ~~In order for the department to qualify for the exemption, an exemption card must be obtained from the Oklahoma Tax Commission which shall be proof of the exemption~~ Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation that the department is registered with the Oklahoma Secretary of State.

(b) A vendor shall obtain the documentation set out in *OAC* ~~710:65-13-15~~ 710:65-7-15 in order to be relieved of liability for sales tax on such sales.

(c) Additionally, volunteer fire departments which are organized under 18 O.S. Section 592 are exempt from having to charge sales tax on the first Fifteen Thousand Dollars ($15,000.00) of sales per year which are made for the purpose of raising funds for the benefit of the department, provided the sales are made on no more than six days per year. [68 O.S. § 1356(19)]

710:65-13-341. Exemption for Council organizations or similar state supervisory organizations of Boy Scouts of America, Girl Scouts of U.S.A., and ~~the Campfire Girls and Boys~~ Camp Fire USA

(a) **General provisions.** Council and state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and ~~the Campfire Girls and Boys~~ Camp Fire USA are

exempt from the levy of sales tax on purchases of tangible personal property and services. **Dens**, **packs**, **troops**, or similar groups affiliated with a council or state supervisory organization of the Boy Scouts of America, Girl Scouts of U.S.A., or ~~the Campfire Girls and Boys~~ Camp Fire USA are not included within the scope of the exemption described in this Section.

(b) **Application procedure.** Application for exemption ~~shall be made by letter, directed to the Taxpayer Assistance Division, Oklahoma Tax Commission. Before a letter verifying the exempt status can be issued, all information described in this subsection must be submitted:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address; and,~~

~~(4) Federal employer's identification number;~~ is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with a

~~(5) A~~ determination letter or group ruling from the Internal Revenue Service.

710:65-13-342. Qualifications for "Juvenile Rehabilitation" exemption

(a) **Qualification for the Juvenile Rehabilitation exemption.** ~~Effective July 1, 1996, sales~~ Sales tax does not apply to the sale of goods or services to organizations which take court-adjudicated juveniles for purposes of rehabilitation and which are exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). However, at least fifty percent (50%) of the juveniles served by the organization must be court-adjudicated and the organization must receive state funds in an amount which is less than ten percent (10%) of the annual budget of the organization.

(b) **Application process.** Application ~~shall be made by letter, addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and,~~

~~(5) Name(s) and current mailing address(es) of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(2) A copy of the last audit, income tax informational return, or other financial statements which will show that for the last fiscal year end before application, less than 10% of the budget of the organization was from state funds;

(3) A statement signed by a responsible officer of the organization that sets out the percentage of juveniles served which were court-adjudicated during the last fiscal year, giving the total number served, and the total number of those that were court-adjudicated;

(4) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(~~d~~c) **Exemption limited to eligible, properly documented transactions.** Only sales of goods or services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for "Juvenile Rehabilitation" organizations may **not** purchase the tangible personal property or services used to perform the contract exempt from sales tax under the exemption provided by statute to "Juvenile Rehabilitation" organizations.

710:65-13-343. Exemption for qualified youth athletic teams

(a) **General provisions.** Sales tax does not apply to the first $15,000.00 of each year's sales, to or by, youth athletic teams, made for the purpose of raising funds for the benefit of the team. In order to qualify for exemption the youth athletic team must be a part of an athletic organization exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4).

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available ~~from the Division~~ telephonically at (405) 521-3160 or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov, along with the following information:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4); and,

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Taxpayer Assistance Division along with the application:~~

~~(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4); and,~~

~~(2) A written description stating the activities of the organization, as evidenced by copies of:~~

~~(A) Articles of incorporation;~~

~~(B) By-laws;~~

~~(C) Brochure; or,~~

~~(D) Notarized letter from the President or Chairman of the organization~~.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only the first $15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this ~~section~~ Section, the sales tax must be remitted to the Oklahoma Tax Commission. Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

710:65-13-344. Exemption for tax exempt, nonprofit organizations, which provide services during the day to homeless persons

(a) **Qualification for tax-exempt, nonprofit organizations which provide services during the day to homeless person exemption.** Sales of tangible personal property to a nonprofit organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), which is organized primarily for the purpose of providing services to homeless persons during the day and located in a metropolitan area with a population in excess of five hundred thousand (500,000) persons according to the latest Federal Decennial Census are exempt from sales tax.

(b) **Application process.** Application ~~shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd. Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3); and

(2) Documentation showing that the organization was established to provide services to homeless persons during the day and is located in a metropolitan area with a population in excess of five hundred thousand (500,000) persons according to the latest Federal Decennial Census. Also, a written description of the services of the organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of tangible personal property by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-345. Exemption for tax exempt organizations, which provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation of wild turkeys

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to or by an organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), for events the principal purpose of which is to provide funding for the preservation of wetlands and habitats for wild ducks or preservation and conservation of wild turkeys.

(b) **Exemption limited to eligible, properly-documented transactions.** Only those purchases or sales which are made for an event, the principal purpose of which is to provide funding for the preservation of wetlands and habitats for wild ducks

and/or the preservation and conservation of wild turkeys will qualify for the exemption described in this Section.

(c) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available ~~from the Division~~ telephonically at 405 521-3160 or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov, along with the following information:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. §1356(55) & (56) exempt from sales tax.

710:65-13-346. Exemption for tax exempt organizations which are a part of a network of community-based, autonomous member organizations providing job training and employment services

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to an organization, exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, which is a part of a network of community-based, autonomous member organizations provided that the organization meets the following criteria;

(1) Serves people with workplace disadvantages and disabilities by providing job training and employment services, as well as job placement opportunities and post-employment support,

(2) Has locations in the United States and at least twenty other countries,

(3) Collects donated clothing and household goods to sell in retail stores and provides contract labor services to business and government, and

(4) Provides documentation to the Oklahoma Tax Commission that over seventy-five percent (75%) of its revenues are channeled into employment, job training and placement programs and other critical community services.

(b) **Application process.** Application ~~must be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:~~

~~(1) legal name of the entity seeking exemption;~~

~~(2) mailing address;~~

~~(3) location address;~~

~~(4) federal employer's identification number; and~~

~~(5) name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3);

(2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in sub-section (a) above as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-348. Limited exemption for qualified neighborhood watch organizations

(a) **Qualification for exemption.** Effective July 1, 2005, the first $2,000 of each calendar year's sales of tangible personal property or services, to, by, or for the benefit of a qualified neighborhood watch organization that is endorsed or supported by or working directly with a law enforcement agency with jurisdiction in the area in which the neighborhood watch organization is located are exempt from sales tax. For purposes of this exemption "**qualified neighborhood watch organization**" *means an organization that is a not-for-profit corporation under the laws of the State of Oklahoma that was created to help prevent criminal activity in an area through community involvement and interaction with local law enforcement and which is one of the first two thousand organizations*

which makes application to the Oklahoma Tax Commission for the exemption after the effective date of the act.

(b) **Application process.** ~~Application must be in the form of a letter requesting an exemption card which should provide the legal name of the entity seeking exemption, a current mailing address, the entity's federal employer's identification number, and the supporting documentation described in subsection (c). The letter should be addressed to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194.~~ Only the first two thousand applications received by the Oklahoma Tax Commission are eligible for exemption.

~~(c)~~ **~~Supporting documentation required.~~** ~~To claim exemption under this Section, the applicant must submit to the Commission, along with the application~~ Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Documentation showing that the organization is a not-for profit corporation under the laws of Oklahoma established to help prevent criminal activity in a specific area through community involvement and interaction with local law enforcement, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Other documents that show the intent of the incorporators at the time of incorporation.

(2) Documentation showing that the organization is either endorsed, supported by or working directly with a law enforcement agency that has jurisdiction in the area where the neighborhood watch is located. Documentation may consist of membership lists, notices or minutes of meetings or letters from the applicable law enforcement agencies concerning their support, endorsement or involvement with the organization.

(3) A description of the boundaries of the area in which the neighborhood watch organization is located.

(4) The name and address of the person representing the organization to whom the exemption card will be mailed and who will be responsible for keeping track of the sales made to, by, or for the benefit of the organization so that the annual limit of $2,000 will not be exceeded by the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only the first $2,000 of either sales to, by or on behalf of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption. The exemption documentation that vendors are required to obtain on purchases to, or for the benefit of the organization is set out in ~~section~~ 710:65-7-17.

(~~e~~d) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

(~~f~~e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, an exemption card will be sent to the applicant.

(~~g~~f) **Denial of exemption; cancellation, suspension, revocation of exemption card.** The exemption may be denied, and the exemption card cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

710:65-13-350. Exemption for Daughters of the American Revolution

(a) **General provisions.** Sales of tangible personal property or services to or by the Daughters of the American Revolution are exempt from sales tax.

(b) **Application process.** Application ~~shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and~~

~~(5) Name(s) and current mailing addresses of responsible officer(s).~~

~~(c)~~ **~~Supporting documentation required.~~** ~~To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Written confirmation that the applicant is currently recognized as an Oklahoma chapter of the Daughters of the American Revolution; and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by

the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-351. Exemption for Veterans of Foreign Wars, Department of Oklahoma, Inc. and subordinate posts

(a) **General provisions.** Sales of tangible personal property or services to or by the Veterans of Foreign Wars, Department of Oklahoma, Inc. and its subordinate posts are exempt from sales tax.

(b) **Application process.** Application ~~shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and~~

~~(5) Name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(19);

(2) Written confirmation that the applicant is currently recognized as a post of the Veterans of Foreign Wars, Department of Oklahoma, Inc.; and

(3) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-352. Exemption for YWCA or YMCA organizations

(a) **General provisions.** Sales of tangible personal property or services to or by YWCA or YMCA organizations are exempt from sales tax.

(b) **Application process.** Application ~~shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address;~~

~~(4) Federal employer's identification number; and~~

~~(5) Name(s) and current mailing addresses of responsible officer(s).~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Written confirmation that the applicant is currently recognized as part of a national nonprofit community service organization meeting the health and social service needs of its members; and

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor

who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-353. Exemption for organizations primarily engaged in providing educational services and programs concerning health-related diseases and conditions

(a) **Qualification for organizations primarily engaged in providing educational services and programs concerning health-related diseases and conditions exemption.** Sales of tangible personal property or services to an organization primarily engaged in providing educational services and programs concerning health-related diseases and conditions to individuals suffering from such health-related diseases and conditions, their caregivers and family members, or in health-related research of such diseases and conditions, or both, are exempt from sales tax. However, in order to qualify, such organization must itself be a member of a tax-exempt organization that is primarily engaged in advancing the purposes of its member organizations through fundraising, public awareness or other efforts for the benefit of its member organizations.

(b) **Application process.** Application ~~shall be made by letter directed to the Business Registration Services Section of the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address; and~~

~~(4) Federal employer's identification number.~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3);

(2) Proof of membership in a tax-exempt organization primarily engaged in advancing the purposes of its member organization, including a description of the activities of the membership organization; and

(3) Documentation showing that the organization is primarily engaged either in providing educational services, programs or support concerning health-related diseases and conditions to individuals suffering from such diseases or their caregivers and family members and or health-related research of such diseases or conditions, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only property or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-354. Exemption for organizations whose purpose is to provide training and education to developmentally disabled persons

(a) **Qualification for organizations whose purpose is to provide training and education to developmentally disabled persons.** Sales to or by qualifying organizations of tangible personal property and services to be used exclusively for charitable or educational purposes are exempt from sales tax. To qualify an organization must be exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code; must have filed a Not-for-Profit Certificate of Incorporation in Oklahoma, and must be organized for the purpose of providing training and education to developmentally disabled individuals; educating the community about the rights, abilities and strengths of developmentally disabled individuals; and promoting unity among developmentally disabled individuals in their community and geographic area.

(b) **Application process.** Application ~~shall be made by letter directed to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address; and~~

~~(4) Federal employer's identification number.~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained

in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3);

(2) Proof of Not-for-Profit Certificate of Incorporation in Oklahoma; and

(3) Documentation showing that the organization is organized for the purpose of providing training and education to developmentally disabled individuals, educating the community about the rights, abilities and strengths of developmentally disabled individuals and promoting unity among developmentally disabled individuals in their community and geographic area, along with a written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(~~d~~c) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

710:65-13-355. Exemption for shelters for abused, neglected, or abandoned children from birth to age eighteen

(a) **Qualification for shelters for abused, neglected, or abandoned children from birth to age eighteen.** Sales of tangible personal property and services to an organization exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, which is a shelter for abused, neglected, or abandoned children from birth to age twelve are exempt from sales tax and after July 1, 2008, the exemption shall apply to eligible shelters for children from birth to age eighteen.

(b) **Application process.** Application ~~shall be made by letter directed to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Before a document verifying an exemption under this Section can be issued, the following information is required to substantiate eligibility for the exemption claimed:~~

~~(1) Legal name of the entity seeking exemption;~~

~~(2) Mailing address;~~

~~(3) Location address; and~~

~~(4) Federal employer's identification number.~~

~~(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application~~ for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U. S. C. § 501(c)(3); and

(2) Documentation showing that the organization is a shelter for abused, neglected, or abandoned children from birth to twelve or beginning July 1, 2008 is a shelter for children from birth to age eighteen.

(3) A written description of the activities of the organization, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure;

(D) Intake documents or other forms used to obtain information from clients which specifically reflect age of children and reason for being sheltered; or

(E) Notarized letter from the President or Chairman of the organization which states the services provided by the organization.

(~~d~~c) **Exemption limited to eligible, properly-documented transactions.** Only sales of goods or services actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

710:65-13-357. Organizations providing funding for scholarships in the medical field

(a) **Qualification for exemption.** Sales tax does not apply to the sale of food and snacks items to or by organizations exempt from taxation pursuant to Internal Revenue Code, 26 U.S.C., Section 501(c)(3) who primary and principal purpose is providing funding for scholarships in the medical field.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov, along with the following information:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and,

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization.

(~~d~~c) **Exemption limited to eligible, properly documented transactions.** Only sales of food or snack items, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. §1356(71) exempt from sales tax.

710:65-13-359. Nonprofit foundations supporting NRA and other like organizations

(a) **Qualifications for exemption.** Sales of property to a nonprofit foundation which raises tax deductible contributions in support of a wide range of firearms related public interest activities of the National Rifle Association of America and other organizations that defend and foster the Second Amendment are exempt from sales tax.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available ~~from the Division~~ telephonically at (405) 521-3160 or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov, along with the following information:

(1) A letter from the Internal Revenue Service (IRS) recognizing the foundation or organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; and

(D) Notarized letter from the President or Chairman of the foundation or organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only property purchased by the foundation/organization, invoiced to the foundation/organization, and paid for by funds or check directly from the foundation/organization will qualify for the exemption described in this Section.

(~~e~~d) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying foundations/organizations enumerated in 68 O.S. §1356(74)(a) exempt from sales tax.

710:65-13-360. Grassroots fundraising programs supporting the NRA

(a) **Qualification for exemption.** Sales of property to or by grassroots fund raising programs related to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association.

(b) **Exemption limited to eligible, properly documented transactions.** Only those purchases or sales which are made in relation to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association will qualify for the exemption described in this Section.

(c) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available ~~from the Division~~ telephonically at (405) 521-3160 or online at ~~www.oktax.state.ok.us~~ www.tax.ok.gov, along with a written description stating the activities of the organization, as evidenced by copies of:

(1) Articles of incorporation;

(2) By-laws;

(3) Brochure; or,

(4) Notarized letter from the President or Chairman of the organization.

710:65-13-361. [RESERVED]

710:65-13-362. Exemption for Boys & Girls Clubs of America affiliates

(a) **General provisions.** Sales of tangible personal property or services to any Boys & Girls Clubs of America affiliate in Oklahoma which is not affiliated with the Salvation Army and which is exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3) are exempt from sales tax.

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E, available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with supporting documentation as follows:

(1) Letter from the Internal Revenue Service recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

(2) Documentation verifying that the applicant club is not affiliated with the Salvation Army.

PART 55. TRUST AUTHORITIES

710:65-13-550. Trust authority transactions

(a) Trust authorities organized pursuant to 60 O.S. § 176 et seq. may purchase material exempt from sales tax, but may not appoint an agent to do so. In order for the transaction to be exempt from sales tax, the purchase must be invoiced to and paid for by the authority, using authority funds or revenue received from bonds let by the authority.

(b) Purchases made with flow-thru funds are taxable. Flow-thru funds are defined as monies deposited in a trust authority account, by private industry, with the authority to

dispense the funds under the trust's own name. [**See:** 68 O.S. § 1356]

(c) The amount of proceeds received from the sale of admission tickets which is separately- stated on the ticket of admission, for the repayment of money borrowed by any public trust of which a county in this state is the beneficiary, for purposes set out in 68 O.S. § 1356(8), is not taxable.

(d) The amount of any surcharge, separately stated on an admission ticket, which is imposed, collected, and used for the sole purpose of constructing, remodeling, or enlarging facilities of a public trust having a municipality or county as its sole beneficiary is exempt from sales tax.

(e) Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with the enabling document for the Trust or Authority showing organization under 60 O.S. § 176 et.seq.

SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

710:65-18-5. Sourcing of telecommunications and other related services

(a) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) *"**Air-to-ground radiotelephone service**" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;*

(2) *"**Call-by-call basis**" means any method of charging for telecommunications services where the price is measured by individual calls;*

(3) *"**Communications channel**" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;*

(4) *"**Customer**" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "**Customer**" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;*

(5) *"**Customer channel termination point**" means the location where the customer either inputs or receives the communications;*

(6) *"**End user**" means the person who utilizes the telecommunications service. In the case of an entity, "**end user**" means the individual who utilizes the service on behalf of the entity.* [68 O.S.Supp.2003, § 1354.30(A)(6)]

(7) *"**Home service provider**" means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act.* [68 O.S.Supp.2003, § 1354.30(A)(7)]

(8) *"**Mobile telecommunications service**" means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act;*

(9) *"**Place of primary use**" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "**place of primary use**" must be within the licensed service area of the home service provider;*

(10) *"**Post-paid calling service**" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunications service;*

(11) *"**Prepaid calling service**" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;*

(12) *"**Prepaid wireless calling services**" means a telecommunications wireless service that provides the right to utilize mobile wireless service as well as other nontelecommunicaton services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.* [68 O.S. Supp 2007 1354.30(A)(12)]

(13) *"**Private communication service**" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and*

(14) *"**Service address**" means:*

(A) *The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;*

(B) *If the location in (A) of this paragraph is not known, "**service address**" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and,*

(C) *If the locations in (A) and (B) of this paragraph are not known, "**service address**" means the location of the customer's place of primary use.*

(b) **Services sold on a call-by-call basis.** *Except for those telecommunications services defined in (d) of this Section, sales of telecommunications which are sold on a "call-by-call" basis are sourced in accordance with the following:*

(1) *When the call both originates and terminates in the same jurisdiction, the call is sourced to that jurisdiction.*

(2) *The jurisdiction in which the service address is located when the call either originates or terminates in that jurisdiction.*

(c) **Services sold on a basis other than on a call-by-call basis.** *For those telecommunications services sold on a basis other than on a call-by-call basis, and except for those services defined in (d) of this Section, the sale is sourced to the customers place of primary use.*

(d) **Other telecommunication services.** *The sale of the following services shall be sourced as in the following manner:*

(1) *A sale of mobile telecommunications services other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by the provisions of Section 55001 of Title 68 of the Oklahoma Statutes;*

(2) *A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:*

(A) *The seller's telecommunications system, or*

(B) *Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;*

(3) *A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with* 710:65-18-3. *Provided, in the case of a sale of a prepaid wireless calling service, the provisions of paragraph (5) of* 710:65-18-3 *shall apply; and*

(4) *A sale of a private communication service is sourced as follows:*

(A) *Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located,*

(B) *Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located,*

(C) *Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty (50) percent in each level of jurisdiction in which the customer channel termination points are located, and*

(D) *Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.* [68 O.S.Supp.2003, § 1354.30]

(e) **Ancillary services.** The sale of an ancillary service is sourced to the customer's place of primary use.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 5. "C"

710:65-19-52. Computers and related systems; "hardware" and "software" defined

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

(1) *"**Computer**" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.~~Supp 2003,~~ § ~~1352(3)~~ 1352(4)]

(2) **"Computer hardware"** means the machine and all of its components and accessories that make up the physical computer assembly.

(3) *"**Computer software**" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.* [68 O.S.~~Supp 2003,~~ § ~~1352(4)~~ 1352(5)]

(4) **"Computer software maintenance contract"** means a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.

(5) *"**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.* [68 O.S.~~Supp 2003,~~ § ~~1352(8)~~ 1352(9)]

(~~5~~6) **"Load and leave"** means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(~~6~~7) *"**Prewritten computer software**" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten software includes software designed and developed by the author or other creator to the specifications of*

a specific purchaser when it is sold to a person other than the purchaser. [68 O.S.~~Supp 2003,~~ § ~~1352(19)~~ 1352(20)]

(8) **"Mandatory computer software maintenance contract"** means a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

(9) **"Optional computer maintenance contract"** means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(b) **Sale or rental of a computer.** The sale of a computer and its related components is subject to sales or use tax. The rental of a computer and its related components, including terminal equipment (hardware) is subject to sales tax.

(c) **Sale of prewritten computer software.** The sale of prewritten computer software delivered in a tangible media format is taxable. Prewritten computer software delivered by means of "load and leave" is also taxable.

(d) **Maintenance contract sold with prewritten computer software.** The taxability of a maintenance contract sold with prewritten computer software delivered in a tangible media format depends on whether the maintenance contract is ~~required~~ mandatory or optional.

(1) If the contract is ~~required~~ mandatory, the entire sale price, including the charge for the contract, is subject to tax.

(2) The charge for an optional contract may be subject to taxation:

(A) If it provides **only** upgrades or ~~enhancements~~ updates which include prewritten computer software delivered in a tangible media format; or,

(B) If it provides both upgrades or updates and support services, and the fee for the support services is **not** stated separately.

(3) If the contract is optional and provides **only** maintenance agreement support services, the contract is **not** taxable.

(e) **Written training materials.** Written training materials are taxable, although the training services themselves are not.

(f) **Modifications to prewritten computer software.** Modifications to "prewritten computer software" do **not** result in the production of custom computer software. *Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten software; provided, however, that where there is a reasonable, separately-stated charge or an invoice or other statement of the price is given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software*. [68 O.S.~~Supp 2003,~~ § ~~1352(19)~~ 1352(20)]

(g) **Custom computer software.** For purposes of this Section, the term **"custom computer software"** means a program prepared to the special order of a customer. The sale of a custom computer program is a service transaction, and therefore, is not subject to tax. In addition, charges for maintenance are not taxable.

(h) **Software purchased with computer.** The charge for prewritten computer software purchased with a computer is subject to tax. If a computer is bought with custom software and the charge for the software is not separately stated, the entire purchase price is subject to tax. In addition, the entire charge is subject to tax if modifications are required and the charge for the modifications is not separately stated and records do not adequately document the extent of the modifications.

PART 7. "D"

710:65-19-72. Deposits, core charges and trade-ins

(a) A core deposit is the amount required by the seller to insure that the buyer of a rebuilt item will exchange or trade-in his old rebuildable item. No deduction from the gross proceeds of a sale is permitted for any credit allowed by the seller for the value of a core charge, deposit or a trade-in in exchange or part payment and the tax applies to the full selling price.

(b) The retail sale of used tangible personal property which has been acquired by the seller by purchase is taxable upon the full selling price. When an article acquired by the taxpayer by trade-in is subsequently resold, this sale also is taxable on the full selling price. If an article purchased or acquired in trade is salvaged or 'cannibalized' for parts, the sale or use of such parts is considered to be taxable. If the parts are used by the vendor to satisfy an extended warranty agreement, if there is no charge to the customer for the parts, the vendor shall report the cost of the parts on a withdrawal basis and pay sales tax on such cost.

(c) Examples of taxable transactions are as follows:

(1) John Doe needs to replace his battery. He drives to Lefty's Auto Supply and purchases a new battery. Lefty's Auto Supply charges thirty dollars ($30.00) for the battery and allows him five dollars ($5.00) exchange. Sales Tax is due on the full thirty dollars ($30.00).

(2) A piano is sold at retail for one thousand dollars ($1,000.00). The purchaser pays six hundred dollars ($600.00) in cash and is allowed a four hundred dollar ($400.00) trade-in. The selling price, upon which the sales tax must be collected and the amount to be reported as gross proceeds is one thousand dollars ($1,000.00). If the trade-in is later sold for five hundred dollars ($500.00), the sales tax must also be collected on the five hundred dollars ($500.00). [**See:** 68 O.S. § ~~1352(11)~~ 1352(12)]

710:65-19-74. Discounts

Discounts, whether cash, term, or coupons which are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale are excluded from the calculation of sales price for basing sales tax computation. [**See:** 68 O.S.~~Supp 2003,~~ § ~~1352(11)(b)(1)~~ 1352(12)(b)(1)]. "Term Discount" for purposes of this Chapter means a predetermined discount offered by a seller to customers conditioned upon the invoice being paid within a specific period of time.

PART 11. "F"

710:65-19-114. Funeral homes

(a) Embalmers and persons providing funeral services are engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers (other than those purchased with advance funds) and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

(b) If an embalmer or provider of funeral services separately itemizes charges in accordance with the rules of the Federal Trade Commission, for tangible personal property, taxable services and nontaxable services, sales tax is to be collected, reported and remitted on the gross receipts from the sale of tangible personal property and services including the following:

(1) Casket or other receptacle
(2) Burial container
(3) Clothing
(4) Marker
(5) Flowers
(6) Other tangible personal property
(7) Other taxable services

(c) If an embalmer or provider of funeral services offers package prices for various types of funerals ~~is~~, tax is to be collected, reported and remitted on the gross receipts from the sale of tangible personal property and taxable services included in the package. For purposes of determining the amount of gross receipts of tangible personal property and taxable services included in the package, the embalmer or provider of funeral services shall calculate tax based upon the prices listed by the embalmer or provider of funeral services on the Casket Price List, Outer Burial Container Price List, General Price List, or Statement of Funeral Goods and Services Selected prepared by the embalmer or provider of funeral services which he prepares in conformity with the rules of the Federal Trade Commission that are in effect at the time the package is purchased. EXAMPLE: Package includes casket, outer burial container, hearse, family vehicle, embalming and other professional services at a cost of $3,000.00. The casket included in the package is listed by the embalmer or provider of funeral services on his Casket Price List at $1,500.00 and the outer burial container is listed on the Outer Burial Container Price List at $600.00. Sales tax must be collected, reported and remitted on gross receipts in the amount of $2,100.00 for this package.

(d) The embalmer or provider of funeral services is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The embalmer or provider of funeral services should present the supplier with a sales tax permit as set out in these rules. An embalmer or provider of funeral services is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items used in preparation of human remains or the provision of other nontaxable services. [**See:** 68 O.S. §~~1354(C)(2)~~ 1354(A)(3)(b)]

PART 17. "I"

710:65-19-156. Internet-related services and transactions

(a) **General provisions.** Charges for providing access to the Internet are not subject to Oklahoma's sales tax, since they do not clearly fall within the levy on telecommunications services. Sales of other services or tangible personal property made via the Internet are taxable in the same manner that they would be taxable if made via any other communication method.

(b) **Internet-related transactions to which the tax is not applicable.** The levy of sales tax does **not** apply to:

(1) Charges for access to the Internet, including dialup, DSL, and cable access services that allow a customer to be routed to the net through a service-provider's server or router.

(2) Charges for designing, creating, or for the storage of information for a "website or home page" on a server, including charges for "set up", "technical fees", "scanning", or domain registration.

(3) Charges for data manipulation or "electronic data processing services", pursuant to *OAC* 710:65-19-86.

(4) Sales of advertising space through the Internet, inasmuch as it falls within the category "electronic media", as defined by *OAC* 710:65-13-1.

(5) *Sales of prewritten computer software that is delivered electronically. For purposes of this paragraph, "delivered electronically" means delivered to the purchaser by means other than tangible storage media*. [**See:** 68 O.S.~~Supp.2003,~~ § ~~1357(30)~~ 1357(32)]

(6) Sales of digital products delivered electronically including music, video, ringtones, and books.

(c) **Internet-related transactions to which the tax is applicable.** The transactions described in this subsection are subject to the levy of sales or use tax, without regard to the fact that the Internet was used to facilitate the sale:

(1) Sales of tangible personal property made via the Internet where the goods are sold to the purchaser in Oklahoma or are shipped into Oklahoma, as set out in *OAC* 710:65-15-1.

(2) Sales of prewritten computer software, where the software is not transferred from the seller to the purchaser electronically.

(3) The lease or purchase of dedicated lines or ports, routers, or other hardware or software by Internet access-providers, for use in providing services to their subscribers, is taxable to the service-provider. Note however, that the purchase of interstate private line service is exempt pursuant to *OAC* 710:65-19-330.

(d) **Establishment of a physical connection with Oklahoma.** The use of an on-line service or the establishment of a website, whether the server on which the website is maintained is located inside or outside Oklahoma, if the website owner has no other physical connection with Oklahoma, is

not a sufficient, physical presence in Oklahoma, absent any other connection, to require the website owner to register as a business and to collect Oklahoma sales tax on sales of tangible personal property or services to consumers located in Oklahoma or on sales of goods sold for use in Oklahoma. The duty to collect and procedures to be used in reporting and remitting sales and use taxes which apply to vendors located or "maintaining a place of business" in Oklahoma are set out in *OAC* 710:65-15-1, 710:65-21-4(b) and in 68 O.S. §§ 1406 et seq. (Use Tax Code).

PART 31. "P"

710:65-19-259. Photocopying

The sale of photocopies and photostats represents the taxable sale of tangible personal property. "Quick printers" and persons operating photocopy or photostating machines primarily for the reproduction of copy furnished by customers are not manufacturers and are not entitled to exemption from the tax on machinery, tools, and supplies such as toner/fixative used in their businesses. Such persons may purchase exempt from the tax only those items, such as paper, that will become ingredients or component parts of the finished products they sell. [**See:** 68 O.S. ~~1354(E)~~ § 1354(6)]

PART 39. " T "

710:65-19-328. Transportation for hire

(a) Sales tax is due on the gross receipts or gross proceeds of transportation for hire to persons by common carrier, including motor transportation companies, pullman car companies, limousines, shuttle services, and other means of transportation for hire. Sales tax is not due on the gross receipts of the sale of transportation by taxicabs.

(b) Transportation for hire is exempt from sales tax:

(1) if the transportation services are provided by a tourism service broker, or

(2) if the transportation services are provided by funeral establishments for purposes of conducting a funeral, or

(3) if the transportation services are sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public. [See: 68 O.S. ~~Section 1357(32)~~ § 1357(36)]

(c) Charges for local transportation are exempt where the fare does not exceed One Dollar ($1.00) or where the transportation is entirely within the corporate limits of a single municipality.

(d) Examples:

(1) A limousine picks up a passenger at a hotel in city A and transports the passenger to the airport which is also located in City A. The charge for the transportation is not subject to sales tax.

(2) A shuttle picks up a passenger in city B and transports the passenger to the airport in city A. Since transportation was completed inside the limits of city A, the transportation was not provided within the corporate limits of city B and the charge for the transportation is therefore subject to sales tax.

(e) Transportation by horse-drawn carriages or similar conveyances are sales of transportation and are subject to this rule.

710:65-19-329. Services relating to telecommunications and telecommunications equipment

(a) **General provisions.** Charges for labor or repair services performed on equipment or wiring which is connected with the transmission of messages, voices or images or connected with equipment used for the transmission of messages, voices or images are subject to sales tax, regardless of whether the charge is stated separately from charges for either telecommunications service or for tangible personal property.

(b) **Examples of taxable transactions.** Services subject to sales tax include, but are not limited to, the following:

(1) Installation of telecommunications equipment;

(2) Movement of telecommunications equipment;

(3) Repair or servicing of telecommunications equipment;

(4) Maintenance of telecommunications equipment; and

(5) Charges for wiring or rewiring, regardless of location, for use with telecommunications equipment.

(c) ~~**Specific exemption.** Specifically exempted from the levy of sales tax are *labor charges for the construction, installation, movement, servicing repair or maintenance of any equipment such as antennas or dishes that have a connection with the transmission of a message or image from cellular towers that are used for the transmission of telecommunications*. [68 O.S.Supp.2004 § 1354(A)(4)(a)(4)]~~

~~(d)~~ **Maintenance contracts.** The sale of maintenance contracts for services subject to sales tax as described in this Section is subject to sales tax.

(~~e~~d) **Applicability of rule.** The provisions of this Section apply generally to all providers of services relating to telecommunications and telecommunications equipment. In addition to requirements similar to those set out in this Section, taxation of telecommunications services rendered by telephone companies is further addressed in 710:65-19-330.

PART 41. "U"

710:65-19-341. Natural or artificial gas and electric utility services

(a) **General provisions.** Generally, the sale of utilities or public services, including natural or artificial gas and electricity, are subject to sales tax. [**See:** 68 O.S. § 1354(A)(2)]

(b) **Exemptions and exclusions.** Natural or artificial gas and electricity sold exclusively for residential use are exempt from the Oklahoma sales tax, but remain subject to any applicable municipal and county sales taxes in effect at the time of the sale. [**See:** 68 O.S. § ~~1357(3)~~ 1357(8) and *OAC* 710:65-13-120]

(c) **Point of sale for gas and electricity.** For purposes of any applicable municipal and county sales taxes, the point of sale for gas and electric utility services is determined to be the location of the meter by which the purchaser's usage is measured.

(d) **Minimum service charges.** When a fixed monthly charge is billed to a customer by a natural gas or electric utility and there is no consumption, this charge is not subject to sales tax. If any amount of gas or electricity is consumed, the minimum charge is subject to sales tax.

(e) **Other charges.** Charges which are separately stated and are unrelated to the amount of gas or electricity used such as fees for meter reading, installation, initiation, disconnection, or restoration of service, as well as charges for returned checks or for late payment, are not subject to sales tax.

SUBCHAPTER 21. USE TAX

710:65-21-2. Definitions

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

*"**Manufacturing operation**" means the designing, manufacturing, compounding, processing, assembling, warehousing, or preparing of articles for sale as tangible personal property. A manufacturing operation begins at the point where the materials enter the manufacturing site and ends at the point where a finished product leaves the manufacturing site. "**Manufacturing operation**" does not include administration, sales, distribution, transportation, site construction, or site maintenance.* [68 O.S.~~Supp.1998, Section 1352(10)~~ § 1352(15)]

"Person" means any individual, partnership, association, or corporation.

"Purchase price" has the same meaning as **"gross receipts"**, as set out in 710:65-1-9.

"Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration. The term **"sale"** includes the exchange, barter, lease, or rental or tangible personal property.

"Use tax" means an excise tax charged on the sale of tangible personal property purchased from outside Oklahoma and brought into the state for consumption or use. [**See:** 68 O.S. § 1401]

[OAR Docket #10-975; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #10-971]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions
710:70-2-3 [AMENDED]
710:70-2-4 [AMENDED]
710:70-2-8 [AMENDED]
710:70-2-9 [AMENDED]
710:70-2-9.1 [AMENDED]
710:70-2-11 [AMENDED]
710:70-2-14 [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-2 [AMENDED]
710:70-5-3 [AMENDED]
710:70-5-4 [AMENDED]
710:70-5-6 [AMENDED]
710:70-5-8 [AMENDED]
710:70-5-9 [AMENDED]
710:70-5-10 [AMENDED]
710:70-5-13 [AMENDED]
710:70-5-14 [NEW]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
710:70-7-4 [AMENDED]
710:70-7-5 [AMENDED]
710:70-7-7 [REVOKED]
710:70-7-8 [AMENDED]
710:70-7-9 [AMENDED]
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n/a

ANALYSIS:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the First Regular Session of the 52nd Legislature (2009).

Section 710:70-2-3 has been amended to implement the provisions of Senate Bill 608 which adds the requirement that wholesalers can only purchase cigarettes from a manufacturer who holds an Oklahoma license. **[68:304]**

Section 710:70-2-4 has been amended to implement the provisions of Senate Bill 608 that the applicant for a cigarette license shall not have been convicted of a crime relating to stolen or counterfeit cigarettes, or receiving stolen or counterfeit cigarettes or have been convicted of or have entered a plea of guilty or nolo contendere to any felony. **[68:304(E)(3)]**

Section 710:70-2-8 has been amended to implement the provisions of Senate Bill 608 regarding fines and penalties for failure to comply with cigarette laws. **[68:316]**

Section 710:70-2-9 has been amended to correct a scrivener's error.

Section 710:70-2-9.1 has been amended to implement the provisions of Senate Bill 608 regarding the license fee for a vehicle if tobacco products are sold from the vehicle. **[68:415]**

New Section 710:70-2-14 has been added to implement the provisions of Senate Bill 608 which prohibits retail to retail sale of cigarettes.

Section 710:70-5-4 has been amended to reflect internal changes within the Tax Commission.

New Section 710:70-5-14 has been added to implement the provisions of Senate Bill 608 which requires wholesalers, retailers and distributors of tobacco products to obtain an annual license from the Tax Commission. **[68:304]**

Section 710:70-7-7 has been revoked to implement the provisions of Senate Bill 608 which strikes language contained in subsections 426(A) and (B) of Title 68.

New Section 710:70-7-10 has been added to implement the provisions of Senate Bill 608 for calculation of the probable demand for noncompacting federally recognized Indian tribes or nations. [68:349.1}

Sections 710:70-2-11, 710:70-5-2, 710:70-5-3, 710:70-5-6, 710:70-5-8, 710:70-5-9, 710:70-5-10, 710:70-5-13, 710:70-7-4, 710:70-7-5, 710:70-7-8 and 710:70-7-9 have been amended to delete obsolete references and comply with statutory language changes implemented in Senate Bill 608.

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. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-3. When stamps must be applied

Oklahoma cigarette stamps and Oklahoma Tribal stamps may be applied only to cigarette packages that the wholesaler, ~~jobber, distributor, or wholesaler~~ has received directly from either a manufacturer or importer of cigarettes, providing that manufacturer or importer possesses a valid permit under 26 U.S.C. § 5712. Effective January 1, 2010, a wholesaler must purchase cigarettes from a manufacturer holding an Oklahoma Cigarette Manufacturer License.

710:70-2-4. Conditions under which a cigarette license may be granted, maintained, or renewed

(a) No cigarette license shall be granted, maintained, or renewed pursuant to this Subchapter and Article 3 of Title 68 of the Oklahoma Statutes, if any owner of an interest of ten (10) percent in the applicant, or holder of a license, meets any of the following conditions:

(1) Applicant owes Five Hundred Dollars ($500.00) or greater in cigarette taxes that are delinquent;

(2) Applicant has been convicted of a crime relating to or for receiving stolen or counterfeit cigarettes;

(3) Applicant has been convicted of or has entered a plea of guilty or nolo contendere to any felony;

(4) Applicant is a manufacturer, and is not a participating manufacturer as defined in 37 O.S. § 600.22;

(~~4~~5) Applicant is not a participating manufacturer as defined 37 O.S. § 600.22 and is not in full compliance with 37 O.S. § 600.23(A).

(~~5~~6) Applicant is a manufacturer, and cigarettes have been imported into the United States by the applicant in violation of 19 U.S.C. § 1681a; or,

(~~6~~7) Applicant is a manufacturer and has manufactured or imported into the United States, cigarettes that do not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. §1331 et seq. [68 O.S. § 304(E)]

(b) In addition to any civil or criminal penalty provided by law, upon a finding that a licensee has violated any provisions of 68 O.S. §301 et seq., the Tax Commission may revoke or suspend the license or licenses of the licensee pursuant to the procedures applicable to revocation of a license set forth in 68 O.S. § 316. [68 O.S. § 304(G)]

710:70-2-8. Penalties for failure to comply with statutory provisions

Section 316 of Title 68 of the Oklahoma Statutes provides for ~~both~~ administrative fines and ~~criminal~~ penalties for failure to comply with the laws concerning the sale of cigarettes, including the possession, distribution, manufacture or sale of counterfeit cigarettes.

710:70-2-9. Cigarette stamp tax rates

(a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are ~~One Hundred~~ Twenty-five percent (~~125%~~25%) greater than the rates for the twenty-unit packages.

(b) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories of cigarettes acquired on or after January 1, 2005.

(c) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rate is $1.03 per pack and is applicable to all non-tribal sales.

710:70-2-9.1. Vehicle Cigarette Licenses

Vehicles from which cigarettes are sold constitute a "place of business" and are required to be permitted. If the vehicle is

owned or operated by a place of business for which the regular ~~Twenty-Five dollar~~ Two Hundred Fifty Dollar ($250.00) fee has been paid the fee for the vehicle is to be $10.00 and the expiration date of the vehicle license permit is to be the expiration date of the permit issued to the other place of business.

710:70-2-11. Requirements placed on distributors wholesalers and retailers to maintain copies of invoices

(a) ~~Distributors~~ Wholesalers shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the ~~distributor~~ wholesaler is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation must show the name, address, phone number and wholesale license number of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction. [68 O.S. § 312.1(E)].

(b) Retailers shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation must show the name and address of the ~~distributor~~ wholesaler from whom, or the address of another facility of the same retailer from which, the cigarettes were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number. [68 O.S. § 312.1(F)].

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, ~~distributors~~ wholesalers, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Compliance Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450. [68 O.S. § 312.1(H)].

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction. [68 O.S. § 312.1(I)].

710:70-2-14. Retail to retail sales of cigarettes prohibited

Effective January 1, 2010, a licensed cigarette retailer is prohibited from selling cigarettes to another licensed cigarette retailer unless the purpose of the sale is to move inventory between stores which are owned by the same legal entity.

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-2. Payment of tax on tobacco products

The excise tax levied upon the sale, use, distribution, exchange, barter or possession of tobacco products in this State shall be paid on a monthly basis by the licensed manufacturer, wholesaler, ~~warehouseman, distributor, or jobber, (except a distributor bonded in accordance with 68 O.S. §405)~~ first possessing, selling, using, distributing, exchanging, bartering, or in any manner dealing with such tobacco products in this State. No other person~~,~~ or wholesaler, ~~warehouseman, distributor, jobber or retailer~~ shall first possess, use, sell, exchange, distribute, barter or in any manner deal with such tobacco products in this State upon which the excise tax has not been paid.

710:70-5-3. Minimum requirements of monthly tobacco products tax reports of licensed manufacturers~~,~~ or wholesalers~~, warehousemen, distributors or jobbers~~

Every licensed manufacturer, and every wholesaler~~, jobber, distributor, retailer and consumer,~~ licensed by the Oklahoma Tax Commission, to possess, use or in any manner deal with tobacco products subject to the excise tax, upon which such tax has not been paid, shall report, to the Oklahoma Tax Commission, all purchases and invoices of all such tobacco products and merchandise subject to such excise tax monthly, on the Monthly Tobacco Products Tax Report form prescribed by the Commission. Each monthly report shall include the following information:

(1) Name, business address and Tobacco License Number of the tax reporter;

(2) All purchases or deliveries, stated separately according to the dates of delivery in the State, of all tobacco products received, possessed, used or in any manner dealt with in the previous calendar month;

(3) Invoice numbers of all purchases or deliveries of such products for the previous calendar month;

(4) Name and business address of each consignee and consignor; and

(5) Copy of each invoice of all purchases or deliveries of such products for the previous month attached to the monthly report form. Copies of invoices submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions. [See: 68 O.S. §201; 68 O.S. §401 et seq.]

710:70-5-4. Incomplete monthly tobacco tax reports of licensed manufacturers, or wholesalers~~, warehousemen, distributors or jobbers~~; forfeiture of discount

Any Monthly Tobacco Products Tax Report form filed with the ~~Business~~ Compliance Tax Division of the Oklahoma Tax Commission shall include, and have attached thereto, the minimum information specified in 68 O.S. §413 and 710:70-5-3. Any such monthly report form that does not include these minimum requirements shall not constitute the mandatory report. And, in the event a proper, complete

monthly report is not filed on or before the due dates in accordance with 710:70-5-5, the discount of two percent (2%) of the tax due for maintaining and collecting such tax, shall not be allowed, and the report shall be delinquent.

710:70-5-6. Discount for timely filing of monthly tobacco products tax reports and paying taxes

(a) Every licensed manufacturer and every wholesaler~~, jobber, distributor, retailer or consumer,~~ required to report and pay the tobacco products excise tax shall be allowed a discount of two percent (2%) of the tax due under each monthly report and shall, at the time of filing each monthly report, pay to the Oklahoma Tax Commission, ninety-eight percent (98%) of the tax due.

(b) The two percent (2%) discount shall not be allowed to any taxpayer who fails to timely file the required monthly report or who fails to timely pay the tax due in accordance with 710:70-5-5.

710:70-5-8. Reports on tobacco products by persons, retailers, consumers,~~ common~~ carriers~~, bonded warehousemen~~ or bailees other than those required to report and pay tax

(a) Every person or entity, listed below, who possesses, controls, transports, uses or in any manner deals with tobacco products within this State subject to the tobacco products excise tax, upon which the tax has not been paid, even though not the party required to pay the tax, shall file a monthly report to the Oklahoma Tax Commission on prescribed forms as follows:

(1) Every retailer or consumer purchasing tobacco products subject to tax in drop shipments shall report those purchases to the Oklahoma Tax Commission on the Monthly Tobacco Products Tax Reports in accordance with 710:70-5-3 through 710:70-5-5, as required of licensed manufacturers, wholesalers, ~~jobbers, distributors,~~ retailers or consumers.

(2) Every ~~common~~ carrier transporting tobacco products, subject to tax, to a point within this State shall monthly report to the Oklahoma Tax Commission the following information:

(A) Name and business address of the ~~common~~ carrier;

(B) The date of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;

(C) The point of origin and the point of delivery of each shipment of said tobacco products transported and delivered into this State in the previous calendar month;

(D) The name of the person or entity to whom said tobacco products were delivered in this State in the previous calendar month; and

(E) Copies of all invoices, bills of lading or instruments of consignment of said tobacco products transported and delivered into this State in the previous calendar month, attached to said report.

(3) Every ~~bonded warehouseman or~~ bailee having possession, custody, control, use or in any manner dealing with tobacco products within this State subject to the tax, shall report monthly to the Oklahoma Tax Commission as is required of ~~common~~ carriers.

(b) All required monthly reports shall be due on or before the fifteenth (15th) day of the calendar month immediately following the calendar month in which the tobacco products subject to the tax are possessed, controlled, transported, used or in any manner dealt with in this State, in accordance with 710:70-5-5.

(c) Copies of invoices, bills of lading or other instruments of consignment submitted shall be subject to destruction upon completion of an office audit of the monthly report and shall not discharge the reporter from the statutory duty to maintain records and files of all such transactions and to permit inspection and examination thereof by the Commission. [**See:** 68 .S. § 201; 68 O.S. §§ 401 et seq.]

710:70-5-9. Reports and payment of taxes on drop shipments of tobacco products

It shall be the duty of every licensed wholesaler~~, jobber, or distributor~~ to report and pay the tobacco products excise tax, levied upon all drop shipments of tobacco products subject to such tax, purchased by any wholesaler, ~~jobber, distributor,~~ retailer or consumer receiving and paying for such drop shipment through the licensed wholesaler~~, jobber or distributor~~. The tax on such drop shipments shall be reported and paid in the same manner as if the drop shipment had first been received or delivered to the licensed wholesaler~~, jobber or distributor~~ through whom the drop shipment was purchased.

710:70-5-10. Prohibition against the possession, sale, use, distribution, exchange, barter, giving away or in any manner dealing with tobacco products upon which the tobacco products tax has not been paid

No person, dealer, distributing agent or wholesaler shall possess, sell, use, exchange, barter, give away or in any manner deal with any tobacco products within this State upon which the tax is levied and unpaid, unless the person, dealer, ~~retailer,~~ distributing agent or wholesaler holds a valid Tobacco License issued pursuant to statute. [**See**: 68 O.S. §§401, 415]

(1) Any person who obtains possession, custody or control of such tobacco products in this State from another other than a holder of a Tobacco License issued by the Oklahoma Tax Commission shall be subject to seizure proceedings. [**See:** 68 O.S. §417]

(2) Any person required to report or report and pay tobacco products tax, and who is delinquent in said reporting or payment shall be subject to seizure proceedings. [**See:** 68 O.S. §417; 710:70-5-11]

710:70-5-13. Requirements placed on ~~distributors~~ wholesalers and retailers to maintain copies of invoices with certain information that must be shown on each invoice

(a) ~~Distributors~~ Wholesalers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor wholesaler is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the ~~distributor's~~ wholesaler's tobacco license number and the quantity by brand style of the tobacco products involved in the transaction. [68 O.S. Section 420.1(A)]

(b) Retailers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation must show the name and address of the ~~distributor~~ wholesaler from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction, and the retail ~~cigarette~~ tobacco license number ~~or sales tax license number~~. [68 O.S. § 420.1(B)]

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, ~~distributors,~~ wholesalers, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Compliance Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450.

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.

710:70-5-14. Wholesale, retail, and distributing agent licenses required

(a) Effective January 1, 2010, every dealer or wholesaler of tobacco products must annually obtain a license from the Tax Commission.

(b) The license fee shall not be paid if the applicant has paid the fee for a cigarette wholesaler license to the Tax Commission.

(c) A retailer of tobacco products must obtain a retail tobacco license prior to purchasing or selling tobacco products after January 1, 2010.

(d) Effective January 1, 2010, retailers of tobacco products shall purchase tobacco products only from a supplier who holds a current tobacco wholesaler license.

(e) Effective January 1, 2010, wholesalers of tobacco products are prohibited from purchasing tobacco products from a person required to obtain an Oklahoma license. A wholesaler shall sell only to a retailer holding an Oklahoma tobacco retailer license.

SUBCHAPTER 7. CIGARETTE AND TOBACCO PRODUCTS SALES BY FEDERALLY RECOGNIZED INDIAN TRIBES AND NATIONS

710:70-7-4. Stamps required

All cigarettes sold or held for sale in the State of Oklahoma shall bear one of the following stamps:

(1) A stamp indicating that the retailer selling or holding for sale such cigarettes is a federally recognized Indian tribe or nation, or licensee thereof, which has entered into a Compact with the State of Oklahoma and is paying the payments specified thereunder; or

(2) A stamp indicating that the retailer selling or holding for sale such cigarettes is a federally recognized Indian tribe or nation, or licensee thereof, which has not entered into a Compact with the State of Oklahoma ~~but has provided the prescribed documentation to qualify for a rate of seventy five percent (75%) of the cigarette excise tax imposed by 68 O.S. §301 et seq;~~ or

(3) A stamp indicating that the retailer selling or holding for sale such cigarettes does not meet the requirements of one of the above-referenced categories and is paying the tax levied pursuant to 68 O.S. §301 et seq.

710:70-7-5. Documentation that purchaser is tribally owned or licensed retail store must be obtained and retained

(a) In order for a wholesaler~~, distributor, jobber or warehouseman~~ to sell to a tribally owned or licensed retail store at a rate of ~~seventy five percent (75%)~~ less than that of the cigarette tax imposed by 68 O.S. §301 et seq., the wholesaler~~, distributor, jobber or warehouseman~~ must receive from said retailer a certificate, affidavit, license or other documentation showing that the purchaser is a tribally owned or licensed store within the meaning of 68 O.S. ~~(Supp. 1992)~~ §348.

(b) Such certificate, affidavit, license, or other documentation must be retained by the wholesaler~~, distributor, jobber or warehouseman~~ during the course of business with the tribally owned or licensed retailer and for a period of three (3) years thereafter.

710:70-7-7. Documentation required for refund on sales of cigarettes or tobacco products sold by tribally-owned or licensed stores to tribal members [REVOKED]

~~(a) A federally recognized Indian tribe or nation may receive a refund of in lieu payments pursuant to 68 O.S. 1992 Supp. §349 and §426 in the amount paid which is attributable to sales of cigarettes or tobacco products made to tribal members which is in excess of twenty five percent (25%) of the tribe's or nation's total sales of cigarettes or tobacco products.~~

~~(b) All tribally owned or licensed stores shall keep the following documentation to claim a refund of in lieu payments on sales to tribal members. These records shall be submitted at any time to the Tax Commission in order to substantiate the refund claim for sales made within one year of the filing of the claim. A sales journal shall be maintained recording:~~

~~(1) Place of sale.~~

~~(2) Date of sale.~~

~~(3) Name of tribal member purchaser.~~

~~(4) Tribal affiliation of purchaser.~~

~~(5) Enrolled number of the tribal member purchaser.~~

~~(6) Quantity sold.~~

~~(7) Product sold.~~

~~(c) All documentation received will be reviewed by the Business Tax Division and a refund will be remitted based on verifiable sales to tribal members. An inventory record shall be maintained for the refund period recording:~~

~~(1) Beginning inventory.~~

~~(2) Purchase statements.~~

~~(3) Ending inventory.~~

710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations

(a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are ~~One Hundred~~ Twenty-five percent (~~125%~~25%) greater than the rates for the twenty-unit packages.

(b) **Rates ~~effective January 1, 2005,~~ applicable to sales on Indian country by federally-recognized Indian tribes or nations, or their licensees.** Rates applicable to sales of cigarettes made on Indian country by federally-recognized Indian tribes or nations, or their licensees are:

(1) ~~**Non-compact rate.** The non-compact rate is 77.25 cents per pack. This rate is applicable to sales made by tribes or their licensees who have not entered into a compact with the State of Oklahoma.~~ **State/tribal rate.** The state/tribal rate is 51.50 cents per pack. The rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Tax Commission.

(2) ~~**Original compact**~~ **State/tribal border rate.** The ~~original compact~~ state/tribal border rate is 25.75 cents per pack for any retailer located within twenty (20) miles of the state line between Oklahoma and Kansas or Oklahoma and Missouri. This rate applies to ~~sales made by tribes or their licensees with an existing compact with the State of Oklahoma in which the tax rate is specified as twenty-five percent (25%) of the rate applied to non-tribal sales~~ compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Tax Commission.

(3) **New compact rate.** The new compact rate is 85.75 cents per pack. The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection ~~(b)(6)~~ (b)(5) apply by specific compact provision.

(4) ~~**Arkansas border rate.** The Arkansas border rate is 30.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Arkansas border, as designated by the terms of their "new" compacts.~~

~~(5)~~ **Kansas border rate.** The Kansas border rate is 60.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Kansas border, as designated by the terms of their "new" compacts.

(~~6~~5) **Exception rate.** The "exception" rate is 5.75 cents per pack. This rate applies to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (b)(1) through ~~(b)(5)~~ (b)(4) of this Section.

710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations

(a) ~~**Non-compact rate.** Non-compact rates apply to sales made by tribes or their licensees who have not entered into a compact with the State of Oklahoma:~~

~~(1) For little (Class A) cigars: $0.027 each.~~

~~(2) For all other (Class C) cigars: $0.09 each.~~

~~(3) For smoking tobacco: Sixty percent (60%) of the Factory List Price.~~

~~(4) For chewing tobacco: Forty-five percent (45%) of the Factory List Price.~~

~~(b) **Original compact rate.** The original compact rate applies to sales made by tribes or their licensees with an existing compact with the State of Oklahoma in which the tax rate is specified as twenty-five percent (25%) of the rate applied to non-tribal sales.~~

~~(1) For little (Class A) cigars: $0.009 each.~~

~~(2) For all other (Class C) cigars: $0.03 each.~~

~~(3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.~~

~~(4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.~~

~~(c)~~ **New compact rate.** The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (f) apply by specific compact provision:

(1) For little (Class A) cigars $0.02925 each.

(2) For all other (Class C) cigars: $0.0975 each.

(3) For smoking tobacco: Fifty percent (50%) of the Factory List Price.

(4) For chewing tobacco: Thirty-seven and one-half percent (37.5%) of the Factory List Price.

(b) **State/tribal rate.** The state/tribal rate applies to sales made by tribes or their licensees with compacts known as state/tribal which require reporting and payment ot the tribe

at the same time reporting and payment of tax is made to the Tax Commission.

(1) For little (Class A) cigars $0.009 each.

(2) For all other (Class C) cigars: $0.03 each.

(3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.

(4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.

(c) **State/tribal border rate.** The state/tribal border rate applies to any retailer located within twenty (20) miles of the state line between Oklahoma and Kansas or Oklahoma and Missouri. This rate applies to sales made by tribes or their licensees with compacts known as state/tribal which require reporting and payment ot the tribe at the same time reporting and payment of tax is made to the Tax Commission.

(1) For little (Class A) cigars $0.009 each.

(2) For all other (Class C) cigars: $0.03 each.

(3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.

(4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.

~~(d) **Arkansas border rate.** The Arkansas border rates apply to tribes' or licensees' locations that are close to the Arkansas border, as designated by the terms of their "new" compacts":~~

~~(1) For little (Class A) cigars $0.01225 each.~~

~~(2) For all other (Class C) cigars: $0.0375 each.~~

~~(3) For smoking tobacco: Seventeen percent (17%) of the Factory List Price.~~

~~(4) For chewing tobacco: Fourteen and one-half percent (14.5%) of the Factory List Price.~~

(~~e~~d) **Kansas border rate.** The Kansas border rates apply to tribes' or licensees' locations that are close to the Kansas border, as designated by the terms of their "new" compacts:

(1) For little (Class A) cigars: $0.00225 each.

(2) For all other (Class C) cigars: $0.0075 each.

(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.

(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

(e) **Texas border rate.** The Texas border rates apply to tribes' or licensees' locations that are close to the Texas border, as designated by the terms of their "new" compacts.

(1) Texas border rate prior to September 1, 2009:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Fourteen point seven eight seven percent (14.787%) of the Factory List Price.

(D) For chewing tobacco: Twelve point two eight seven percent (12.287%) of the Factory List Price.

(2) Texas border rate on or after September 1, 2009 and ending on or before August 31, 2010:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Twenty-three point five nine percent (23.59%) of the Factory List Price.

(D) For chewing tobacco: Eighteen point five nine percent (18.59%) of the Factory List Price.

(3) Texas border rate on or after September 1, 2010 and ending on or before August 31, 2011:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Twenty-seven point three nine four percent (27.394%) of the Factory List Price.

(D) For chewing tobacco: Twenty-four point eight nine four percent (24.894%) of the Factory List Price.

(4) Texas border rate on or after September 1, 2011 and ending on or before August 31, 2012:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Forty-one point one nine seven percent (41.197%) of the Factory List Price.

(D) For chewing tobacco: Thirty-one point one nine seven percent (31.197%) of the Factory List Price.

(5) Texas border rate on or after September 1, 2012:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Fifty percent (50%) of the Factory List Price.

(D) For chewing tobacco: Thirty-seven point five percent (37.5%) of the Factory List Price.

(f) **Exception rate.** The "exception" rates apply to sales made by ~~tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (a) through (e) of this Section~~ tribes' and licensees' locations specified by the terms of the tribes' new compact.

(1) For little (Class A) cigars: $0.00225 each.

(2) For all other (Class C) cigars: $0.0075 each.

(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.

(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

710:70-7-10. Calculation of probable demand for noncompacting federally recognized Indian tribes or nations

(a) **Purpose of rule:** The purpose of this rule is to provide the procedure necessary for the implementation of calculation of probable demand for Native American tax free stamps for each noncompacting tribe or nation resident in Oklahoma for cigarettes and other tobacco products, pursuant to 68 O.S. § 349.1., effective January 1, 2010.

(b) **Calculation of probable demand:** Probable demand shall be calculated in conformity with the requirements of 68 O.S. § 349.1.

(c) **Service of preliminary calculation of probable demand upon affected noncompacting tribes and nations:** Not less than seventy-five (75) calendar days prior to the first calendar day of each calendar year, the preliminary calculation of probable demand for cigarette and other tobacco products shall be served upon the governing authorities or other designated agent of each and every noncompacting tribe and nation, together with a copy of this Section. Service shall be deemed complete upon the date of placing said preliminary

calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(d) **Service of objections/dispute of preliminary calculation of probable demand by affected noncompacting tribes and nations:** Within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand, affected noncompacting tribes and nations may serve upon the Office of the General Counsel, Oklahoma Tax Commission, 120 North Robinson, Suite 2000 W, Oklahoma City, OK 73102-7801, any objections/dispute of the preliminary calculation of probable demand, together with any verifiable information in its possession regarding such probable demand, including, but not limited to, a verifiable record of previous sales to tribal members or other statistical evidence. Service shall be deemed complete upon placing of objections/dispute of the preliminary calculation of probable demand, together with supporting verifiable evidence in the first class mail, postage prepaid, addressed to the Office of the General Counsel, Oklahoma Tax Commission at the above address.

(e) **Failure to file objection/dispute of preliminary calculation of probable demand.** If, within thirty (30) calendar days from the date of service of the preliminary calculation of probable demand upon an affected tribe or nation, that tribe or nation has failed to file its objection/dispute to the preliminary calculation served upon it, that preliminary calculation shall become the final calculation, final and nonappealable.

(f) **Final calculation of probable demand.** If an affected tribe or nation timely files its objection/dispute to the preliminary calculation of probable demand for that affected tribe or nation and furnishes supporting verifiable information pursuant to (d) of this Section, said objection/dispute, together with supporting verifiable evidence shall be considered, and a final calculation of probable demand issued and served within fifteen (15) calendar days from the date of service of said objection/dispute. Service shall be deemed complete upon the date of placing said preliminary calculation in the first class mail, postage prepaid, addressed to the governing authorities or other designated agent of each and every noncompacting tribe or nation.

(g) **Timely filing of objections/dispute of final calculation of probable demand.** If, within fifteen (15) calendar days from the date of service of the final calculation of probable demand upon an affected tribe or nation, that tribe or nation has timely filed its objection/dispute to the final calculation served upon it, the matter of the final calculation of probable demand shall proceed as a protested matter, pursuant to the provisions of the OAC 710:1-5-21 through OAC 710:1-5-48.

(h) **Final calculation of probable demand to be used while any timely protest and appeal of the final calculation of probable demand is pending.** If an affected tribe or nation files a timely objection/dispute to the final calculation served on it, cigarettes and other tobacco products may be obtained, on a monthly basis, with entitlement based upon 1/12th of the final calculated probable demand for cigarettes and other tobacco products. Provided, however, at the option of the affected tribe or nation, it may obtain cigarettes and other tobacco products each month, based upon 1/12th of the final calculated probable demand, plus not more than an additional twenty five percent (25%) of 1/12th of the final calculated probable demand for cigarettes and other tobacco products. In the event an affected tribe or nation elects to obtain such an additional amount of untaxed cigarettes and other tobacco products, entitlement to request those additional amounts shall cease when the total of cigarettes and other tobacco products obtained in a calendar year equals the final calculation of probable demand for that calendar year.

(i) **Final determinations of the final calculated probable demand appealable pursuant to 68 O.S. § 225.** Final orders of the Oklahoma Tax Commission pursuant to 68 O.S. § 349.1 and this Section shall be appealable to the Oklahoma Supreme Court, as a matter of right, pursuant to 68 O.S. § 225.A.

[OAR Docket #10-971; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #10-972]

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PERMANENT final adoption
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Subchapter 1. Oklahoma Quality Jobs Program
710:85-1-8 [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-9 [AMENDED]
Subchapter 11. 21st Century Quality Jobs Program [NEW]
710:85-11-1 [NEW]
710:85-11-2 [NEW]
710:85-11-3 [NEW]
710:85-11-4 [NEW]
710:85-11-5 [NEW]
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As part of the Commission's ongoing review of its rules, proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes.

Sections 710:85-1-8 and 710:85-5-9 have been amended to clarify policy and procedure regarding record retention and the treatment of separated baseline employees. **[68:3606]**

Subchapter 11 - 21st Century Quality Jobs Program has been added to implement the provisions of the 21st Century Quality Jobs Incentive Act, Senate Bill 938, First Regular Session of the 52nd Legislature (2009), and provides the incentive claim filing process, the criteria for receiving incentive payments, and the limitations for receiving incentive payments.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM

710:85-1-8. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;
(2) Identification number of qualified establishment;
(3) Period for which claim is filed;
(4) Actual number of new direct jobs during period of claim;
(5) Gross payroll of new direct jobs during period of claim;
(6) Net benefit rate; and
(7) Amount claimed for period.

(b) **Deadline for filing first claim.** For establishments that were approved after October 31, 2001, *in no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Oklahoma Department of Commerce.*

(c) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [**See:** 68 O.S. §2385.6]

(d) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, termination dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. Baseline employees must be filled by active employees as of the last business day of each month. If an employee in the baseline group is terminated or retires prior to the last business day of the month, the qualified establishment must replace the employee with a quality jobs employee or a newly hired employee. These records shall be retained in both hard copy form and in an electronic format approved by the Commission for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(e) **Payment of claim.** Except as provided in 710:85-1-11, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual gross payroll for new direct jobs for the calendar quarter for which the claim is filed.

(f) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:
(A) a statement of the action by the Commission that is protested;
(B) a statement of the qualified establishment's disagreement with such action; and
(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

SUBCHAPTER 5. SMALL EMPLOYER QUALITY JOBS PROGRAM

710:85-5-9. Verification of claim

The Commission shall verify the actual gross payroll for new direct jobs utilizing all available information. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, termination dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. Baseline employees must be filled by active

employees as of the last business day of each month. If an employee in the baseline group is terminated or retires prior to the last business day of the month, the qualified establishment must replace the employee with a quality jobs employee or a newly hired employee. These records shall be retained in both hard copy form and in an electronic format, approved by the Commission, for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

SUBCHAPTER 11. 21ST CENTURY QUALITY JOBS PROGRAM

710:85-11-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §250.1 et seq. and to facilitate the administration, allocation, and payment of certain tax incentives pursuant to the **21st Century Quality Jobs Incentive Act.** [68 O.S. §3911 et seq.]

710:85-11-2. Definitions

In addition to terms defined in 68 O.S. §3913, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"Department" means the Oklahoma Department of Commerce.

710:85-11-3. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [**See:** 68 O.S. § 2385.1 et seq. and *OAC* 710:90-1-1 through710:90-7-2]

710:85-11-4. Procedure for filing report, review, determination

(a) **Contents of report.** Beginning with the first complete calendar quarter following the start date designated by the Department the establishment shall file with the Oklahoma Tax Commission a report of jobs and gross taxable payroll paid during quarter. The report, on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;

(2) Identification number of qualified establishment;

(3) Period for which report is filed;

(4) Actual number of new direct jobs during period of report;

(5) Individual gross taxable payroll for each new direct job for the establishment for the report period; and

(6) Other information required to be submitted by the Commission.

(b) **Reports to constitute a claim.** A report filed pursuant to this Section shall constitute a claim for incentive payment. The establishment must continue to file quarterly reports for the ten (10) year incentive period or until it is no longer qualified to receive incentive payments.

(c) **Commission action upon receipt of reports.** Upon receipt of the reports for the initial calendar quarter and for each subsequent calendar quarter, the Commission shall make the following determinations:

(1) During the initial twelve (12) quarters, the establishment paid individuals in new direct jobs an average annualized wage that equaled or exceeded the requirements of §3914(C); or

(2) After the establishment has created ten (10) new direct jobs, it paid individuals in new direct jobs an average annualized wage that equaled or exceeded the requirements of §3914(C), and maintained the minimum number of new direct jobs.

710:85-11-5. Verification of claim

The Commission shall verify the report data utilizing available information. In the event the Commission is unable to verify the data, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to an amount verified by the Commission.

710:85-11-6. Payment of claim

(a) After the review of the report and the verification that the establishment qualifies, as set out above, for an incentive payment, the Commission shall issue a warrant in an amount equal to the applicable benefit rate multiplied by the amount of gross taxable payroll of new direct jobs actually paid by the establishment.

(b) The amount claimed shall not include in the computation of gross taxable payroll any portion of penalty or interest paid as a result of delinquency in filing or paying income tax withheld.

710:85-11-7. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, is revised, or denied by the Commission:

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

(A) A statement of the action determined by the Commission;

(B) A statement of the qualified establishment's disagreement with such action; and

(C) Supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the

Commission shall become final and no appeal will be entertained.
(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC* 710:1-5-21 through 710:1-5-48.

710:85-11-8. Limitation on incentive payments
(a) No claim for an incentive payment shall be honored if the report for the first complete calendar quarter is not submitted to the Commission within three (3) years from the start date designated by the Department.
(b) An establishment that does not meet the wage and new jobs requirements of §3914(C) within twelve (12) quarters of the date its application is approved shall be ineligible to receive additional incentive payments;
(c) An establishment, after the creation of ten new direct jobs, that does not meet the minimum wage and job requirements for a calendar quarter shall be ineligible to receive an incentive payment for that quarter;
(d) An establishment, after the creation of ten (10) new direct jobs, which does not meet the minimum wage and job requirements for four (4) consecutive quarters shall be ineligible to receive any further incentive payments. [**See:** 68 O.S. § 3915]

710:85-11-9. Audits
(a) **Reports subject to audit.** The reports filed pursuant to the requirements of the 21st Century Quality Jobs Incentive Act shall be accepted as filed by the Commission, subject to audit.
(b) **Examination by agent of the Commission.** Any representative of the Commission holding a certificate of authority may make an examination or investigation of the place of business, tangible personal property, equipment and facilities, and the books, records, papers, vouchers, accounts and documents of any qualified establishment.
(c) **Duty to comply and cooperate with examination.** It shall be the duty of every qualified establishment and every director, officer, or employee of every qualified establishment to exhibit to the Commission, or to the employees or agents of such Commission, the items mentioned in (b) of this Section. [**See:** 68 O.S. §206]

710:85-11-10. Disclosure of information
The Commission may, upon request, disclose the name of the qualified establishment that has received any incentive payments and the amount of payments received.

[OAR Docket #10-972; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #10-973]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Payments
710:90-3-4 [AMENDED]
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n/a
INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Section 710:90-3-4 has been amended to implement the provisions of Senate Bill 318 which requires all remitters of Oklahoma Income tax withholding that are on the federal semi-weekly deposit schedule to remit at the same time as under the federal semi-weekly deposit schedule. **[68:2385.3]**
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-4. Filing of tax returns
(a) Every employer required to deduct and withhold Oklahoma Income Tax from employee wages shall file a quarterly return and remit the tax withheld to the Commission on or before the twentieth (20th) day of the month following the close of each quarter. Quarterly returns shall be filed on a calendar year basis and not a fiscal year basis.
(b) Except as specified in subsection (c), if the amount of Oklahoma Income Tax withheld exceeds Five Hundred Dollars

($500.00) for any quarter, the employer is required to file and remit the taxes withheld monthly, for each monthly period after the quarter in which taxes withheld exceeded Five Hundred Dollars ($500.00). Such monthly reports shall be due on or before the twentieth (20th) day of each succeeding month.

(c) Every employer owing an average of Five Thousand Dollars ($5,000.00) or more per month in taxes in the previous fiscal year and every employer required to remit federal withholding under the Federal Semiweekly Deposit Schedule shall file returns pursuant to the Tax Commission's electronic data interchange program.

(d) Every employer owing an average of Ten Thousand Dollars ($10,000.00), or more, per month in taxes for the previous fiscal year and every employer required to remit federal withholding under the Federal Semiweekly Deposit Schedule, shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes.

(1) Employers exceeding the Ten Thousand Dollar threshold will be notified annually in writing by the Commission to begin payments under the Federal Semiweekly Deposit Schedule.

(2) For employers making payments other than by electronic funds transfer, a withholding ~~payment voucher~~ return shall be filed with each payment.

(3) For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment.

(4) Employers shall file ~~A~~ withholding ~~return~~ returns ~~for payments made by electronic funds transfer shall be filed monthly~~ pursuant to the Tax Commission's electronic data interchange program on or before the twentieth day of the month following the close of each monthly period.

(~~4~~5) If a payment is required to be made on a day that is not a banking day, the payment is considered timely if it is made by the close of the next banking day. In addition to Federal and State bank holidays, Saturdays and Sundays are treated as non-banking days.

(~~5~~6) Semiweekly schedule employers have at least three (3) banking days to make a payment. If any of the three (3) weekdays after the end of a semiweekly period is a banking holiday, the employer will have one (1) additional banking day for payment.

(~~d~~e) An employer, who because of an unusual and nonrecurring event or occurrence withholds Five Hundred Dollars ($500.00) or more for any quarter, may apply to the Commission for permission to remain on a quarterly filing frequency status. To qualify, the employer must substantiate that such occurrence is not an accurate reflection of the normal or expected future amounts to be withheld. Employer filing records must substantiate that for the four (4) consecutive quarters preceding the occurrence, Oklahoma Withholding Tax liability has been less than Five Hundred Dollars ($500.00) each quarter. It should be clearly understood that a change from monthly to quarterly filing cannot be commenced until official permission from the Commission is received in writing.

(1) There are certain conditions that could cause denial or revocation of this authorization by the Commission:

(A) If the employer is or becomes delinquent in either the filing of the return or the payment of the taxes due thereon; or

(B) In the event that for any subsequent quarterly period the liability of an employer who has been authorized to file returns and to make payments quarterly exceeds Five Hundred Dollars ($500.00) in Withholding Tax for any one quarter; or

(C) In the event that the Commission determines that any such quarterly filing or return any payment of tax due thereon would unduly jeopardize the proper administration of the Oklahoma Withholding Tax Law.

(2) If the Commission decides it is necessary to revoke the authorization to file quarterly in relation to any of the conditions in (1) of this subsection, the taxpayer will be required to file returns and pay the tax due on a monthly basis.

(~~e~~f) Any returns and remittances not filed or paid on or before the date due shall be considered delinquent.

(~~f~~g) Every employer registered with the Commission for purposes of reporting and remitting withheld taxes shall file a return for each reporting period required, whether or not wages subject to Oklahoma Withholding Taxes are paid, unless otherwise provided. On the return for such a reporting period, the employer should indicate that zero wages were paid and that no tax is due. [**See:** 68 O.S. Section 2385.3]

[OAR Docket #10-973; filed 6-7-10]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 95. MISCELLANEOUS AREAS OF REGULATORY AND ADMINISTRATIVE AUTHORITY

[OAR Docket #10-974]

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PERMANENT final adoption
RULES:
Subchapter 15. Wire Transmitter Fee [NEW]
710:95-15-1 Purpose [NEW]
710:95-15-2 Definitions [NEW]
710:95-15-3 Wire transmitter fee [NEW]
710:95-15-4 Transactions to which the fee is not applicable [NEW]
710:95-15-5 Compliance [NEW]
710:95-15-6 Conflict of law [NEW]
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The rule changes reflect the provisions of House Bill 2250, 52nd Legislature, First Regular Session, which levies a fee on each money transmission transaction by any licensee of a money transmission, transmitter or wire transmitter business. The new rules include definitions, the amount of the fee, who must collect the fee, when and on what form the fee must be remitted, and penalty for failure to comply.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 15. WIRE TRANSMITTER FEE

710:95-15-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to the **Drug Money Laundering and Wire Transmitter Act.** [63 O.S. §§ 2-503.1a et seq.]

710:95-15-2. Definitions

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

"Bill payment service" means an operator of a payment system acting in a third party capacity, to the extent that it provides processing, clearing, settlement, or other similar services between persons and businesses for a traceable debt of a good or service in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearinghouse transfers, or other similar funds transfers or transactions.

"Bureau" means Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

"Commission" means the Oklahoma Tax Commission.

"Delegate" means a person a licensee designates to provide money services on behalf of the licensee.

"Licensee" means a person licensed under the Oklahoma Financial Transaction Reporting Act, Title 6 O.S. § 1511. A licensee is a "supplier" or "money transmitter" under section 2 of the Oklahoma Financial Transaction Reporting Act.

"Money transmitter or wire transmitter business" means a licensee or delegate or someone otherwise required to be licensed who engages in this State in the business of:

(A) facilitating money transmissions;

(B) selling or issuing payment instruments for a fee, commission or other benefit;

(C) receiving money for transmission or transmitting money within in the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile, electronic transfer, or otherwise for a fee, commission or other benefit; or

(D) receiving money from obligors for the purpose of paying obligors' bills, invoices or accounts for a fee, commission or other benefit paid by the obligor.

710:95-15-3. Wire transmitter fee

(a) **Applicability of the fee.** Beginning July 1, 2009, there is a fee levied against licensees by the Drug Money Laundering and Wire Transmitter Act on each money transmission transaction initiated at a location of any licensee or its delegate of a money transmitter or wire transmitter business. [**See**: 63 O.S. § 2-503.1j]

(b) **Amounts.** The fee shall be assessed on the amount of the money transmission, exclusive of fees and costs. The amount of the fee shall be determined as follows:

(1) For each transaction not in excess of Five Hundred Dollars ($500.00), the fee is Five Dollars ($5.00).

(2) For each transaction in excess of Five Hundred ($500.00), the fee is Five Dollars ($5.00) plus one percent (1%) of the amount in excess of Five Hundred Dollars ($500.00).

(c) **Reports.** Every licensee required to collect the wire transmitter fee shall file a quarterly return and remit the fees collected to the Commission electronically on or before the fifteenth (15th) day of the month following the close of each quarter. The licensee may deduct from the fees payable for the quarter the amount of any fees associated with incomplete transfers which are refunded to consumers during that quarter provided proof of refund to customer is attached. Quarterly returns shall be filed on a calendar year basis and not a fiscal year basis.

(d) **Notice.** Every licensee and their delegates shall post a notice on a form prescribed by the Bureau that notifies customers that upon filing an Oklahoma individual income tax return with either a valid social security number or a taxpayer identification number the customer shall be entitled to an income tax credit equal to the amount of the fee paid by the customer for the transaction.

710:95-15-4. Transactions to which the fee is not applicable

(a) **Bill payment services.** Transactions between individuals and businesses, registered with the Secretary of State of Oklahoma or another State in the United States, or utility companies licensed by the Oklahoma Corporation Commission, through a bill payment service which the money being transferred is for a good or service not otherwise prohibited by State or Federal statute for a traceable debt are not subject to the wire transaction fee.

(b) **Origination of transfers.** Only transactions originating from Oklahoma are subject to the wire transaction fee.

(c) **Credit or debit card transfers.** Internet and telephone transfers conducted through a debit card, credit card or ACH transfer are not subject to the wire transaction fee.

(d) **Exempt entities.** Entities otherwise exempted from Money Service Business Licensing pursuant to the Oklahoma Financial Transaction Reporting Act are not subject to the wire transaction fee.

(e) **Prepaid debit cards and stored value cards.** The sale and servicing of prepaid debit cards and stored value cards are not subject to the wire transaction fee.

(f) **Money orders.** The sale of money orders is not subject to the wire transaction fee.

(g) **Check cashing.** Check cashing transactions and deferred presentment transactions are not subject to the wire transaction fee.

710:95-15-5. Compliance

If a licensee fails to file reports or remit the wire transaction fee, the Commission may suspend the license of the licensee and its delegates. Notification of the suspension shall be sent to the State Banking Commissioner and the Director of the Bureau, and the State Banking Commissioner may make a claim against the surety bond of the licensee. The licensee and its delegates may not reapply for a license until all required reports have been filed and all required fee amounts have been remitted. [**See**: 63 O.S. § 2-503.1j (E) and (F)]

710:95-15-6. Conflict of law

In the event of a conflict in the definitions pursuant to these rules, the intent of the Drug Money Laundering and Wire Transmitter Act and associated language shall prevail, followed by the Financial Transaction Reporting Act.

[OAR Docket #10-974; filed 6-7-10]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-960]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
748:1-1-1. Organization. [NEW]
748:1-1-2. Address. [NEW]
748:1-1-3. Commissioners. [NEW]
748:1-1-4. Meetings [NEW]

AUTHORITY:
Title 59 O.S. §§ 1000.22, 1000.24 and 1000.26; Uniform Building Code Commission

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748:1-1-2. Address. [NEW]
748:1-1-3. Commissioners. [NEW]
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INCORPORATIONS BY REFERENCE:
"n/a"

ANALYSIS:
These rules are currently in existence and have been previously approved as emergency rules by the Uniform Building Code Commission ("UBCC"). This action seeks to make these rules permanent. 748:1-1-1; 748:1-1-2; 748:1-1-3 and 748:1-1-4 establish rules for the administrative operations of the UBCC by requiring an agency organization, establishing the agency address, setting forth the protocol for Commission members' election of officers, calling meetings and the conduct of meetings, and establishing guidelines for meeting dates, times and locations.

CONTACT PERSON:
Mitchell Hort, Rules Liaison, Uniform Building Code Commission, 2401 N.W. 23, Suite 5, Oklahoma City, 73107 telephone:(405) 354-6676; facsimile: (405) 350-8929; electronic mail: mhort@cityofyukonok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

748:1-1-1. Organization

The employees of the Commission shall be organized and divided into such divisions or units, as the Commission deems desirable for efficiency. Such organization and division may be revised by the Commission as it finds necessary or expedient.

Copies of the organizational chart are available upon request to the Chairman of the Commission.

748:1-1-2. Address

The principal office of the Oklahoma Uniform Building Code Commission shall be at the Construction Industries Board, 2401 NW 23rd Street, Suite 5, Oklahoma City, Oklahoma 73107.

748:1-1-3. Commissioners

(a) The Commission shall elect from its membership a Chairman and a Vice-Chairman.

(b) Officers of the Commission shall be elected annually, at the last meeting of each calendar year. In the event an officer's position becomes vacant, a replacement shall be elected to complete the unexpired term at the following meeting of the Commission.

(c) The Chairman shall preside over all Commission meetings and rule on all questions of procedures and order. He shall call a special meeting when requested by four members, in writing, to do so. The chairman shall determine the agenda of each meeting.

(d) The Vice-Chairman shall assume the duties of the Chairman during the chairman's absence or incapacity.

748:1-1-4. Meetings

(a) The Commission shall hold such meetings, as it deems necessary, with a regular meeting once during each quarter of the calendar year. Special meetings may be called by the Chairman in his discretion, and shall be called when four (4) members of the Commission of the Commission request of the Chairman, in writing, that such a meeting be called.

(b) The Commission may convene at any location within the state of Oklahoma as the Commission may specify; provided, that unless otherwise specified, meetings shall be conducted at the room provided for that purpose at the Construction Industries Board, 2401 NW 23rd Street, Suite 5, Oklahoma City, Oklahoma 73107.

[OAR Docket #10-960; filed 6-4-10]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 3. GENERAL PROVISIONS

[OAR Docket #10-961]

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PERMANENT final adoption
RULES:
748:3-1-1. Context and Interpretation [NEW]
748:3-1-2. Definitions [NEW]
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INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
These rules are currently in existence and have been previously approved as emergency rules by the Uniform Building Code Commission ("UBCC"). This action seeks to make these rules permanent. Title 748:3-1-1 sets forth the context and provides interpretive guidance for definitions adopted by the UBCC. Title 748: 3-1-2 defines essential terms necessary to implement the Act in accordance with the plain meaning and clear intent of the Act. These terms were not defined by the Oklahoma Legislature in the Act.
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., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

748:3-1-1. Context and Interpretation

(a) Unless the context otherwise requires, singular words shall be deemed to include the plural, and masculine words to include the feminine, and vice versa.

(b) These rules and the codes adopted herein are not intended to displace, inhibit or restrict the authority of permitting agencies or code enforcement jurisdictions from their administrative responsibilities to consider and interpret the spirit and intent of any adopted codes, including administrative sections of the adopted codes which address the duties and powers of building officials and administrative authorities. With respect to code provisions which are ministerial as opposed to those containing building or construction standards or requirements, the Commission adopts such provisions only to the extent that the Commission is authorized to do so and to the extent that any such provision is not contrary to any valid law of the State of Oklahoma or local ordinance.

748:3-1-2. Definitions

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

"Authority Having Jurisdiction means an organization, office, or individual responsible for enforcing the requirements of the State Adopted Building Codes, including the prior authorization or approval of any equipment, materials, installations or procedures used in all or part of the construction of a new, or the alteration or renovation of an existing, building or structure, including integral finishes, fixtures and building systems therein.

"Building Code" means a collection of required standards and practices intended to apply to all or part of the construction of new, or the alteration or renovation of existing, buildings or structures, including integral finishes, fixtures and building systems therein.

"Building Permit" means any written or verbal authorization or approval, issued by an authority having jurisdiction, which allows the holder or other persons to commence the construction, alteration or renovation of all or part of a residential or commercial building or structure subject to the requirements of the State Adopted Building Codes. For purposes of this Title, the term building permit includes any process wherein authorization, approval or registration is required prior to construction even though: 1) a permitting or registration document is not issued at that time; 2) the authority having jurisdiction refers to the authorization, approval or registration as something other than a "permit"; or 3) the only activities performed by the authority having jurisdiction are fee-based inspections of the work performed. For purposes of this Title, each segment of a multi-segment permit shall be considered a separate building permit if the segment meets each of the following conditions: 1) the authority having jurisdiction requires a separate, stand-alone building permit for the segment work when said work is not performed as part of a multi-segment construction project; 2) the authority having jurisdiction charges a stand-alone building permit fee for the segment work when said work is not performed as part of a multi-segment construction project; and 3) the segment work is subject to the requirements of the State Adopted Building Codes.

"Construction Code" and **"Construction Permit"** shall have the same meaning as, and be respectively interchangeable and synonymous with, the terms "Building Code" and "Building Permit" as defined herein, respectively.

"Multi-Segment Permitting" is the administrative process of consolidating multiple building permit work authorizations, approvals and/or registrations and the payment of required permit fees for a multi-segment construction project into a single administrative process.

"State Adopted Building Codes" means any legally applicable building code currently in force and effect within the State or a governing jurisdiction until superseded by a code adopted by the Commission and all building codes adopted by the Oklahoma Uniform Building Code Commission.

[OAR Docket #10-961; filed 6-4-10]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 5. FEES AND COLLECTION OF FEES

[OAR Docket #10-962]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fees [NEW]
748:5-1-1. Fees for initial permit and permit renewal [NEW]
Subchapter 3. Collection and Late Fee Assessment [NEW]
748:5-3-1. Late Fee Assessment [NEW]
AUTHORITY:
Title 59 O.S. §§ 1000.22, 1000.23 ,1000.24, 1000.25 and 1000.26; Uniform Building Code Commission
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Subchapter 1. Fees [NEW]
748:5-1-1. Fees for initial permit and permit renewal [NEW]
Subchapter 3. Collection and Late Fee Assessment [NEW]
748:5-3-1. Late Fee Assessment [NEW]
Gubernatorial approval:
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10-159
INCORPORATIONS BY REFERENCE:
"n/a"
ANALYSIS:
These rules are currently in existence and have been previously approved as emergency rules by the Uniform Building Code Commission ("UBCC"). This action seeks to make these rules permanent. 748:5-1-1 establishes fees within parameters of 59 O.S. § 1000.25 and sets forth necessary guidelines for the collection and administration of said fees in harmony with the Act. 748:5-3-1 sets forth timelines, percentages and assessment procedures for the assessment of late fees as set forth in Section 1000.25.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. FEES

748:5-1-1. Fee for initial permit and permit renewal

(a) Beginning the first day of the month 60 days following the Governor's approval of the emergency rules, the Commission shall charge a fee of $4.00 on all building permits issued by any state agency, municipality, or other political subdivision of this state which authorizes work governed by the State Adopted Building Codes. Beginning the first day of the month 60 days following the Governor's approval of the emergency rules, the Commission shall charge a fee of $0 on all renewal building permits issued by any state agency, municipality, or other political subdivision of this state which authorizes work governed by the State Adopted Building Codes.

(b) Such fees shall be collected by the state agency, municipality or other political subdivision issuing the building or construction permits within this state. The fees shall be deposited in an account created by the collecting entity for that purpose;

(c) The state agency, municipality or other political subdivision shall remit the monies in the account on a monthly basis directly to the State Treasury for deposit in the Oklahoma Uniform Building Code Commission Revolving Fund created pursuant to Section 1000.28 of Title 59 of the Oklahoma statutes.

(d) Any state agency, municipality or other political subdivision collecting and remitting fees pursuant to this section may levy a fee up to fifty cents ($.50) for every building permit. Any state agency, municipality or other political subdivision collecting and remitting fees pursuant to this section may levy a fee of $0 for any building renewal permit issued. These monies shall be deposited into an account for the sole use of the state agency, municipality or other political subdivision. The state agency, municipality or other political subdivision shall state the total amount of funds collected and the total number of fees imposed to the State Treasury in the report required by subparagraph (g) of this section.

(e) It shall be the responsibility of the state agency, municipality or other political subdivision to account for and ensure the correctness and accuracy of payments made to the State Treasury pursuant to Uniform Building Code Commission Act as found at 59 O.S. §1000.21 et seq.

(f) Funds collected by a state agency, municipality or other political subdivision and remitted to the State Treasury pursuant to the Oklahoma Uniform Building Code Commission Act shall be deposited in the Oklahoma Uniform Building Code Commission Revolving Fund and shall be used solely for the purposes of the Oklahoma Uniform Building Code Commission Act.

(g) Along with the deposits required by subparagraph (d), each state agency, municipality or other political subdivision shall also submit a report stating the total amount of funds collected and the total number of fees imposed during the preceding month. The report shall be made on computerized or manual disposition forms as prescribed by the Commission.

SUBCHAPTER 3. COLLECTION AND LATE FEE ASSESSMENT

748:5-3-1. Late Fee Assessment

Deposits of fees to the Oklahoma Uniform Building Code Commission Revolving Fund shall be due on the twentieth day of each month for the fees collected during the preceding calendar month. There shall be a late fee imposed for failure to make timely deposits. The Oklahoma Uniform Building Code Commission, in its discretion, may waive all or part of the late fee. Such late fee shall be one percent (1%) of the principal amount due per day beginning from the tenth day after payment is due and accumulating until the late fee reaches one hundred percent (100%) of the principal amount due.

[OAR Docket #10-962; filed 6-4-10]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 7. COMMISSION COMMITTEES

[OAR Docket #10-963]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General [NEW]
748:7-1-1. General Composition and Assignments [NEW]
748:7-1-2. Scope [NEW]
748:7-1-3. Reports [NEW]
748:7-1-4. Open Meeting Rules [NEW]
748:7-1-5. Participation of the Public [NEW]
748:7-1-6. Advisory Only [NEW]
748:7-1-7. Prerogative and Direction [NEW]
748:7-1-8. Committee Forms [NEW]
Subchapter 3. Ad Hoc Committees [NEW]
748:7-3-1. Ad Hoc Committees [NEW]
Subchapter 5. Standing Committees [NEW]
748:7-5-1. Standing Committees [NEW]
Subchapter 7. Technical Committees [NEW]
748:7-7-1. Specific Purpose [NEW]
748:7-7-2. Task Assignments [NEW]
748:7-7-3. Technical Committee Composition [NEW]
748:7-7-4. Member Selection [NEW]
AUTHORITY:
Title 59 O.S. §§ 1000.24(A)(1) AND (B)(5); Uniform Building Code Commission
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INCORPORATIONS BY REFERENCE:

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ANALYSIS:

748:7-1-1, 7-1-2, 7-1-3, 7-1-4, 7-1-5, 7-1-6, 7-1-7 and 7-1-8 establish the general guidelines, composition, subject matter, protocol, scope and forms of committees which may be established by the Uniform Building Code Commission. 748:3-1-1 creates the Ad hoc committee format. 748:7-5-1 establishes the standing committee format. 748:7-7-1, 7-7-2, 7-7-3 and 7-7-4 set forth more specific requirements, tasks and guidelines governing the Commission's technical committees which will be created to study and make recommendations on the adoption of certain codes, as specified by the Commission.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL

748:7-1-1. General composition and assignments

General composition and task assignments of Commission Committees shall be as directed by Commission. With the exception of technical committees, typically the membership of a committee shall be at least two (2) but not more than five (5) Commission members. Committee members shall be as nominated by the Commission chairman or other Commission member(s) and approved by vote of the Commission. As needed, the Commission chairman may call and task a committee between Commission meetings without specific Commission approval. At the next Commission meeting, the called committee and task assignment shall be ratified or modified by vote of the Commission or a directive to cease activities would be given the committee.

748:7-1-2. Scope

Task assignments shall be researched and reviewed by the respective committee and a recommendation shall be presented to the Commission for approval, disapproval, modification, re-study, or end of task assignments.

748:7-1-3. Reports

Committees shall report to the Commission quarterly or otherwise as often as applicable to their task assignment(s). Reports to the Commission will include a written summary of a committee's study and recommendations, including action minutes of committee meetings.

748:7-1-4. Open Meeting rules

Committees are advisory only and the Open Meeting Act does not apply to committee meetings. A quorum of Commission members shall not be appointed to any committee.

748:7-1-5. Participation of the public

Committees may allow or request individuals from the public to attend and provide expertise related to committee task assignments as requested by members of the committee with the approval of the committee chair.

748:7-1-6. Advisory only

Actions by all committees are advisory and subject to Commission action. Likewise, the Commission may vote to proceed on any subject or task without recommendation from a committee.

748:7-1-7. Prerogative and direction

Committee leadership and working assignments to accomplish the committee's task shall be the prerogative of the members of a committee, unless otherwise directed by the Commission or Commission chairman.

748:7-1-8. Committee forms

Committees may take the form of various types of work or missions as directed by the Commission. Committees can take whatever form the Commission so directs. The typical committee types include, but not limited to, ad hoc committees, standing committees, and technical committees.

SUBCHAPTER 3. AD HOC COMMITTEES

748:7-3-1. Ad Hoc Committees

Ad hoc committees shall be created by the Commission for a specific purpose of limited scope, typically having a set time frame for completion.

SUBCHAPTER 5. STANDING COMMITTEES

748:7-5-1. Standing Committees

Standing Committees shall be formed and charged with ongoing task assignments and shall have no set schedule to end its task(s) except as directed by the Commission.

SUBCHAPTER 7. TECHNICAL COMMITTEES

748:7-7-1. Specific purpose

Technical committees shall be tasked to review and recommend for or against adoption of a specific potential construction code or elements contained within such code(s).

748:7-7-2. Task assignments

Technical committee task assignments directed by the Commission can be any code related regulatory item(s) as may provide for the health, safety, and welfare of the public. Typically, technical committees will review potential code(s)

for adoption, but shall not be limited to that function or method in completing the directives of the Commission.

748:7-7-3. Technical Committee composition

Technical committees shall be comprised of at least one Commission member who will perform the duties of a Commission liaison to the technical committee and shall be ex officio member with a vote. Typically, the other members of a technical committee will be from the public providing in general for a cross-section of expertise representative of the field of construction related to the task assignment given the committee by the Commission. Nominated and elected within the committee, the technical committee chairman and vice chairman will be one of the public members of the committee unless the Commission or Commission chairman directs otherwise.

748:7-7-4. Member selection

(a) Public members of technical committees shall be selected from individual volunteers, or persons recommended by members of the Commission, or by a permitting jurisdiction, or by a construction industry organization, or by a construction firm or design firm, or from any other construction related source. Candidates shall submit resumes' and any other of their background data as requested by the Commission, and a statement of interest as to why they would provide the needed expertise and code experience for service based on the task of a specific technical committee. The Commission Vice Chairman, or his designee, will serve as the contact person to receive all such public requests for consideration by a public nominator. The Vice Chairman shall present a recommendation to the Commission for approval of a slate of technical committee members for a specific committee, plus one alternate nominee in each sub-element of the technical committee, such as but not limited to, industry contractors, code regulators, and design team members. The Commission will elect the persons of their choice after considering the recommended slate of the Vice Chairman. The membership size of a technical committee shall be set by the Commission and can vary based upon the task assignment.

(b) Serving at the Commission's pleasure, the term of office for a technical committee and the effective office of its members shall remain in force until dismissed by the Commission, individually or collectively.

[OAR Docket #10-963; filed 6-4-10]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 10. CODE ADOPTION PROCEDURES

[OAR Docket #10-964]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
748:10-1-1. Discretion of the Commission [NEW]
748:10-1-2. Public Input to Technical Committees [NEW]
748:10-1-3. Technical Committees Recommendations and Reports [NEW]
748:10-1-4. Final Adoption by Rulemaking [NEW]
AUTHORITY:
Title 59 O.S. §§ 1000.23 and 1000.24(A)(1) AND (B)(5); Uniform Building Code Commission
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ANALYSIS:
748:10-1-1, 10-1-2, 10-1-3 and 10-1-4 establish the protocol of code adoption, including the Commission's use and assignment of a technical committee for the study of a particular code for recommendation to the Commission. These rules provide for public input and comment throughout any code adoption process, from the outright adoption of a code by the Commission without the use of a Committee or the study of the code and recommendation by a technical committee, to the legal minimum of public notice and comment provided by the Oklahoma Administrative Procedures Act at final Commission adoption.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

SUBCHAPTER 1. GENERAL

748:10-1-1. Discretion of the Commission

The Commission has the responsibility and authority to elect the best and most appropriate method(s) to facilitate code adoption regardless of whatever typical protocol of process(s) and format(s) may currently or historically exist. The Commission may act upon its own discretion, or seek the opinions and recommendations of others. Typically the Commission will select and utilize a technical committee to research and review options for potential new codes or code revisions, and receive

from that technical committee a recommended course of action for the Commission's consideration.

748:10-1-2. Public input to Technical Committees

Technical committees shall provide for public comment and suggestions for the task assignments directed by the Commission. This public interaction shall occur during the technical committee's deliberations and before a final report/recommendation is presented to the Commission for action. Depending upon the task assignment, the Commission will determine the number of public meetings that shall be called, as well as, the location and time.

748:10-1-3. Technical Committees recommendations and reports

Technical committees shall provide progress reports to the Commission as directed by the Commission. Unless otherwise directed by the Commission, recommendations by a technical committee shall be presented to the Commission in writing and shall conclude with one of the following or a combination thereof, "recommend adoption without modification," or "adoption not recommended," or "recommend adoption subject to the following, amendment, deletion, or addition."

748:10-1-4. Final adoption by rulemaking

After all technical committee reports are made to the Commission in open session allowing for public comment, the Commission may commence APA rulemaking to adopt the appropriate code or element of a code at their discretion. Technical committee reports are advisory only and the Commission can commence APA rulemaking to adopt, table, modify as noted, or any other appropriate action as deemed so by the Commission. Technical committee reports which are not submitted within the schedule as approved or revised by the Commission may be considered for action without receiving a technical committee recommendation, with or without an accompanying report.

[OAR Docket #10-964; filed 6-4-10]

TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 15. CODE ADOPTED BY STATE AGENCIES AND POLITICAL SUBDIVISIONS

[OAR Docket #10-965]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
748:15-1-1. Codes Which May be Adopted [NEW]
748:15-1-2. Procedure to Adopt Different Code [NEW]
748:15-1-3. Amendment of Existing Commission Codes [NEW]
748:15-1-4. Procedure to Amend Existing Commission Codes [NEW]
748:15-1-5. Effect of Repeal [NEW]

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ANALYSIS:
748:15-1-1, 15-1-2, 15-1-3, 15-1-4 and 15-1-5 establish the protocol and procedure for state agencies and political subdivisions to adopt a code which exceeds the standards and requirements of a code adopted by the Commission or amending a code adopted by the Commission as necessary to accommodate a local condition.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JULY 11, 2010:

748:15-1-1. Codes which may be adopted

State agencies and political subdivisions may adopt construction codes with standards and requirements which exceed the standards and requirements adopted by the Commission.

748:15-1-2. Procedure to adopt different code

(a) An adopted code shall be filed with the Commission. The code shall be accompanied by a written statement from the agency's or political subdivision's chief executive officer or legal counsel certifying that said code has been duly adopted in accordance with Oklahoma law, with a copy of the official minutes reflecting the adoption of said code. The code will then be approved for listing on the Commission's website subject to 748:15-1-2(b).

(b) The Commission's approval for website listing shall be entirely focused upon whether the submitting agency or jurisdiction has completed the filing requirements prescribed by the Commission and certified to the Commission as to the lawful adoption of the code. The Commission shall not approve

codes based upon the technical equivalency or superiority of the submitted code compared to State adopted codes. However, if the Commission finds that a State agency's or political subdivision's adopted code does not contain higher standards or requirements than any State Adopted Code, the Commission may indicate this finding on the website listing.

(c) Effective dates of locally adopted codes submitted by an agency or jurisdiction shall not be considered or ruled upon by the Commission.

748:15-1-3. Amendment of existing Commission codes

State agencies and political subdivisions may amend codes adopted by the Commission to make changes necessary to accommodate local conditions, subject to approval of the Commission. Commission approval for amendment of existing codes shall be considered after an agency or jurisdiction certifies that it is the official action of that entity to pursue such an amendment and submit to the procedures set forth in 748:15-1-4, including a possible technical evaluation by the Commission in determining whether approval should be granted.

748:15-1-4. Procedure to amend Commission adopted codes

(a) A state agency or political subdivision shall submit an application to the Commission to make an amendment to a Commission adopted code. All amendments must be necessary to accommodate a local condition(s) and the application shall clearly explain the proposed accommodation, why the amendment is "necessary" and identify the "local condition."

(b) The Commission will assign the application to the appropriate technical committee for review and recommendation. The Commission will consider the committee recommendation in open session.

(c) The Commission's denial of an application is subject to appeal as an individual proceeding pursuant to the Administrative Procedures Act.

(d) Upon the Commission's approval of the application, the amendment will be posted to the Commission's website to inform the public about such change in the respective agency's or political subdivision's jurisdiction.

(e) For purposes of this section:

(1) "Accommodate" means the proposed code amendment solution actually serves as its primary purpose to address the issue which necessitates the amendment.

(2) "Local condition" means a condition which is particularly specific to the environment or surroundings of the jurisdiction seeking the change or amendment to the State adopted code and the condition is not expressly or specifically contemplated in the adopted code at issue.

(3) "Necessary" means an essential and safe code amendment solution, the absence of which causes undue hardship on a person or class of persons.

748:15-1-5. Effect of repeal

An agency's or political subdivision's repeal of a code with higher standards or requirements or change to accommodate local condition shall be effective upon repeal unless otherwise specified by the agency or political subdivision repealing the higher standard or requirement or local change.

[OAR Docket #10-965; filed 6-4-10]