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Board of Governors of the Licensed ARCHITECTS , Landscape Architects and Registered Interior Designers of Oklahoma (<i>Formerly</i> : Board of Governors of the Licensed ARCHITECTS and Landscape Architects of Oklahoma; and Board of Governors of the Licensed ARCHITECTS , Landscape Architects and Interior Designers of Oklahoma)	55	Board of Trustees for the ENID Higher Education Program (<i>exempted 11-1-98</i>)	250
ARCHIVES and Records Commission	60	Department of ENVIRONMENTAL Quality	252
Board of Trustees for the ARDMORE Higher Education Program (<i>exempted 11-1-98</i>)	65	State Board of EQUALIZATION	255
Oklahoma ARTS Council	70	ETHICS Commission (<i>Title revoked</i>)	257
Oklahoma State ATHLETIC Commission (<i>Formerly</i> : Oklahoma Professional BOXING Commission) - <i>See</i> Title 92		ETHICS Commission	258
ATTORNEY General	75	Office of State FINANCE	260
State AUDITOR and Inspector	80	State FIRE Marshal Commission	265
State BANKING Department	85	Oklahoma Council on FIREFIGHTER Training	268
Oklahoma State Employees BENEFITS Council	87	Oklahoma FIREFIGHTERS Pension and Retirement System	270
Council of BOND Oversight	90	[RESERVED]	275
Oklahoma State ATHLETIC Commission (<i>Formerly</i> : Oklahoma Professional BOXING Commission)	92	FORENSIC Review Board	277
State BURIAL Board (<i>abolished 7-1-92</i>)	95	State Board of Registration for FORESTERS	280
[RESERVED]	100	FOSTER Care Review Advisory Board	285
Oklahoma CAPITAL Investment Board	105	Oklahoma FUNERAL Board (<i>Formerly</i> : Oklahoma State Board of Embalmers and Funeral Directors) - <i>See</i> Title 235	
Oklahoma CAPITOL Improvement Authority	110	Oklahoma FUTURES	290
State CAPITOL Preservation Commission	115	GOVERNOR (<i>See also</i> Title 1, Executive Orders)	295
CAPITOL-MEDICAL Center Improvement and Zoning Commission	120	GRAND River Dam Authority	300
Oklahoma Department of CAREER and Technology Education (<i>Formerly</i> : Oklahoma Department of VOCATIONAL and Technical Education) - <i>See</i> Title 780		Group Self-Insurance Association GUARANTY Fund Board	302
Board of Regents of CARL Albert State College (<i>exempted 11-1-98</i>)	125	Individual Self-Insured GUARANTY Fund Board	303
Department of CENTRAL Services (<i>Formerly</i> : Office of PUBLIC Affairs) - <i>See</i> Title 580		STATE Use Committee (<i>Formerly</i> : Committee on Purchases of Products and Services of the Severely HANDICAPPED)	304
CEREBRAL Palsy Commission	130	Office of DISABILITY Concerns (<i>Formerly</i> : Office of HANDICAPPED Concerns)	305
Commission on CHILDREN and Youth	135	Oklahoma State Department of HEALTH	310
Board of CHIROPRACTIC Examiners	140	Oklahoma Basic HEALTH Benefits Board (<i>abolished 11-1-97</i>)	315
Oklahoma Department of EMERGENCY Management (<i>Formerly</i> : Department of CIVIL Emergency Management)	145	Oklahoma HEALTH Care Authority	317
Oklahoma Department of COMMERCE	150	HIGHWAY Construction Materials Technician Certification Board	318
COMMUNITY Hospitals Authority	152	Oklahoma HISTORICAL Society	320
COMPSOURCE Oklahoma (<i>Formerly</i> : State INSURANCE Fund) - <i>See</i> Title 370		Oklahoma HORSE Racing Commission	325
Oklahoma CONSERVATION Commission	155	Oklahoma HOUSING Finance Agency	330
CONSTRUCTION Industries Board	158	Oklahoma HUMAN Rights Commission	335
Department of CONSUMER Credit	160	Department of HUMAN Services	340
CORPORATION Commission	165	Committee for INCENTIVE Awards for State Employees	345
Department of CORRECTIONS	170	Oklahoma INDIAN Affairs Commission	350
State Board of COSMETOLOGY	175	Oklahoma INDIGENT Defense System	352
Oklahoma State CREDIT Union Board	180	Oklahoma INDUSTRIAL Finance Authority	355
CRIME Victims Compensation Board	185	INJURY Review Board	357
Joint CRIMINAL Justice System Task Force Committee	190	Oklahoma State and Education Employees Group INSURANCE Board	360
Board of DENTISTRY	195	INSURANCE Department	365
Oklahoma DEVELOPMENT Finance Authority	200	COMPSOURCE Oklahoma (<i>Formerly</i> : State INSURANCE Fund)	370
Office of DISABILITY Concerns (<i>Formerly</i> : Office of HANDICAPPED Concerns) - <i>See</i> Title 305		Oklahoma State Bureau of INVESTIGATION	375
Board of Regents of EASTERN Oklahoma State College (<i>exempted 11-1-98</i>)	205	Council on JUDICIAL Complaints	376
		Office of JUVENILE Affairs	377
		Department of LABOR	380
		Department of the Commissioners of the LAND Office	385
		Council on LAW Enforcement Education and Training	390
		Oklahoma LAW Enforcement Retirement System	395
		Board on LEGISLATIVE Compensation	400

Agency	Title	Agency	Title
Oklahoma Department of LIBRARIES	405	Oklahoma SAVINGS and Loan Board (<i>abolished 7-1-93</i>)	625
LIEUTENANT Governor	410	SCENIC Rivers Commission	630
Oklahoma LINKED Deposit Review Board	415	Oklahoma Commission on SCHOOL and County Funds	
Oklahoma LIQUEFIED Petroleum Gas Board	420	Management	635
Oklahoma LIQUEFIED Petroleum Gas Research, Marketing and Safety		Advisory Task Force on the Sale of SCHOOL Lands (<i>functions</i>	
Commission	422	<i>concluded 2-92</i>)	640
LITERACY Initiatives Commission	425	The Oklahoma School of SCIENCE and Mathematics	645
LONG-RANGE Capital Planning Commission	428	Oklahoma Center for the Advancement of SCIENCE and	
Oklahoma State Board of Examiners for LONG-TERM Care		Technology	650
Administrators (<i>Formerly:</i> Oklahoma State Board of Examiners		SECRETARY of State	655
for NURSING Home Administrators) - <i>See</i> Title 490		Department of SECURITIES	660
LOTTERY Commission, Oklahoma	429	Board of Regents of SEMINOLE State College (<i>exempted</i>	
Board of Trustees for the MCCURTAIN County Higher Education		11-1-98)	665
Program (<i>exempted 11-1-98</i>)	430	SHEEP and Wool Commission	670
Commission on MARGINALLY Producing Oil and Gas Wells	432	State Board of Licensed SOCIAL Workers	675
State Board of MEDICAL Licensure and Supervision	435	SOUTHERN Growth Policies Board	680
MEDICAL Technology and Research Authority of Oklahoma	440	Oklahoma SOYBEAN Commission (<i>abolished 7-1-97</i>)	685
Board of MEDICOLEGAL Investigations	445	Board of Examiners for SPEECH-LANGUAGE Pathology and	
Department of MENTAL Health and Substance Abuse Services	450	Audiology (<i>Formerly:</i> Board of Examiners for SPEECH	
MERIT Protection Commission	455	Pathology and Audiology)	690
MILITARY Planning Commission, Oklahoma Strategic	457	STATE Employee Charitable Contributions, Oversight	
Department of MINES	460	Committee for (<i>Formerly:</i> STATE Agency	
Oklahoma MOTOR Vehicle Commission	465	Review Committee)	695
Board of Regents of MURRAY State College (<i>exempted 11-1-98</i>)	470	STATE Use Committee (<i>Formerly:</i> Committee on Purchases of Products	
Oklahoma State Bureau of NARCOTICS and Dangerous Drugs		and Services of the Severely HANDICAPPED)— <i>See</i> Title 304	
Control	475	Oklahoma STUDENT Loan Authority	700
Board of Regents of NORTHERN Oklahoma College (<i>exempted</i>		TASK Force 2000	705
11-1-98)	480	Oklahoma TAX Commission	710
Oklahoma Board of NURSING	485	Oklahoma Commission for TEACHER Preparation	712
Oklahoma State Board of Examiners for LONG-TERM Care		TEACHERS' Retirement System	715
Administrators (<i>Formerly:</i> Oklahoma State Board of Examiners		State TEXTBOOK Committee	720
for NURSING Home Administrators)	490	TOBACCO Settlement Endowment Trust Fund	723
Board of Regents of OKLAHOMA City Community College (<i>exempted</i>		Oklahoma TOURISM and Recreation Department	725
11-1-98)	495	Department of TRANSPORTATION	730
Board of Regents of OKLAHOMA Colleges (<i>exempted 11-1-98</i>)	500	Oklahoma TRANSPORTATION Authority (<i>Name changed to</i>	
Board of Examiners in OPTOMETRY	505	Oklahoma TURNPIKE Authority 11-1-05) - <i>See</i> Title 731	
State Board of OSTEOPATHIC Examiners	510	Oklahoma TURNPIKE Authority (<i>Formerly:</i> Oklahoma	
PARDON and Parole Board	515	TRANSPORTATION Authority AND Oklahoma TURNPIKE	
Oklahoma PEANUT Commission	520	Authority) - <i>See</i> also Title 745	731
Oklahoma State PENSION Commission	525	State TREASURER	735
State Board of Examiners of PERFUSIONISTS	527	Board of Regents of TULSA Community College (<i>exempted</i>	
Office of PERSONNEL Management	530	11-1-98)	740
Board of Commercial PET Breeders	532	Oklahoma TURNPIKE Authority (<i>Name changed to Oklahoma</i>	
Oklahoma State Board of PHARMACY	535	TRANSPORATION Authority 11-1-99 - <i>no rules enacted in this</i>	
PHYSICIAN Manpower Training Commission	540	<i>Title - See</i> Title 731)	745
Board of PODIATRIC Medical Examiners	545	Oklahoma UNIFORM Building Code Commission	748
Oklahoma POLICE Pension and Retirement System	550	Board of Trustees for the UNIVERSITY Center at Tulsa (<i>exempted</i>	
State Department of POLLUTION Control (<i>abolished 1-1-93</i>)	555	11-1-98)	750
POLYGRAPH Examiners Board	560	UNIVERSITY Hospitals Authority	752
Oklahoma Board of PRIVATE Vocational Schools	565	UNIVERSITY Hospitals Trust	753
State Board for PROPERTY and Casualty Rates		Board of Regents of the UNIVERSITY of Oklahoma (<i>exempted</i>	
(<i>abolished 7-1-06; see also Title 365</i>)	570	11-1-98)	755
State Board of Examiners of PSYCHOLOGISTS	575	Board of Regents of the UNIVERSITY of Science and Arts	
Department of CENTRAL Services (<i>Formerly:</i> Office of PUBLIC		of Oklahoma (<i>exempted 11-1-98</i>)	760
Affairs)	580	Oklahoma USED Motor Vehicle and Parts Commission	765
PUBLIC Employees Relations Board	585	Oklahoma Department of VETERANS Affairs	770
Oklahoma PUBLIC Employees Retirement System	590	Board of VETERINARY Medical Examiners	775
Department of PUBLIC Safety	595	Oklahoma Department of CAREER and Technology Education	
REAL Estate Appraiser Board	600	(<i>Formerly:</i> Oklahoma Department of VOCATIONAL and	
Oklahoma REAL Estate Commission	605	Technical Education)	780
Board of Regents of REDLANDS Community College (<i>exempted</i>		Oklahoma WATER Resources Board	785
11-1-98)	607	Board of Regents of WESTERN Oklahoma State College (<i>exempted</i>	
State REGENTS for Higher Education	610	11-1-98)	790
State Department of REHABILITATION Services	612	Oklahoma WHEAT Commission	795
Board of Regents of ROGERS State College (<i>exempted 11-1-98</i>)	615	Department of WILDLIFE Conservation	800
Board of Regents of ROSE State College (<i>exempted 11-1-98</i>)	620	WILL Rogers and J.M. Davis Memorials Commission	805

Submissions for Review

Within 10 calendar days after adoption by an agency of a proposed PERMANENT rulemaking action, the agency must submit the proposed rules to the Governor and the Legislature for review. In addition, the agency must publish in the *Register* a "statement" that the rules have been submitted for gubernatorial/legislative review.

For additional information on submissions for gubernatorial/legislative review, see 75 O.S., Section 303.1, 303.2, and 308.

TITLE 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

[OAR Docket #12-368]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 15. Standards and Criteria for Domestic Violence and Sexual Assault Programs [AMENDED]

SUBMITTED TO GOVERNOR:

March 30, 2012

SUBMITTED TO HOUSE:

March 30, 2012

SUBMITTED TO SENATE:

March 30, 2012

[OAR Docket #12-368; filed 3-30-12]

TITLE 75. ATTORNEY GENERAL CHAPTER 25. STANDARDS AND CRITERIA FOR BATTERERS INTERVENTION PROGRAMS

[OAR Docket #12-369]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 25. Standards and Criteria for Batters Intervention Programs [AMENDED]

SUBMITTED TO GOVERNOR:

March 30, 2012

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[OAR Docket #12-369; filed 3-30-12]

TITLE 120. CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION CHAPTER 10. ZONING REGULATIONS FOR CAPITOL-MEDICAL CENTER IMPROVEMENT AND ZONING COMMISSION

[OAR Docket #12-349]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 5. General District Provisions and Additional Zoning Regulations

Part 5. Special Uses

120:10-5-25 [AMENDED]

Subchapter 15. Signage Regulations

120:10-15-16 [NEW]

SUBMITTED TO GOVERNOR:

March 28, 2012

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SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-349; filed 3-30-12]

TITLE 165. CORPORATION COMMISSION CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #12-367]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 34. Competitive Procurement

165:35-34-1. Purpose of this Subchapter [AMENDED]

165:35-34-3. RFP Competitive Bidding Procurement Process for Long Term Fuel Transportation, Long Term Fuel Storage, Long Term Electric Generation and Long Term Purchase Power Agreements [AMENDED]

165:35-34-4. Commodity Fuel Supply Competitive Bidding Procurement Process for a Term Greater than Five Years [NEW]

Subchapter 37. Integrated Resource Planning

165:35-37-1. Purpose of this Subchapter [AMENDED]

165:35-37-4. Integrated Resource Plan Reviews [AMENDED]

Subchapter 43. Transmission Only Utility [NEW]

Submissions for Review

165:35-43-1. Purpose of this Subchapter [NEW]
165:35-43-2. Definitions [NEW]
165:35-43-3. Recognition by the Commission [NEW]
165:35-43-4. Reporting [NEW]
165:35-43-5. Commission Consideration [NEW]
165:35-43-6. Determining Assessment Fees [NEW]
165:35-43-7. Decommissioning of Transmission Lines
[NEW]

SUBMITTED TO GOVERNOR:

March 29, 2012

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[OAR Docket #12-367; filed 3-30-12]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 45. FIREWORKS**

[OAR Docket #12-381]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. Licensing, Permits, Sales, Inspections and
Penalties [NEW]
265:45-1-1 [NEW]
265:45-1-2 [NEW]
265:45-1-3 [NEW]
265:45-1-4 [NEW]
265:45-1-5 [NEW]
265:45-1-6 [NEW]

SUBMITTED TO GOVERNOR:

April 9, 2012

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April 9, 2012

SUBMITTED TO SENATE:

April 9, 2012

[OAR Docket #12-381; filed 4-9-12]

**TITLE 380. DEPARTMENT OF LABOR
CHAPTER 30. PROTECTION OF LABOR**

[OAR Docket #12-343]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions

380:30-1-2 [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2012

SUBMITTED TO HOUSE:

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SUBMITTED TO SENATE:

March 29, 2012

[OAR Docket #12-343; filed 3-29-12]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 3. NON-COAL RULES OF
PRACTICE AND PROCEDURES**

[OAR Docket #12-379]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 3. Non-Coal Rules of Practice and Procedures
[AMENDED]

SUBMITTED TO GOVERNOR:

March 22, 2012

SUBMITTED TO HOUSE:

March 22, 2012

SUBMITTED TO SENATE:

March 22, 2012

[OAR Docket #12-379; filed 4-4-12]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 10. NON-COAL RULES AND
REGULATIONS**

[OAR Docket #12-380]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 10. Non-Coal Rules and Regulations
[AMENDED]

SUBMISSION TO GOVERNOR:

March 22, 2012

SUBMISSION TO HOUSE:

March 22, 2012

SUBMISSION TO SENATE:

March 22, 2012

[OAR Docket #12-380; filed 4-4-12]

**TITLE 530. OFFICE OF PERSONNEL
MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF
PERSONNEL ADMINISTRATION RULES**

[OAR Docket #12-348]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 3. Affirmative Action and Equal Employment
Opportunity

Part 2. Discrimination Complaints Investigations

530:10-3-22 [AMENDED]

Subchapter 7. Salary and Payroll

Part 1. Salary and Rate of Pay

530:10-7-19 [REVOKED]

Subchapter 9. Recruitment and Selection

Part 3. Written and Performance Tests

530:10-9-37 [AMENDED]

530:10-9-38 [AMENDED]

Part 5. Registers

530:10-9-52 [AMENDED]

Part 9. Classified Appointments

530:10-9-100 [AMENDED]

Part 11. Direct Hire Authority

530:10-9-111 [AMENDED]

Part 13. Veterans Preference

530:10-9-131 [AMENDED]

Subchapter 15. Time and Leave

Part 5. Miscellaneous Types of Leave

530:10-15-58 [NEW]

Subchapter 17. Performance Evaluation and Career
Enhancement Programs

Part 7. Carl Albert Public Internship Program

530:10-17-77 [AMENDED]

Appendix A. Pay Band Schedule [REVOKED]

Appendix A. Pay Band Schedule [NEW]

SUBMITTED TO GOVERNOR:

March 28, 2012

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March 28, 2012

[OAR Docket #12-348; filed 3-30-12]

**TITLE 580. DEPARTMENT OF CENTRAL
SERVICES
CHAPTER 20. CONSTRUCTION AND
PROPERTIES**

[OAR Docket #12-350]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 27. Use of Best Value Competitive Proposals to
Award a Contract [NEW]

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[OAR Docket #12-350; filed 3-30-12]

**TITLE 580. DEPARTMENT OF CENTRAL
SERVICES
CHAPTER 55. ~~COMMITTEE OF
ALTERNATIVE FUELS TECHNICIAN
EXAMINERS~~ALTERNATIVE FUELS
PROGRAM**

[OAR Docket #12-352]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Chapter 55. ~~Committee of Alternative Fuels Technician
Examiners~~Alternative Fuels Program [AMENDED]

SUBMITTED TO GOVERNOR:

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[OAR Docket #12-352; filed 3-30-12]

**TITLE 580. DEPARTMENT OF CENTRAL
SERVICES
CHAPTER 61. OKLAHOMA STATE
GOVERNMENT ASSET REDUCTION AND
COST SAVINGS PROGRAM**

[OAR Docket #12-351]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Chapter 61. Oklahoma State Government Asset Reduction
and Cost Savings Program [NEW]

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Submissions for Review

SUBMITTED TO SENATE:

March 30, 2012

[OAR Docket #12-351; filed 3-30-12]

**TITLE 585. PUBLIC EMPLOYEES
RELATIONS BOARD
CHAPTER 2. OPERATIONS UNDER THE
FPAA AND THE MECBA**

[OAR Docket #12-344]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions
585:2-1-1 through 585:2-1-5 [AMENDED]
Subchapter 3. Program Administration and Description
585:2-3-1 through 2-3-9 [AMENDED]
Subchapter 5. Procedures
585:2-5-1 through 2-5-9 [AMENDED]
585:2-5-10 [REVOKED]
Subchapter 7. Hearings
585:2-7-3 [AMENDED]
585:2-7-12 [AMENDED]

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[OAR Docket #12-344; filed 3-29-12]

**TITLE 585. PUBLIC EMPLOYEES
RELATIONS BOARD
CHAPTER 30. UNFAIR LABOR PRACTICE
AND PROHIBITED PRACTICE CHARGES**

[OAR Docket #12-345]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

585:30-1-1 through 30-1-8 [AMENDED]

SUBMITTED TO GOVERNOR:

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[OAR Docket #12-345; filed 3-29-12]

**TITLE 585. PUBLIC EMPLOYEES
RELATIONS BOARD
CHAPTER 35. CERTIFICATION CASES**

[OAR Docket #12-346]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions
585:35-1-1 through 35-1-5 [AMENDED]
Subchapter 5. Representation Petitions Under the MECBA
[REVOKED]
585:35-5-1 through 35-5-8 [REVOKED]
Subchapter 7. Elections
585:35-7-1 through 35-7-2 [REVOKED]

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[OAR Docket #12-346; filed 3-29-12]

**TITLE 595. DEPARTMENT OF PUBLIC
SAFETY
CHAPTER 1. GENERAL RULES OF THE
DEPARTMENT OF PUBLIC SAFETY**

[OAR Docket #12-357]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 15. Sale and Auction of Surplus and Forfeited
Property
595:1-15-3. Sale of surplus property [AMENDED]

SUBMITTED TO GOVERNOR:

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SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-357; filed 3-30-12]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES**

[OAR Docket #12-358]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card

Part 1. Purpose

595:10-1-1. Purpose [AMENDED]

Part 2. Application for Initial Driver License

595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]

595:10-1-5. Graduated driver license; persons under eighteen (18) years of age [AMENDED]

Part 3. Driver License Renewal

595:10-1-11. Notice of pending expiration of driver license or identification card [AMENDED]

595:10-1-12. Oklahoma licensee temporarily residing out of the state [AMENDED]

Part 5. Driver License Replacement

595:10-1-19. Oklahoma licensee temporarily residing out of the state [AMENDED]

Part 7. Identification Cards

595:10-1-25. Procedure for obtaining an identification card [AMENDED]

595:10-1-28. Oklahoma identification card holder temporarily residing out of the state [AMENDED]

Part 13. Motor License Agents

595:10-1-50. Identification required [AMENDED]

595:10-1-51. Operational procedures [AMENDED]

595:10-1-56. Renewal of driver license or identification cards [AMENDED]

595:10-1-57. Replacement of driver license or identification card [AMENDED]

595:10-1-62. Free driver licenses and identification cards [AMENDED]

595:10-1-63. Corrections [AMENDED]

Part 19. Driver License and Identification Card Content

595:10-1-92. Driving restriction codes [AMENDED]

Subchapter 3. Examination

595:10-3-9. Skills examination [AMENDED]

Subchapter 13. Parent-taught Driver Education

595:10-13-4. Requirements and application for certification as a parent-taught driver education course; certification renewal [AMENDED]

595:10-13-5. Requirements for parents and students [AMENDED]

595:10-13-8. Prescribed forms [AMENDED]

595:10-13-9. Termination, cancellation, or denial of certification or acceptance [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2012

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March 28, 2012

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March 28, 2012

[OAR Docket #12-358; filed 3-30-12]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 25. WRECKERS AND TOWING SERVICES**

[OAR Docket #12-359]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions

595:25-1-2. Definitions [AMENDED]

595:25-1-3. General policies [AMENDED]

Subchapter 5. All Wrecker Operators

595:25-5-6. Schedule of rates and fees; ~~indoor storage~~ [AMENDED]

Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements

595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]

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March 28, 2012

[OAR Docket #12-359; filed 3-30-12]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT**

[OAR Docket #12-360]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]

595:35-1-9. Hearings [AMENDED]

595:35-1-10. Administrative penalty assessment guidelines [AMENDED]

Submissions for Review

SUBMITTED TO GOVERNOR:

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March 28, 2012

[OAR Docket #12-360; filed 3-30-12]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 50. TABS, TAGS, SIGNS AND INSIGNIAS**

[OAR Docket #12-361]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Parking Placards for Physically Disabled Persons

595:50-3-2. Physically disabled parking placards [AMENDED]

595:50-3-6. Duplication of physically disabled parking placards; replacement of a lost stolen, or defective physically disabled parking placard [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2012

SUBMITTED TO HOUSE:

March 28, 2012

SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-361; filed 3-30-12]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 60. AUTHORIZATION TO CARRY CONCEALED FIREARMS**

[OAR Docket #12-362]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

595:60-1-1. Purpose [AMENDED]

595:60-1-4. Eligibility [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2012

SUBMITTED TO HOUSE:

March 28, 2012

SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-362; filed 3-30-12]

**TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS**

[OAR Docket #12-336]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

748:1-1-2. Address [AMENDED]

748:1-1-4. Meetings [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2012

SUBMITTED TO HOUSE:

March 28, 2012

SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-336; filed 3-28-12]

**TITLE 748. UNIFORM BUILDING CODE COMMISSION
CHAPTER 3. GENERAL PROVISIONS**

[OAR Docket #12-335]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

748:3-1-2. Definitions [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2012

SUBMITTED TO HOUSE:

March 28, 2012

SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-335; filed 3-28-12]

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

[OAR Docket #12-337]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. IBC® 2009 Edition [NEW]

- 748:20-1-1. Adoption of International Building Code® 2009 [NEW]
748:20-1-2. Effect of Adoption [NEW]
748:20-1-3. IBC® 2009 Appendices [NEW]
748:20-1-4. IBC® 2009 Provisions Adopted and Modified [NEW]
748:20-1-5. IBC® 2009 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]
748:20-1-6. IBC® 2009 Chapter 1 Scope and Administration [NEW]
748:20-1-7. IBC® 2009 Chapter 2 Definitions [NEW]
748:20-1-8. IBC® 2009 Chapter 3 Use and Occupancy Classification [NEW]
748:20-1-9. IBC® 2009 Chapter 4 Special Detailed Requirements Based on Use and Occupancy [NEW]
748:20-1-10. IBC® 2009 Chapter 8 Interior Finishes [NEW]
748:20-1-11. IBC® 2009 Chapter 9 Fire Protection Systems [NEW]
748:20-1-12. IBC® 2009 Chapter 10 Means of Egress [NEW]
748:20-1-13. IBC® 2009 Chapter 16 Structural Design [NEW]
748:20-1-14. IBC® 2009 Chapter 18 Soils and Foundations [NEW]
748:20-1-15. IBC® 2009 Chapter 29 Plumbing System [NEW]
748:20-1-16. IBC® 2009 Chapter 32 Encroachments into the Public Right-of-Way [NEW]
748:20-1-17. IBC® 2009 Chapter 34 Existing Buildings and Structures [NEW]
748:20-1-18. IBC® 2009 Chapter 35 Referenced Standards [NEW]
Subchapter 3. IFC® 2009 [NEW]
748:20-3-1. Adoption of International Fire Code® 2009 Edition [NEW]
748:20-3-2. Effect of Adoption [NEW]
748:20-3-3. IFC® 2009 Appendices [NEW]
748:20-3-4. IFC® 2009 Provisions Adopted and Modified [NEW]
748:20-3-5. IFC® 2009 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]
748:20-3-6. IFC® 2009 Chapter 1 Scope and Administration [NEW]
748:20-3-7. IFC® 2009 Chapter 2 Definitions [NEW]
748:20-3-8. IFC® 2009 Chapter 5 Fire Service Features [NEW]
748:20-3-9. IFC® 2009 Chapter 6 Building Services and Systems [NEW]
748:20-3-10. IFC® 2009 Chapter 8 Interior Finish, Decorative Materials and Finishes [NEW]
748:20-3-11. IFC® 2009 Chapter 9 Fire Protection Systems [NEW]
748:20-3-12. IFC® 2009 Chapter 10 Means of Egress [NEW]
748:20-3-13. IFC® 2009 Chapter 46 Construction Requirements for Existing Buildings [NEW]
748:20-3-14. IFC® 2009 Chapter 47 Referenced Standards [NEW]
Subchapter 7. IEBC® 2009
748:20-7-1. Adoption of International Existing Building Code® 2009 Edition [NEW]
748:20-7-2. Effect of Adoption [NEW]
748:20-7-3. IEBC® 2009 Appendices [NEW]
748:20-7-4. IEBC® 2009 Provisions Adopted and Modified [NEW]
748:20-7-5. IEBC® 2009 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]
748:20-7-6. IEBC® 2009 Chapter 1 Scope and Administration [NEW]
748:20-7-7. IEBC® 2009 Chapter 2 Definitions [NEW]
748:20-7-8. IEBC® 2009 Chapter 13 Performance Compliance Methods [NEW]
748:20-7-9. IEBC® 2009 Chapter 15 Referenced Standards [NEW]

SUBMITTED TO GOVERNOR:

March 28, 2012

SUBMITTED TO HOUSE:

March 28, 2012

SUBMITTED TO SENATE:

March 28, 2012

[OAR Docket #12-337; filed 3-28-12]

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 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #12-406]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

Subchapter 13. Infection Control

310:667-13-5 [NEW]

GUBERNATORIAL APPROVAL:

March 30, 2012

[OAR Docket #12-406; filed 4-10-12]

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

[OAR Docket #12-347]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 5. Individual Providers and Specialties

Part 27. Independent Licensed Physical Therapists

317:30-5-291. [AMENDED]

Part 28. Occupational Therapy Services

317:30-5-296. [AMENDED]

Part 77. Speech and Hearing Services

317:30-5-676. [AMENDED]

(Reference APA WF # 11-07)

GUBERNATORIAL APPROVAL:

March 26, 2012

[OAR Docket #12-347; filed 3-29-12]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, DENTAL, VISION AND LIFE PLANS

[OAR Docket #12-355]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Administration of Plans

360:10-3-13. [AMENDED]

360:10-3-24. [AMENDED]

360:10-3-25. [AMENDED]

360:10-3-29.1. [AMENDED]

Subchapter 5. Coverage and Limitations

Part 3. The Plans

360:10-5-16. [AMENDED]

Part 11. Medicare Supplement

360:10-5-79. [AMENDED]

GUBERNATORIAL APPROVAL:

January 11, 2012

[OAR Docket #12-355; filed 3-30-12]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 15. THE DISABILITY PLAN

[OAR Docket #12-356]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

360:15-1-2. [AMENDED]

360:15-1-20. [AMENDED]

GUBERNATORIAL APPROVAL:

January 11, 2012

[OAR Docket #12-356; filed 3-30-12]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-382]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

715:1-1-2 [AMENDED]

715:1-1-3 [AMENDED]

715:1-1-4 [AMENDED]

715:1-1-6 [REVOKED]

715:1-1-9 [REVOKED]

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

March 30, 2012

[OAR Docket #12-382; filed 4-9-12]

TITLE 715. TEACHERS' RETIREMENT SYSTEM CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #12-383]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Membership Provisions

715:10-1-2 [AMENDED]

715:10-1-3 [AMENDED]

715:10-1-4 [AMENDED]

715:10-1-5 [AMENDED]

715:10-1-6 [AMENDED]

715:10-1-7 [AMENDED]

Subchapter 3. Service Eligibility

715:10-3-1 [AMENDED]

715:10-3-2 [AMENDED]

715:10-3-3 [AMENDED]

715:10-3-4 [AMENDED]

715:10-3-5 [AMENDED]

Subchapter 5. Establishing Other Service Credits

715:10-5-4 [REVOKED]

715:10-5-7.3 [AMENDED]

715:10-5-9 [AMENDED]

715:10-5-11 [REVOKED]

715:10-5-28 [AMENDED]

715:10-5-33 [REVOKED]

Subchapter 7. Membership Vesting and Termination

715:10-7-6 [AMENDED]

Subchapter 9. Survivor Benefits

715:10-9-2 [REVOKED]

715:10-9-3 [AMENDED]

715:10-9-4 [REVOKED]

715:10-9-5 [AMENDED]

715:10-9-6 [REVOKED]

Subchapter 11. Withdrawal from Membership and Refund of Deposits

715:10-11-1 [AMENDED]

715:10-11-2 [AMENDED]

Subchapter 13. Contributions for Membership Service

715:10-13-1 [REVOKED]

715:10-13-4.1 [REVOKED]

715:10-13-9 [REVOKED]

715:10-13-13 [AMENDED]

Subchapter 15. Service Retirement

715:10-15-1 [AMENDED]

715:10-15-2 [AMENDED]

715:10-15-7 [AMENDED]

715:10-15-7.1 [REVOKED]

715:10-15-10.2 [AMENDED]

715:10-15-10.3 [AMENDED]

715:10-15-13 [REVOKED]

Subchapter 17. Post-Retirement Employment

715:10-17-2 [AMENDED]

715:10-17-6 [AMENDED]

Subchapter 25. Qualified Domestic Order

715:10-25-1 [REVOKED]

715:10-25-2 [REVOKED]

715:10-25-3 [REVOKED]

715:10-25-4 [REVOKED]

715:10-25-5 [REVOKED]

715:10-25-6 [REVOKED]

GUBERNATORIAL APPROVAL:

March 30, 2012

[OAR Docket #12-383; filed 4-9-12]

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

[OAR Docket #12-334]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 9. NEC® 2011 Edition [NEW]

748:20-9-1. Adoption of National Electric Code® 2011 [NEW]

748:20-9-2. Effect of Adoption [NEW]

748:20-9-3. NEC® 2011 Informative Annexes [NEW]

748:20-9-4. NEC® 2011 Provisions Adopted and Modified [NEW]

748:20-9-5. NEC® 2011 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]

748:20-9-6. NEC® 2011 Article 90 Introduction [NEW]

748:20-9-7. NEC® 2011 Chapter 5 Special Occupancies [NEW]

Subchapter 11. IFGC® 2009

748:20-11-1. Adoption of International Fuel Gas Code® 2009 Edition [NEW]

748:20-11-2. Effect of Adoption [NEW]

748:20-11-3. IFGC® 2009 Appendices [NEW]

748:20-11-4. IFGC® 2009 Provisions Adopted and Modified [NEW]

748:20-11-5. IFGC® 2009 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]

748:20-11-6. IFGC® 2009 Chapter 1 Scope and Administration [NEW]

748:20-11-7. IFGC® 2009 Chapter 3 General Regulations [NEW]

- 748:20-11-8. IFGC® 2009 Chapter 4 Gas Piping Installations [NEW]
748:20-11-9. IFGC® 2009 Chapter 6 Specific Appliances [NEW]
748:20-11-10. IFGC® 2009 Chapter 8 Referenced Standards [NEW]
Subchapter 13. IMC® 2009
748:20-13-1. Adoption of International Mechanical Code® 2009 Edition [NEW]
748:20-13-2. Effect of Adoption [NEW]
748:20-13-3. IMC® 2009 Appendices [NEW]
748:20-13-4. IMC® 2009 Provisions Adopted and Modified [NEW]
748:20-13-5. IMC® 2009 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]
748:20-13-6. IMC® 2009 Chapter 1 Scope and Administration [NEW]
748:20-13-7. IMC® 2009 Chapter 2 Definitions [NEW]
748:20-13-8. IMC® 2009 Chapter 3 General Regulations [NEW]
748:20-13-9. IMC® 2009 Chapter 5 Exhaust Systems [NEW]
748:20-13-10. IMC® 2009 Chapter 6 Duct Systems [NEW]
748:20-13-11. IMC® 2009 Chapter 15 Referenced Standards [NEW]
Subchapter 15. IPC® 2009
748:20-15-1. Adoption of International Plumbing Code® 2009 Edition [NEW]
748:20-15-2. Effect of Adoption [NEW]
748:20-15-3. IPC® 2009 Appendices [NEW]
748:20-15-4. IPC® 2009 Provisions Adopted and Modified [NEW]
748:20-15-5. IPC® 2009 Participation in Federal Programs and/or Federally Funded or Financed Projects [NEW]
748:20-15-6. IPC® 2009 Chapter 1 Scope and Administration [NEW]
748:20-15-7. IPC® 2009 Chapter 2 Definitions [NEW]
748:20-15-8. IPC® 2009 Chapter 3 General Provisions [NEW]
748:20-15-9. IPC® 2009 Chapter 4 Fixtures, Faucets and Fixture Fittings [NEW]
748:20-15-10. IPC® 2009 Chapter 5 Water Heaters [NEW]
748:20-15-11. IPC® 2009 Chapter 6 Water Supply and Distribution [NEW]
748:20-15-12. IPC® 2009 Chapter 7 Sanitary Drainage [NEW]
748:20-15-13. IPC® 2009 Chapter 8 Indirect/Special Waste [NEW]
748:20-15-14. IPC® 2009 Chapter 9 Vents [NEW]
748:20-15-15. IPC® 2009 Chapter 10 Traps, Interceptors, and Separators [NEW]
748:20-15-16. IPC® 2009 Chapter 11 Storm Drainage
748:20-15-17. IPC® 2009 Chapter 13 Referenced Standards

GUBERNATORIAL APPROVAL:

February 29, 2012

[OAR Docket #12-334; filed 3-28-12]

Withdrawn Rules

An agency may withdraw proposed PERMANENT rules prior to final adoption (approval by Governor/Legislature) by notifying the Governor and the Legislature and by publishing a notice in the *Register* of such a withdrawal.

An agency may withdraw proposed EMERGENCY rules prior to approval/disapproval by the Governor by notifying the Governor, the Legislature, and the Office of Administrative Rules. The withdrawal notice is not published in the *Register*, however, unless the agency published a Notice of Rulemaking Intent in the *Register* before adopting the EMERGENCY rules.

For additional information on withdrawal of proposed rules, see 75 O.S., Section 308(F) and 253(K) and OAC 655:10-7-33.

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 10. PEACE OFFICER CERTIFICATION

[OAR Docket #12-338]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

390:10-1-5 [AMENDED]

390:10-1-7 [AMENDED]

DATES:

Adoption:

March 12, 2012

Submitted to Governor:

March 14, 2012

Submitted to House:

March 14, 2012

Submitted to Senate:

March 14, 2012

Withdrawn:

March 28, 2012

[OAR Docket #12-338; filed 3-29-12]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 20. RESERVE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #12-339]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

390:20-1-5 [AMENDED]

390:20-1-15 [NEW]

DATES:

Adoption:

March 12, 2012

Submitted to Governor:

March 14, 2012

Submitted to House:

March 14, 2012

Submitted to Senate:

March 14, 2012

Withdrawn:

March 28, 2012

[OAR Docket #12-339; filed 3-29-12]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #12-340]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

390:25-1-14 [AMENDED]

DATES:

Adoption:

March 12, 2012

Submitted to Governor:

March 14, 2012

Submitted to House:

March 14, 2012

Submitted to Senate:

March 14, 2012

Withdrawn:

March 28, 2012

[OAR Docket #12-340; filed 3-29-12]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 27. POLICE OFFICER ANNUAL FIREARMS REQUALIFICATION

[OAR Docket #12-341]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

390:27-1-5 [AMENDED]

390:27-1-6 [AMENDED]

Withdrawn Rules

DATES:

Adoption:

March 12, 2012

Submitted to Governor:

March 14, 2012

Submitted to House:

March 14, 2012

Submitted to Senate:

March 14, 2012

Withdrawn:

March 28, 2012

[OAR Docket #12-341; filed 3-29-12]

WITHDRAWN RULES:

390:55-1-11 [AMENDED]

390:55-1-12 [AMENDED]

DATES:

Adoption:

March 12, 2012

Submitted to Governor:

March 14, 2012

Submitted to House:

March 14, 2012

Submitted to Senate:

March 14, 2012

Withdrawn:

March 28, 2012

[OAR Docket #12-342; filed 3-29-12]

**TITLE 390. COUNCIL ON LAW
ENFORCEMENT EDUCATION AND
TRAINING
CHAPTER 55. FACILITIES MANAGEMENT**

[OAR Docket #12-342]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

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 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 15. OAC GRANT PROGRAM

[OAR Docket #12-371]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

25:15-1-2. Definitions [AMENDED]

25:15-1-3. Planning [AMENDED]

25:15-1-4. Programming Implementation Airport Grant Program Requirements and Procedures [AMENDED]

AUTHORITY:

3 O.S. Section 84 (C); Oklahoma Aeronautics Commission

DATES:

Comment period:

December 16, 2011 through January 16, 2012.

Public hearing:

January 17, 2012

Adoption:

January 19, 2012

Submitted to Governor:

January 25, 2012

Submitted to House:

January 25, 2012

Submitted to Senate:

January 25, 2012

Gubernatorial approval:

February 29, 2012

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 29, 2012

Final adoption:

March 29, 2012

Effective:

May 11, 2012

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Per 3 O.S. Section 84 (C), which set the requirements and procedures to be followed by the Aeronautics Commission in the administration of the grant program. The changes in the rules add definitions, modify cost shares for participation in the grant program and also place a maximum limit on the Commission's participation in airport terminal projects.

CONTACT PERSON:

Jane Mitchell, Administrative Rules Liaison, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

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 MAY 11, 2012:

25:15-1-2. Definitions

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

"Aeronautics Commission" means the organizational unit responsible for administering aviation grant programs for the State of Oklahoma and the Federal Aviation Administration.

"Capital Improvement Program" means a list of airport capital projects approved by the Aeronautics Commission for implementation within a three-year planning horizon showing a description of the project, the cost of each phase of the project, when the project is expected to occur, and the sources of funding.

"Biennial Element" means a list of those projects in the Capital Improvement Program scheduled for implementation in the most immediate two-year period.

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

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

"Oklahoma Airport System Plan" means the plan, adopted by the Aeronautics Commission, which identifies the airports included in the State's airport system and identifies the

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service level, functional classification, design standard, and airport reference code for each system airport.

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

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

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

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

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

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

"Airport Layout Plan" means the basic plan for the layout of an airport that shows, as a minimum the present boundaries of the airport and of the offsite areas that the airport sponsor owns or controls for airport purposes, and of their proposed additions. It will include the location and nature of existing and proposed airport facilities such as runways, taxiways, aprons, terminal buildings, hangars and roads, and of their proposed modifications and extensions. Also, it will provide the location of existing and proposed non-aviation areas, and of their existing improvements.

"NPIAS Needs Worksheets" are identical to Airport Development Worksheets with the difference being that these are maintained for NPIAS airports.

25:15-1-3. Planning

(a) Planning and Programming Process.

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

(2) The Aeronautics Commission staff shall assist publicly owned, publicly used airports in identifying airport needs and deficiencies. Airport sponsors eligible to participate in grant programs are sponsors of publicly owned, public use airports included in the Oklahoma Airport System Plan. The Aeronautics Commission staff shall, in consultation with each airport sponsor, prepare and maintain an airport development worksheet for each airport included in the Oklahoma Airport System Plan. The airport development worksheet shall be reviewed and updated at least once every three years. The airport development worksheet shall identify the capital projects

needed at the airport over a ~~10~~—20 year planning horizon, together with the estimated cost, construction type, objective code, and airport component for each project. The identified projects shall be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan.

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

(b) Capital Improvement Program Content.

(1) The Capital Improvement Program shall contain a list of proposed State and FAA funded projects that can be implemented with forecast revenues within the three year planning horizon.

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

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

(4) The Capital Improvement Program shall show the proposed implementation schedule for each project.

(5) The Capital Improvement Program shall include other priorities, policies, and procedures as adopted by the Aeronautics Commission.

(c) Capital Improvement Program Development.

(1) The Capital Improvement Program lists projects for which expenditures are expected to begin within the three-year planning horizon.

(2) On a two-year cycle, the Aeronautics Commission staff shall ~~invite each airport sponsor to submit a Letter of Interest identifying projects requested to be included in the Capital Improvement Program~~ update the NPIAS needs database and the ADWS database (for Non-NPIAS airports). The Letter of Interest shall include, for each requested project, the project description, project justification, project cost, project time frame, and a statement that the local matching funds for the project will be available. The sponsor's administrative official must sign the Letter of Interest. To update the Commission's database, sponsors will use FAA's Overall Development Objective (ODO) data sheet for each requested project.

(3) The Aeronautics Commission staff shall evaluate projects in the NPIAS and ADWS databases ~~each Letter of Interest~~ and recommend projects for inclusion in the Capital Improvement Program based on:

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

(B) ~~The project descriptions, justifications, and cost estimates provided by the sponsor in the Letter of Interest.~~ Multi-year on-going projects that are currently identified in the approved CIP will be given higher priority during the development of the CIP.

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

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

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

~~(F) Other factors as may be relevant (for example, the services provided at the airport, the sponsor's demonstrated ability to maintain and operate the airport, the sponsor's ability to address safety inspection deficiencies, the airport's pavement condition index, pavement life cycle consideration as developed by the pavement management program, etc.)~~

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

~~(4) **Capital Improvement Program—Biennial Program.**~~

~~(1) The Biennial Program lists projects listed in the Capital Improvement Program for which expenditures are expected to begin within the next two years.~~

~~(2) Development.~~

~~(A) The Aeronautics Commission staff shall request from each airport sponsor a Letter of Intent for projects being recommended for inclusion in the Biennial Program. The request for the Letter of Intent shall provide the proposed project description based on the available funding.~~

~~(B) The airport sponsor's Letter of Intent shall include the project description, project justification, an updated project cost estimate, and a statement that the local matching funds are available. The sponsor's administrative official must sign the Letter of Intent.~~

~~(C) The Biennial Program shall be developed based on the Letters of Intent. A project will not be included in the Biennial Program that is not supported by a Letter of Intent.~~

~~(D) The Aeronautics Commission shall approve the Biennial Program annually. The Aeronautics Commission may, at its discretion, amend the Biennial Program in response to changed conditions.~~

~~(E) An emergency project request, with verifiable justification, may be submitted to the Aeronautics Commission for inclusion in the Biennial Program any time.~~

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

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

(b) **Notification to Proceed.**

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

(2) The notification letter shall:

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

(B) Authorize or direct the airport sponsor to:

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

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

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

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

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

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

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

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

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

(A) Reimbursement of the cost of engineering; or

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

(2) The airport sponsor's administrative official must sign the grant application form(s).

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

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

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

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

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

(e) **Grant Application; State Cost-Share and Matching Information.**

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- (1) For non-federal participation projects, the Aeronautics Commission's maximum cost-share level shall not exceed 95 percent, the cost share level be 90 percent for the Aeronautics Commission, and 10 percent for the airport sponsor.
- (2) For federal participation projects that are identified in the Commission's Capital Improvement Program, involving federal state apportionment, non primary entitlement and discretionary funds, the Aeronautics Commission may participate in one-half of the federal required match.
- (3) For federal participation projects identified in the Commission's Capital Improvement Program, the Aeronautics Commission may provide supplemental funding for project items. The Aeronautics Commission maximum cost-share level for the supplemental funding shall not exceed 95 percent.
- (34) For federal participation projects involving federal non-primary entitlement funds only and/or special earmarks, the Aeronautics Commission will not participate in the federal required match.
- (5) For terminal building projects, the Aeronautics Commission's maximum cost-share level shall be 50 percent and shall not exceed \$500,000.
- (f) **Grant Application; Project Information.**
- (1) The airport sponsor will provide the following information:
- (A) The airport sponsor shall submit an Airport Layout Plan or sketch with the grant application (designated as Exhibit A) indicating the location of the proposed construction work with all grant applications.
- (B) The airport sponsor shall submit final project plans and specifications with the grant application (designated as Exhibit B).
- (C) The airport sponsor shall submit a project narrative with the grant application describing the items of airport development for which the airport sponsor is requesting assistance (designated as Exhibit B-1).
- (D) The airport sponsor shall submit a project cost list with the grant application that provides a detailed cost breakdown of project. This list will be based on the bid awarded by the airport sponsor. The amounts on this list are considered not to be exceeded amounts and any expenditure over these amounts will not be considered for reimbursement without prior approval of the Aeronautics Commission (designated as Exhibit B-2).
- (E) The airport sponsor shall submit the engineering contract for the project scope and thea not to exceed amount for project engineering fees with the grant application and an outline of the work to be performed that is within the FAA's standards for airports (designated as Exhibit B-3).
- (F) The Sponsor will also submit a certification stating compliance with FAA standards (or state standards with an approved Modification to Standards from funding agencies).
- (G) The airport sponsor shall submit the contract for on-site construction observations (designated Exhibit B-4).
- (FH) The airport sponsor shall provide a signed statement in the grant application that the airport sponsor is not currently in default to any state agency for any obligation related to the development, operation or maintenance of the airport (designated as Exhibit C).
- (GI) The airport sponsor shall provide a signed statement with the grant application that the airport sponsor will not award any contract to any contractor who is currently suspended or disbarred by any federal agency, the Oklahoma Department of Central Services or the Oklahoma Department of Transportation for the project contemplated under the grant application (designated as Exhibit C-1).
- (HJ) The airport sponsor shall provide an affidavit with the grant application that states the person signing is the administrative official for the sponsor, that the sponsor has not provided any compensation, donation or gift to an officer or employee of the state in procuring the grant, that any employee of the state compensated by the airport sponsor involved in the development of the grant will not provide any services in the project, and that this project will not result in any duplication of previous grant requests or awards (designated as Exhibit C-2).
- (2) ~~The airport sponsor shall also complete the project questionnaire and project checklist that is part of the grant application.~~
- (g) **Grant Application; Height Hazard Zoning and Land Use.** Each airport sponsor shall indicate within the application that it has taken action to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and take-off of aircraft, and assuring the protection or control of the aerial approaches to the airport (designated as Exhibit D). The adoption and enacting of these zoning regulations is outlined in Title 3, Section 103 through 116, of the Oklahoma State Statutes.
- (h) **Grant Application; Assurances.** The airport sponsor, upon signing the grant application, agrees to the following assurances:
- (1) Upon the approval of the grant by the Aeronautics Commission, the capital project will be completed within a maximum of two years.
- (2) The airport sponsor agrees to the following conditions regarding the users of the airport:
- (A) Neither the airport sponsor nor the occupant of any of the airport facilities shall discriminate against any person or a class of persons in the use of any facility provided to the public on airport property.
- (B) The airport sponsor shall operate the airport in such a manner that the airport is open to all types and classes of users and establish such non-discriminatory conditions required for the safe and efficient operation of the airport.

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

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

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

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

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

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

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

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

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

(8) The Aeronautics Commission shall prepare a financial report ~~initiate a detailed audit~~ of income and expenditures of all project funds ~~through an agreement with the Oklahoma State Auditor and Inspector's Office~~. All project records shall be maintained by the airport sponsor for not less than three (3) years from the final acceptance of the project by the Aeronautics Commission, and the airport sponsor shall provide access to these records upon request ~~to~~ of the ~~Commission~~state or the FAA. This provision shall in no way affect any requirement imposed upon the airport sponsor by the Oklahoma Open Records

Act or any other state or federal law. These records shall include such documentary evidence as invoices, cost estimates, payrolls, vouchers, cancelled checks or warrants, and receipts for cash payments that support each item of project costs. The final 10% of state grant funds will not be released until a satisfactory financial report ~~audit~~ has been accepted ~~from the Oklahoma State Auditor and Inspector's Office, and approved~~ by the Aeronautics Commission staff.

(9) The Aeronautics Commission shall not pay or be obligated to pay for any work on the project that has been incurred prior to the grant application being submitted to the Aeronautics Commission. In addition, any funds approved by the Aeronautics Commission shall only be used for project costs identified in the grant application.

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

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

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

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

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

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

(6) The airport sponsor shall complete ~~any~~the project in accordance with FAA's standard the plans and specifications submitted to Aeronautics Commission and with all applicable FAA regulations ~~unless prior written modification to standards has been approved by the FAA (for federally funded projects) or the Commission (for state only~~

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projects). The airport sponsor shall provide the following reports to the Aeronautics Commission:

- (A) A weekly progress report using the appropriate FAA form;
 - (B) A copy of all acceptance tests shall be provided by the acceptance testing laboratory as soon as they are available; and
 - (C) An acceptance test summary report shall be provided to the Aeronautics Commission upon completion of the project.
- (7) The airport sponsor, upon request, shall provide annual statements of airport revenues and expenses.
- (8) The airport sponsor shall comply with the Municipal Airports Act, Title 3, Section 65, and the provisions thereafter, of the Oklahoma State Statutes, specifically Section 65.12, that requires that revenues from airport operations be deposited in a separate fund and used exclusively for the airport.
- (9) All airport development using grant funds shall be consistent with the Airport Layout Plan approved by the FAA. A copy of the approved Airport Layout Plan, with any modifications, will be filed with the Aeronautics Commission.
- (10) The airport sponsor shall comply with all applicable provisions of Title 61 of the Oklahoma State Statutes which governs competitive bidding for public construction contracts.
- (11) The airport sponsor shall provide a tabulation of all bids for the project with the grant application.
- (12) The airport sponsor shall operate lighting for the airport when such lighting is included in the project.
- (13) The Aeronautics Commission and/or the state are not parties to any contract entered into by the airport sponsor to accomplish the project.
- (14) The airport sponsor shall understand and agree that should the airport sponsor fail to abide by all of the terms and conditions of the grant agreement, then the funds provided by the Aeronautics Commission shall be withdrawn. In addition, the airport sponsor shall notify the Aeronautics Commission of any delays or problems with the project and request an extension or deviation from the Aeronautics Commission.
- (j) **Grant Agreement; Payments.**
- (1) The airport sponsor shall request reimbursement for project costs from the Aeronautics Commission on a monthly basis upon initiation of the project. The Aeronautics Commission shall reimburse the sponsor only for bid items at the bid unit price. The Aeronautics Commission will only process the request for reimbursement when accompanied by the following documentation:
 - (A) For federal participation grants, a copy of a signed FAA form SF 271 Outlay Report and a Cost Distribution Worksheet based upon the line items in the executed grant.
 - (B) For non-federal participation grants, a Cost Distribution Work sheet based upon line items in the executed grant.
 - (~~BC~~) Copies of all vendor invoices.

(~~CD~~) A construction quantities report from the primary contractor signed by the resident inspector and/or the Engineer-of-record.

(~~DE~~) All test invoices.

(2) The Aeronautics Commission shall process the monthly requests for reimbursement until 90% of the grant awarded by the Aeronautics Commission is expended. The final 10% will be released upon the completion of the following items:

(A) A copy of all acceptance tests, summary of acceptance testing and if required by the specifications lot-wise percentage within limits (PWL) calculation has been submitted to the Aeronautics Commission. The report shall document the results of all acceptance tests performed, the construction lot, location of the material tested and the quantity represented.

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

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

(~~CD~~) A satisfactory financial report audit has been completed submitted by the Oklahoma State Auditor and Inspector's Office and accepted by the Aeronautics Commission.

(k) **Endorsement by the Aeronautics Commission:**

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

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

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

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

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

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

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

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

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

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

[OAR Docket #12-371; filed 4-3-12]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION CHAPTER 30. AIRCRAFT PILOT AND PASSENGER PROTECTION ACT

[OAR Docket #12-370]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions 25:30-1-2 [AMENDED] 25:30-1-3 [AMENDED] Subchapter 3. Application Requirements 25:30-3-4 [AMENDED] Subchapter 7. Notice, Determination and Commission Actions 25:30-7-1 [AMENDED] 25:30-7-3 [AMENDED] Subchapter 9. Permits 25:30-9-3 [AMENDED]

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Oklahoma Aeronautics Commission, 3 O.S. Section 120.14.

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Per 3 O.S. Section 120.14, which set the requirements and procedures to be followed by the Aeronautics Commission in the administration and enforcement of its duties regarding the construction of a structure in the vicinity of a public-use airport and notification to military airports in the state of Oklahoma.

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 MAY 11, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

25:30-1-2. Definitions

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

"Airport elevation" is the highest point of an airport's usable runways measured in feet from mean sea level;

"Airport reference point" is the geometrical center of all usable runways;

"Applicant" is an individual, firm, partnership, corporation, association, or body politic and includes a trustee, receiver, assignee, or other similarly authorized representative of any of them;

"Approach surface" is an imaginary surface shaped like a trapezoid:

- (A) longitudinally centered on the extended runway centerline at a public-use airport,
(B) beginning two hundred (200) feet beyond the end of each runway pavement and at the runway end elevation,
(C) having an inner-edge width of one thousand (1,000) feet expanding outward uniformly to a width of sixteen thousand (16,000) feet at the outer edge, and
(D) sloping upward for a distance of ten thousand (10,000) feet at a slope of fifty (50) to one (1), with an additional forty thousand (40,000) feet at a slope of forty (40) to one (1);

"Commission" means the Oklahoma Aeronautics Commission or a successor agency;

"Conical surface" is an imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four thousand (4,000) feet;

"FAA" means the Federal Aviation Administration or a successor agency;

"Horizontal surface" is an imaginary horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of ten thousand (10,000) feet radii from a point located on the extended runway centerline two hundred (200) feet beyond each end of runway pavement and connecting the adjacent arcs by lines tangent to those arcs;

"Incompatible purpose" means the use of a building or structure as a residence, educational center (including all types of primary and secondary schools, preschools, and child-care facilities), places of worship, hospital, medical inpatient treatment facility, nursing/convalescent home, retirement home, or similar use;

"Legal representative" means a person who is authorized to legally bind an entity;

"Permit" means a permit issued by the Commission under this act;

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"**Person**" means an individual, firm, partnership, corporation, association, or body politic and includes a trustee, receiver, assignee, or other similarly authorized representative of any of them;

"**Primary surface**" is a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is one thousand (1,000) feet;

"**Public-use airport**" means a structure or an area of land or water that is designed and set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the interest of the public for the landing and taking off of aircraft and is identified by the FAA as a public-use airport. Public-use airport shall include any military airport operated by a branch of the armed services of the United States government. Public-use airport shall not include any privately owned airport for private use as identified by the FAA, or any airport owned by a municipality with a population exceeding five hundred thousand (500,000) according to the most recent Federal Decennial Census;

"**Runway**" means the portion of an airport designated as the area used for the landing or takeoff of aircraft;

"**Runway protection zone**" is a trapezoidal zone centered along the extended runway centerline, beyond each end of the primary surface, two thousand five hundred (2,500) feet long, with an inner width of one thousand (1,000) feet and an outer width of one thousand seven hundred fifty (1,750) feet. The function of the runway protection zone is to enhance the protection of people and property on the ground;

"**Structure**" means any constructed or installed object, including, but not limited to, buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and antennae and overhead transmission lines. The term does not include:

- (A) any aviation navigational aids that are fixed by function, or
- (B) any construction or installed object on property owned by the federal government; and

"**Total structure height**" means the elevation of the ground above mean sea level at the structure's location, plus the height of the structure above ground level in feet, plus the applicable survey type adjustment as described in Appendix A.

25:30-1-3. Who is required to file

A person shall obtain a permit from the Commission prior to the construction or installation of any of the following near a public-use airport:

- (1) Any proposed structure for an incompatible purpose in the primary surface or the runway protection zone;
- (2) Any structure, alteration or addition to a structure within three (3) statute miles from the airport reference point of a public-use airport, that would result in a total

structure height in excess of one hundred fifty (150) feet above the ~~established~~ airport elevation; and

(3) Any structure, alteration or addition to a structure that would result in a total Structure height greater than the horizontal, conical or approach surfaces, as Defined in 25:30-1-2 of the Aircraft Pilot and Passenger Protection Act.

SUBCHAPTER 3. APPLICATION REQUIREMENTS

25:30-3-4. Fees

Pursuant to Title 3, Oklahoma Statutes, Section 120.1 for construction of structures in the vicinity of public-use airports, the Commission shall charge reasonable fees for services rendered, not to exceed Two Hundred Dollars (\$200.00). All fees shall be paid to the Oklahoma Aeronautics Commission. Required fees must be paid before any action will be taken by the Commission on the matter relating thereto and before the issuance of any permit. Permit fees will not be refunded if the application for a permit is denied or withdrawn. The following fees will be charged:

- (+) Application for a new permit: \$200.00
- (2) ~~Minor amendment to application: \$50.00~~
- (3) ~~Major amendment to application: \$100.00~~
- (4) ~~Amendments to an existing permit: \$100.00~~

SUBCHAPTER 7. NOTICE, DETERMINATION AND COMMISSION ACTIONS

25:30-7-1. Commission review

(a) Upon receiving an application, the Commission shall notify a legal representative of the public-use airport owner affected by the application and solicit comments from the airport owner.

(b) In determining whether to issue a permit, the Commission shall consider sections 25:30-5-1 and 25:30-5-2, and the following:

- (1) The nature of the terrain and height of existing structures;
- (2) Public and private interests and investments;
- (3) The character of flying operations and planned developments of an airport;
- (4) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport;
- (5) Technological advances;
- (6) The safety of persons on the ground and in the air;
- (7) Land use density;
- (8) Comments from all interested persons;
- (9) Findings and determinations of other government agencies;
- (10) Depending upon the type of survey used, an adjustment will be made in accordance with FAA regulations to the horizontal and vertical measurements of the proposed

structure as described in Appendix A of this Chapter. If the survey type (horizontal and vertical) is not certified by a licensed engineer or a licensed surveyor, a horizontal adjustment of plus or minus two hundred fifty (250) feet and a vertical adjustment of fifty (50) feet will be applied to the structure measurements;

(11) Any other information the Commission finds pertinent to that applications review.

25:30-7-3. Commission's determination

The Commission's review of an application can lead to the following determinations:

~~(1) The proposed construction would not exceed any standard as set forth in sections 25:30-5-1 or 25:30-5-2 and is therefore approved;~~

~~(2) The proposed construction would exceed the obstruction standards set forth in sections 25:30-5-1 or 25:30-5-2 and is therefore denied;~~

~~(3) The proposed construction would exceed the obstruction standards/limitations set forth in sections 25:30-5-1 or 25:30-5-2; 25:30-1-3; however, due to other considerations listed in section 25:30-7-1, the application is approved; and~~

~~(4) The proposed construction is not located in an area that is regulated in accordance with 25:30-1-3; therefore, a permit from the Commission is not required.~~

(3) The proposed construction would not exceed any limitation set forth in section 25:30-1-3; therefore, a permit from the Commission is not required and shall not be issued.

SUBCHAPTER 9. PERMITS

25:30-9-3. Amendments to permit

The Commission shall consider amendments to permits that are administrative in nature including the transfer of ownership rights. The permit holder or his legal representative shall notify the Commission in writing of the amendments to the permit and shall provide the affected permit number(s). ~~A change~~ change ~~to the latitude/longitude/location~~ or an increase in the total height of a permitted structure will require the applicant to obtain a new permit.

[OAR Docket #12-370; filed 4-3-12]

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 1. GENERAL PROVISIONS**

[OAR Docket #12-394]

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240:1-3-9. Release of Confidential Information to Specific Government Agencies [AMENDED]

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None

ANALYSIS:

The amendment to this rule will correct a site to the federal statutes in subsection (b)(18).

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. §308.1(A), WITH AN EFFECTIVE DATE OF MAY 15, 2012:

SUBCHAPTER 3. RECORDS AND INSPECTIONS

240:1-3-9. Release of confidential information to specific government agencies

(a) Pursuant to 40 O.S. § 4-508(C), the government agencies, public entities and political subdivisions specified in part (b) of this rule may obtain confidential information maintained by the Oklahoma Employment Security Commission after entering into an agreement with the Oklahoma Employment Security Commission that sets out the purpose the information will be used for, how the information will be transmitted, and how the information will be safe guarded. All costs involved in providing information to government agencies, public entities, or political subdivisions will be set out in the agreement. The information shall be held confidential by the receiving government agency, public entity or political subdivision at all times and shall not be disclosed or open to public inspection. It shall be allowable for the receiving government agency, public entity or political subdivision to release aggregated data.

(b) Government agencies authorized to obtain confidential information from the Oklahoma Employment Security are:

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- (1) The Oklahoma Department of Commerce, to accomplish specific goals, missions or tasks of the agency as determined by the Oklahoma Legislature;
- (2) The Oklahoma Department of Transportation for use in federally mandated regional transportation planning, which is performed as a part of its official duties;
- (3) The Oklahoma State Treasurer's office to verify or evaluate the effectiveness of the Oklahoma Small Business Linked Deposit Program on job creation;
- (4) The Oklahoma Attorney General for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
- (5) Compsource Oklahoma for use in investigation of workers' compensation fraud;
- (6) The Oklahoma Department of Labor for use in investigation of workers' compensation fraud;
- (7) The Oklahoma Workers' Compensation Court for use in investigation of workers' compensation fraud;
- (8) The Oklahoma Insurance Department for use in investigation of workers' compensation fraud, insurance fraud and health care fraud;
- (9) The Oklahoma State Bureau of Investigation for use in criminal investigations, the location of missing persons or fugitives from justice, and the investigation of insurance fraud and health care fraud;
- (10) The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control for use in criminal investigations and the location of missing persons or fugitives from justice;
- (11) The Center of International Trade of Oklahoma State University for the development of international trade for employers doing business in the State of Oklahoma;
- (12) The Oklahoma State Regents for Higher Education for use in the default prevention efforts and/or collection of defaulted student loans guaranteed by the Oklahoma Guaranteed Student Loan Program;
- (13) The Center for Economic and Management Research of the University of Oklahoma to identify economic trends;
- (14) The Center for Economic and Business Development at Southwestern Oklahoma State University to identify economic trends;
- (15) The Oklahoma Office of State Finance to identify economic trends;
- (16) The Department of Mental Health and Substance Abuse Services to evaluate the effectiveness of mental health and substance abuse treatment and state or local programs utilized to divert persons from inpatient treatment;
- (17) Public housing agencies for purposes of determining eligibility pursuant to 42 U.S.C., Section 503(i);
- (18) An agency of this state or its political subdivisions, or any nonprofit corporation that operates a program or activity designated as a partner in the Workforce Investment Act One-Stop delivery system pursuant to 29 U.S.C.A., Section ~~2481-2841~~ (b)(1), based on a showing of need made to the Commission;

- (19) The national Wage Record Interchange System, at the discretion of the Commission;
- (20) The Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research;
- (21) The Oklahoma Health Care Authority for use in determining eligibility for subsidies for health insurance premiums for qualified employers, employees, self-employed persons, and unemployed persons; or
- (22) The Oklahoma State Department of Rehabilitation Services for use in assessing results and outcomes of clients served.

[OAR Docket #12-394; filed 4-10-12]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 5. EMPLOYMENT SERVICE

[OAR Docket #12-395]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
240:5-1-3. Registration for work [NEW]

AUTHORITY:

40 O.S. §§2-204. 4-302; and the Oklahoma Employment Security Commission.

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November 15, 2011 through December 15, 2011

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The amendment to this rule will correct a site to the federal statutes in subsection (b)(18).

CONTACT PERSON:

Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146. E-Mail address: Melissa.Copenhaver@oes.state.ok.us .

**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 MAY 15, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

240:5-1-3. Registration for work

Any person may register for work through the Oklahoma Employment Service by completing the Employment Service Application on the Commission's website or at a Workforce Center. Once the application form is completed and entered into the Oklahoma JobLink, the person shall be considered an Employment Service applicant and registered for work in Oklahoma.

[OAR Docket #12-395; filed 4-10-12]

**TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION
CHAPTER 10. UNEMPLOYMENT INSURANCE PROGRAM**

[OAR Docket #12-396]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
 - 240:10-1-2. Definitions [AMENDED]
 - 240:10-1-4. Electronic signatures [NEW]
 - 240:10-1-5. Filing by electronic means [NEW]
- Subchapter 3. Benefits
 - Part 5. Eligibility
 - 240:10-3-20. Instructions to secure work [AMENDED]
 - 240:10-3-23. Claims for total unemployment benefits [AMENDED]
 - 240:10-3-24. Claims for partial unemployment benefits [AMENDED]
 - Part 9. Disqualification
 - 240:10-3-41. Application of retirement proceeds and severance pay [AMENDED]
 - 240:10-3-45. Cases involving ~~positive~~ drug or alcohol ~~tests~~ testing [AMENDED]
 - Part 11. Filing Claims - Notice
 - 240:10-3-54. E-mail notification in unemployment benefit claims [NEW]

SUMMARY:

The amendments to the rules in this chapter will define "temporary layoffs" in cases involving federal agencies or federal contractors; change the definition of "week"; allow for electronic signatures; allow for electronic filing of documents; waive the work search requirement for persons receiving benefits through a shared work plan; require registration for work to draw unemployment benefits; revoke the partial unemployment benefit claim rule due to a federal conformity issue; define how retirement payments shall be deducted from unemployment benefits; revise drug or alcohol testing rule to conform with current law; and provide for e-mail notification in unemployment benefit claims.

AUTHORITY:

40 O.S. §§ 1-220, 1-224, 2-202, 2-204, 2-411, 2-503, 2-504, 4-302; 40 O.S. §551 et seq., and the Oklahoma Employment Security Commission.

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None

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ANALYSIS:

The amendments to the rules in this chapter will define "temporary layoffs" in cases involving federal agencies or federal contractors; change the definition of "week"; allow for electronic signatures; allow for electronic filing of documents; waive the work search requirement for persons receiving benefits through a shared work plan; require registration for work to draw unemployment benefits; revoke the partial unemployment benefit claim rule due to a federal conformity issue; define how retirement payments shall be deducted from unemployment benefits; revise drug or alcohol testing rule to conform with current law; and provide for e-mail notification in unemployment benefit claims.

CONTACT PERSON:

Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146. E-Mail address: Melissa.Copenhaver@oesc.state.ok.us .

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 MAY 15, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

240:10-1-2. Definitions

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

"**Commuting distance**" means an automobile driving distance of fifty (50) miles from a claimant's place of residence.

"**Full-time work**" means employment in thirty-two (32) or more hours of work per week.

"**Good cause**" means reasons beyond the control of the party seeking relief.

"**Independent contractor**" means:

(A) Any person who performs services according to their own methods and without control except as to results is an independent contractor, if they are:

- (i) Customarily engaged in an independently-established business; or
- (ii) Performing service outside the usual course of the contractor's business and outside the places of such business.

(B) In order to be considered "without control" the individual providing the service shall:

- (i) Provide their own tools and equipment;

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- (ii) Pay their own ordinary and customary business expenses;
- (iii) Risk losing money from the contract;
- (iv) Be free to hire their own assistants; and
- (v) Be responsible for obtaining and maintaining all business, tax registrations and all business occupational licenses required by federal, state, or local laws or ordinances.

(C) A written contract relating to such services shall be considered under 40 O.S. Section 1-210 (14), along with all other pertinent evidence in determining employment status and shall not be accorded any greater weight than any other evidence.

(D) This definition shall not be interpreted or construed as conflicting with Section 3304 (a) (6) (a) of the Federal Unemployment Tax Act.

"Interested Party" means:

(A) In an unemployment claim appeal - the Commission, a claimant who files a claim for unemployment benefits with the Commission, and any employer who properly files a written objection to the claim pursuant to 40 O.S. §2-503 (E).

(B) In an unemployment tax protest - the Commission and the employer with an account that is directly affected by a decision made by the Commission or its representative.

(C) In a supplemental unemployment benefit plan appeal - the Commission, the employer that made application for approval of the plan, and the collective bargaining agent of the employees, if any exists.

"Leases" and "Rents" [40:1-210(15)] mean a contract between an owner of a business, building, or property and a lessee, in which:

(A) Space is leased, sublet, or rented for the purpose of operating or conducting a trade or business by the lessee;

(B) The lease or rental fee is set at a fixed amount per month, that remains constant for the term of the lease, sublease, or rental contract; and

(C) Is not based upon a percentage of income or revenue earned in the trade or business.

"Mail", "Mailed", and "Mailing", as used in 40 O.S. §1-224, shall mean the mailing of a document through the United States Postal Service or a private delivery service designated by the United States Secretary of the Treasury pursuant to 26 U.S.C. §7520(f), as a delivery service that may deliver returns, claims, statements, or other documents to the Internal Revenue Service.

"Part-time work" means employment of less than thirty-two (32) hours of work in a week.

"Profiling" means:

(A) A systematic computer generated process that:

- (i) Identifies those claimants most likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;
- (ii) Refers identified claimants to reemployment services; and

(iii) Collects follow-up information relating to the services received.

(B) Data elements which may be used in the identification process for profiling are:

- (i) Recall status;
- (ii) Union hiring hall agreement;
- (iii) Education;
- (iv) Job tenure;
- (v) Industry;
- (vi) Occupation;
- (vii) Unemployment rate;
- (viii) Number of prior UI claims; and
- (ix) Maximum weekly benefit amount.

(C) Data elements prohibited for usage in profiling are:

- (i) Age;
- (ii) Race or ethnic group;
- (iii) Sex;
- (iv) Color;
- (v) National origin;
- (vi) Disability;
- (vii) Religion;
- (viii) Political affiliation; and
- (ix) Citizenship.

"Reasonable cash value" [40:1-218] means an amount estimated and determined by consideration of the position held, type of work performed, duration of the work, and customary compensation of like providers in like industries.

"Reemployment Services" means those services which provide job search assistance and job placement services, which are counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs and referrals to employers, and other similar services.

"Temporary Layoff" means a short term cessation of work or employment in which the employer maintains an attachment to an employee by means of a recall date or, in cases involving a federal agency or federal contractor with employees who have agreed to refrain from seeking employment elsewhere as part of their terms of employment when work is ceased due to the needs of the federal government, and the federal employer or federal contractor maintains an attachment to an employee by means of its contract of employment, then a recall date will not be required.

"Wages"

(A) **"Gratuities or Tips"**. The employer shall include as wages all monies paid as gratuities or tips actually *received by an individual in the course of his work* [40:1-218] or, if actual information is not available, gratuities and tips shall be allocated to the employer in the amount of 8% of gross receipts.

(B) **"Noncash remuneration"**. Noncash remuneration means meals, lodging or any other payment in kind received by a worker from the employing unit in addition to or in lieu of cash payments for services unless such *meals and lodging are furnished on the business premises of the employer for the convenience of the employer*. [40:1-218(4)]

"Wages paid"

(A) The term "wages paid" [40:1-219] shall include both wages actually received by the worker and wages constructively paid. Wages shall be considered constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time although not then actually in the worker's possession. A mere crediting of the wages to the worker's account, without actually making them available to the worker so that they may be drawn upon by him/her at any time, does not constitute constructive payment.

(B) In the case of an employer who terminates his/her coverage as of January 1st of some year, the term "wages paid" shall include all wages earned for all pay periods up to and including the last payroll period ending in that year, at the end of which, the employer's coverage is terminated.

(C) "Wages paid" to the worker are to be reported in the calendar quarter in which they were actually paid.

"Week"

~~(A) For the purpose of paying benefits and for the purpose of this Chapter, a "week" [40:1-220] as defined in 40 O.S. §1-220 shall consist of a calendar week which begins at 12:01 A.M. Sunday and ends at midnight the following Saturday.~~

~~(B) Provided that the Commission, upon its own initiative or upon application by any employer, may prescribe that with regard to individuals involved in a temporary layoff with a specified date to return to work and whose assigned work week consists of consecutive work days within two different calendar weeks, the definition of a "week" shall be the work week as assigned by the employer.~~

~~(C) For the purposes of determining full time work, "week" means a period of seven consecutive days that is established by an employer as its regular work week.~~

240:10-1-4. Electronic signatures

(a) The term "electronic signature" means an electronic sound, symbol, text or process, attached to or logically associated with a document required to be filed by the Employment Security Act of 1980 or these rules, and executed or adopted by a person with the intent to sign the document.

(b) An electronic signature will have the same meaning and significance as would a handwritten signature that is affixed to an equivalent paper document. If an applicable law or rule requires a handwritten signature on a document, an electronic signature shall satisfy that requirement.

(c) The intent of a person or entity to sign a document shall be conclusively established if the signature is made on a certification page that is protected by a user ID and password. For all electronic signatures made outside of the certification page protocol, the electronic signature of the person or entity on a document will create a rebuttable presumption that the signature is valid and intended as a signature.

240:10-1-5. Filing by electronic means

(a) If an individual or entity files a document by electronic means, this shall constitute implied consent for the Oklahoma Employment Security Commission to notify and deliver documents to that party by the same electronic means.

(b) An individual or entity who files by electronic means shall retain the original source document in its possession or control for a period of four (4) years and during the pendency of any legal proceedings involving the document, whichever is longer. The document shall be retained in exactly the same format and content as transmitted and shall be produced upon request by the Commission, an administrative law judge or any party to the legal proceedings. Upon failure to produce the original source document when requested, the Commission or an administrative law judge may refuse to consider the document as a properly filed instrument.

(c) The Oklahoma Employment Security Commission shall not be responsible for events that disrupt or render impossible the receipt of documents transmitted electronically.

SUBCHAPTER 3. BENEFITS

PART 5. ELIGIBILITY

240:10-3-20. Instructions to secure work

(a) Able and available to accept employment. When a claimant files an initial claim for benefits, the Commission shall instruct the claimant that, in addition to registering for work, the claimant must diligently search for suitable employment. [40:2-408(2)]

(b) Seek and accept work. The Commission shall direct and require that in diligently searching for work the claimant must do those things that a reasonably prudent individual would be expected to do to secure work using any means that are appropriate and customary each week. Special circumstances:

(1) Union members must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.

(2) A claimant must participate in all reemployment services offered by the Commission if selected by a profiling program established by the Oklahoma Employment Security Commission or any other State Employment Service. [40:2-417(4)]

(3) If an employee is involved in a temporary layoff, ~~is receiving partial unemployment insurance pursuant to 240:10-3-24,~~ or is receiving supplemental unemployment benefit payments through an approved plan, or is receiving benefits through an approved shared work plan, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer.

240:10-3-23. Claims for total unemployment benefits

(a) **Definition.** An individual shall be defined as in "total unemployment" during a week whenever:

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- (1) the individual has been separated from employment with his/her last regular employer; and
 - (2) the individual has not during the week performed services in employment for any employer; or
 - (3) the individual has worked less than full time for some employer and earned less than his/her weekly benefit amount plus \$100.00. [40:1-217]
- (b) ~~Initial claim.~~ ~~The initial claim may serve as a registration for work.~~
- (c) **Effective date.** The effective date of an initial claim, additional initial claim, or a reopened claim shall be the first day of the calendar week in which the individual first files the initial claim, additional initial claim, or reopened claim.
- (d) **Failure to report/good cause.** When the Commission representative determines that a claimant had good cause for failure to report as directed, a claim may be accepted at a later date, not to exceed seven (7) calendar days from the date originally specified for his/her reporting.
- (e) **Continued claim.** A claimant who is filing for benefits under the mail claim system, the Interactive Voice Response System, or the Internet may file a continued claim provided the claimant files the continued claim within fourteen (14) calendar days from the week ending date of the claim or within fourteen (14) calendar days from the date the continued claim is furnished to the claimant.
- (f) **Determination of eligibility for benefits.** The OES Act prescribes the following requirements:
- (1) A Commission representative shall determine claimant's eligibility for benefits.
 - (2) A Commission representative shall accept written and verbal statements from the claimant and the employer.
 - (3) A Commission representative shall take any action necessary to determine the facts and to determine the rights of both the employer and claimant.
 - (4) A Commission representative shall write a determination which must include the following:
 - (A) An explanation of the parties' appeal rights;
 - (B) A summary of pertinent facts;
 - (C) The reasons for allowing or denying benefits; and
 - (D) The conclusion or legal results of the decision.
 - (5) Any interested party may appeal a determination. The appeal shall be filed with the Commission. When the appeal is filed, all interested parties shall be notified.
- (g) In computing any period of time described in this rule, the day of the event from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included. Claimants required to make a filing on a day in which the offices of the Commission are not open shall make the filing through the Internet or by telephone through the Interactive Voice Response system. Failure to file for a claim within the time allowed will result in denial of benefits for that week.

240:10-3-24. Claims for partial unemployment benefits [REVOKED]

- (a) **Condition for filing claim.**
- (1) ~~Claims for "partial unemployment" may be filed for workers only at the request and assistance of the workers' regular employer and under the conditions set forth herein.~~
 - (2) ~~An employer who places regular, full time workers on a temporary reduced work week schedule in order to retain the services of such workers until full time work can be resumed may assist the worker(s) in filing claims for unemployment compensation in "partial unemployment" for each calendar week in which work is performed on a reduced schedule.~~
 - (3) ~~An initial or additional initial claim for partial unemployment shall not be filed for a worker who was employed during the calendar week for his/her normal, customary, full time working hours, or who did not perform any work or have earnings payable for the week.~~
 - (4) ~~The employer must be in substantial compliance with all requirements of the Employment Security Act of 1980. If an employer is delinquent in payment of taxes, the employer will be deemed in substantial compliance if the employer enters into a payment plan agreement with the Commission and is in compliance with the agreement. All quarterly unemployment tax reports must be filed before an employer requests partial unemployment.~~
- (b) **Partial unemployment defined.** An individual shall be defined as in "partial unemployment" during a calendar week whenever:
- (1) ~~the individual has not been separated from employment with his/her last regular employer; and~~
 - (2) ~~the individual has during the week performed services in employment for his/her regular employer; but~~
 - (A) ~~because of lack of work was reduced to less than his/her normal, customary, full time work hours; and~~
 - (B) ~~has earnings from such reduced work schedule for that week of less than his/her weekly benefit amount plus \$100.00.~~
 - (c) **Partial continued claims.**
 - (1) ~~A worker who filed a partial initial claim, or who has been receiving benefits for partial unemployment, may continue to file partial continued claims as if he/she were a partially unemployed worker for not more than the first six (6) consecutive weeks of total unemployment (no earnings) or part total unemployment (some earnings from another employer) immediately following the period of partial unemployment so long as he/she remains attached to his/her regular employer.~~
 - (2) ~~A worker who files such partial claims for six (6) consecutive weeks during which he/she has no wages payable from his/her regular employer shall file an initial claim, additional initial claim, or continued claim, as appropriate, under OAC 240:10-3-23 "Claims for Total Unemployment Benefits" for subsequent weeks.~~
 - (d) **Effective date.** The effective date of an initial claim or additional initial claim for partial unemployment shall be the first day of the calendar week during which the individual was

employed less than his/her normal customary, full time work because of lack of work and in which earnings from such reduced work is less than his/her weekly benefit amount plus One Hundred Dollars (\$100.00).

(e) **Filing partial claims.** A worker who is "partially unemployed" may, with the assistance of his/her employing unit, claim partial benefits under the following conditions:

(1) The employing unit shall, immediately following the calendar week in which the worker first performed work on a reduced work schedule, execute the Commission's "Claim for Partial Benefits," Form OES-526P, for each worker who has worked during the week in such reduced work schedule of less than full time. Upon proper execution, the Form OES-526P will be delivered to the worker together with a copy of the Commission's booklet entitled, "Information for Workers Who Are Unemployed."

(2) Not later than fourteen (14) days after receiving such Form OES-526P, the worker shall complete the portion denoted as "Claimant's Report of Other Earnings" and return it to his or her employer to submit or the claimant may mail the completed form to the address listed on the form. Form OES-526P, properly completed, shall constitute the worker's claim for benefits and registration for work within the meaning of 40 O.S. Section 2-203 and 2-204. The form will also constitute the waiting period, required by 40 O.S. Section 2-206, providing the total earnings reported by the regular employing unit plus "other earnings," if any, as reported by the worker does not equal or exceed the "weekly benefit amount of the newly established benefit year plus One Hundred Dollars (\$100.00)."

(3) Upon receipt of the first Form OES-526P, properly completed, the Commission will compute a weekly benefit amount for the worker claimant. Such computation shall be made effective as of the first day of the calendar week for which the claim was filed that the claimant was partially unemployed. The Commission will furnish the employing unit a "Notice of Partial Benefits," Form OES-532, setting forth the claimant's weekly benefit amount and his/her benefit year ending date. The Commission will also mail the monetary eligibility for benefits form to the worker claimant.

(4) Upon receipt of an allowed "Notice of Determination of Partial Benefits," Form OES-532, the employing unit shall execute and deliver to the worker claimant concerned a "Continued Claim for Partial Benefits," Form OES-527P, immediately for each prior calendar week of partial unemployment applicable and each subsequent calendar week of partial unemployment for further completion by the worker and submission to the Commission for payment processing.

(f) **Late claims.** If a Commission representative determines that a worker claimant filed no claims due to the failure of the employing unit to comply with the requirements of the Commission Rules, or if the claimant was coerced to refrain from the prompt filing of the claim(s), the Commission representative shall extend the period during which the claims may be filed to a date which shall not be less than one (1) nor more

than four (4) weeks after such determination. The Commission shall notify the employing unit and the worker claimant in writing that the arrangement to execute "Partial Claims for Benefits" has been terminated. Claimants will file claims for subsequent weeks under the rules and statutes for total unemployment benefits.

PART 9. DISQUALIFICATION

240:10-3-41. Application of retirement proceeds and severance pay

(a) **Lump-sum Retirement proceeds payment.** A lump-sum distribution from a retirement plan shall be deductible from benefits in the week received.

(b) **Regular retirement payments.** If a claimant is receiving monthly retirement payments that are required to be deducted from unemployment insurance benefits pursuant to 40 O.S. §2-411, the Commission shall deduct 7/30ths of the monthly retirement payment from each week of unemployment benefits received.

(c) **Severance pay.** Severance pay which is deemed wages shall be deductible from benefits in the week received.

240:10-3-45. Cases involving positive drug or alcohol test testing

In order to establish that the drug or alcohol test of an employment insurance claimant was conducted in accordance with the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §§551 through 565, the employer must produce the following:

(1) Documentation of a positive test result issued by the testing facility that performed the test.

(2) Documentation of the chain of custody of the testing sample from the point of collection to the testing facility.

(3) The medical review officer's certification of proper testing standards and procedures.

(4) A statement concerning the circumstances, as set out in 40 O.S. §554, under which the testing was requested or required.

(5) A copy of the employer's drug testing policy as required by 40 O.S. §555.

(6) Documentation showing that the employer provides an employee assistance program as required by 40 O.S. §561.

(7) Any evidence relevant to the adjudication of questions of fact or law regarding drug or alcohol testing that may be an issue in the claim for unemployment benefits. In order to establish misconduct due to a positive drug or alcohol test or the refusal to take a drug or alcohol test, the employer must produce the evidence required by the Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §§551 through 565.

PART 11. FILING CLAIMS - NOTICE

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240:10-3-54. E-mail notification in unemployment benefit claims

(a) Any claimant or employer may request that all notices concerning an unemployment benefit claim, in which the party is involved, be delivered to that party by e-mail. Once the request is processed, all notices that are allowed to be sent by e-mail may be sent by e-mail. For employers that make the request, all notices in all unemployment insurance cases currently pending and that arise in the future may be delivered by e-mail.

(b) The responsibility for providing the correct e-mail address will be that of the claimant or employer.

(c) All time deadlines shall be computed from the date of the e-mail notification sent by the Commission.

[OAR Docket #12-396; filed 4-10-12]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 15. BOARD OF REVIEW PROCEDURES

[OAR Docket #12-397]

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RULES:

Subchapter 11. Appeals to District Court

240:15-11-1. Board of Review decisions; appeal to district court [AMENDED]

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SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

This rule will change the appeal time from the Board of Review to District Court from 10 days to 30 days to comply with statutory amendments made in 2011.

CONTACT PERSON:

Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146. E-Mail address: Melissa.Copenhaver@oesc.state.ok.us .

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 MAY 15, 2012:

SUBCHAPTER 11. APPEALS TO DISTRICT COURT

240:15-11-1. Board of Review decision; appeal to district court

The Board of Review decision shall be based upon the record compiled by the Appeal Tribunal. Within a reasonable time, the Board shall enter a decision affirming, modifying, remanding or reversing the decision of the Appeal Tribunal. The decision shall be in writing and shall be signed by a majority of the members of the Board. Copies of the decision shall be promptly mailed by the Clerk to all parties of record in the case and shall bear appeal rights of the parties. The decision shall be final and binding unless within ~~ten (10)~~ thirty (30) days after the mailing of the decision to the parties' last known address, a petition for review of the Board decision is filed by an interested party in a District Court pursuant to Section 2-610, Title 40 Okla. Stat. 1980.

[OAR Docket #12-397; filed 4-10-12]

TITLE 240. OKLAHOMA EMPLOYMENT SECURITY COMMISSION CHAPTER 21. WORKFORCE INVESTMENT ACT

[OAR Docket #12-398]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

240:21-1-1. Purpose and authority [AMENDED]

240:21-1-2. Definitions [AMENDED]

240:21-1-3. Addresses for appeals [AMENDED]

240:21-1-4. Time computation [NEW]

Subchapter 3. Denial or Termination of Eligibility of a Training Provider [REVOKED]

240:21-3-1. Reporting - Termination [REVOKED]

240:21-3-2. Notice to the training provider [REVOKED]

240:21-3-3. Appeal [REVOKED]

240:21-3-4. Hearing [REVOKED]

240:21-3-5. District court appeal [REVOKED]

240:21-3-6. Administrative record [REVOKED]

Subchapter 7. Monitoring

240:21-7-1. Monitoring and exit conference [AMENDED]

240:21-7-2. Monitoring report [AMENDED]

240:21-7-3. Monitoring resolution [AMENDED]

240:21-7-5. Appeal [AMENDED]

AUTHORITY:

40 O.S. §§4-302, 4-702, and the Oklahoma Employment Security Commission.

DATES:

Comment period:

November 15, 2012 through December 15, 2012

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None held or requested

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May 15, 2012

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

In 2011, it was decided that the monitoring and auditing of most Workforce Investment Act programs would be done by the Oklahoma Department of Commerce instead of the Oklahoma Employment Security Commission (OESC). The OESC was asked to continue monitoring two small workforce grants, the National Emergency Grant and the Senior Community Service Employment Grant (Title V). The amendments to this chapter will modify the rules to meet the new assignment and will make the rules more flexible by deleting reference to the Workforce Investment Act (WIA) and replacing it with a more general term workforce related grants. Rules related to training providers are being revoked because the OESC will no longer be involved in this process. A new time computation rule is being proposed that would more specifically set out how time periods in these rules are to be calculated.

CONTACT PERSON:

Melissa Copenhaver, Rulemaking Liaison, 2401 N. Lincoln Boulevard, 5th Floor, Oklahoma City, Oklahoma 73152. Telephone number 405/557-7146. E-Mail address: Melissa.Copenhaver@oesc.state.ok.us .

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 MAY 15, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

240:21-1-1. Purpose and authority

The Governor of the State of Oklahoma appointed the Governor's Council for Workforce and Economic Development (State Council) in compliance with the Section 111 of the Workforce Investment Act. The State Council assists the Governor in developing the Strategic State Workforce Investment Plan (State Plan) for Title I of the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act pursuant to Section 112 of WIA. ~~In the State Plan, the Governor designated the Oklahoma Employment Security Commission (OESC) as the WIA Title I administrative entity responsible for WIA Title I and Wagner-Peyser program implementation and oversight.~~ The Oklahoma Employment Security Commission (OESC), as the direct grant recipient, is responsible for the monitoring and

oversight for workforce-related grants, programs and activities established and funded by the U.S. Department of Labor. The purpose of these rules is to facilitate the implementation of the WIA, U.S. Department of Labor WIA regulations, ~~and~~ State Plan, and workforce related grants as they relate to specific OESC funding. The authority for these rules is established by Title 40 O.S. § 4-702.

240:21-1-2. Definitions

In addition to definitions found at WIA section 101 and 20 CFR 660.300, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Assessment Board" is a hearing Board for the OESC, which is designated to adjudicate certain appeals specified herein.

"Chief Local Elected Official" or **"CLEO"** means (a) the chief elected executive officer of a unit of general local government in a local area; and (b) in a case in which a local area includes more than one unit of general local government, the individuals designated under the agreement described in WIA section 117(c)(1)(B).

"Department" or **"DOL"** means the U.S. Department of Labor, including its agencies and organizational units.

"Division of Internal Audit" means the OESC division responsible for conducting audit resolutions.

"Fiscal Agent" means an entity chosen by the CLEO to serve as OESC's subrecipient of the local area's ~~WIA~~ workforce related grant funds. Such designation does not relieve the CLEO or the Governor of the liability for any misuse of grant funds.

"Grant" means an award of WIA or workforce related financial assistance by the U.S. Department of Labor to an eligible ~~WIA~~ recipient.

"Grantee" means the direct recipient of grant funds from the Department of Labor. A grantee may be referred to as a recipient.

"Local Area" means a local workforce investment area designated pursuant to WIA section 116.

"Local Board" means a Local Workforce Investment Board established pursuant to WIA section 117, to set policy for the local area workforce investment system.

"Recipient" means an entity to which a WIA or workforce related grant is awarded directly from the Department of Labor to carry out a specific program ~~under title I of WIA.~~

"Secretary" means the Secretary of the U.S. Department of Labor.

"State Council" means the Governor's Council for Workforce and Economic Development established pursuant to WIA section 111.

"Subgrant" means an award of financial assistance made under a grant by a grantee or subrecipient to an eligible subrecipient.

"Subrecipient" means an entity to which a subgrant is awarded and which is accountable to the recipient, or higher tier subrecipient, for the use of the funds provided.

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240:21-1-3. Addresses for appeals

When a rule in this Chapter allows for an appeal, the following addresses are to be used:

- (1) Secretary, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
- (2) Regional Administrator, Regional Office, U.S. Department of Labor, 525 S. Griffin Street Dallas, Texas 75202.
- (3) Director of Workforce ~~Integrated~~ Programs Services, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152-2003.
- (4) Division of Internal Audit, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.
- (5) Assessment Board, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152.
- (6) ~~Director of Workforce Quality, Oklahoma Employment Security Commission, P.O. Box 52003, Oklahoma City, OK 73152-2003.~~

240:21-1-4. Time computation

In computing any period of time prescribed or allowed by the Employment Security Act of 1980, by these rules, or by order of a hearing officer, the day of the act, event, or default from which the designated period of time begins to run shall not be included. All intervening days falling between the beginning and end of the time period shall be counted, including Saturdays, Sundays, holidays and any day the offices of the Oklahoma Employment Security Commission are closed for part or all of the day. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the offices of the Oklahoma Employment Security Commission do not remain open for public business until 4:00 p.m.

SUBCHAPTER 3. DENIAL OR TERMINATION OF ELIGIBILITY OF A TRAINING PROVIDER [REVOKED]

240:21-3-1. Reporting - termination [REVOKED]

~~Pursuant to WIA section 122 (i) the Governor designated the Oklahoma Employment Security Commission (OESC) to make the determinations required by WIA section 122 (e)(2) and (f) unless this requirement is waived by the U.S. Department of Labor.~~

- (1) ~~Each Local Board shall submit the list of training providers, including their performance information and program cost information as described in WIA section 122 (b) or (c), to the Director of Workforce Integrated Programs. If the Director of Workforce Integrated Programs~~

~~determines within thirty (30) days after the date of submission that the provider does not meet the performance levels in WIA section 122 (e)(6), the Director of Workforce Integrated Programs may remove the training provider from the list for the program. This does not apply to an agency submitting an application under WIA section 122 (b)(1).~~
(2) ~~If the Director of Workforce Integrated Programs, after consultation with the Local Board, determines that an eligible training provider, or an individual providing information on behalf of an individual training provider, violated WIA section 122 (f) (1) and (2), the Director of Workforce Integrated Programs shall terminate the eligibility of the training provider.~~

240:21-3-2. Notice to the training provider [REVOKED]

~~The Director of Workforce Integrated Programs shall send a certified letter to the training provider at the training provider's address of record with the local board.~~

240:21-3-3. Appeal [REVOKED]

~~The training provider has twenty (20) days from the date the decision is mailed to appeal the determination to OESC's Assessment Board. If a timely appeal is not received, the decision shall become final and no further appeal shall be allowed.~~

240:21-3-4. Hearing [REVOKED]

~~If a timely appeal is received, the Assessment Board will conduct a hearing pursuant to its rules at 240:10-11-20 through 240:10-11-31. The Assessment Board will issue a decision within sixty (60) days from the date the appeal is filed.~~

240:21-3-5. District court appeal [REVOKED]

~~If the training provider's appeal is denied by the Assessment Board, it may file an appeal to district court pursuant to Oklahoma's Administrative Procedures Act, 75 Okla. Stat. section 318.~~

240:21-3-6. Administrative record [REVOKED]

~~OESC will provide the administrative record to the district court in the time period provided for in 40 Okla. Stat. section 3-403.~~

SUBCHAPTER 7. MONITORING

240:21-7-1. Monitoring and exit conference

- (a) OESC will annually monitor each local area fiscal agent, Local Board, and OESC's subrecipients pursuant to the requirements set forth in WIA section 184 (a) (4)(1-3) and 20 CFR section ~~667.410~~ 667.400 (c) (1) and 20 CFR Section 667.410 (a) (1-3).
- (b) OESC's subrecipients and Local Boards must monitor their subrecipients or service providers. ~~Monitoring shall~~

be conducted as outlined in the "Governor's Oversight and Monitoring Plan".

(c) An exit conference will be conducted after each OESC monitoring review. Exit notes, which identify issues that may result in findings and/or questioned costs, will be provided to the local area. The local area representatives have fifteen (15) days from date of the exit conference to submit information and/or documentation to OESC to resolve these possible findings and/or questioned costs before they are included in the monitoring report referenced in 240:21-7-2. Additional findings and/or questioned costs may arise after the on-site review and exit conference are conducted.

240:21-7-2. Monitoring report

(a) A monitoring report will be issued by the Director of Workforce Quality Services to the CLEO, local area fiscal agent, Local Board, or OESC's subrecipients after each monitoring review. A ~~Copies~~ copy of this report will also be addressed to ~~the Director of Workforce Integrated Programs,~~ and OESC's Director of Internal Audit. If evidence of possible violations is discovered, they will be detailed in the report. The report shall be based, in part, on the requirements of WIA, the regulations promulgated thereunder, administrative requirements, applicable cost principles, grant agreements, and state and local policies.

(b) Monitoring reports and resolutions generated by an OESC subrecipient or Local Board must be submitted to the Director of Workforce Quality Services when issued.

240:21-7-3. Monitoring resolution

(a) The Director of Workforce Quality Services is responsible for monitoring resolution.

(b) Resolution of a monitoring finding is required when there are disallowed/questioned costs, administrative findings or deficiencies.

(c) The CLEO, local area fiscal agent, Local Board or OESC's subrecipient has thirty (30) days from the date of the monitoring report to submit its response to the designated portions of the monitoring report to the Director of Workforce Quality Services. The response must contain all additional information, documents, or arguments the CLEO, local area fiscal agent, Local Board or OESC's subrecipient wants the Director of Workforce Quality Services to consider in making the final determination. An entity submitting a response to the monitoring report may request in writing an additional thirty (30) day time period. The Director of Workforce Quality Services will determine if additional time will be allowed and advise the entity in writing of his or her decision. The Director of Workforce Quality Services may request additional information from the entity submitting a response, if clarification is needed. The Director of Workforce Quality Services may schedule or the CLEO, local area fiscal agent, Local Board or OESC's subrecipient may request, an informal resolution conference in order to discuss the findings in the monitoring report. The request for the informal resolution conference should be submitted to the Director of Workforce Quality prior to the first thirty (30) day deadline.

(d) The Director of Workforce Quality Services shall issue a final determination in compliance with 240:21-7-4.

(e) The Director of Workforce Quality Services will maintain a monitoring resolution file documenting the disposition of reported questioned costs and corrective actions taken for all findings.

(f) After follow-up procedures are completed, if the grant recipient is found in non-compliance, the Director of Workforce ~~Integrated Programs~~ Services will send a notice in the form of a certified letter of impending sanctions. The notice will indicate the violation, the corrective action to be taken, the impending sanction, and the process by which the grant recipient may appeal the sanction.

240:21-7-5. Appeal

(a) If the CLEO, local area fiscal agent, Local Board or OESC's subrecipient is not satisfied with the findings issued in the final determination, it has fifteen (15) days from the date of the final determination to file an appeal.

(b) The appeal must be filed with the Director of Workforce Quality Services.

(c) The Director of Workforce Quality Services will then forward a copy of the appeal to the Assessment Board within five (5) days from receipt.

[OAR Docket #12-398; filed 4-10-12]

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS**

[OAR Docket #12-405]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

317:2-1-2. [AMENDED]

317:2-1-15. [NEW]

(Reference APA WF # 11-18B)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Sections 3241.1 through 3241.6 of Title 63 of the Oklahoma Statutes

DATES:

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February 9, 2012

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February 9, 2012

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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 5, 2012

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SUPERSEDED EMERGENCY ACTIONS:**Superseded rules:**

317:2-1-2. [AMENDED]

317:2-1-15. [NEW]

Gubernatorial approval:

November 22, 2011

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29 Ok Reg 187

Docket number:

11-1152

(Reference APA WF # 11-18A)

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rules are revised to establish guidelines for and implement the Supplemental Hospital Offset Payment Program (SHOPP) as authorized by 63 Okla. Stat. §§ 3241.1 through 3241.6. OHCA is required by the SHOPP Act to assess all in-state hospitals, unless specifically exempted, an assessment fee of 2.5%. Funds derived from the assessment will be used to garner federal matching funds which will be used to maintain SoonerCare provider reimbursement rates as well as pay participating hospitals a quarterly access payment.

CONTACT PERSON:

Tywanda Cox at 522-7153

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 MAY 11, 2012:

317:2-1-2. Appeals**(a) Member Process Overview.**

(1) The appeals process allows a member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to file an appeal, the member files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal.

(3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received within 30 days of written notice sent by OHCA according to Title 68 ~~O.S.~~ Okla. Stat. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out and necessary documentation not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date

and time for this procedure. The member must appear at this hearing and it is conducted according to 317:2-1-5. The ALJ's decision may be appealed to the Chief Executive Officer of the OHCA, which is a record review at which the parties do not appear (317:2-1-13).

(7) Member appeals are ordinarily decided within 90 days from the date OHCA receives the member's timely request for a fair hearing unless the member waives this requirement. [Title 42 C.F.R. Section 431.244(f)]

(8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision is normally rendered by the ALJ within 20 days of the hearing before the ALJ.

(b) Provider Process Overview.

(1) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA Administrative Law Judge under 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the provider who files a grievance) files an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.)

(B) If the LD form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(C) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(D) A decision will be rendered by the ALJ ordinarily within 45 days of the close of all evidence in the case.

(E) Unless an exception is provided in 317:2-1-13, the Administrative Law Judge's decision is appealable to OHCA's CEO under 317:2-1-13.

(c) ALJ jurisdiction. The administrative law judge has jurisdiction of the following matters:**(1) Member Appeals:**

(A) Discrimination complaints regarding the SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;

(E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(F) Proposed administrative sanction appeals pursuant to 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(G) Appeals which relate to eligibility determinations made by OHCA;

(H) Appeals of insureds participating in Insure Oklahoma which are authorized by 317:45-9-8(a); and

(2) Provider Appeals:

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by Long Term Care facilities for non-payment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under 317:30-5-131.2(b)(5), (e)(8), and (e)(12);

(D) Petitions for Rulemaking;

(E) Appeals to the decision made by the Contracts manager related to reports of supplier non-compliance to the Central Purchasing Division, Oklahoma Department of Central Services and other appeal rights granted by contract;

(F) Drug rebate appeals;

(G) Nursing home contracts which are terminated, denied, or non-renewed;

(H) Proposed administrative sanction appeals pursuant to 317:30-3-19. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will normally be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(I) Contract award appeals;

(J) Provider appeals of OHCA audit findings pursuant to 317:2-1-7. This is the final and only appeals process for appeals of OHCA audits; and

(K) Oklahoma Electronic Health Records Incentive program appeals related only to incentive payments, incentive payment amounts, provider eligibility determinations, and demonstration of adopting, implementing, upgrading, and meaningful use eligibility for incentives.

(L) Supplemental Hospital Offset Payment Program (SHOPP) annual assessment, Supplemental Payment, fees or penalties as specifically provided in OAC 317:2-1-15.

317:2-1-15. Supplemental Hospital Offset Payment Program (SHOPP) Appeals

(a) In accordance with Title 63 of the Oklahoma Statutes Section 3241.4 OHCA is authorized to promulgate rules for appeals of annual assessments, fees and penalties to hospitals as defined by the statute. The rules in this Section describe those appeals rights.

(1) OAC 317:30-5-58 subsections (a) through (e) describe the SHOPP Assessments, fees and the penalties for non-payment of the fee or failure to file a cost report, as set out in 63 Okla. Stat. §§ 3241.3 and 3241.4

(2) Appeals filed under this Section are heard by an Administrative Law Judge (ALJ).

(3) To file an appeal, the provider hospital must file an LD-2 form within thirty (30) days of receipt of the notification from OHCA assessing the annual SHOPP Assessment, a fee or penalty. The penalty, fee or assessment is deducted from the hospital's payment if the assessment is unpaid at the time the appeal is filed. If the hospital prevails in the appeal the amount assessed will be returned to the hospital with their payment.

(4) The hearing will be conducted in accordance with OAC 317:2-1-5.

(b) An individual hospital may appeal an individual assessment at the time of its annual assessment. As provided for above in subsection (3), the appeal must be filed within thirty (30) days of receipt of the notification of assessment by OHCA to the hospital. If the hospital challenges the computation of the hospital's net patient revenue, the assessment rate, or assessment amount then the appeal will proceed in accordance with subsection(4)above.

(c) Individual hospitals that appeal the quarterly assessment are limited to calculation errors in dividing the annual assessment into four parts. Appeals must be filed within thirty 30 days of receipt of the notice of assessment by OHCA to the hospital. The appeal will proceed in accordance with subsection (4) above.

(d) If OHCA determines an overpayment of SHOPP payments has been made to an individual hospital, then the hospital may file an appeal within thirty (30) days of the notice of overpayment. Overpayments are deducted from the hospital's payment. The appeal will proceed in accordance with subsection (4) above.

(e) OHCA recognizes that some individual hospital's claims regarding an inappropriate assessment or overpayment may involve aggregate data. For example an appeal may involve one of the following issues:

- (1) total hospitals in the entire SHOPP pool;
- (2) total hospitals that are exempt from SHOPP;
- (3) total hospitals classified as critical access hospitals;
- (4) total net revenue from all hospitals in the pool;
- (5) the total amount of monies allocated to each pool in the SHOPP; or
- (6) the pro-rata distribution in a pool(s).

(f) If an individual hospital brings an aggregate appeals claim, there are two (2) elements of proof to be met. The ALJ must determine that the hospital can demonstrate by a preponderance of evidence:

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- (1) that data was made available before the hospital submitted the appeal; and
(2) a specific calculation error has been made statewide that can be shown by the hospital.
(g) The "Upper Payment Limit" and the "Upper Payment limit Gap" are not appealable in the administrative process.

[OAR Docket #12-405; filed 4-10-12]

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

[OAR Docket #12-402]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
(Reference APA WF # 11-16)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 447.70

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N/A

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N/A

ANALYSIS:
Rules are revised to clarify OHCA's current policy that pregnancy-related services are exempt from cost-sharing requirements. Confusion existed among providers as to when pregnant women may be charged a co-pay. This rule makes clear the visit must be pregnancy-related. The rules are also revised to remove reference to another section of policy that is no longer in effect.

CONTACT PERSON:
Tywanda Cox at 522-7153

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 MAY 11, 2012:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5. Assignment and Cost Sharing

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

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

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

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

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

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

(2) Once an assigned claim has been filed, the member must not be billed and the member is not responsible for any balance except the amount indicated by OHCA. The only amount a member may be responsible for is a co-payment, or the member may be responsible for services not covered under the medical programs. In any event, the member should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Provider Services.

(3) When potential assignment violations are detected, the OHCA will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the OHCA is required to suspend further payment to the provider.

(c) **Assignment in SoonerCare.** Any provider who holds a fee for service contract and also executes a contract with a provider in the SoonerCare Choice program must adhere to the rules of this subsection regarding assignment.

(1) If the service provided to the member is outside of the scope of the services outlined in the SoonerCare

Contract, then the provider may bill or seek collection from the member.

(2) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) of this subsection, the Oklahoma Health Care Authority shall be the final authority for this decision. ~~The provider seeking payment under the SoonerCare Program may appeal to OHCA under the provisions of OAC 317:2-1-2.1.~~

(3) Violation of this provision shall be grounds for a contract termination in the fee-for-service and SoonerCare programs.

(d) **Cost Sharing-Copayment.** Section 1902(a)(14) of the Social Security Act permits states to require certain members to share some of the costs of SoonerCare by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. OHCA requires a co-payment of some SoonerCare members for certain medical services provided through the fee for service program. A co-payment is a charge which must be paid by the member to the service provider when the service is covered by SoonerCare. Section 1916(e) of the Act requires that a provider participating in the SoonerCare program may not deny care or services to an eligible individual based on such individual's inability to pay the co-payment. A person's assertion of their inability to pay the co-payment establishes this inability. This rule does not change the fact that a member is liable for these charges and it does not preclude the provider from attempting to collect the co-payment.

(1) Co-payment is not required of the following members:

(A) Individuals under age 21. Each member's date of birth is available on the REVS system or through a commercial swipe card system.

(B) Members in nursing facilities and intermediate care facilities for the mentally retarded.

~~(C) Pregnant women.~~

~~(D)~~ Home and Community Based Service waiver members except for prescription drugs.

~~(E)~~ Native Americans providing documentation of ethnicity in accordance with 317:35-5-25 who receive items and services furnished by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services.

(2) Co-payment is not required for the following services:

(A) Family planning services. Includes all contraceptives and services rendered.

(B) Emergency services provided in a hospital, clinic, office, or other facility.

(C) Services furnished to pregnant women, if those services relate to the pregnancy or to any other medical condition which may complicate the pregnancy.

(3) Co-payments are required in an amount not to exceed the federal allowable for the following:

(A) Inpatient hospital stays.

(B) Outpatient hospital visits.

(C) Ambulatory surgery visits including free-standing ambulatory surgery centers.

(D) Encounters with the following rendering providers:

- (i) Physicians,
- (ii) Advanced Practice Nurses,
- (iii) Physician Assistants,
- (iv) Optometrists,
- (v) Home Health Agencies,
- (vi) Certified Registered Nurse Anesthetists,
- (vii) Anesthesiologist Assistants,
- (viii) Durable Medical Equipment providers, and
- (ix) Outpatient behavioral health providers.

(E) Prescription drugs.

- (i) Zero for preferred generics.
- (ii) \$0.65 for prescriptions having a SoonerCare allowable payment of \$0.00-\$10.00.
- (iii) \$1.20 for prescriptions having a SoonerCare allowable payment of \$10.01-\$25.00.
- (iv) \$2.40 for prescriptions having a SoonerCare allowable payment of \$25.01-\$50.00.
- (v) \$3.50 for prescriptions having a SoonerCare allowable payment of \$50.01 or more.

(F) Crossover claims. Dually eligible Medicare/SoonerCare members must make a co-payment in an amount that does not exceed the federal allowable per visit/encounter for all Part B covered services. This does not include dually eligible HCBS waiver members.

(4) Aggregate cost-sharing liabilities in a given calendar year may not exceed 5% of the member's gross annual income.

[OAR Docket #12-402; filed 4-10-12]

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

[OAR Docket #12-403]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 17. Medical Suppliers

317:30-5-211.2. [AMENDED]

(Reference APA WF # 11-17)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

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INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rules are adopted to exempt durable medical equipment repairs with a cost per item of less than \$250.00 from the prescription requirement.

CONTACT PERSON:

Tywanda Cox at 522-7153

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 MAY 11, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.2. Medical necessity

(a) **Coverage.** Coverage is subject to the requirement that the equipment be necessary and reasonable for the treatment of an illness or injury, or to improve the functioning of a malformed body member. The member's diagnosis must warrant the type of equipment or supply being purchased or rented.

(b) **Prescription requirements.** All DME, except for equipment repairs with a cost per item of less than \$250.00 total parts and labor and hearing aid batteries, require a prescription signed by a physician, a physician assistant, or an advanced practice nurse. Except as otherwise stated in state or federal law, the prescription must be in writing, or given orally and later reduced to writing by the provider filling the order. Prescriptions are valid for no more than one year from the date written. The prescription must include the following information:

- (1) date of the order;
- (2) name and address of the prescriber;
- (3) name and address of the member;
- (4) name or description and quantity of the prescribed item;
- (5) diagnosis for the item requested;
- (6) directions for use of the prescribed item; and
- (7) prescriber's signature.

(c) **Certificate of medical necessity.** For certain items or services, the supplier must receive a signed CMN/OHCA

CMN from the treating physician. The supplier must have a signed CMN/OHCA CMN in their records before they submit a claim for payment. The CMN/OHCA CMN may be faxed, copied or the original hardcopy.

(d) **Place of service.**

(1) OHCA covers DMEPOS for use in the member's place of residence except if the member's place of residence is a nursing facility.

(2) For members residing in a nursing facility, most medical supplies and/or DME are considered part of the facility's per diem rate. Refer to coverage for nursing facility residents at OAC 317:30-5-211.16.

[OAR Docket #12-403; filed 4-10-12]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

[OAR Docket #12-404]

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RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-58. [NEW]

(Reference APA WF # 11-18A)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Sections 3241.1 through 3241.6 of Title 63 of the Oklahoma Statute and 42 CFR 433.68.

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Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

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11-1155

(Reference APA WF # 11-18A)
INCORPORATIONS BY REFERENCE:
 N/A

ANALYSIS:
 Rules are revised to establish guidelines for and implement the Supplemental Hospital Offset Payment Program (SHOPP) as authorized by 63 Okla. Stat. §§ 3241.1 through 3241.6. OHCA is required by the SHOPP Act to assess all in-state hospitals, unless specifically exempted, an assessment fee of 2.5%. Funds derived from the assessment will be used to garner federal matching funds which will be used to maintain SoonerCare provider reimbursement rates as well as pay participating hospitals a quarterly access payment.

CONTACT PERSON:
 Tywanda Cox at 522-7153

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 MAY 11, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-58. Supplemental Hospital Offset Payment Program.

(a) **Purpose.** The Supplemental Hospital Offset Payment Program (SHOPP) is a hospital assessment fee that is eligible for federal matching funds when used to reimburse SoonerCare services. In accordance with Section 3241.1 of Title 63 of the Oklahoma Statutes.

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

- (1) **"Base Year"** means a hospital's fiscal year ending in 2009, as reported in the Medicare Cost Report or as determined by the Oklahoma Health Care Authority (OHCA) if the hospital's data is not included in a Medicare Cost Report.
- (2) **"Fee"** means supplemental hospital offset assessment pursuant to Section 3241.1 of Title 63 of the Oklahoma Statutes.
- (3) **"Hospital"** means an institution licensed by the State Department of Health as a hospital pursuant to Section 1-701.1 of Title 63 of the Oklahoma Statutes maintained primarily for the diagnosis, treatment, or care of patients;
- (4) **"Hospital Advisory Committee"** means the Committee established for the purposes of advising the OHCA and recommending provisions within and approval of any state plan amendment or waiver affecting the Supplemental Hospital Offset Payment Program.
- (5) **"NET hospital patient revenue"** means the gross hospital revenue as reported on Worksheet G-2 (Columns

1 and 2, Lines 16, 17 and 18) of the Medicare Cost Report, multiplied by hospital's ratio of total net to gross revenue, as reported on Worksheet G-3 (Column 1, Line 3) and Worksheet G-2 (Part I, Column 3, Line 25);

(6) **"Medicare Cost Report"** means form CMS-2552-96, the Hospital Cost Report, as it existed on January 1, 2010;

(7) **"Upper payment limit"** means the maximum ceiling imposed by 42 C F R §§ 447.272 and 447.321 on hospital Medicaid reimbursement for inpatient and outpatient services, other than to hospitals owned or operated by state government; and

(8) **"Upper payment limit gap"** means the difference between the upper payment limit and SoonerCare payments not financed using hospital assessments.

(c) **Supplemental Hospital Offset Payment Program.**

(1) Pursuant to 63 Okla. Stat. §§ 3241.1 through 3241.6 the Oklahoma Health Care Authority (OHCA) was mandated to assess hospitals licensed in Oklahoma, unless exempted under (c) (2) of this Section, a supplemental hospital offset payment fee.

(2) The following hospitals are exempt from the SHOPP fee:

- (A) a hospital that is owned or operated by the state or a state agency, or the federal government, as determined by OHCA, using most recent Medicare cost report worksheet S-2, column 1, line 18 or other line that indicates ownership, or by a federally recognized Indian tribe or Indian Health Services, as determined by OHCA, using the most recent IHS/Tribal facility list for Oklahoma as updated by the Indian Health Service Office of Resource Access and Partnerships in Partnership with the Centers for Medicaid and State operations.
- (B) a hospital that provides more than fifty percent (50%) of its inpatient days under a contract with a state agency other than the OHCA, as determined by OHCA, using data provided by the hospital;
- (C) a hospital for which the majority of its inpatient days are for any one of the following services, as determined by OHCA, using the Inpatient Discharge Data File published by the Oklahoma State Department of Health, or in the case of a hospital not included in the Inpatient Discharge Data File, Using substantially equivalent data provided by the hospital:

- (i) treatment of a neurological injury;
- (ii) treatment of cancer;
- (iii) treatment of cardiovascular disease;
- (iv) obstetrical or childbirth services; or
- (v) surgical care except that this exemption will not apply to any hospital located in a city of less than five hundred thousand (500,000) population and for which the majority of inpatient days are for back, neck, or spine surgery.

(D) a hospital that is certified by the Centers for Medicare and Medicaid Services (CMS) as a long term acute hospital, according to the

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most recent list of LTCH's published on the CMS <http://www.cms.gov/LongTermCareHospitalPPS/08download.asp> or as a children's hospital; and

(E) a hospital that is certified by CMS as a critical access hospital, according to the most recent list published by Flex Monitoring Team for Critical Access Hospital (CAH) Information at <http://www.flex-monitoring.org/cahlistRA.cgi>, which is based on CMS quarterly reports, augmented by information provided by state Flex Coordinators.

(d) The Supplemental Hospital Offset Payment Program Assessment.

(1) The SHOPP assessment is imposed on each hospital, except those exempted under (c) (2) of this Section, for each calendar year in an amount calculated as a percentage of each hospital's net hospital patient revenue. The assessment rate until December 31, 2012, is two and one-half percent (2.5%). At no time in subsequent years will the assessment rate exceed four percent (4%).

(2) OHCA will review and determine the amount of annual assessment in December of each year.

(3) A hospital may not charge any patient for any portion of the SHOPP assessment.

(4) The Method of collection is as follows:

(A) The OHCA will send a notice of assessment to each hospital informing the hospital of the assessment rate, the hospital's net hospital patient revenue calculation, and the assessment amount owed by the hospital for the applicable year.

(B) The hospital has thirty (30) days from the date of its receipt of a notice of assessment to review and verify the hospital's net patient revenue calculation, and the assessment amount.

(C) New hospitals will only be added at the beginning of each calendar year.

(D) The annual assessment imposed is due and payable on a quarterly basis. Each quarterly installment payment is due and payable by the fifteenth day of the first month of the applicable quarter (i.e. January 15th, April 15th, etc.)

(E) Failure to pay the amount by the 15th or failure to have the payment mailing postmarked by the 13th will result in a debt to the State of Oklahoma and is subject to penalties of 5% of the amount and interest of 1.25% per month. The SHOPP assessment must be received by OHCA no later than the 15th of the month. If the 15th falls upon a holiday or weekend (Saturday-Sunday), the assessment is due by 5 p.m. (Central Standard Time) of the following business day (Monday-Friday).

(F) If a hospital fails to timely pay the full amount of a quarterly assessment, OHCA will add to the assessment:

(i) a penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date, and

(ii) on the last day of each quarter after the due date until the assessed amount and the penalty imposed under section (i) of this paragraph are paid in full, an additional five percent (5%) penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

(iii) the quarterly assessment including applicable penalties and interest must be paid regardless of any appeals action requested by the facility. If a provider fails to pay the OHCA the assessment within the time frames noted on the invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments. In accordance with OAC 317:2-1-15 SHOPP appeals.

(G) The SHOPP assessments excluding penalties and interest are an allowable cost for cost reporting purposes.

(e) Supplemental Hospital Offset Payment Program Cost Reports.

(1) The report referenced in paragraph (b)(6) must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility must retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, "Whoever... (2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefits or payment... shall (i) in the case of such statement, representation, failure, or conversion by any person in connection with furnishing (by the person) of items or services for which payment is or may be under this title (42 U.S.C. § 1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than \$25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than \$10,000 or imprisoned for not more than one year, or both."

(4) Net hospital patient revenue is determined using the data from each hospital's fiscal year 2009 Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file.

(5) If a hospital's fiscal year 2009 Medicare Cost Report is not contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file dated December 31, 2010, the hospital will submit a copy of the hospital's 2009 Medicare Cost Report to the

Oklahoma Health Care Authority (OHCA) in order to allow the OHCA to determine the hospital's net hospital patient revenue for the base year.

(6) If a hospital commenced operations after the due date for a 2009 Medicare Cost Report, the hospital will submit its initial Medicare Cost Report to Oklahoma Health Care Authority (OHCA) in order to allow the OHCA to determine the hospital's net patient revenue for the base year.

(7) Partial year reports may be prorated for an annual basis. Hospitals whose assessments were based on partial year cost reports will be reassessed the following year using a cost report that contains a full year of operational data.

(8) In the event that a hospital does not file a uniform cost report under 42 U.S.C., Section 1396a(a)(40), the OHCA will provide a data collection sheet for such facility.

(f) **Closure, merger and new hospitals.**

(1) If a hospital ceases to operate as a hospital or for any reason ceases to be subject to the fee, the assessment for the year in which the cessation occurs is adjusted by multiplying the annual assessment by a fraction, the numerator of which is the number of days in the year during which the hospital is subject to the assessment and denominator of which is 365. Within 30 days of ceasing to operate as a hospital, or otherwise ceasing to be subject to the assessment, the hospital will pay the assessment for the year as so adjusted, to the extent not previously paid.

(2) Cost reports required under (e)(5),(e)(6),or (e)(8) of this subsection for assessment calculation must be submitted to OHCA by November 1,2011 for the 2012 assessment, and for subsequent years' assessment calculation by September 30 of the preceding year.

(g) **Disbursement of payment to hospitals.**

(1) All in-state inpatient hospitals are eligible for hospital access payments each year as set forth in this subsection except for those listed in OAC 317:30-5-58 (c) (2):

(A) In addition to any other funds paid to inpatient critical access hospital for services provided to SoonerCare members, each critical access hospital will receive hospital access payments equal to the amount by which the payment for these services was less than one hundred one percent (101%) of the hospital's cost of providing these services.

(B) In addition to any other funds paid to hospitals for inpatient hospital services to SoonerCare members, each eligible hospital will receive inpatient hospital access payments each year equal to the hospital's pro rata share of the inpatient supplemental payment pool as reduced by payments distributed in paragraph (1) (A) of this Section. The pro rata share will be based upon the hospital's SoonerCare payment for inpatient services divided by the total SoonerCare payments for inpatient services of all eligible hospitals within each class of hospital; not to exceed the UPL for the class.

(2) All in-state outpatient hospitals are eligible for hospital access payments each year as set forth in this subsection except for those listed in OAC 317:30-5-58 (c) (2):

(A) In addition to any other funds paid to outpatient critical access hospital for services provided to SoonerCare members, each critical access hospital will receive hospital access payments equal to the amount by which the payment for these services was less than one hundred one percent (101%) of the hospital's cost of providing these services.

(B) In addition to any other funds paid to hospitals for outpatient hospital services to SoonerCare members, each eligible hospital will receive outpatient hospital access payments each year equal to the hospital's pro rata share of the outpatient supplemental payment pool as reduced by payments distributed in paragraph (2) (A) of this Section. The pro rata share will be based upon the hospital's SoonerCare payment for outpatient services divided by the total SoonerCare payments for outpatient services of all eligible hospitals within each class of hospital; not to exceed the UPL for the class.

(3) If any retrospective audit determines that a class of hospitals has exceeded the inpatient and/or outpatient UPL the overpayment will be recouped and redistributed. If the overpayment cannot be redistributed due to all classes being paid at their UPL, the overpayment will be deposited in to the SHOPP fund.

[OAR Docket #12-404; filed 4-10-12]

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

[OAR Docket #12-401]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 5. Individual Providers and Specialties
- Part 27. Independent Licensed Physical Therapists 317:30-5-291. [AMENDED]
- Part 28. Occupational Therapy Services 317:30-5-296. [AMENDED]
- Part 77. Speech and Hearing Services 317:30-5-676. [AMENDED]

(Reference APA WF # 11-07)

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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

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INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

PT/OT/ST rules restrict individually-contracted provider services to children, though adults may receive such therapy services in an outpatient hospital setting. Rules are amended to ensure clarity in policy that there is no coverage for adults for services rendered by individually-contracted providers, but there is coverage for adults in an outpatient hospital setting.

CONTACT PERSON:

Tywanda Cox at 522-7153

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 MAY 11, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 27. INDEPENDENT LICENSED PHYSICAL THERAPISTS

317:30-5-291. Coverage by category

Payment is made to registered physical therapists as set forth in this Section.

- (1) **Children.** Initial therapy evaluations do not require prior authorization. All therapy services following the initial evaluation must be prior authorized for continuation of service.
- (2) **Adults.** There is no coverage for adults-for services rendered by individually contracted providers. Coverage for adults is permitted in an outpatient hospital setting as described in 30-5-42.1.
- (3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

PART 28. OCCUPATIONAL THERAPY SERVICES

317:30-5-296. Coverage by category

Payment is made for occupational therapy services as set forth in this Section.

(1) **Children.** Initial therapy evaluations do not require prior authorization. All therapy services following the initial evaluation must be prior authorized for continuation of service.

(2) **Adults.** There is no coverage for adults-for services rendered by individually contracted providers. Coverage for adults is permitted in an outpatient hospital setting as described in 30-5-42.1.

(3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

PART 77. SPEECH AND HEARING SERVICES

317:30-5-676. Coverage by category

Payment is made for speech and hearing services as set forth in this Section.

- (1) **Children.** Coverage for children is as follows:
 - (A) **Preauthorization required.** Initial therapy evaluations and the first three therapy visits do not require prior authorization. All therapy services following the initial evaluation and first three visits must be preauthorized prior to continuation of service.
 - (B) **Speech/Language Services.** Speech/language therapy services may include speech/language evaluations, individual and group therapy services provided by a state licensed speech/language pathologist.
 - (C) **Hearing aids.** Hearing and hearing aid evaluations include pure tone air, bone and speech audiometry by a state licensed audiologist. Payment is made for a hearing aid following a recommendation by a Medical or Osteopathic physician and a hearing aid evaluation by a state licensed audiologist.
- (2) **Adults.** There is no coverage for adults-for services rendered by individually contracted providers. Coverage for adults is permitted in an outpatient hospital setting as described in 30-5-42.1.
- (3) **Individuals eligible for Part B of Medicare.** Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

[OAR Docket #12-401; filed 4-10-12]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-ELIGIBILITY

[OAR Docket #12-399]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-42. [AMENDED]

(Reference APA WF # 11-02)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 111-312, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

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Part 5. Countable Income and Resources
317:35-5-42. [AMENDED]

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28 OK Reg 2329

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11-969

(Reference APA WF # 11-02)

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 requires state Medicaid agencies to disregard federal tax refunds or advance payments with respect to a refundable tax credits as income and as resources for purposes of determining eligibility. To bring Agency policy in compliance with this law, eligibility rules and income guidelines are revised to eliminate consideration of the Earned Income Tax Credit, which is the only refundable tax credits currently counted for eligibility purposes.

CONTACT PERSON:

Tywanda Cox at 522-7153

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 MAY 11, 2012:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) **General.** The term income is defined as that gross gain or gross recurrent benefit which is derived from labor, business, property, retirement and other benefits, and many other forms which can be counted on as currently available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income.

(1) If it appears the applicant or SoonerCare member is eligible for any type of income (excluding SSI) or resources, he/she must be notified in writing by the Agency of his/her potential eligibility. The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within 30 days from the date of the notice will result in a determination of ineligibility.

(2) If a husband and wife are living in their own home, the couple's total income and/or resource is divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) If only one spouse in a couple is eligible and the couple ceases to live together, only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month which they ceased to live together are considered.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (1 - 49 cents is rounded down, and 50 - 99 cents is rounded up). For example, an individual's weekly earnings of \$99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar ($\$99.90 \times 4.3 = \429.57 rounds to \$430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify OASDI benefits.

(b) **Income disregards.** In determining need, the following are not considered as income:

(1) The coupon allotment under the Food Stamp Act of 1977;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Form

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08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.

(C) Proceeds of a loan secured by an exempt asset are not an asset;

- (5) One-third of child support payments received on behalf of the disabled minor child;
- (6) Indian payments (including judgment funds or funds held in trust) distributed by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;
- (7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;
- (8) Title III benefits from State and Community Programs on Aging;
- (9) Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);
- (10) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;
- (11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the national School Lunch Act;
- (12) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;
- (13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;
- (14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a

rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;

(15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;

(17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) LIHEAP payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(19) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(20) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(21) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;

(22) Income of a sponsor to the sponsored eligible alien;

(23) Income that is set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of income excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(24) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(25) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;

(26) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;

(27) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

(28) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);

(29) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);

(30) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009; and

(31) Wages paid by the Census Bureau for temporary employment related to Census activities.

(c) **Determination of income.** The member is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility.

(1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.

(2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of SoonerCare and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare benefit and SSP case. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.

(3) Some of the more common income sources to be considered in determining eligibility are as follows:

(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.

(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:

- (I) seeing the member's award letter or warrant;
- (II) obtaining a signed statement from the individual who cashed the warrant; or
- (III) by using BENDEX and SDX.

(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment

must be computed according to OKDHS Form 08AX011E.

(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.

(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:

(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third party resources and do not affect the income eligibility or the vendor payment of the member.

(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.

(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to \$90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to \$90 per month. None of the \$90 may be used in computing any vendor payment or spenddown. In these instances, the nursing home resident is entitled to the \$90 reduced VA pension as well as the regular nursing facility maintenance standard. Any vendor payment or spenddown will be computed by using other income minus the monthly nursing facility maintenance standard minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.

(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for the mentally retarded or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(C) **Lump sum payments.**

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- (i) Any income received in a lump sum (with the exception of SSI lump sum) covering a period of more than one month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, including SSI (with the exception of dedicated bank accounts for disabled/blind children under age 18), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, retroactive OASDI, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.
- (ii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.
- (iii) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.
- (iv) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.
- (D) Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.
- (i) If royalty income is received monthly but in irregular amounts, an average based on the previous six months' royalty income is computed and used to determine income eligibility. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two month's royalty income is averaged to compute countable monthly income.
- (ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from rent property is treated as unearned income.
- (iii) When property rental is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.

(E) Earned income/self-employment. The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services; e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.

~~(i) Advance payments of EITC or refunds of EITC received as a result of filing a federal income tax return are considered as earned income in the month after they are received.~~

~~(ii) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.~~

~~(iii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business expense and appropriate earned income disregards.~~

~~(iv) Self-employment income is determined as follows:~~

~~(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount as well as the allowable deductions are the same as can be claimed under the Internal Revenue code for tax purposes.~~

~~(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.~~

~~(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time~~

the business has been in operation to establish the monthly income amount.

(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work related expense deduction given in OAC 340:10-3-33(1)).

(iv) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(F) **Inconsequential or irregular income.** Inconsequential or irregular receipt of income in the amount of \$10 or less per month or \$30 or less per quarter is disregarded. The disregard is applied per individual for each type of inconsequential or irregular income. To determine whether the income is inconsequential or irregular, the gross amount of earned income and the gross minus business expense of self-employed income are considered.

(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

- (i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.
- (ii) **Weekly.** Income received weekly is multiplied by 4.3.
- (iii) **Twice a month.** Income received twice a month is multiplied by 2.
- (iv) **Biweekly.** Income received every two weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(d) **Computation of income.**

(1) **Earned income.** The general income exclusion of \$20 per month is allowed on the combined earned income of the eligible individual and eligible or ineligible spouse. See paragraph (6) of this subsection if there are ineligible minor children. After the \$20 exclusion, deduct \$65 and one-half of the remaining combined earned income.

(2) **Unearned income.** The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered. See paragraph (6) of this subsection if there are ineligible minor children.

(3) **Countable income.** The countable income is the sum of the earned income after exclusions and the total gross unearned income.

(4) **Deeming computation for disabled or blind minor child(ren).** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age 18.

(A) A ~~mentally-retarded~~ intellectually disabled child living in the home who is ineligible for SSP due to the deeming process may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program as outlined in OAC 317:35-9-5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(5) **Premature infants.** Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams (approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents' income is not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

(6) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS Form 08AX001E, Schedule VII. C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.

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(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

(7) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three broad categories:

- (A) transportation to and from work;
- (B) job performance; and
- (C) job improvement.

[OAR Docket #12-399; filed 4-10-12]

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

[OAR Docket #12-400]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Insure Oklahoma ESI Employee Eligibility
317:45-9-4. [AMENDED]
Subchapter 11. Insure Oklahoma IP
Part 3. Insure Oklahoma IP Member Health Care Benefits
317:45-11-10. [AMENDED]
317:45-11-12. [AMENDED]
Part 5. Insure Oklahoma IP Member Eligibility
317:45-11-24. [AMENDED]
Subchapter 13. Insure Oklahoma Dental Services
317:45-13-1. [AMENDED]
(Reference APA WF # 11-05)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 5006(a) of the American Recovery and Reinvestment Act; 42 CFR 457.535

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Superseded rules:
Subchapter 9. Insure Oklahoma ESI Employee Eligibility
317:45-9-4. [AMENDED]
Subchapter 11. Insure Oklahoma IP
Part 3. Insure Oklahoma IP Member Health Care Benefits
317:45-11-10. [AMENDED]
317:45-11-12. [AMENDED]
Part 5. Insure Oklahoma IP Member Eligibility
317:45-11-24. [AMENDED]
Subchapter 13. Insure Oklahoma Dental Services
317:45-13-1. [AMENDED]

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(Reference APA WF # 11-05)

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Rules are revised to comply with Federal law on Native American cost-sharing exemptions. Native Americans are exempt from Insure Oklahoma co-pays or premiums when they receive services provided by I/T/U providers or through referral by contract health services. Native American children are exempt from all cost-sharing requirements regardless of where the services were rendered.

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 MAY 11, 2012:

SUBCHAPTER 9. INSURE OKLAHOMA ESI EMPLOYEE ELIGIBILITY

317:45-9-4. Employee cost sharing

Employees are responsible for up to 15 percent of their health plan premium. The employees are also responsible for up to 15 percent of their dependent's health plan premium if the dependent is included in the program. The combined portion of the employee's cost sharing for health plan premiums cannot exceed three percent of his/her annual gross household income computed monthly. Native American children providing documentation of ethnicity are exempt from cost-sharing requirements, including premium payments and out-of-pocket expenses.

SUBCHAPTER 11. INSURE OKLAHOMA IP

PART 3. INSURE OKLAHOMA IP MEMBER HEALTH CARE BENEFITS

317:45-11-10. Insure Oklahoma IP adult benefits

(a) All IP adult benefits are subject to rules delineated in 317:30 except as specifically set out in this Section. The scope of IP adult benefits described in this Section is subject to specific non-covered services listed in 317:45-11-11.

(b) A PCP referral is required to see any other provider with the exception of the following services:

- (1) behavioral health services;
- (2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;
- (3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;
- (4) women's routine and preventive health care services;
- (5) emergency medical condition as defined in 317:30-3-1; and
- (6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

(c) IP covered adult benefits for in-network services, limits, and applicable co-payments are listed in this subsection. In addition to the benefit-specific limits, there is a maximum lifetime benefit of \$1,000,000. Dependent children coverage is found at 317:45-11-12. Children are not held to the maximum lifetime benefit. Native American adults providing documentation of ethnicity who receive items and services furnished by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services are exempt from co-payments. Coverage includes:

- (1) Anesthesia / Anesthesiologist Standby. Covered in accordance with 317:30-5-7. Eligible services are covered for covered illness or surgery including services provided by a Certified Registered Nurse Anesthetist (CRNA) or Anesthesiologist Assistant (AA).
- (2) Blood and Blood Products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.
- (3) Chelation Therapy. Covered for heavy metal poisoning only.
- (4) Diagnostic X-ray, including Ultrasound. Covered in accordance with 317:30-5-22(b)(2). PCP referral is required. Standard radiology (X-ray or Ultrasound): \$0 co-pay. Specialized scanning and imaging (MRI, MRA, PET, or CAT Scan); \$25 co-pay per scan.
- (5) Emergency Room Treatment, services and supplies for treatment in an emergency. Contracted provider services are subject to a \$30 co-pay per occurrence. The emergency room co-pay will be waived if the member is admitted to the hospital or death occurs before admission.

(6) Inpatient Hospital Benefits. Covered in accordance with 317:30-5-41, 317:30-5-47 and 317:30-5-95; \$50 co-pay per admission.

(7) Preventive Office Visit. For services of evaluation and medical management (wellness exam); one visit per year with a \$10 co-pay. This visit counts as an office visit.

(8) Office Visits/Specialist Visits. Covered in accordance with 317:30-5-9, 317:30-5-10, and 317:30-5-11. For services of evaluation and medical management; up to four visits are covered per month; PCP referral required for specialist visits; \$10 co-pay per visit.

(9) Outpatient Hospital/Facility Services.

(A) Includes hospital surgery services in an approved outpatient facility including outpatient services and diagnostic services. Prior authorization required for certain procedures; \$25 co-pay per visit.

(B) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections; \$10 co-pay per visit.

(C) Physical, Occupational and Speech Therapy services. Coverage is limited to one evaluation/re-evaluation visit (unit) per discipline per calendar year and 15 visits (units) per discipline per date of service per calendar year; \$10 co-pay per visit.

(10) Maternity (Obstetric). Covered in accordance with 317:30-5-22. Nursery care paid separately under eligible child; \$50 inpatient hospital co-pay.

(11) Laboratory/Pathology. Covered in accordance with 317:30-5-20; \$0 co-pay.

(12) Mammogram (Radiological or Digital). Covered in accordance with 317:30-5-901; \$0 co-pay.

(13) Immunizations. Covered in accordance with 317:30-5-2.

(14) Assistant Surgeon. Covered in accordance with 317:30-5-8.

(15) Dialysis, Kidney dialysis, and services and supplies, either at home or in a facility; \$0 co-pay.

(16) Oral Surgery. Services are limited to the removal of tumors or cysts; Inpatient Hospital \$50 or Outpatient Hospital/Facility; \$25 co-pay applies.

(17) Behavioral Health (Mental Health and Substance Abuse) Treatment (Inpatient). Covered in accordance with 317:30-5-95.1; \$50 co-pay per admission.

(18) Behavioral Health (Mental Health and Substance Abuse) Treatment (Outpatient).

(A) Agency services. Covered in accordance with 317:30-5-241 and 317:30-5-596; \$10 co-pay per visit.

(B) Individual provider services. Licensed Behavioral Health Professionals (LBHPs) are defined as follows for the purpose of Outpatient Behavioral Health Services and Outpatient Substance Abuse Treatment:

- (i) 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 practicing as described in 317:30-5-2.

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(ii) 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 licensing boards listed in (I) through (VI) below. The exemptions from licensure under 59 Okla. Stat. §1353(4) and (5), 59 §1903(C) and (D), 59 §1925.3(B) and (C), and 59 §1932(C) and (D) do not apply to Outpatient Behavioral Health Services.

- (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.

(iii) 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.

(iv) 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.

(v) LBHPs must have a valid Insure Oklahoma contract in order to bill for services rendered.

(vi) LBHP services require prior authorization and are limited to 8 therapy services per month per member and 8 testing units per year per member; \$10 co-pay per visit.

(19) Durable Medical Equipment and Supplies. Covered in accordance with 317:30-5-210 through 317:30-5-218. A PCP referral and prior authorization is required for certain items. DME/Supplies are covered up to a \$15,000 annual maximum; exceptions from the annual DME limit are diabetic supplies, oxygen, home dialysis, and parenteral therapy; \$5 co-pay for durable/non-durable supplies and \$25 co-pay for durable medical equipment.

(20) Diabetic Supplies. Covered in accordance with 317:30-5-211.15; not subject to \$15,000 annual DME limit; \$5 co-pay per prescription.

(21) Oxygen. Covered in accordance with 317:30-5-211.11 through 317:30-5-211.12; not subject to \$15,000 annual DME limit; \$5 co-pay per month.

(22) Pharmacy. Covered in accordance with 317:30-5-72.1 and 317:30-5-72. Prenatal vitamins and smoking cessation products do not count against monthly prescription limits; \$5/\$10 co-pay per prescription.

(23) Smoking Cessation Products. Products do not count against monthly prescription limits. Covered in accordance with 317:30-5-72.1; \$5/\$10 co-pay per product.

(24) Nutrition Services. Covered in accordance with 317:30-5-1076; \$10 co-pay per visit.

(25) External Breast Prosthesis, Bras and Prosthetic Garments. Covered in accordance with 317:30-5-211.13; \$25 co-pay per prosthesis.

(26) Surgery. Covered in accordance with 317:30-5-8; \$50 co-pay per inpatient admission and \$25 co-pay per outpatient visit.

(27) Home Dialysis. Covered in accordance with 317:30-5-211.13; not subject to \$15,000 annual DME limit; \$0 co-pay.

(28) Parenteral Therapy. Covered in accordance with 317:30-5-211.14; not subject to \$15,000 annual DME limit; \$25 co-pay per month.

(29) Family Planning Services and Supplies, including Sterilizations. Covered in accordance with 317:30-3-57; \$0 co-pay.

(30) Home Health Medications, Intravenous (IV) Therapy and Supplies. Covered in accordance with 317:30-5-211.15 and 317:30-5-42.16(b)(3).

(31) Fundus photography.

(32) Perinatal dental care for pregnant women. Covered in accordance with 317:30-5-696; \$0 co-pay.

317:45-11-12. Insure Oklahoma IP children benefits

(a) IP covered child benefits for in-network services, limits, and applicable co-payments are listed in this Subsection. All IP benefits are subject to rules delineated in 317:30 except as specifically set out in this Section. All services provided must be medically necessary as defined in 317:30-3-1(f). The scope of IP child benefits described in this Section is subject to specific non-covered services listed in 317:45-11-13. Dependent children are not held to the maximum lifetime benefit of \$1,000,000. Native American children providing documentation of ethnicity are exempt from co-payments. Coverage includes:

(1) Ambulance services. Covered as medically necessary; \$50 co-pay per occurrence; waived if admitted.

(2) Blood and blood products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.

(3) Chelation therapy. Covered for heavy metal poisoning only.

(4) Chemotherapy and radiation therapy. Covered as medically necessary; \$10 co-pay per visit.

(5) Clinic services including renal dialysis services. Covered as medically necessary; \$0 co-pay for dialysis services; \$10 co-pay per office visit.

(6) Diabetic supplies. One glucometer, one spring-loaded lancet device, two replacement batteries per year - 100 glucose strips and lancets per month; not included in DME \$15,000 max/year; \$5 co-pay per billable service. Additional supplies require prior authorization.

(7) Diagnostic X-ray services. Covered as medically necessary; \$25 co-pay per scan for MRI, MRA, PET, CAT scans only.

(8) Dialysis. Covered as medically necessary.

(9) Durable medical equipment and supplies. Covered as medically necessary with \$15,000 annual maximum;

\$5 co-pay per item for durable/non-durable supplies; \$25 co-pay per item for DME.

(10) Emergency department services. Covered as medically necessary; \$30 co-pay per occurrence; waived if admitted.

(11) Family planning services and supplies. Birth control information and supplies; pap smears; pregnancy tests.

(12) Home health services. Home health visits limited to 36 visits per year, prior authorization required, includes medications IV therapy and supplies; \$10 co-pay per visit, appropriate pharmacy and DME co-pays will apply.

(13) Hospice services. Covered as medically necessary, prior authorization required; \$10 co-pay per visit.

(14) Immunizations. Covered as recommended by ACIP; \$0 co-pay.

(15) Inpatient hospital services (acute care only). Covered as medically necessary; \$50 co-pay per admission.

(16) Laboratory services. Covered as medically necessary.

(17) Psychological testing. Psychological, neurological and development testing; outpatient benefits per calendar year, prior authorization required issued in four unit increments - not to exceed eight units/hours per testing set; \$0 co-pay.

(18) Mental health/substance abuse treatment-outpatient. All outpatient benefits require prior authorization. Outpatient benefits limited to 48 visits per calendar year. Additional units as medically necessary; \$10 co-pay per outpatient visit.

(19) Mental health/substance abuse treatment-inpatient. Acute, detox, partial, and residential treatment center (RTC) with 30 day max per year, 2 days of partial or RTC treatment equals 1 day accruing to maximum. Additional units as medically necessary; \$50 co-pay per admission. Requires prior authorization.

(20) Nurse midwife services. Covered as medically necessary for pregnancy-related services only; \$0 co-pay.

(21) Nutrition services. Covered as medically necessary; \$10 co-pay.

(22) Nutritional support. Covered as medically necessary; not included in DME \$15,000 max/year. Parenteral nutrition covered only when medically necessary; \$25 co-pay.

(23) Other medically necessary services. Covered as medically necessary.

(24) Oral surgery. Covered as medically necessary and includes the removal of tumors and cysts; \$25 co-pay for outpatient; \$50 co-pay for inpatient hospital.

(25) Outpatient hospital services. Covered as medically necessary and includes ambulatory surgical centers and therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for children with proven malignancies or opportunistic infections; \$25 co-pay per visit; \$10 co-pay per visit for therapeutic radiology or chemotherapy.

(26) Oxygen. Covered as medically necessary; not included in DME \$15,000 max/year; \$5 co-pay per month.

(27) PCP visits. Blood lead screen covered as medically necessary. Hearing services limited to one outpatient newborn screening. Well baby/well child exams follow recommended schedule to age 19; \$0 co-pay for preventive visits and well baby/well child exams; \$10 co-pay for all other visits.

(28) Physical, occupational, and speech therapy. Covered as medically necessary; prior authorization required; \$10 co-pay per visit.

(29) Physician services, including preventive services. Covered as medically necessary; \$0 co-pay for preventive visits; \$10 co-pay for all other visits.

(30) Prenatal, delivery and postpartum services. Covered as medically necessary; \$0 co-pay for office visits; \$50 co-pay for delivery.

(31) Prescription drugs and insulin. Limited to six per month; generic preferred. Prenatal vitamins and smoking cessation products do not count toward the six prescription limit; \$5-\$10 co-pay.

(32) Smoking cessation products. Limited coverage; 90-day supply; products do not count against prescription drug limit; \$5-\$10 co-pay.

(33) Specialty clinic services. Covered as medically necessary; \$10 co-pay.

(34) Surgery. Covered as medically necessary; \$25 co-pay for outpatient facility; \$50 co-pay for inpatient hospital.

(35) Tuberculosis services. Covered as medically necessary; \$10 co-pay per visit.

(36) Ultraviolet treatment-actinotherapy. Covered as medically necessary; prior authorization required after one visit per 365 sequential days; \$5 co-pay.

(b) A PCP referral is required to see any other provider with the exception of the following services:

- (1) behavioral health services;
- (2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;
- (3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;
- (4) women's routine and preventive health care services;
- (5) emergency medical condition as defined in 317:30-3-1; and
- (6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

PART 5. INSURE OKLAHOMA IP MEMBER ELIGIBILITY

317:45-11-24. Member cost sharing

(a) Members are given monthly invoices for health plan premiums. The premiums are due, and must be paid in full, no later than the 15th day of the month prior to the month of IP coverage.

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(1) Members are responsible for their monthly premiums, in an amount not to exceed four percent of their monthly gross household income.

(2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed four percent of their monthly gross household income, based on a family size of one and capped at 250 percent of the Federal Poverty Level. The increase from 200 to 250 percent of the FPL will be phased in over a period of time as determined by the Oklahoma Health Care Authority.

(3) Native Americans providing documentation of ethnicity are exempt from premium payments.

(b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of Insufficient/Non-sufficient funds.

SUBCHAPTER 13. INSURE OKLAHOMA DENTAL SERVICES

317:45-13-1. Dental services requirements and benefits

The Oklahoma Health Care Authority (OHCA) provides dental services to children who qualify for the Insure Oklahoma Individual Plan (IP). Dental coverage is obtained through direct purchase from the OHCA. The existing cost sharing requirements for IP qualified children apply. Native Americans children providing documentation of their ethnicity are exempt from dental co-pay requirements. Children obtaining medical coverage through IP receive Dental IP coverage. The OHCA contracts with Dental IP providers utilizing the SoonerCare network. The Dental IP providers are reimbursed pursuant to the SoonerCare fee schedule for rendered services.

(1) The Dental IP program is covered as medically necessary and includes coverage for Class A, B, C, and orthodontia services. All coverage is provided as necessary to prevent disease, promote and restore oral health, and treat emergency conditions. Dental services follow the American Academy of Pediatric Dentistry (AAPD) periodicity schedule. Prior authorization is required for certain services.

(2) Class A services are covered as medically necessary and include preventive, diagnostic care such as cleanings, check-ups, X-rays, and fluoride treatments, no co-pay is required.

(3) Class B services are covered as medically necessary and include basic, restorative, endodontic, periodontic, oral and maxillofacial surgery care such as fillings, extractions, periodontal care, and some root canal, \$10 co-pay is required.

(4) Class C services are covered as medically necessary and include major, prosthodontic care such as crowns, bridges and dentures, \$25 co-pay is required.

(5) Class D services are covered as medically necessary and include orthodontic care. Orthodontic care is not covered for cosmetic purposes or any purposes which are not medical in nature, \$25 co-pay is required.

(6) Emergency dental services are covered as medically necessary, no co-pay is required.

[OAR Docket #12-400; filed 4-10-12]

TITLE 360. OKLAHOMA STATE AND EDUCATION EMPLOYEES GROUP INSURANCE BOARD CHAPTER 10. STATE AND EDUCATION EMPLOYEES HEALTH, DENTAL, VISION AND LIFE PLANS

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360:10-3-25. [AMENDED]

360:10-3-29.1. [AMENDED]

Subchapter 5. Coverage and Limitations

Part 3. The Plans

360:10-5-16. [AMENDED]

Part 11. Medicare Supplement

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Changes to Chapter 10 clarify definitions, conform rules to recent benefit changes, clarify language, and clarify existing plan exclusions.

CONTACT PERSON:

Gary Goff, Attorney, Assistant Administrator, (405) 717-8744

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 JANUARY 1, 2013:

SUBCHAPTER 3. ADMINISTRATION OF PLANS

360:10-3-13. Payment of health, dental and life benefits

(a) Life insurance benefits are payable to the beneficiary designated by the employee. Premiums and overpaid disability benefits due and payable to OSEEGIB at the time of the insured's death may be withheld from life insurance benefits before payment of the remainder to the beneficiary or estate. Life proceeds are not assignable, except a beneficiary may assign proceeds in an amount equal to the decedent's burial expenses. If no beneficiary form is on file with OSEEGIB, benefits will be paid to the decedent's estate.

(b) Health and dental benefits are payable to the employee or the provider. If any health or dental benefits remain unpaid at the employee's death, OSEEGIB, may at its option, pay the benefits to the employee's estate or to any one or more relatives such as follows: spouse, father, mother, children, brothers or sisters. Any such payment will constitute complete discharge of OSEEGIB's obligation to the extent of the amount paid.

(c) If a minor or person otherwise legally incapable of giving a valid receipt of discharge of any payment is selected as a beneficiary, a guardian must be appointed by a court of competent jurisdiction before benefits shall be paid.

360:10-3-24. Dependents

Eligible dependents may be enrolled by new employees with their coverage effective concurrently with the employee's coverage if the member has signed the insurance change form requesting such coverage within the member's initial thirty [30] day enrollment period. Dependent coverage not elected at that time shall not become available until the next enrollment period. Dependents are not eligible for any coverage in which the member is not enrolled. When one eligible dependent is covered, all eligible dependents must be covered for all elected coverage. The spouse or dependent may elect not to be covered when the spouse or dependent is covered by other verifiable group health, dental or vision coverage. The member can elect not to cover dependents who do not reside with the member, are married, are not financially dependent on the member for support, have other group coverage or are eligible for Indian or military health benefits. The spouse may elect not to be covered provided a statement signed by the employee and the spouse is submitted to the Insurance/Benefits Coordinator. Dependent's benefits shall only be covered under one primary insured except in the case of dependent life.

(1) When the parent is covered by health insurance, in order for an employee to retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) for his or her own newborn child, a completed insurance change form and any appropriate premium for the month of birth must be furnished to the Insurance/Benefits Coordinator within thirty [30] days after the date of birth of the newborn. Claims incurred for inpatient hospital treatment beyond the first forty-eight [48] or ninety-six [96] hours may not be processed or paid for the newborn until the newborn has been properly enrolled in the Plan. HealthChoice newborn limited benefit:

a newborn has limited coverage for a birth for the first forty-eight [48] hours following a vaginal delivery or for the first ninety-six [96] hours following a C-section delivery without an additional premium. There are no benefits for services in addition to the routine hospital stay if the newborn is not enrolled for the month of the birth and premiums are not paid for that month. A Newborn Benefit Waiver must be completed to exclude a newborn from the Newborn Benefit.

(2) Newborns must be added the first of the month of the child's birth by filling out an Insurance Change Form within thirty [30] days after birth of the newborn.

(3) When one or more eligible dependents are currently covered, the newborn must be added to the same coverage.

(4) Where a newborn is added to coverage, all other eligible dependents must be enrolled in coverage if they are not currently enrolled. A member can waive health or dental coverage for their spouse.

(5) If a member accepts newborn benefits for the birth of his or her child but does not retain coverage after the first forty-eight [48] hours (vaginal delivery) or ninety-six [96] hours (caesarian delivery) as a result of the member's failure to furnish his or her Insurance/Benefits Coordinator with a completed insurance change form and any appropriate premium for the month of the newborn's birth within thirty [30] days after the birth of the newborn:

(A) There is no additional premium for the newborn benefit.

(B) Enrollment of other eligible dependents is not required.

~~(26)~~ If optional coverage is not selected until after the employee's effective date, but within the member's initial thirty [30] day enrollment period, the optional coverage will be effective the first [1st] day of the month following the date the optional coverage was selected.

~~(37)~~ In the event a dependent is hospital confined on the day his health coverage would otherwise become effective, health coverage for that dependent is not effective until the day following his or her final discharge from the hospital.

~~(48)~~ Eligible dependents who lose other group health, dental or vision insurance coverage may be added to the equivalent health, dental or vision coverage offered through OSEEGIB within thirty [30] days after the loss of other group insurance coverage without penalty for orthodontia if those dependents have been continuously covered by other group dental insurance, or have been eligible for treatment at military or Indian health facilities. Notice and proof of the loss of other coverage and termination date of other coverage must be submitted within thirty [30] days after the loss of the other coverage. At the insured's option, in order to avoid a break in coverage and the application of the orthodontia limitations, coverage under this Plan shall become effective on the first [1st] day of the month during which the insured actually lost previous coverage, provided the insured pays the full premium for that month. Otherwise, coverage shall become effective under this Plan on the first [1st] day of the month following notice of the loss of other coverage, and

any break in coverage will result in the application of the orthodontia limitations.

(59) Newly acquired dependents may be added if the election is made within thirty [30] days after the qualifying event, or during the annual enrollment period as established by OSEEGIB. Documentation proving the qualifying event may be required. The effective date of coverage will be the first [1st] day of the month following notification to OSEEGIB of the qualified event except for newborn or adopted dependent children.

(610) Provided all other eligibility requirements are satisfied, ~~newly born or~~ adopted eligible dependent children, eligible children for which guardianship has been newly granted to the insured or the insured's spouse, or eligible children of which the insured has been newly granted physical custody pending adoption, guardianship, or other legal custody, may be covered from the first [1st] day they are placed in the insured's physical custody, only upon payment of the full monthly premium for that individual, not prorated, and only after written notice has been given to OSEEGIB within thirty [30] days after obtaining physical custody. Copies of all documents relating to the matter are also required.

(711) At the insured's option, coverage for eligible dependent children newly placed in the insured's physical custody may become effective on the first [1st] day of the second month following placement, if written notice is provided within thirty [30] days after the date of placement, or at the next option period as established by OSEEGIB.

(812) In the absence of a court order indicating adoption, guardianship, legal separation or divorce, an insured may apply for coverage on other unmarried minor children living with the insured provided: (1) the insured submits a copy of his most recent federal income tax return showing the child was listed as the insured's dependent for income tax deduction purposes; and (2) if the last federal income tax form requested above does not list the child, the insured shall be required to provide an Application for Coverage for Other Dependent Children form prescribed by the Plan; and (3) coverage, if approved, shall begin on the first [1st] day of the month following approval, and will never apply retroactively; and (4) all other applicable eligibility requirements must be satisfied; and (5) all necessary premiums have been paid. OSEEGIB shall have the right to verify the dependent's status, to request copies of the insured's federal income tax returns from time to time, and to discontinue coverage for such dependents if they are found to be ineligible for any reason.

360:10-3-25. Termination of dependent coverage

(a) **Waiting period of twelve [12] months.** If coverage is discontinued for dependents, the employee cannot reapply for the discontinued coverage for any dependents again for at least twelve [12] months. Reinstated coverage shall be subject to penalty for orthodontia limitations.

(b) **Loss of other group health, dental, vision or life insurance coverage.** The twelve [12] month requirement does

not apply when the dependent has lost other group health, dental, vision and/or life insurance coverage and is seeking reinstatement pursuant to Rule ~~360:10-3-24(4)~~360:10-3-24(8).

(c) **Dependent reaches age twenty-six [26].** Coverage will be terminated for dependents reaching age twenty-six [26] on the first [1st] day of the month following their twenty-sixth [26th] birthday, except disabled dependents who are incapable of self-support and who have been deemed eligible for coverage by OSEEGIB.

360:10-3-29.1. Double coverage prohibited

An eligible person shall not be insured as a primary insured and also as a dependent for any benefit options except dependent life, nor can any dependent be covered simultaneously by more than one primary insured, except for dependent life. Double enrollment, whether it occurs intentionally or by error, shall be deemed void from the inception, and OSEEGIB reserves the right to decide which form of single enrollment coverage to allow, whether primary or dependent.

SUBCHAPTER 5. COVERAGE AND LIMITATIONS

PART 3. THE PLANS

360:10-5-16. Plan limits

(a) **Deductible.** Covered members or dependents may be required to meet a calendar year deductible. Only covered charges will apply to the deductible.

(b) **Family deductible.** The family deductible is met when covered family medical expenses combined exceed the Plan's specified amount. No further deductible will be required from any covered participant for the remainder of the calendar year.

(c) **Out-of-pocket expenses.** Per person and family calendar year out-of-pocket expenses are limited under HealthChoice to the percentage based coinsurance only. Copayments which have been established at specific dollar amounts will continue to apply after the out-of-pocket percentage based coinsurance has been met. Out-of-pocket expenses owed by members as a result of non-confined emergency room visits and non-Network inpatient hospital confinements are not considered to be deductibles. These out-of-pocket expenses are copays that are not considered when calculating a member's out-of-pocket maximum accumulations.

(d) **Network out-of-pocket maximum.** When the member or dependent exceeds the specified out-of-pocket calendar year maximum OSEEGIB will pay one hundred percent [100%] of the allowable fee for treatment provided by a Network provider. The one hundred percent [100%] payment of the allowable fee will be made by HealthChoice for the remainder of the calendar year. Network out-of-pocket maximum accumulations also apply to the non-Network out-of-pocket accumulations.

(e) **Non-Network out-of-pocket.** The Plan will pay one hundred percent [100%] of the allowable fee for treatment provided by a non-Network provider, once the member or

dependent exceeds the specified out-of-pocket calendar year threshold. The one hundred percent [100%] payment of the allowable fee will be made by the Plan for the remainder of the calendar year. Specific HealthChoice plans may apply non-Network out-of-pocket accumulations to the Network out-of-pocket maximums. Unlike Network providers, non-Network providers have no contractual obligation to limit members' financial responsibility after HealthChoice has paid the claim. HealthChoice processes claims based on limited allowable fees to Network and non-Network providers. Allowable fees are not the same as charges billed by providers. Network providers have agreed with HealthChoice to write off the remainder of their fees after all payments from HealthChoice and the member's deductible, copay and coinsurance have been determined. However, non-Network providers have no write-off agreement with HealthChoice, which means the member remains responsible for paying all outstanding billed costs for treatment which have not been paid by HealthChoice. In most cases, this leaves the member responsible for paying a substantial out-of-pocket fee for treatment by the non-Network provider.

(f) **Lifetime maximum benefit.** There is a lifetime maximum benefit that will be paid by the Plan for a member or dependent, with regard to pharmacy benefits.

(g) **Treatment by non-Network providers.** Any treatment at a non-Network provider will remain subject to the fee schedule or any other form of maximum claim payment limitation. Claims paid pursuant to the benefit administration procedures or guidelines as adopted by OSEEGIB at any non-Network hospital or provider are subject to the limited maximum allowable fee in every case, regardless of the reason why the member sought and received treatment at the non-Network provider, and will usually result in substantial out-of-pocket expenses to the insured. Exceptions allowed by Statute at 74 O.S. §1304(12) and (13) may be made, when appropriate.

PART 11. MEDICARE SUPPLEMENT

360:10-5-79. Enrollment in Medicare Supplement

(a) **Medicare Supplement coverage enrollment required regardless of age.** All covered individuals who are eligible for Medicare, except current employees and their dependents as addressed in 360:10-5-76, must be enrolled in a Medicare Supplement Plan, offered through OSEEGIB, regardless of age.

(b) **Effective date of Medicare Supplement coverage.** Medicare Supplement coverage shall become effective on the first [1st] day of the month following the date OSEEGIB receives actual notice of the member's eligibility for Medicare. There shall be no refund of premiums for prior months during which the member was eligible for Medicare, and written notice was not provided to OSEEGIB. An exception shall be made for individuals who are retroactively awarded Medicare coverage by the Social Security Administration, when written notice of the retroactive award is provided to OSEEGIB within thirty [30] days after the member's notification of the Social

Security Administration award. A member's sixty-fifth [65th] birthday is considered automatic notification of Medicare eligibility.

(c) **Non-Medicare eligible individuals.** Nothing in the rules in this chapter prohibits individuals who are not eligible for Medicare from being enrolled in OSEEGIB's regular health plan; however, individuals eligible to purchase Medicare coverage are excluded.

[OAR Docket #12-353; filed 3-30-12]

**TITLE 360. OKLAHOMA STATE AND
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INSURANCE BOARD
CHAPTER 15. THE DISABILITY PLAN**

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CONTACT PERSON:

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Permanent Final Adoptions

360:15-1-2. Definitions

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

"Base compensation" means the rate of earnings in effect on the date disability begins. Base compensation does not include overtime, commissions, bonuses, longevity pay, salary increases, productivity enhancement program payments and all other extra compensation.

"Benefit period" means the first [1st] day of the benefit period will be the day benefits commence as defined at 360:15-1-4(a) and (b). The end of the benefit period will be the last day of eligibility as defined at 360:15-1-11(d). A recurrent disability as defined at 360:15-1-7 will not alter the beginning date of the benefit period.

"The Board" means the eight [8] members designated by statute [74 O.S. §1303(1)].

"Disability" means a person is considered to be disabled when he is unable, as a result of injury or illness, to perform the material duties of his own occupation. Disability will be considered to have commenced on the date the employee first receives treatment or advice from a physician after his last date worked and said disability is expected to last thirty-one [31] consecutive calendar days or longer. After the first twenty-four [24] months of disability, disability will be defined as inability to perform each of the material duties of any gainful occupation for which a person is or may become reasonably qualified by training, education or experience. None of the classes of disability used in other plans or programs such as temporary, permanent, total, or partial, etc., are to be used to limit or define this plan's disability criteria, whether or not the terms are used in medical or legal documents supplied as proof of disability under this plan. Uses of such terms are intended to be disregarded by this plan. Determinations rendered by or for workers compensation or social security are not considered prima facie evidence of disability for this plan.

"Eligibility period" means the first thirty-one [31] consecutive calendar days of employment. No benefit is payable for this period. For employees with less than one [1] year of service, proof of continuous presence at the regularly assigned work place and verification by the appointing authority that the employee was performing all of the material duties of the employee's regular occupation continuously during the eligibility period shall be required as conditions of satisfaction of the eligibility period. Employees reinstated to eligibility to participate in the disability plan after having waived disability coverage pursuant to 74 O.S. §1308.3 will be considered to have no prior service and no continuous employment prior to their reinstated eligibility.

"Elimination period" means the first thirty [30] consecutive calendar days of disability. No benefit is payable for this period.

"Employee" means, for purposes of this chapter only, the term employee includes but is not limited to persons who are currently drawing disability benefits under this Disability Plan or who meet each and every requirement of this Disability Plan.

"Furlough" means a nonscheduled working day, in addition to regular nonscheduled working days requested by the employer.

"Illness" means sickness or disease, including pregnancy and complications of pregnancy. Disability resulting from the illness must begin while the employee is participating in the Plan.

"Injury" means bodily injury resulting directly from an accident, independent of all other causes. The resulting disability must occur while the employee is participating in the Plan.

"OSEEGIB" means the Oklahoma State and Education Employees Group Insurance Board.

"Participation" means participation in the Disability Plan shall be limited to employees who have been employees for a period of not less than one [1] month prior to the onset of the disability. The employee must have been continuously employed by the employer for a period of not less than one [1] month, and must have satisfied the requirements of the eligibility period as defined herein. For the purposes of this chapter, one [1] month shall mean thirty-one [31] consecutive days.

"Physician" means a person licensed to practice medicine and surgery, osteopathy, chiropractic, podiatry, optometry, or dentistry and legally qualified as a medical practitioner under the insurance statutes of the State of Oklahoma, and operating within the scope of his license. An employee or an employee's spouse, child, father, mother, sister, or brother will not be included in this definition.

"Preexisting condition" means, for the purposes of this chapter only, an illness or injury for which the employee received medical care, diagnosis, consultation, treatment or took prescribed drugs or medicines during the ninety [90] day period immediately preceding his/her entry-on-duty (EOD) date. The term "preexisting condition" shall also include any condition which is related to such injury or illness.

"Years of service" means time spent as an active employee performing full-time duties for remuneration with an entity participating in the Disability Plan. Time on partial disability or leave (with or without pay) after an established disability date will not be counted toward years of service for disability benefit purposes. Time on leave without pay status after an established disability date will also not be counted toward years of service for disability benefit purposes. Under no circumstances will time for which an insured receives disability benefits under this Plan be counted toward years of service.

360:15-1-20. Termination of coverage

Employees cease to be insured under the Disability Plan on the earliest of the following dates:

- (1) The date the Disability Plan terminates;
- (2) The date employment terminates. Cessation of active employment will be deemed termination of employment, except:
 - (A) The insurance will be continued for a disabled employee during the period during which the employee remains disabled.

(B) OSEEGIB may continue the employee's insurance, subject to the following:

- (i) Insurance may be continued for the time shown in the policy specifications for an employee on furlough or temporarily laid off; or
- (ii) OSEEGIB shall act so as not to discriminate unfairly among employees in similar situations.

(3) Waiver of disability coverage pursuant to 74 O.S. §1308.3.

[OAR Docket #12-354; filed 3-30-12]

**TITLE 450. DEPARTMENT OF MENTAL
HEALTH AND SUBSTANCE ABUSE
SERVICES
CHAPTER 15. CONSUMER RIGHTS**

[OAR Docket #12-364]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Consumer Rights
- Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
- 450:15-3-8. Right to freedom from ~~maltreatment mistreatment, abuse and neglect~~ [AMENDED]
- Part 3. Consumer Grievance Procedure
- 450:15-3-45. Consumer Grievance Policy and Procedures and local advocacy activities [AMENDED]
- Part 7. Consumer Access to Health Information, Facilities Operated by ODMHSAS
- 450:15-3-66. Right to an accounting of disclosures from facilities operated by ODMHSAS [AMENDED]
- Part 11. Resident Rights, Mental Health Residential Care Facilities
- 450:15-3-85. Resident Grievance Policy & Procedures [AMENDED]
- Subchapter 7. Office of Consumer Advocacy and Department Investigations
- Part 1. Office of Consumer Advocacy
- 450:15-7-3. Advocate General [AMENDED]
- 450:15-7-4. Office of Consumer Advocacy Powers & Duties [AMENDED]
- Part 2. Investigations
- 450:15-7-6. Reporting suspected maltreatment [AMENDED]

AUTHORITY:

Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 2-108 and 2-109.

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 15 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:

Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 521-6365.

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 1, 2012:

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-8. Right to freedom from maltreatment mistreatment, abuse and neglect

- (a) Staff shall not mistreat, physically, sexually, verbally or otherwise abuse any consumer. Visitors or other consumers shall not be permitted to physically, sexually, verbally or otherwise abuse any consumer. Staff shall not neglect any consumer.
- (b) The facility director shall ensure a critical incident report is completed for each alleged occurrence of abuse or neglect and a copy is forwarded to the ODMHSAS division that is designated to review or investigate allegations of mistreatment, abuse or neglect.
- (c) In cases of sexual or physical abuse, the person in charge of the facility shall promptly inform the County Sheriff or the District Attorney so that a criminal investigation can be initiated.

PART 3. CONSUMER GRIEVANCE PROCEDURE

450:15-3-45. Consumer Grievance Policy and Procedures and local advocacy activities

Facilities shall have a written grievance policy that includes:

- (1) A written notice of the grievance procedure is provided to each consumer or guardian and, to an individual of the consumer's choice;
- (2) Time frames for the grievance procedures which allow for an expedient resolution of consumer grievance(s);
 - (A) Inpatient and residential programs shall be a seven (7) day timeframe;

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(B) Outpatient, intensive outpatient and day treatment programs shall be a fourteen (14) day timeframe;

(C) Crisis stabilization, medical detoxification and social detoxification programs shall have a three (3) day timeframe;

(3) A procedure for advising the consumer he or she has the right to make a complaint to the facility's local advocate or the ODMHSAS Consumer Advocacy Division and the mechanism for contacting the Consumer Advocacy Division. A consumer shall have unimpeded and confidential access to the facility's local advocate and the ODMHSAS Office of Consumer Advocacy. No policy or procedure shall require contact with the facility's local advocate prior to contacting the ODMHSAS Office of Consumer Advocacy;

(4) The procedure by which consumers are notified of the specific name(s) of the individual(s) responsible for coordinating the program's grievance procedure; and the individual responsible for or authorized to make decisions for resolution of the grievance; and the specific name(s) of the individual(s) acting as the facility's local advocate. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated. The designated local advocate shall work with facility staff and contractors to ensure the needs of consumers are met at the lowest level possible and that consumer rights are enforced and not violated;

(5) The provision of written notification to the consumer of the grievance outcome and mechanism by which an individual may appeal the outcome;

(6) ODMHSAS operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Commissioner or designee;

(7) A mechanism to monitor the grievance process and improve performance based on outcomes;

(8) An annual review of the grievance policy and procedure including providing copies of updated grievance policy and procedure information to the Office of Consumer Advocacy when requested; and

(9) The ongoing monitoring of the grievance process and, based on outcomes, adjust and improve processes;

(10) The individual(s) designated as a facility's local advocate shall be responsible for coordinating and monitoring the facility's advocacy activities and contacts with the ODMHSAS Office of Consumer Advocacy. Duties of the facility's local advocate shall include, but is not limited to:

(A) Serve as the on-sight advocate for consumers being treated or under the care of the program or facility and act as a liaison to the ODMHSAS Office of Consumer Advocacy. Such activities may include

(i) Assist consumers in filing grievances;

(ii) Serve as resource for consumers for questions or information dissemination about the facility, admission and discharge processes, or other basic human needs while in treatment; and

(iii) Make contact with consumers involved in or who witness Critical Incidents or Sentinel

Events while in treatment to ensure needs are being met.

(B) Serve as facility or program liaison to the Office of Consumer Advocacy in advocacy activities.

PART 7. CONSUMER ACCESS TO HEALTH INFORMATION, FACILITIES OPERATED BY ODMHSAS

450:15-3-66. Right to an accounting of disclosures from facilities operated by ODMHSAS

Facilities operated by ODMHSAS must provide to consumers upon request an accounting of disclosures of health information in the designated record set as provided below:

(1) The consumer must make a written request to the facility's health information director, ~~or~~ ODMHSAS Privacy Officer, or designee.

(2) The facility must provide an accounting of disclosures made of the consumer's designated record set during a time period specified up to six (6) years prior to the date of the request for an accounting except for disclosures:

(A) To carry out treatment, payment or health care operations as permitted under law;

(B) To the consumer about his or her own information;

(C) Authorized by the consumer;

(D) To persons involved in the consumer's care or other notification purposes permitted under law;

(E) For national security or intelligence purposes;

(F) To corrections officials or law enforcement officials as permitted under law; or

(G) That are a part of a limited data set;

(H) That are merely incidental to another permissible use or disclosure;

(I) Which were made before April 14, 2003;

(J) In certain circumstances involving health oversight, a facility may temporarily suspend the consumer's right to receive an accounting of disclosures.

(3) The accounting for disclosure must contain the following information for each disclosure:

(A) Date of disclosure;

(B) Name of entity or person who received the information, and, if known, the address of such entity or person;

(C) A brief description of the information from the designated record set disclosed; and

(D) The purpose for which the disclosure was made;

(4) If during the time period for the accounting, multiple disclosures have been made to the same person or entity for a single purpose, or pursuant to a single authorization, the accounting may provide information as set forth above for the first disclosure, and then summarize the frequency, periodicity, or number of disclosures made during the accounting period and the date of the last such disclosure during the accounting period.

(5) The facility shall have sixty (60) days to act on the request for accounting of disclosures, unless the facility sends the consumer a letter within the initial sixty (60) day period extending the period for no more than an additional thirty (30) days. The letter shall explain the reasons for delay and the date on which the accounting will be provided.

(6) The first accounting in any twelve (12) month period must be provided to the consumer without charge. A reasonable, cost-based fee may be charged for additional accountings within the twelve (12) month period, provided the consumer is informed in advance of the fee, and is permitted an opportunity to withdraw or amend the request.

(7) The facility must document the following:

(A) All information required to be included in an accounting of disclosures of information from the designated record set;

(B) All written accountings provided to consumers, and;

(C) Titles of persons or offices responsible for receiving and processing requests for an accounting from consumers.

PART 11. RESIDENT RIGHTS, MENTAL HEALTH RESIDENTIAL CARE FACILITIES

450:15-3-85. Resident Grievance Policy & Procedures

Each RCF shall have a written grievance policy and procedure providing for, but not limited to, the following:

(1) Written notice of the procedure provided to the resident and, if involved with the resident, to family members or significant others.

(2) Time frames for the grievance policy's procedures which allow for resolution within fourteen (14) days.

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy; ~~and the individual responsible for or authorized to make decisions for resolution of the grievance~~ and the specific name(s) of the individual(s) acting as the facility's local advocate. In the instance where the decision maker is the subject of a grievance, decision making authority shall be delegated. The designated local advocate shall work with facility staff and contractors to ensure the needs of consumers are met at the lowest level possible and that consumer rights are enforced and not violated.

(4) Procedure by which a notice is provided to the resident advising that he or she has a right to make a complaint to the Local Advocate or the ODMHSAS Office of Consumer Advocacy. A consumer shall have unimpeded and confidential access to the facility's local advocate and the ODMHSAS Office of Consumer Advocacy. No policy or procedure shall require contact with the facility's local advocate prior to contacting the ODMHSAS Office of Consumer Advocacy.

(5) Mechanism to monitor the grievance process and improve performance based on outcomes.

(6) Annual review of the grievance policy and its implementing procedures, with revisions as needed to improve.

(7) The provision of written notification to the consumer of the grievance outcome and the mechanism by which an individual may appeal the outcome.

(8) The individual(s) designated as a facility's local advocate shall be responsible for coordinating and monitoring the facility's advocacy activities and contacts with the ODMHSAS Office of Consumer Advocacy. Duties of the facility's local advocate shall include, but is not limited to:

(A) Serve as the on-sight advocate for consumers being treated or under the care of the program or facility and act as a liaison to the ODMHSAS Office of Consumer Advocacy. Such activities may include

(i) Assist consumers in filing grievances;

(ii) Serve as resource for consumers for questions or information dissemination about the facility, admission and discharge processes, or other basic human needs while in treatment; and

(iii) Make contact with consumers involved in or who witness Critical Incidents or Sentinel Events while in treatment to ensure needs are being met.

(B) Serve as facility or program liaison to the Office of Consumer Advocacy in advocacy activities.

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY AND DEPARTMENT INVESTIGATIONS

PART 1. OFFICE OF CONSUMER ADVOCACY

450:15-7-3. Advocate General

The Advocate General shall be an attorney appointed by the Board. He or she is responsible for the Office of Consumer Advocacy and coordinates its system-wide implementation. The Advocate General shall have the following powers and duties:

(1) To serve as an advocate for consumers.

(2) To supervise personnel assigned to the Office of Consumer Advocacy.

~~(3) To visit each facility that is operated by, subject to certification by or under contract with the Department at least one (1) time per fiscal year to ensure the facility has made adequate provisions for the medical care, supervision and safekeeping of all ODMHSAS consumers, and to provide a status report, either verbally or in writing, to the facility's executive director regarding the findings of such visit.~~

(4) To make recommendations to Commissioner and provide regular or special reports regarding unresolved grievances or other issues affecting consumer rights and quality of care to the Commissioner and Board.

~~(4.5)~~ To carry out the powers and duties of the Office of Consumer Advocacy.

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(5) To perform other duties as assigned by the Board or Commissioner.

450:15-7-4. Office of Consumer Advocacy Powers & Duties

The Advocate General shall assign an Advocate to monitor the care and treatment of individuals receiving services at each facility operated by, certified by or under contract with the ODMHSAS; and to carry out the purpose and duties of the Office of Consumer Advocacy. The Office of Consumer Advocacy shall have the following powers and duties:

- (1) To serve as an advocate for consumers and to ensure the highest quality of care to all consumers at facilities operated by, subject to certification by, or under contract with the Department.
- (2) If a consumer needs legal counsel, the Advocate shall advise the consumer of his or her right to seek counsel and refer the individual to counsel, if necessary.
- (3) To monitor his or her assigned facilities to ensure the facilities have made adequate provisions for the medical care, supervision and safekeeping of all DMHSAS consumers, and to provide a monthly status report, either verbally or in writing, to the facility's executive director regarding these issues.
- (4) To access facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of performing activities as necessary to monitor care and treatment provided by such facilities. These visits may be unannounced and or unscheduled as determined by the Department. Reasonable access shall include, but is not limited to, observations, discussions, and face to face meetings with staff and consumers, copies of policies and procedures related to grievances, complaints, consumer care, access to services and safety; and forms and documentation related to Critical Incidents and Sentinel Events.
- (5) To access and copy necessary records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Office of Consumer Advocacy.
- (6) To be proactive in the enforcement of the provisions of the Mental Health and Substance Abuse Consumer Bill of Rights,
- (7) To timely report any issue(s) of which the Office of Consumer Advocacy becomes aware that may adversely affect consumer care through the proper chain of command, beginning at the lowest level, in order to timely resolve such issue(s).
- (8) To assist consumers in filing grievances,
- (9) To assist in transitioning consumers who are committed to the Oklahoma Forensic Center pursuant to 22 O.S. §§1175.1 et seq. to appropriate alternative placements in accordance with 22 O.S. §§1175.1. et seq.
- (10) To file habeas corpus or writ of mandamus actions on behalf of individuals receiving services from facilities

operated by, subject to certification by or under contract with the Department, and appear on their behalf in civil commitment and criminal post-commitment proceedings, and appear on behalf of Department consumers in proceedings for writs of habeas corpus or mandamus.

(11) To monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department.

(12) To assist consumers in filing grievances and to review and take appropriate action to resolve unresolved grievances and allegations of improper treatment of individuals receiving services from facilities operated by the Department.

(13) To be proactive and assist in the overall improvement of behavioral system and service delivery related to consumers.

(14) To coordinate and communicate with local facility advocates on a regular basis regarding consumer rights, advocacy activities, and quality of care issues.

(15) To visit each facility that is operated by, subject to certification by or under contract with the Department at least one (1) time per fiscal year to ensure the facility has made adequate provisions for the medical care, supervision and safekeeping of all ODMHSAS consumers, and to provide a status report, either verbally or in writing, to the facility's executive director regarding the findings of such visit.

(16) To perform other duties as assigned by the Board or Commissioner.

PART 2. INVESTIGATIONS

450:15-7-6. Reporting suspected maltreatment

(a) **Reporting Requirements.** ODMHSAS employees who have reason to believe that maltreatment of a consumer has occurred shall report such information to the ODMHSAS Inspector General. This reporting requirement also extends to employees of facilities which contract with or are certified by ODMHSAS. Persons unsure of what to report are directed call the Inspector General at 1-405-522-84184058 or 1-877-426-4058. Questions regarding this reporting requirement may also be made by e-mailing: InspectorGeneral@odmhsas.org.

(b) **Method of Reporting.** Any person obligated to report an allegation of maltreatment of consumers, including but not limited to suspected abuse, neglect, mistreatment, or exploitation of consumers shall contact the Inspector General in Oklahoma City, Oklahoma by telephone (1-405- 522-84184058 or 1-877-426-4058) twenty-four (24) hours a day, seven (7) days a week. Reports may also be made by e-mailing: Inspector-General@odmhsas.org or by faxing a critical incident report to ~~1-405-522-6851~~ Provider Certification at (405) 522-0236.

(c) All facilities that are certified by, operated by, or contracted with the Department shall post the contact information for the ODMHSAS Office of Inspector General and ODMHSAS Office of Consumer Advocacy prominently in each

consumer treatment unit and in consumers admissions, visiting and public areas.

[OAR Docket #12-364; filed 3-30-12]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-373]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
590:1-1-5. Retirement Coordinators [AMENDED]
Subchapter 3. Administrative Review and Hearings
590:1-3-8. Hearing Procedure [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §§901, 904, 909

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The amendment to rule 590:1-1-5 modifies the information which must be provided by the Retirement Coordinator to the member. The amendment permits Retirement Coordinators to provide basic plan information in the form of a handbook or other similar agency publications and requires the Coordinators to direct the member to the agency website.

The amendment to 590:1-3-8 provides that the burden of proof in administrative proceedings shall be on the individual requesting the hearing unless otherwise provided by law.

CONTACT PERSON:

Joseph A. Fox, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

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 MAY 11, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

590:1-1-5. Retirement Coordinators

(a) Appointment. Retirement Coordinators shall be appointed for each participating county, city, town or county hospital and each State agency to serve as a representative between the Retirement Board and the participating Employer.
(b) Responsibilities. These Retirement Coordinators shall be responsible for the enrollment, assistance of the completion of forms, and instructions to the members on behalf of the participating employer relating to the Oklahoma Public Employees Retirement System.

(c) Notice to members; Plan information. The Retirement Coordinator shall be responsible for ensuring that each participating member of the System is provided a copy basic Plan information in the form of the most current Member Handbook or other similar publications from the System, and all other official notices from the System. The member shall also be directed to the website of the System, www.opers.ok.gov, for more specific Plan information. Each Retirement Coordinator shall establish and maintain sufficient documentation to verify compliance with this rule, and shall furnish said verification upon request by the System.

(d) Employment; training; liability. The Retirement Coordinator is employed by and under the authority of each participating county, city, town or county hospital and each State agency and is not an employee of the System. The System will make available information and training opportunities, however, it is the responsibility of the Coordinator to become familiar with the Plan provisions and keep abreast of all changes and amendments. Neither the System nor the Board will be liable for or bound by any mistakes, errors or misrepresentations of the Retirement Coordinators.

SUBCHAPTER 3. ADMINISTRATIVE REVIEW AND HEARINGS

590:1-3-8. Hearing procedure

(a) Purpose and process. The hearing provides each party the opportunity to present witnesses and evidence in support of his or her respective case. Hearings shall be conducted in accordance with the Administrative Procedures Act and the rules in this Subchapter. The hearing shall be structured by the Hearing Examiner and open to the public. The Hearing Examiner may order parts of the proceedings closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons.

(b) Party responsibility. Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal unless good cause is shown.

(c) Hearing Examiner responsibility. The Hearing Examiner will convene the hearing, note appearances, and consider any motions or preliminary matters. The Hearing Examiner shall administer oaths or affirmations of the witnesses. The Hearing Examiner may also:

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- (1) question any party or any witness;
 - (2) establish a scheduling order for the hearing to include time lines for further filings and the date of the hearing before the Board of Trustees;
 - (3) rule on any request for an extension of time, or on any other motions or other procedural matters;
 - (4) regulate the course of the hearing, rule on admissibility of all evidence, and regulate the conduct of the participants;
 - (5) request additional briefs on issues or law as may be reasonably necessary;
 - (6) take official notice of any material fact not appearing as evidence in the record if the fact is among traditional matters of judicial notice;
 - (7) recess and reconvene the hearing; or
 - (8) order the proceedings to be expedited in the event of severe financial hardship, upon good cause shown, in accordance with 590:1-3-17.
- (d) **Transcript of hearing.** The System shall cause a full stenographic record of the hearing to be made by a competent court reporter. A copy of the stenographic record shall be provided to any party to the proceeding at the request and expense of such party.
- (e) **Arguments; witnesses; evidence.** The party requesting the hearing shall be heard first and has, unless otherwise provided by law, the burden of proof to show in what respect the action or proposed action of the System is incorrect. Each party shall have the opportunity to present its case, to make opening statements, to call and examine witnesses, to offer documentary evidence into the record and to make closing arguments. Each party shall also have the opportunity to cross-examine opposing witnesses on matter covered in direct examination and, in the discretion of the Hearing Examiner, upon matter relevant to the issues even though not covered in direct examination. Any objection to testimony or evidentiary offers should be made, and the basis of the objection stated on the record.
- (f) **Scheduling order.** Prior to the closing of the record, each party shall agree to a proposed scheduling order which shall include deadlines for submitting a proposed final order, filing objections to the Hearing Examiner's Proposed Final Order, rebuttals to any objections, requesting a rehearing, and the date of the hearing before the Board of Trustees. The Hearing Examiner shall sign the agreed scheduling order and each party shall receive a copy.
- (g) **Closing the record.** The record shall be closed when each party has had an opportunity to be heard and present evidence. Once the record is closed, no additional evidence or arguments shall be considered. The Hearing Examiner may grant a rehearing, reopening or reconsideration of the hearing upon a showing of good cause by either party prior to the date of the scheduled hearing before the Board of Trustees.

[OAR Docket #12-373; filed 4-4-12]

TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM CHAPTER 10. PUBLIC EMPLOYEES RETIREMENT SYSTEM

[OAR Docket #12-374]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Credited Service

590:10-3-8. Actuarial cost for purchases; delinquent service cost [AMENDED]

Subchapter 7. Retirement Benefits

590:10-7-16. Rollovers [AMENDED]

590:10-7-22. Federal qualified military service rights [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S., §§ 902, 909.1, 913.4, 913.5, 913b, 913c, 914, 917, 920B

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rule:

Subchapter 1. General Provisions

590:10-1-7. Non-state agency contributions [AMENDED]

Subchapter 3. Credited Service

590:10-3-10. Incentive credit [AMENDED]

590:10-3-11. Termination credit [AMENDED]

590:10-3-14. Elected official service credit [AMENDED]

Subchapter 7. Retirement Benefits

590:10-7-4. Early retirement factor [AMENDED]

590:10-7-9. Fractional year computations [AMENDED]

Subchapter 8. Department of Corrections Benefits

590:10-8-5. Normal retirement date for Post-Hazardous Duty Members [AMENDED]

Subchapter 9. Survivors and Beneficiaries

590:10-9-1. Survivors' benefits [AMENDED]

Gubernatorial approval:

September 28, 2011

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29 Ok Reg 49

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11-1024

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The amendment to 590:10-1-7 changes the late charge for unpaid contributions from the non-state agency employer. The monthly charge is increased from 1.5% to 3% of the unpaid balance. The amendment is necessary to comply with recent legislation found in Section 2 of Enrolled Senate Bill 840 (2011), amending 74 O.S. §920B. The amendment was approved as an emergency rule.

The amendment to 590:10-3-8 adds a new provision for determining the amount due from employer remittance errors. The amendment would require the employer to pay the insufficient contribution amount plus interest instead of paying actuarial cost.

The amendment to 590:10-3-10 modifies the eligibility requirements for purchasing incentive credit to conform with the new statutory retirement date provisions for employees and elected officials joining the System after November 1, 2011. The amendment complies with the new provisions contained in Sections 1 and 2 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902 and §913.4. This amendment was approved as an emergency rule.

The amendment to 590:10-3-11 provides a cross reference for the purchase of termination credit relating to the new retirement date provisions for employees joining the System after November 1, 2011. This amendment complies with the newly enacted provisions of Section 1 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902. This amendment was approved as an emergency rule.

The amendment to 590:10-3-14 modifies the rule relating to service credit calculations for different classes of elected officials by adding a new class of elected officials who are elected or appointed on or after November 1, 2011. The amendment is in accordance with recently enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902, §913.4 and §914. This amendment was approved as an emergency rule.

The amendment to 590:10-7-4 modifies the rule relating to early retirement factors to provide new age factors for members who first join the System on or after November 1, 2011. The amendment is in accordance with recently enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902, §913.4 and §914. This amendment was approved as an emergency rule.

The amendment to 590:10-7-9 relates to the procedures for calculating fractional years of service. The amendment distinguishes between officials elected prior to and on or after November 1, 2011. The amendment is in accordance with recently enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902, §913.4 and §914. This amendment was approved as an emergency rule.

The amendment to 590:10-7-16 permits nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a 403(b) plan if separate accounting requirements are met.

The amendment to 590:10-7-22 corrects a citation to the Internal Revenue Code which relates to the treatment of differential wage payments received by a person while performing qualified military service.

The amendment to 590:10-8-5 updates the normal retirement date for post-hazardous duty members to include the new retirement dates for employees joining the System after November 1, 2011. This amendment complies with the newly enacted provisions of Section 1 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902. This amendment was approved as an emergency rule.

The amendment to 590:10-9-1 provides for a new vesting period of 8 years for those officials elected or appointed on or after November 1, 2011 as it relates to survivor benefits. The amendment is in accordance with recently enacted provisions of Sections 1, 2 and 3 of Enrolled Senate Bill 794 (2011), amending 74 O.S. §902, §913.4 and §914. This amendment was approved as an emergency rule.

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 MAY 11, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

590:10-1-7. Non-state agency contributions

Any participating county, county hospital, city or town, conservation district, or circuit engineering district or trust

shall contribute to the System all required retirement contributions due on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. Any non-state agency employer who remits contributions later than ~~30~~thirty (30) days following the due date, will be assessed a late charge of ~~1.5%~~three percent (3%). The late charge will be calculated on the unpaid balance and will compound monthly until paid.

SUBCHAPTER 3. CREDITED SERVICE

590:10-3-8. Actuarial cost for purchases; delinquent service cost

(a) **Actuarial Costs.** Effective January 1, 1991, all purchases of service credit, including incentive credit pursuant to 74 O.S. §913.5, or employer error costs pursuant to 74 O.S. §917(7), shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost and any tables formulated for the purpose of determining such cost, shall be based on the actuarial assumptions utilized in the actuarial valuation report for the Fiscal Year ending June 30 of the prior year.

(2) The actuarial value shall be based upon the member's age, salary and contribution level at the time of purchase, together with the earliest age for retirement with maximum benefits and actuarially assumed salary at the time of retirement. If purchase is not made by the due date on the billing statement, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of determining this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For purposes of determining this actuarial cost, the mortality tables shall be formulated as a unisex table assuming a 50% male and a 50% female population, based upon the actuarial assumptions in paragraph (1) of this section.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be averaged based upon the most current month's payroll information.

(6) In the event that the actuarial cost is less than the contributions that would have been required by law, the member and/or the employer shall pay the actual contributions cost.

(b) **Delinquent service costs.** The cost for purchases of delinquent service credit for service of one (1) month or less which is based on employer error and which is one (1) or more years past due shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum. If delinquent service of one (1) year or less is identified and paid for within one (1) year from the beginning service date, the cost will be calculated at employer and employee contributions only. The cost for delinquent service credit for service of more than one (1) month and which is over one (1) year past due shall be calculated at actuarial cost. The cost for

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any delinquent service credit for a retiree returning to work shall be calculated at employer and employee contributions plus ten percent (10%) simple interest per annum.

(c) **Remittance errors.** In the event a participating employer timely remits contributions for an individual member which are determined to be insufficient as a result of being based on an incorrect contribution rate or incorrectly-reported compensation, the employer shall be notified and pay the amount of the insufficiency plus ten percent (10%) simple interest per annum. The provisions of this paragraph shall not be applicable to employer remittances not received in a timely manner and which are subject to the provisions of paragraphs (a) and (b) of this section and 74 O.S. §920B.

590:10-3-10. Incentive credit

(a) Pursuant to 74 O.S. §913(b) certain eligible members of the System may purchase up to two (2) full years of incentive credit at actuarial value. Incentive credit may be used as participating service or addition to age.

(1) ~~Incentive credit may be used as participating service or addition to age.~~

(2) ~~Members are eligible for purchase of up to 2 years of credit (24 months).~~

(b) Those eligible to purchase incentive credit include the following:

(31) Employees who are eligible for normal or early retirement because of age or are within ~~two (2)~~ years of reaching normal or early retirement age;

(2) members who have accumulated at least 78 points toward the Rule of 80, and/or members who have accumulated at least 88 points towards the Rule of 90 ~~are eligible for this purchase, except that:~~

(3) ~~elected officials who are first elected or appointed prior to November 1, 2011, may purchase incentive credit to qualify for the Rule of 80 only;~~

(4) ~~elected officials who are first elected or appointed on or after November 1, 2011, who are eligible for normal or early retirement because of age or are within two (2) years of reaching normal or early retirement age; and~~

(5) Hazardous Duty Members may purchase incentive credit to qualify only for the Rule of 80 or 90 or for early retirement.

(4c) Incentive credit can not be used as full time equivalent employment. Members must have at least ~~four (4)~~ years of the required ~~six (6)~~ years of full time equivalent employment in order to be eligible for this purchase and must accrue ~~six (6)~~ years of full time equivalent employment prior to retirement.

(5d) Members must be active and participating at the time of purchase or at the time of the transfer pursuant to ~~paragraph (7) subsection (f)~~ of this section.

(6e) This purchase may be amortized over sixty (60) months as provided for in 590:10-3-9.

(7f) Eligible members purchasing incentive credit pursuant to this section may transfer a participating service purchase to an addition to age purchase or an addition to age purchase to a participating service purchase. This transfer applies to purchases already made by an eligible member or to purchases currently being made through installment payments pursuant

to 590:10-3-9. Full or partial installment payments made pursuant to this section shall not be refundable under any circumstances. Transferring an incentive purchase to another incentive purchase pursuant to this paragraph may not result in an equal transfer.

590:10-3-11. Termination credit

(a) Pursuant to 74 O. S. §913c, certain eligible members of the System may purchase up to three (3) full years of termination credit.

(b) Following official notice from a participating employer of an approved reduction-in-force on or after July 1, 1998, and of ~~the~~ those employees subject to ~~said~~ the reduction-in-force, the System will communicate detailed instructions about the purchase of termination credit to those members affected.

(2c) Purchase of termination credit allows an eligible member to constructively participate as if still employed by a participating employer until reaching eligibility for a normal retirement ~~either at age 62 or by achieving 80/90 points date as defined in 74 O.S. §902(24).~~ The purchase of termination credit represents the amount of service which would have accrued through the member's normal retirement date had they not been terminated due to a reduction-in-force and will allow an eligible member to preserve the same normal retirement date as he or she would have had if the member's position had not been terminated by a reduction-in-force.

(3d) Members must have at least six (6) years of full-time equivalent employment with a participating employer in order to be eligible to purchase termination credit.

(4e) Members who ~~are between the ages of 59 and 62 (those members who are within 3three (3) years of achieving eligibility for a normal retirement at age 62) date based on age as set forth in 74 O.S. §902(24), or who have accumulated at least 74 points toward the Rule of 80 or 84 points toward the Rule of 90 (those members who are within 6six (6) years of achieving eligibility for normal retirement under the 80/90 point provisions), are eligible to purchase termination credit if they are subject to a reduction-in-force.~~

(5f) Members cannot purchase both termination credit and incentive credit.

(6g) Members may purchase termination credit not to exceed the amount of years and months required to reach normal retirement. The maximum amount of termination credit which may be purchased is ~~3three (3)~~ years of service.

(7h) The cost to purchase termination credit will be an amount equal to the employee and employer contributions which would have been paid to the System based upon the last full month of compensation.

(8i) To purchase termination credit, the member must file a written election of intent within six (6) months from the date the member is terminated. Payment in full must be received by the System within sixty (60) days of the filing of the election to purchase.

(9j) Failure to make payment in full by the due date, returning to employment with a participating employer or retirement by the member or surviving spouse at any time prior to the normal retirement date will void the purchase of termination credit. The System will return the purchase price tendered.

590:10-3-14. Elected official service credit

(a) **First elected service on or after August 22, 2008.** Any member of the System before August 22, 2008, who is first elected or appointed on or after August 22, 2008, but prior to November 1, 2011, and who retires as an elected official with at least six (6) years in elected office, may count all of his or her non-elected service which occurred prior to the elected service, if any, as if it were elected service. The applicable contribution rate selected by the elected official shall apply and the calculation of the benefit shall be made in accordance with the provisions of 74 O.S. §913.4. However, in no event shall the retirement benefits be more than one hundred percent (100%) of his or her highest contiguous twelve (12) months of compensation earned as an elected official or as a non-elected member.

(b) **Joining System on or after August 22, 2008.** Any member who first joins the System on or after August 22, 2008, and who is first elected or appointed prior to November 1, 2011, shall have elected and non-elected service separately calculated as follows:

(1) All non-elected credited service will be calculated at the applicable factor multiplied by the member's final average compensation and multiplied by the non-elected years.

(2) All elected service will be multiplied by the appropriate computation factor corresponding to the contribution rate selected by the member as an elected official. The salary used for the benefit formula for elected service shall be the elected official's single highest annual compensation as an elected official.

(3) The calculations provided for in paragraphs (1) and (2) of this subsection (b) will then be added together to determine the total benefit for such member. Under no circumstances shall the elected official be entitled to apply the contribution rate and the corresponding computation factor selected pursuant to 74 O.S. §913.4(A) or the compensation received as an elected official to the computation of any non-elected service.

(4) Fractional year computations made under this section shall be calculated in accordance with 590:10-7-9.

(c) **Elected service prior to August 22, 2008.** The amendments to 74 O.S. §913.4(C)(3) and (4) in Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008, did not amend or affect the calculation of service credit for any elected official who was a member of this System and who served as an elected official prior to August 22, 2008.

(d) **Effective date.** The authorizing legislation for determining elected official service credit provided by subsections (a) through (c) of this section is Enrolled Senate Bill 1641 of the 2nd Regular Session of the 51st Legislature (2008), Section 1, Chapter 105, O.S.L. 2008. The emergency clause in SB 1641 failed thereby making the effective date of the legislation ninety (90) days following sine die adjournment, or August 22, 2008. ~~The internal references to July 1, 2008, in 74 O.S. §913.4(C)(3) and (4), shall be interpreted to mean August 22, 2008.~~

(e) **First elected on or after November 1, 2011.** Pursuant to 74 O.S. §913.4(A)(5) and §913.4(B), as amended in Enrolled Senate Bill 794 of the 1st Regular Session of the 53rd Legislature (2011), Section 2, Chapter 206, O.S.L. 2011, any member of the System joining prior to or on or after November 1, 2011, and who is first elected or appointed on or after November 1, 2011, shall have the contribution rate specified in 74 O.S. §919.1(1)(a) and the amount of the benefit for all elected and non-elected service credit shall be based on the provisions of 74 O.S. §915(A)(1).

SUBCHAPTER 7. RETIREMENT BENEFITS

590:10-7-4. Early retirement factor

The monthly benefit to be paid under early retirement shall be based on the actual age in years and months the retirement member has attained on the date retirement benefits are to begin. The reduction factor is based on a level interpolation, between ages 55 and 62 for members whose first participating service occurs before November 1, 2011, and between ages 60 and 65 for members whose first participating service occurs on or after November 1, 2011.

590:10-7-9. Fractional year computations

(a) ~~Title~~ **Rounding of fractional year.** Pursuant to 74 O.S. §913(C) ~~provides that~~, a fractional year of six (6) months or more shall be considered as one (1) year, and less than six (6) months shall be disregarded. This round-up provision may be used one time for credited service of a member to establish the benefit of ~~said~~ the member. This rule is necessary to prevent the gain or loss of service credit to a member. In no event shall the rounding up provisions apply if it would result in any member receiving an additional year or years that the member would not otherwise be entitled to receive.

(b) ~~Title~~ **Correctional and probation and parole officers.** Pursuant to 74 O.S. §915(A) ~~provides for~~, the computation of retirement benefits of Department of Corrections Correctional and ~~Pardon~~ Probation and Parole Officers ~~at~~ is 2.25% for certain credit prior to July 1, 1990, and 2.5% for certain credit after July 1, 1990, ~~and at~~ 2% for all other credit.

(1) Such members may retire with fractional years of service credit in the 2.25% and the 2.5% categories and the statutes only provide for computation at these rates on full years of service. Due to the fact that only the total credited service can be rounded up, some members may face losing a year of service credit when the fractional years of credit are disregarded.

(2) To prevent such a loss of service credit, the fractional portions of years in the 2.25% and the 2.5% categories will be added to the years of credit used in the 2% category and rounded up therein, if applicable. If a member still loses a year of service credit after adding the fractional years to the 2% category, the fractional years may be added to the 2.25% category and rounded up therein, if applicable.

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(c) **Hazardous Duty Members.** Hazardous Duty Members who elect to participate or are required to participate at the higher employee contribution rate will receive retirement benefits at the 2.5% category only on full years of service as Hazardous Duty Members for which the higher contributions have been paid. The fractional portions of years in the 2.5% category will be added to any other service credit, calculated in the 2% category and rounded up therein, if applicable, for the computation of the retirement benefit.

(d) **Elected officials.**

(1) If first elected or appointed prior to November 1, 2011, elected officials who do not participate in an elected status for at least six (6) full years will receive retirement benefits on the years and months of elected service instead of full years. The benefit shall be calculated using the computation factor corresponding to the contribution rate the official paid during those years and months of elected service and on the highest annual salary earned as an elected official. Non-elected service credit will be calculated using the applicable computation factor. The elected and non-elected service shall be added to determine the total credited service. If this total results in a fractional year of six (6) months or more, it shall be considered as one year, and less than six (6) months shall be disregarded. The years and months of elected service shall then be deducted from the total credited service and the remaining balance of service shall be calculated using the applicable non-elected service computation factor.

(2) If first elected or appointed on or after November 1, 2011, elected officials who do not participate in an elected status for at least eight (8) full years will receive retirement benefits on the years and months of elected service instead of full years. The contribution rate for such officials shall be as specified in 74 O.S. §919.1(1)(a) and the amount of the benefit shall be based on the provisions of 74 O.S. §915(A)(1).

(e) **Elected officials participating at more than one rate.** Elected officials who participate at more than one contribution rate during their elected service will receive retirement benefits calculated using (1) the computation factor assigned for each contribution rate paid and (2) the highest annual salary for which that particular contribution rate was paid for each full year of elected service credit. Fractional years of elected service credit will be added to the years of elected service for which the highest contribution rate was paid and rounded up therein, if applicable, for the computation of the retirement benefit.

590:10-7-16. Rollovers

(a) This section applies to the Oklahoma Public Employees Retirement System and to the Uniform Retirement System for Justices and Judges.

(b) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to Section 401(a)(31) of the federal Internal Revenue Code.

(c) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee,

except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(d) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(1) To an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(2) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(3) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.

(e) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) An individual retirement account described in Section 408(a) of the Internal Revenue Code;

(2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

(3) an annuity plan described in Section 403(a) of the Internal Revenue Code;

(4) a qualified trust described in Section 401(a) of the Internal Revenue Code;

(5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code;

(6) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for

amounts transferred into that plan from the retirement system; or

(7) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(f) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purposes of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(g) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

590:10-7-22. Federal qualified military service rights

(a) **Additional benefits if provided by Plan.** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or pension system, are entitled to any additional benefits that the system would otherwise provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) **Differential wage payments.** Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(212) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

SUBCHAPTER 8. DEPARTMENT OF CORRECTIONS BENEFITS

590:10-8-5. Normal retirement date for Post-Hazardous Duty Members

In addition to a normal retirement at age 62, under Rule of 80 or under Rule of 90 date as defined in 74 O.S. §902(24), Post-Hazardous Duty Members who are employed by the Department of Corrections at the time of retirement are eligible to retire after completion of at least twenty (20) years of full-time-equivalent employment as provided in 590:10-3-6 of

these rules; provided, the required higher contribution for Hazardous Duty Members is paid or the member was employed, pursuant to 74 O.S. §915(A)(8), as a correctional officer or probation and parole officer at the Department of Corrections.

SUBCHAPTER 9. SURVIVORS AND BENEFICIARIES

590:10-9-1. Survivors' benefits

(a) If an active or retired elected official with a minimum of six (6) years of participating service, who was first elected or appointed before November 1, 2011, or an active or retired elected official with a minimum of eight (8) years of participating service who was first elected or appointed on or after November 1, 2011, dies, the surviving spouse is eligible to receive one half (1/2) of the elected official's benefit provided the elected official had met the service requirements for retirement. If a retired elected member selected an Option to apply to his/her service, the joint annuitant receives the Option benefit instead of the one half (1/2) benefit to the spouse.

(b) At the death of a member who is eligible to retire pursuant to law but is not actually retired, or is eligible to vest or had elected a vested benefit, the surviving spouse shall be entitled to receive the appropriate Option benefit as provided by law beginning at the date the deceased member would have become eligible to receive such benefits had the member survived. The System may withhold benefits to the surviving spouse until the necessary documentation is received and verified. The benefits payable shall accrue from the first day of the month following the death of the member if the deceased member met the requirements for an early or normal retirement.

[OAR Docket #12-374; filed 4-4-12]

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 15. UNIFORM RETIREMENT SYSTEM FOR JUSTICES AND JUDGES**

[OAR Docket #12-375]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 590:15-1-2. Administration [AMENDED]
- 590:15-1-12. Rollovers [AMENDED]
- 590:15-1-18. Federal qualified military service rights [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 20 O.S., §§ 1101.1, 1108

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N/A

ANALYSIS:

The amendment to 590:15-1-2 places the Board of Trustee's long-standing policy for allocating expenses for the Uniform Retirement System for Justices and Judges into the permanent rules. The rule is necessary to codify the policy of keeping plan assets and expenses separate as required for a governmental retirement plan under the Internal Revenue Code.

The amendment to 590:15-1-12 permits nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a 403(b) plan if separate accounting requirements are met.

The amendment to 590:15-1-18 corrects a citation to the Internal Revenue Code which relates to the treatment of differential wage payments received by a person while performing qualified military service.

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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 MAY 11, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

590:15-1-2. Administration

(a) **Administration of Plan.** The Oklahoma Public Employees Retirement System shall administer the Uniform Retirement System for Justices and Judges, in accordance with the provisions outlined in ~~Title 20 O.S. Section §§ 1101 et seq., as amended,~~ and will coordinate with the Administrative Director of the Courts in the administration of the Uniform Retirement System for Justices and Judges.

(b) **Remittance of contributions.** The Administrative Director of the Courts shall remit all required court and employee contributions on a monthly basis. All required contributions and supporting documentation must be received by the System on or before the fifteenth (15th) day of the month following the month for which the contributions are due. The Administrative Director of the Courts will be assessed a late charge of 1.5% for any contributions remitted later than ~~30 thirty (30)~~ days following the due date. The late charge will be calculated on the unpaid balance and will compound monthly until paid.

(c) **Allocation of expenses.** The administrative expenses which are paid by the Oklahoma Public Employees Retirement

System on behalf of the Uniform Retirement System for Justices and Judges, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the USRJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

590:15-1-12. Rollovers

(a) For purposes of compliance with Section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election to make a rollover. A distributee may elect, at a time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution that is reasonably expected to total less than Two Hundred Dollars (\$200.00) during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code.

(c) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

(1) To an individual retirement account or annuity described in Section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in Section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross

income and the portion of the distribution that is not so includible;

(2) on or after January 1, 2007, to a qualified defined benefit plan described in Section 401(a) of the Internal Revenue Code or to an annuity contract described in Section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(3) on or after January 1, 2008, to a Roth IRA described in Section 408A of the Internal Revenue Code.

(d) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(1) An individual retirement account described in Section 408(a) of the Internal Revenue Code,

(2) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code,

(3) an annuity plan described in Section 403(a) of the Internal Revenue Code,

(4) a qualified trust described in Section 401(a) of the Internal Revenue Code,

(5) effective January 1, 2002, an annuity contract described in Section 403(b) of the Internal Revenue Code,

(6) effective January 1, 2002, a plan eligible under Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system, or

(7) effective January 1, 2008, a Roth IRA described in Section 408A of the Internal Revenue Code.

(e) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a non-spouse beneficiary who is a designated beneficiary as defined by Section 401(a)(9)(E) of the Internal Revenue Code. However, a non-spouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(f) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

590:15-1-18. Federal qualified military service rights

(a) **Additional benefits if provided by Plan.** Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service (as defined in Chapter 43 of Title 38, United States Code), to the extent required by Section 401(a)(37) of the Internal Revenue Code, survivors of a member in a State or local retirement or

pension system, are entitled to any additional benefits that the system would otherwise provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

(b) **Differential wage payments.** Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(~~2~~12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

[OAR Docket #12-375; filed 4-4-12]

**TITLE 590. OKLAHOMA PUBLIC
EMPLOYEES RETIREMENT SYSTEM
CHAPTER 25. DEFERRED
COMPENSATION**

[OAR Docket #12-376]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Benefits

590:25-9-17. Rollovers to other plans [AMENDED]

590:25-9-20. Federal qualified military service [AMENDED]

Subchapter 15. Trust

590:25-15-2. Payments from Trust Fund [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. §1701

DATES:

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The amendment to 590:25-9-17 removes surplus language relating to eligible rollover distributions.

The amendment to 590:25-9-20 corrects language relating to the treatment of differential wage payments received by a person while on active duty in the

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uniformed services. The correction is necessary to comply with provisions of the Internal Revenue Code.

The amendment to 590:25-15-2 adds the Board of Trustee's long-standing policy for allocating expenses for the Deferred Compensation Plan into the permanent rules. The rule is necessary to codify the policy of keeping plan assets and expenses separate as required for a governmental deferred compensation plan under the Internal Revenue Code.

CONTACT PERSON:

Joseph A. Fox, General Counsel, Oklahoma Public Employees Retirement System, 5801 N. Broadway Extension, Suite 400, Oklahoma City, Oklahoma 73118, 405-858-6737

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 MAY 11, 2012:

SUBCHAPTER 9. BENEFITS

590:25-9-17. Rollovers to other plans

(a) Effective January 1, 2002, notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) As used in this section:

(1) "Eligible retirement plan", for purposes of a direct rollover, shall mean a qualified trust described in Section 401(a) of the Code, an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, or a Roth individual annuity (if the individual is eligible for a Roth rollover) described in Section 408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. ~~However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~ Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life

expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the designated beneficiary of the distributee, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); or (iv) any amount that is distributed on account of hardship.

(3) "Distributee" includes a Participant or a Participant's surviving spouse, or for the limited purposes set forth in paragraph (c) of this section, a non-spouse beneficiary.

(c) Effective January 1, 2007, a non-spouse beneficiary pursuant to Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in Section 408(a) of the Code, or an individual retirement annuity described in Section 408(b) of the Code, established for the purpose of receiving the distribution. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of Section 402(c) of the Code.

(d) Except as otherwise provided, this section shall apply to distributions made after December 31, 2001.

590:25-9-20. Federal qualified military service

(a) Notwithstanding any provisions of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Code.

(~~b~~) A Qualified Participant whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) may elect to make additional deferrals to the Plan upon resumption of employment with the Employer equal to the maximum annual deferrals that the Participant could have elected during that period if the Participant's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies to five (5) years following the resumption of employment, if sooner, for a period equal to three times the period of the interruption or leave. The Employer, in accordance with 74 O.S. §1701, will make the Employer Contribution for such Qualified Participant for the equivalent period.

(~~2~~) ~~Effective January 1, 2009, a Qualified Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Section 414(u)(12)(D) of the Code from the Employer, will be treated as a Participant of the Employer and the differential wage payment will be treated as Compensation.~~

(c) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonable equivalent manner.

(3d) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had had the Participant resumed and then terminated employment with the Employer on account of death.

SUBCHAPTER 15. TRUST

590:25-15-2. Payments from Trust Fund

(a) The Recordkeeper shall make payments from the Trust Fund to such persons in such manner, at such times and in such amounts as the Board, acting through the Plan Administrator, shall direct. The Recordkeeper shall be fully protected in making, discontinuing, or stopping payments from the Trust Fund in accordance with the directions of the Board and/or the Plan Administrator. The Recordkeeper shall have no responsibility to see to the application of payments so made or to ascertain whether the directions of the Board and/or Plan Administrator comply with the Plan. When the Board and/or the Plan Administrator directs that any payment is to be made only during or until the time a certain condition exists regarding the payee, any payment made by the Recordkeeper in good faith, without actual notice or knowledge of the changed status or condition of the payee, shall be considered to have been properly made by the Recordkeeper and made in accordance with the direction of the Board and/or Plan Administrator.

(b) To the extent permitted by law, the Board shall be reimbursed for its expenses, if any, that are reasonable and necessary for the administration of the Plan and the Trust. The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan and the Trust, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each

factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the USRJJ, DCP and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

(c) The Board, acting through the Plan Administrator and/or Recordkeeper is authorized, to the extent required under applicable law, to withhold from distributions to any payee such sum as the Board determines is necessary to cover federal and state taxes for which the Board may be liable, which are, or may be, assessed with regard to the amount distributable to such payee, in accordance with Section 15 of Subchapter 9 of Chapter 25. Upon discharge or settlement of such tax liability the Board shall pay the balance of such sum, if any, to such payee or to his estate. Prior to making any payment or distribution hereunder, the Board may require such releases or other documents from any lawful taxing authority and may require such indemnity from any payee or distributee as the Board shall reasonably deem necessary for its protection.

(d) No amounts shall be payable to the Employer hereunder, from the Trust Fund, except as provided in the Plan.

[OAR Docket #12-376; filed 4-4-12]

**TITLE 590. OKLAHOMA PUBLIC EMPLOYEES RETIREMENT SYSTEM
CHAPTER 35. DEFERRED SAVINGS INCENTIVE PLAN**

[OAR Docket #12-377]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 7. Contributions
- 590:35-7-1. Employer contributions [AMENDED]
- Subchapter 13. Benefits and Distributions
- 590:35-13-9. Rollovers to eligible retirement plan [AMENDED]
- Subchapter 15. Limitations on Annual Additions
- 590:35-15-3. Adjustments for excess amount [AMENDED]
- Subchapter 19. Administration of Plan
- 590:35-19-7. Payment of expenses [AMENDED]

AUTHORITY:

Oklahoma Public Employees Retirement System Board of Trustees; 74 O.S. §1707

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The amendment to 590:35-7-1 corrects language relating to the treatment of differential wage payments received by a person while on active duty in the uniformed services. The correction is necessary to comply with provisions of the Internal Revenue Code.

The amendment to 590:35-13-9 removes surplus language relating to eligible rollover distributions.

The amendment to 590:35-15-3 simplifies the manner in which adjustments for errors resulting in excess compensation amounts are handled by referring to the Internal Revenue Service corrections program. The change is necessary to comply with new Internal Revenue Service Section 415 regulations.

The amendment to 590:35-19-7 adds the Board of Trustee's long-standing policy for allocating expenses for the Deferred Savings Incentive Plan into the permanent rules. The rule is necessary to codify the policy of keeping plan assets and expenses separate as required for a governmental deferred savings incentive plan under the Internal Revenue 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 MAY 11, 2012:

SUBCHAPTER 7. CONTRIBUTIONS

590:35-7-1. Employer contributions

(a) The Employer shall contribute to the Trust Fund an amount referred to as an Employer Contribution. Such contribution shall be calculated as follows: in accordance with 74 O.S. §1707, a contribution in the amount of or equivalent to Twenty-Five Dollars (\$25.00) per month, or such amount as may be appropriated by the Legislature of the State of Oklahoma shall be made to the Plan on behalf of each Qualified Participant, as soon as practicable after receipt.

(b) Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART"), and Section 414(u) of the Internal Revenue Code.

~~(1) Effective January 1, 2009, a Qualified Participant whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Section 414(u)(12)(D) of the Internal Revenue Code from the Employer, will be treated as a Participant of the Employer and the differential wage payment will be treated as Compensation.~~

(1) Beginning January 1, 2009, to the extent required by Sections 3401(h) and 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments (while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code) from an employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(2) Effective January 1, 2007, death benefits payable under this Plan shall be paid in accordance with Section 401(a)(37) of the Internal Revenue Code, which provides that in the case of a Participant who dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that the Plan would otherwise provide had the Participant resumed and then terminated employment with the Employer on account of death.

SUBCHAPTER 13. BENEFITS AND DISTRIBUTIONS

590:35-13-9. Rollovers to eligible retirement plan

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) As used in this section:

(1) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); the portion of any other distribution(s) that is not includible in gross income, except to the extent provided by paragraph (c) of this section; and effective for distributions made after December 31, 2001, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.

(2) "Eligible retirement plan" means an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), or a qualified trust described in Code Section 401(a), or Roth individual annuity (if the individual is eligible for a Roth rollover) described in Code Section

408(A)(e) for distributions made after December 31, 2007, that accepts the distributee's eligible rollover distribution. ~~However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.~~ Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p).

(3) "Distributee" means a Participant. In addition, the Participant or the Participant's surviving spouse are distributees with regard to the interest of the spouse. For the limited purposes set forth in paragraph (d) of this section, distributee means a non-spouse beneficiary.

(4) "Direct rollover" means a payment by the Plan to the eligible retirement plan specified by the distributee.

(c) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such a portion may be transferred only to an individual retirement account or an individual retirement annuity described in section Code Section 408(a) or (b) of the Code, a qualified plan described in section Code Sections 401(a) or 403(a) of the Code, or to an annuity contract described in section Code Section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(d) Effective January 1, 2007, a non-spouse beneficiary pursuant to section Code Section 402(c)(11) of the Code may elect to have any portion of an eligible rollover distribution paid directly to an individual retirement account described in section Code Section 408(a) of the Code, or an individual retirement annuity described in section Code Section 408(b) of the Code, established for the purpose of receiving the distribution. A rollover pursuant to this paragraph shall be treated as a rollover of an eligible rollover distribution only for purposes of section Code Section 402(c) of the Code.

SUBCHAPTER 15. LIMITATIONS ON ANNUAL ADDITIONS

590:35-15-3. Adjustments for excess amount

~~If, due to a reasonable error in estimating a Qualified Participant's Compensation for the Plan Year, or such other reasonable circumstances as may be acceptable to the Commissioner~~

~~of Internal Revenue, a reduction is necessary to avoid exceeding the limitation set forth. If there is an Annual Addition in excess of the limitation set forth in this Subchapter, such or any other excess amount shall be disposed of as follows: subject to correction under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program), such amount will be corrected as permitted under the Employee Plan Compliance Resolutions System (or other similar Internal Revenue Service correction program).~~

~~(1) If the Qualified Participant also is a participant in a defined benefit plan maintained by the Employer, such Qualified Participant's accrued benefit under the defined benefit plan shall be reduced in accordance with the terms of such defined benefit plan.~~

~~(2) If any excess remains after application of Subparagraph (1) of Section 590:35-15-3 above, any Employer contributions which have been contributed shall be transferred to a suspense account and reallocated under Section 590:35-9-1 hereof, to the extent that the return and corresponding transfer would reduce the excess amount.~~

SUBCHAPTER 19. ADMINISTRATION OF PLAN

590:35-19-7. Payment of expenses

(a) Forfeitures pursuant to Section 590:35-9-2, if any, shall be used to pay Plan and/or Trust expenses. To the extent not paid by the Employer, all costs and expenses incurred in administering this Plan and Trust shall be paid by the Plan and Trust, through the reduction of each Participant's Account.

(b) The fees payable for actuarial, consulting, legal, accounting or other reasonable and necessary services relating to the administration of the Plan and Trust, as provided for therein, including expenses for the Board of Trustees, shall be payable by the Board of Trustees out of the Trust Fund, and until so paid shall constitute a first and prior charge and lien against the Trust Fund, to the extent not paid by the Employer.

(c) The administrative expenses which are paid by the Oklahoma Public Employees Retirement System on behalf of the Plan, including operating expenses, depreciation expense, and investment related expenses other than fees for investment manager services, shall be allocated as of June 30 each year. An allocation percentage shall be calculated based on the amounts included in the audited financial statements from the prior year for the Oklahoma Public Employees Retirement System ("OPERS"), the Uniform Retirement System for Justices and Judges ("URSJJ"), the Oklahoma State Employees Deferred Compensation Plan ("DCP"), and the Oklahoma State Employees Deferred Savings Incentive Plan ("SIP") using the following factors: 1) benefits; 2) contributions; and 3) average investments. The ratio of each factor to the total for the individual plans will be calculated and the average of the sum of these ratios by plan will be the percentage used to allocate the expenses for reimbursement by the USRJJ, DCP

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and SIP to OPERS for the payments made on their behalf effective for the succeeding year beginning July 1.

[OAR Docket #12-377; filed 4-4-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #12-363]

RULEMAKING ACTION:

PERMANENT final adoption.

RULES:

Subchapter 1. Commercial Driver Licensing
Part 2. Application for Initial Commercial Driver License
595:11-1-14. Adoption by reference [AMENDED]
595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference [AMENDED]
Part 3. Commercial Driver License Renewal - in Person
595:11-1-21. Procedure for obtaining a renewal commercial driver license in person [AMENDED]
Part 9. Commercial Driver License Card Content
595:11-1-61. Information displayed on commercial driver licenses [AMENDED]
595:11-1-62. Driving restriction codes [AMENDED]
Subchapter 3. Examination
595:11-3-2. Study guide [AMENDED]
595:11-3-6. Written examination [AMENDED]
595:11-3-7. Pre-trip inspection examination of commercial motor vehicles [AMENDED]
595:11-3-8. Skills examination [AMENDED]
Subchapter 9. Driver Status Notification System
595:11-9-5. Requirements for enrolling drivers by subscribing employers [AMENDED]
595:11-9-6. Renewing enrolled drivers [AMENDED]
595:11-9-9. Fee schedule and payment [AMENDED]

AUTHORITY:

47 O.S. § 6-101 et seq.; Commissioner of Public Safety

DATES:

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May 6, 2011

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 29, 2012.

Final Adoption:

March 29, 2012

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June 1, 2012

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Commercial Driver Licensing
Part 2. Application for Initial Commercial Driver License
595:11-1-14. Adoption by reference [AMENDED]
595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference [AMENDED]
Part 3. Commercial Driver License Renewal - in Person

595:11-1-21. Procedure for obtaining a renewal commercial driver license in person [AMENDED]

Part 9. Commercial Driver License Card Content

595:11-1-61. Information displayed on commercial driver licenses [AMENDED]

595:11-1-62. Driving restriction codes [AMENDED]

Subchapter 3. Examination

595:11-3-2. Study guide [AMENDED]

595:11-3-6. Written examination [AMENDED]

595:11-3-7. Pre-trip inspection examination of commercial motor vehicles [AMENDED]

595:11-3-8. Skills examination [AMENDED]

Subchapter 9. Driver Status Notification System

595:11-9-5. Requirements for enrolling drivers by subscribing employers [AMENDED]

595:11-9-6. Renewing enrolled drivers [AMENDED]

595:11-9-9. Fee schedule and payment [AMENDED]

Gubernatorial approval:

June 16, 2011

Register publication:

28 Ok Reg 21

Docket number:

11-930

INCORPORATIONS BY REFERENCE:

Incorporated standards:

49 C.F.R., Part 393, Parts and Accessories Necessary for Safe Operation

Incorporating rules:

OAC 595:11-1-14

Availability:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@dps.state.ok.us.

ANALYSIS:

Amendments to this chapter would update procedures relating to the issuance of commercial driver licenses.

The proposed actions are amendments to existing rules.

The circumstances which created the need for these rules are update information related to the issuance of commercial driver licenses.

The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.

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 JUNE 1, 2012:

SUBCHAPTER 1. COMMERCIAL DRIVER LICENSING

PART 2. APPLICATION FOR INITIAL COMMERCIAL DRIVER LICENSE

595:11-1-14. Adoption by reference

The Department of Public Safety hereby adopts by reference the United States Department of Transportation regulations pertaining to licensing of commercial motor vehicle operators, as contained in Title 49 of the Code of Federal Regulations (49 C.F.R.) [47 O.S. §6-101(L)]. Information relative to this adoption is available through various sources, such as the

Labelmaster publication, "Federal Motor Carrier Safety Regulations." Copies of this publication are available by contacting the Oklahoma Trucking Association at (405) 843-9488. Specific regulations pertaining to licensing of commercial motor vehicle operators adopted by reference under this Section are:

- (1) Part 380, Special Driver Training Requirements;
- (2) Part 383, Commercial Driver's License Standards; Requirements and Penalties;
- (3) Part 384, State Compliance with Commercial Driver's License Program;
- (4) Part 390, Federal Motor Carrier Safety Regulations: General; ~~and~~
- (5) Part 391, Qualifications of Drivers; ~~and~~
- (6) Part 393, Parts and Accessories Necessary for Safe Operation.

595:11-1-15. Applicability, substitutions, limitations, and additions to federal regulations adopted by reference

(a) **Applicability.** The licensing regulations found in 49 C.F.R., Parts 383 and 391, as adopted in OAC 595:11-1-14 are applicable to all applicants for Class A, B, and C commercial driver licenses.

(b) **Terminology substitutions.** Unless otherwise specified, the following terminology shall apply to federal rules adopted by referenced in OAC 595:11-1-14:

- (1) "Department of Public Safety" shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.
- (2) "Commissioner of Public Safety" shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(c) **Limitations to scope of definitions.** The definitions provided in (b) of this Section are limited in application to 47 O.S. § 6-101 et seq. and the rules adopted by the Department to carry out the provisions those statutes. These definitions do not alter, replace, or change any definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Additional qualification of all classes of commercial drivers.** The following additions are made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older:

- (1) A driver operating solely in intrastate commerce shall be at least eighteen (18) years of age; and
- (2) Any person who is not at least twenty-one (21) years old shall not be licensed for:
 - (A) the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or
 - (B) transporting fifteen (15) or more passengers; provided, this subparagraph shall not apply to school bus drivers as provided in OAC 210:30-5.

(e) **Additional qualifications for non-excepted commercial drivers.** The following additions are made to the federal requirement in Commercial Driver's License Standards; Requirements and Penalties [49 CFR §384] relating to medical examiner certification:

(1) A non-excepted commercial driver operating solely in intrastate commerce shall meet the same qualifications as a driver operating in interstate commerce; and

(2) Current medical examiner certification shall be delivered to the Department of Public Safety by the driver by:

- (A) mail to: Department of Public Safety, Attn: CDL Program Administration
- (B) fax to: 405-425-2060
- (C) e-mail to: mec@dps.state.ok.us
- (D) in person to: the Department of Public Safety headquarters or any Department of Public Safety Examine Site

(3) Changes to the status of any driver from non-excepted status to excepted status or from excepted status to non-excepted status shall be made in writing to the Department by the driver, using one of the delivery methods described in paragraph (2).

PART 3. COMMERCIAL DRIVER LICENSE RENEWAL - IN PERSON

595:11-1-21. Procedure for obtaining a renewal commercial driver license in person

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Department of Public Safety for renewal of the commercial driver license of the licensee. Failure to renew a commercial driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her commercial driver license under the provisions required by law and this Section if the person wishes to keep his or her commercial driver license in force.

(b) **Required identification.**

(1) **Renewal with expiring or expired commercial driver license.** The expiring or expired commercial driver license provided as the primary identification may be retained by the licensee, after the Department has invalidated the document by punching holes through the license class and license type displayed. The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(2).

(2) **Renewal without driver license.** Any person who does not have the expiring or expired commercial driver license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Vision screening.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R., §391.41. A valid and unexpired United States Department of Transportation medical examiner's certificate (USDOT physical) may be submitted in lieu of actual vision screening by the Department.

(d) **Limitations to issuance of a renewal commercial driver license.**

(1) A renewal commercial driver license shall be issued only to an individual whose driving privilege is not under

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suspension, revocation, disqualification, cancellation, or denial and who complies with this Chapter, state law, and federal law and regulation.

(2) Any applicant who requests a renewal of his or her commercial driver license when the license has been expired in excess of three (3) years shall be required to appear before a driver license examiner, pursuant to OAC 595:11-1-11 as for an original license.

(e) **Early renewal of a commercial driver license.** Any licensee may renew his or her commercial driver license no more than ~~six (6) months~~ one (1) year prior to the expiration date. A renewal which occurs more than ~~six (6) months~~ one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.

(f) **Change of commercial driver license number.** A request by a licensee to change the commercial driver license number shall conform to the provisions of OAC 595:11-1-12(c).

PART 9. COMMERCIAL DRIVER LICENSE CARD CONTENT

595:11-1-61. Information displayed on commercial driver licenses

Each commercial driver license shall display the following information about the person to whom the license was issued [47 O.S. §6-111(A)]:

- (1) digitized color photograph,
- (2) full legal name in the order [last], [first] [middle]. No initial shall be used unless the initial is a part of the legal name of the person. If any abbreviation is required due to the length of the name, only the Department of Public Safety shall have authority to determine the abbreviation used,
- (3) current residence address or mailing address,
- (4) signature,
- (5) sex,
- (6) date of birth,
- (7) weight,
- (8) height,
- (9) color of eyes,
- (10) driver license class,
- (11) driver license number,
- (12) driver license issue date,
- (13) driver license expiration date,
- (14) any driving restriction code(s) (if applicable),
- (15) any driver license endorsement(s) (if applicable),
- (16) date upon which the person reaches twenty-one (21) years of age and the words "UNDER 21" [47 O.S. §6-101.1(A)] (if applicable), and
- (17) organ donor indicator (if applicable).

595:11-1-62. Driving restriction codes

A restriction or restrictions shall be placed upon a person's commercial driving privilege as deemed necessary by the Department [47 O.S. §6-113]. Each restriction shall be in accordance with 595:10-1-92 ~~appear as a code on the~~

~~commercial driver license of the person. Following are the possible driving restriction codes and their meanings:~~

- ~~(1) 1. Corrective lenses~~
- ~~(2) 6. Food, fruit, or candy within reach of driver~~
- ~~(3) 7. Adequate artificial limbs~~
- ~~(4) 8. Detailed restriction—Inquire against the commercial driver license file. (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's commercial driver license file.)~~
- ~~(5) A. Regardless of age, when operating a motorcycle must be in view of licensed driver at least 21 years old~~
- ~~(6) E. When operating a Class A, B or C commercial motor vehicle, restricted to automatic transmission~~
- ~~(7) K. CDL intrastate only~~
- ~~(8) L. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic~~
- ~~(9) M. When operating passenger bus, restricted to Class C commercial motor vehicle~~
- ~~(10) N. When operating passenger bus, restricted to Class B or C commercial motor vehicle~~
- ~~(11) O. Tractor-trailer~~
- ~~(12) Z. Restricted to commercial motor vehicles without air brakes~~
- ~~(13) V. Medical variance~~

SUBCHAPTER 3. EXAMINATION

595:11-3-2. Study guide

The official study guide for applicants shall be the "Commercial Driver's Manual", which is distributed by the Department of Public Safety. Copies are available free of charge:

- (1) from motor license agencies,
- (2) by mail from: Department of Public Safety, ~~Driver License Examining Division-Commercial Driver License Program Administration~~, P.O. Box 11415, Oklahoma City, Oklahoma 73136-0415,
- (3) in person at the Department of Public Safety, ~~Driver License Examining Division-Commercial Driver License Program Administration~~, 3600 North M. L. King Avenue, Oklahoma City, or
- (4) from the Department's website at <http://www.dps.state.ok.us/dls/>

595:11-3-6. Written examination

(a) **General.** A written examination shall be administered by a driver examiner to each applicant for a commercial driver license to determine the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state; provided, the written examination may be waived as provided in OAC 595:11-1-13(a). The written examination, if not waived, and the vision screening shall be successfully passed by the applicant before the skills test is administered. The written examination includes, when applicable, any separate endorsement/restriction examinations

as described in this Section. An applicant determined by an examiner to be cheating on any portion of an examination shall:

- (1) immediately forfeit the examination,
- (2) be given a failing score by the examiner, and
- (3) be disqualified from retaking the examination for one week.

(b) **Examination content.**

(1) **Written examination.** The written examination administered for a commercial driver license shall consist of a minimum of fifty (50) multiple-choice questions. In addition, the combination vehicle test administered for a Class A commercial driver license shall consist of a minimum of twenty (20) multiple-choice questions. The minimum passing score for each written examination shall be eighty percent (80%).

(2) **Endorsement or restriction examination.** The minimum number of multiple-choice questions and the minimum passing score for each endorsement or restriction examination shall be as follows:

- (A) "P" passenger endorsement - 20 questions - 80% score
- (B) "H" hazardous materials endorsement - 30 questions - 80% score
- (C) "N" tank vehicle endorsement - 20 questions - 80% score
- (D) "M" motorcycle endorsement - 20 questions - 75% score
- (E) "S" school bus endorsement - 20 questions - 80% score
- (F) "T" double or triple trailers endorsement - 20 questions - 80% score
- (G) Air brakes - 25 questions - 80% score. Failure to pass at least 80% of the 25 questions regarding air brakes will result in a restriction code "ZL" (Vehicle Without Air Brakes) being placed on the applicant's license upon issuance. The applicant shall be prohibited from taking the skills examination in a vehicle with air brakes.

~~(3) **Written pre-trip inspection examination.** The written pre-trip inspection examination administered for a commercial driver license shall consist of seven (7) multiple choice questions. The minimum passing score shall be six (6) questions correct out of the seven (7) questions.~~

(c) **Alternate method of examination.** The Department may provide an alternate method for the written examination for an applicant who cannot read or has a language barrier.

(d) **Retesting.** An applicant failing the written examination may be granted the opportunity to retest on the next regular business day.

(e) **Discretionary examination.** Any examination, as deemed necessary by the Department, may be administered by the Department as required for the establishment and authorization of a special endorsement or to permit the operation of commercial motor vehicles.

(f) **Restricted Class A, B, or C commercial driver license.** Any person eighteen (18) years of age or older may apply for a restricted Class A, B, or C commercial driver license,

as provided in 47 O.S. §6-101(F), solely for the purpose of behind-the-wheel training in a commercial motor vehicle while accompanied by a licensed driver who is twenty-one (21) years of age or older and who holds a valid commercial driver license, including any and all required endorsements, for the class and type of commercial motor vehicle being driven.

(1) The restricted commercial driver license shall be issued as provided for 47 O.S., § 6-101(F)(2). Any person may reapply for another restricted commercial driver license by complying with all requirements for the class of restricted commercial driver license desired.

(2) The Department shall not place a hazardous materials (H) endorsement on a restricted commercial driver license.

595:11-3-7. Pre-trip inspection examination of commercial motor vehicles

(a) **Condition of vehicle.** It is the responsibility of the applicant to furnish for the skills examination a commercial motor vehicle in good working order which meets all state laws and federal requirements regarding operability and equipment.

(b) **In general.** An applicant for a commercial driver license shall pass a vehicle pre-trip inspection examination at the designated inspection location. The pre-trip inspection test:

- (1) shall be performed in a vehicle representative of the vehicle class for the type of commercial driver license for which the applicant is applying,
- (2) shall not be performed using a vehicle transporting hazardous materials or a vehicle which is required to be placarded for hazardous materials under the rules of the Department of Public Safety or federal law or regulation,
- (3) shall not be performed using a vehicle which requires an oversize permit under state law or Department of Public Safety rules,
- (4) shall not be performed using a vehicle that was not designed and constructed by the manufacturer with a seating capacity for one or more persons in addition to the driver, and
- (5) shall not be performed with the aid or assistance of notes or prompting. An applicant determined by an examiner to be cheating on any portion of an examination shall:

- (A) immediately forfeit the examination,
- (B) be given a failing score by the examiner, and
- (C) be disqualified from retaking the examination for one week.

(c) **Physical pre-trip inspection examination.** The physical pre-trip inspection examination administered for a commercial driver license shall consist of ~~a minimum of nine (9) and a maximum of twenty-seven (27) items of inspection and shall be performed only on commercial motor vehicles with air brakes, depending on the type and axle configuration of the vehicle.~~ The test shall include the items prescribed in OAC 595:11-3-8 the content and methods provided in the most recent release of the 2005 American Association of Motor Vehicle Administrators CDL test model. The content is available to the public as provided for in OAC 595:11-3-2.

(d) **Scoring procedure.** The scoring procedure for the vehicle pre-trip inspection examination shall be based on

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the applicant's ability to identify and explain the function or purpose of each item required to be inspected. The Applicants must successfully identify and explain at least 70% of the inspection items, which will be based upon the type and axle configuration of the vehicle. For air brake vehicles, the following actions will constitute an automatic failure:

- (1) an air brakes leakage test while the engine is running,
- (2) failure to turn the ignition key to the "on" or "accessory" position for air brake bleed down test, or
- (3) failure to release the parking brake for air leakage and bleed down test.

(e) **Components.** The vehicle pre-trip inspection examination may include, but shall not be limited to, inspection of the following items:

(1) **All vehicles:**

(A) **Engine compartment:**

- (i) air compressor
- (ii) leaks

(B) **Engine start:**

- (i) air buzzer sounds
- (ii) air brakes

(2) **Tractor only:** air, electric lines

(3) **Truck, school buses, tractors and coach/transit buses:**

(A) **Front brake:**

- (i) slack adjuster
- (ii) chamber
- (iii) hoses
- (iv) drum

(B) **Rear brakes:**

- (i) slack adjuster
- (ii) chamber
- (iii) hoses
- (iv) drum

(4) **Trailer:**

(A) **Trailer front air/electric connectors**

(B) **Brakes:**

- (i) slack adjuster
- (ii) chamber
- (iii) hoses
- (iv) drum

595:11-3-8. Skills examination

(a) **In general.** The skills examination shall be administered only after the applicant has successfully passed the written examination, or had it waived if eligible under OAC 595:11-1-13(a), and the vision screening. Whenever a skills examination is required, the following general conditions shall apply:

- (1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a commercial motor vehicle. The applicant shall furnish for the skills examination the type of commercial motor vehicle required for the class of driver license requested. It is the responsibility of the applicant to furnish for the skills examination a commercial

motor vehicle in good working order which meets all state laws and federal requirements regarding operability and equipment. A vehicle not equipped with air brakes shall be required to have driving restriction code "ZL"(Vehicle Without Air Brakes) placed on the license of the applicant, upon approval of the issuance of the license.

(2) The skills examination shall not be administered in a commercial motor vehicle which:

- (A) is transporting hazardous materials or which is required to be placarded for hazardous materials,
- (B) requires an oversize permit under the laws of this state or the rules of the Department of Public Safety,
- (C) was not designed and constructed by the manufacturer with a seating capacity for one or more persons in addition to the driver,
- (D) is not insured as required by 47 O.S. §7-600 et seq.,
- (E) does not have a current license plate,
- (F) is saddle mounted,
- (G) is a wrecker vehicle towing another vehicle, or
- (H) is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts.

(b) **Scoring of examination.** The scoring procedure will be on a cumulative deduction system based on poor or improper driving practices. The Commissioner or the Commissioner's representative shall determine a point value for each act of poor or improper driving.

(c) **Content of examination for commercial driver license.** The skills examination shall be conducted in conformance with 49 C.F.R., Section 383.

(d) **Retesting.**

(1) An applicant who fails the skills examination for a commercial driver license may be granted the opportunity to retest the following business day.

(2) When an applicant fails to qualify for a commercial driver license after three (3) attempts to successfully pass the skills examination, he or she will be required to obtain a restricted commercial driver license, which shall restrict the individual to operating a commercial motor vehicle while accompanied by a qualified licensed driver in the front seat, before another skills examination will be administered.

(3) The Department shall conduct the skills examination for the holder of a restricted commercial driver license not more than three (3) times, each time at least one (1) business day apart or as instructed by the examiner, beginning no sooner than thirty (30) days from the date of issuance of the restricted license. Should the restricted licensee fail the third examination, the licensee shall wait at least thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given at the request of the restricted licensee but not more than one (1) examination shall be given every thirty (30) days.

(4) In computing any time period prescribed by this subsection, the day of the failed examination from which

the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(de) **Exceptions to thirty-day waiting period.** The holder of a restricted commercial driver license shall not be eligible to have a skills examination administered until after a minimum of thirty (30) days following the issuance of such license. However, the holder of a restricted commercial driver license, restricting the holder to being accompanied by a licensed driver twenty-one (21) years of age or older holding a valid license for the class of vehicle being driven, may have the thirty-day waiting time waived if the restricted licensee is currently receiving instruction or has successfully completed a commercial motor vehicle driver training program conducted by a commercial truck driver education school licensed by the Department, a school bus driver education course conducted by the State Department of Education, or a truck driver training course offered by the Oklahoma Department of Career and Technology Education. The restricted licensee shall submit to the Department evidence of successful course completion or evidence the licensee is currently receiving instruction. In computing the 30-day time period prescribed by this subsection, the day on which the restricted commercial driver license is issued shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(ef) **Substitute for skills examination.** A skills examination may be waived by the Department for an applicant when one of the following requirements is met:

- (1) The applicant is the holder of a valid commercial driver license from one of the fifty (50) states, the District of Columbia, or a Canadian province.
- (2) The applicant is a fireman or an active member of a branch of the military; provided, the person for the two (2) years immediately preceding application for a commercial driver license [49 C.F.R. Parts 383 and 391];
 - (A) can show, with proper documentation, that he or she has operated a representative class commercial motor vehicle,
 - (B) certifies that he or she has not been licensed by more than one jurisdiction at the same time,
 - (C) certifies that he or she has not had any suspension, revocation, cancellation, denial, or disqualification of driving privileges in the two (2) years immediately preceding the application,
 - (D) has not been convicted of any major disqualifying offense, as defined in 47 O.S., § 6-205.2,
 - (E) has not been convicted more than once of a serious traffic offense, as defined in 47 O.S., § 6-205.2, regardless of the type or class of vehicle the offense occurred in, and
 - (F) certifies that he or she has not been involved in any collision in which he or she was recorded as being at fault.

SUBCHAPTER 9. DRIVER STATUS NOTIFICATION SYSTEM

595:11-9-5. Requirements for enrolling drivers by subscribing employers

- (a) A subscribing employer may enroll a driver into the system if:
 - (1) The driver is an Oklahoma resident;
 - (2) The driver has an Oklahoma commercial driver license;
 - (3) The employer notifies the driver, in writing, of its participation in the system and the impending enrollment of the driver; and
 - (4) Maintains on file a signed release from the driver to obtain driving record information.
- (b) An enrolled driver shall be maintained by the Department in the Driver Status Notification System until removed by the employer.
- (c) The annual fee for each enrolled driver shall be ~~Fifteen Dollars (\$15.00)~~ Five Dollars (\$5.00) plus the fee for a Motor Vehicle Report as prescribed in 47 O.S. § 6-117, payable immediately upon enrollment.
- (d) The employer shall receive from the Department a notification, via e-mail, to log in to the Driver Status Notification System and receive a current Motor Vehicle Report for the newly enrolled driver. The Motor Vehicle Report shall meet the federal requirement of the employer to obtain an annual driving record for the driver.
- (e) Enrollment of a driver entitles the employer to receive:
 - (1) one copy of a Motor Vehicle Report for the driver, as provided in (d), and
 - (2) unlimited electronic notifications, via e-mail, related to the driver as described in OAC 595:11-9-8.

595:11-9-6. Renewing enrolled drivers

- (a) The enrollment of each enrolled driver of the subscribing employer shall be automatically renewed by the Department at the beginning of each calendar year.
- (b) An enrolled driver shall be maintained by the Department in the Driver Status Notification System until removed by the employer.
- (c) The annual fee for each renewal of an enrolled driver shall be ~~Fifteen Dollars (\$15.00)~~ Five Dollars (\$5.00) plus the fee for a Motor Vehicle Report as prescribed in 47 O.S. § 6-117, payable immediately upon enrollment.
- (d) The employer shall receive from the Department a notification, via e-mail, to log in to the Driver Status Notification System and receive a current Motor Vehicle Report for the renewed driver. The Motor Vehicle Report shall meet the federal requirement of the employer to obtain an annual driving record for the driver.
- (e) Renewal of the enrollment of a driver entitles the employer to receive:
 - (1) one copy of a Motor Vehicle Report for the driver, as provided in (d), and
 - (2) unlimited electronic notifications, via e-mail, related to the driver as described in OAC 595:11-9-8.

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595:11-9-9. Fee schedule and payment

- (a) The fee schedule shall be:
- (1) The fee for an original application for subscription by an employer shall be Fifty Dollars (\$50.00).
 - (2) The fee for a renewal subscription of an employer shall be Fifty Dollars (\$50.00).
 - (3) The fee for an original enrollment of a driver by an employer shall be \$15Five Dollars (\$5.00) plus the fee for a Motor Vehicle Report as prescribed in 47 O.S. § 6-117.
 - (4) The fee for a renewal enrollment of a driver by an employer shall be \$15Five Dollars (\$5.00) plus the fee for a Motor Vehicle Report as prescribed in 47 O.S. § 6-117.
- (b) All fees are due and payable immediately application, enrollment, or renewal, as appropriate.
- (c) No fee shall be subject to refund or to prorating.
- (d) Payment shall be made to the Department by a nationally-recognized credit card. A credit card convenience fees shall apply.

[OAR Docket #12-363; filed 3-30-12]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM

[OAR Docket #12-387]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. Business Personal Property Valuation Schedules
710:10-2-5 [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2.2 [AMENDED]
710:10-7-4 [AMENDED]
710:10-7-5 [AMENDED]
710:10-7-11 [AMENDED]
710:10-7-13 [AMENDED]
Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-1 [AMENDED]

AUTHORITY:

68 O.S. §§ 203 and 2902(H); Oklahoma Tax Commission

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n/a

ANALYSIS:

Section 710:10-2-5 has been amended to reflect the recent Oklahoma Supreme Court decision [*Assessor of Roger Mills County vs. Unit Drilling Company*, 2011 OK 4] regarding the valuation of personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs for tax assessment purposes.

Proposed amendments to **Subchapter 7**, "*Manufacturing Facilities*", and **Subchapter 14**, "*Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate*" are intended to clarify eligibility and application requirements, to comply with current legal authority, and to correct scrivener's errors.

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 MAY 11, 2012:

SUBCHAPTER 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-5. Petroleum related equipment

- (a) **Petroleum related equipment.** "**Petroleum related equipment**" includes, but is not limited to: cable tool rigs, casing and tubing, crude oil, drill pipe, drilling rigs, gas compressors, meters, natural gas, pipeline costs, tanks, and valves.
- (b) **Exploration related equipment.** All taxable personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs shall be assessed annually at theits fair cash value, based upon the value set forby the first Hadco International monthly bulletin published for the current tax year and such other available relevant and reliable market data, if any, concerning the fair cash value of property of the same kind, using the appropriate depth rating assigned to the drawworks by its manufacturer and actual condition of the rig. [See: 68 O.S. Supp.2007 § 2817(K)]
- (c) **Sources.** Sources utilized to determine the values of petroleum related equipment are:

- (1) For cable tool rigs, values are determined by reference to catalogs of equipment manufacturers and dealers.
- (2) For casing, tubing, drill pipe, collars, and drilling rigs the source for values utilized is *Hadco International*, an appraisal and data firm specializing in the petroleum industry which measures current market conditions and values of various assets. This is a monthly publication.

- (3) For crude oil, values are determined from the Oklahoma market twelve-month verage.
- (4) For valves and tanks, values utilized are taken from *Marshall and Swift Valuation Service*, a national valuation service contracted by the Division to provide tables of values for real and personal property, depreciation schedules, and trending tables for historical costs. The service is updated on a monthly basis.
- (5) For natural gas in storage, value is determined by reference to the *New York Mercantile Exchange (NYMEX)*, which provides average cost of natural gas purchased from the storage facility, including data on well head gas purchase price, pipeline transportation, and storage fees.
- (6) For gas compressors, meters, pipeline costs, and related equipment, values are determined from surveys of Oklahoma companies, research of records filed in the various counties, and other available sources. Such values may be adjusted using *Marshall and Swift Valuation Service* tables as provided in ~~OAC 710:10~~OAC 710:10-2-1(c).

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 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 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. § 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. § 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. § 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~~**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

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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. When the increased payroll requirement is met, the affidavit will deemed to be satisfied and no longer in effect.

(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.

710:10-7-4. Qualifying manufacturing concerns exempt; forms

Qualifying manufacturing concerns as defined by law shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities for a period of five (5) years. Exemptions will be allowed only upon approved application filed with the county assessor for each year the exemption is requested on forms prescribed by the Oklahoma Tax Commission. The application shall be fully completed, sworn to and signed by the applicant, if an individual, or by a duly authorized officer or general partner or authorized agent of entities applying for the exemption. Authorized agents must file a Power of Attorney, OTC Form BT 129, with the initial and each annual application. Form BT 129 is available telephonically at (405) 521-3160 or online at www.tax.ok.gov. Any additional information requested in writing by the county assessor, the County Board of Equalization, or the Oklahoma Tax Commission shall be furnished in a sworn and signed statement.

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 signed by the county assessor and the county board of equalization shall be filed by the county assessor with the Oklahoma Tax Commission no later than June 15 of the **TAX 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); Article 10 § 22A Okla. Const.]

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 deliver the original application, whether approved or rejected, to the County Board of Equalization, on or before the fourth Monday in April each year for its review. After the County Board of Equalization has approved or rejected the application, the original application shall be forwarded to the Oklahoma Tax Commission Ad Valorem Division by June 15th of the current year.
- (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**" and notify the applicant at the address shown on the application. 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~~ valuation.
- (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.

710:10-7-13. Hearings before County Board of Equalization

In case the county assessor or County Board of Equalization disallows or rejects an application for a manufacturing exemption from ad valorem taxation, the applicant may obtain a hearing before the Board of Equalization by filing a written complaint with the Secretary of said Board (the county clerk) within ten (10) days from the receipt of the notice. The complaint shall specify the grievances and the pertinent facts in relation the matter, and the County Board of Equalization shall conduct hearings, as provided by statute. The final decision of the County Board of Equalization must be sent to the Tax Commission on or before June 15. [See: 68 O.S. §§ 2895, 2902]

SUBCHAPTER 14. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-1. General provisions

- (a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption of the full fair cash value for homestead property and household personal property of qualified owners for ad valorem purposes.
- (b) The "one hundred percent disabled veterans exemption" refers to the implementation of the constitutional amendments added to the Oklahoma Constitution, Article 10, § 8E, by State Question 715, effective January 1, 2006 and Article 10, § 8D, by State Question 735, effective January 1, 2009. The amendments direct county assessors to exempt the total amount of the actual fair cash value of the homestead real property and household personal property of any qualified person who has made proper application. The applicant's real property must be a valid homestead property, with evidence of a homestead exemption, or eligible for homestead exemption. ~~As with any homestead based exemption, the general statutes governing homestead exemption qualification apply to the one hundred percent disabled veterans exemption.~~ Only one homestead, and by extension, only one exemption, is permitted in any one year, per applicant. The exemption applies only to owner-occupied homestead property and may not be applied to any non-homestead property. [See: 68 O.S. §§ 2888, 2889, 2890, 2893]

[OAR Docket #12-387; filed 4-9-12]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 20. ALCOHOL, MIXED BEVERAGES, AND LOW-POINT BEER**

[OAR Docket #12-386]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 2. Low-Point Beer
 - Part 1. General Provisions
 - 710:20-2-5 [AMENDED]
 - 710:20-2-6 [AMENDED]
- Subchapter 3. Alcoholic Beverages
 - 710:20-3-3 [AMENDED]
- Subchapter 5. Mixed Beverages
 - 710:20-5-6 [AMENDED]

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Oklahoma Tax Commission; 68 O.S. § 203; 37 O.S. § 586

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n/a

ANALYSIS:

Section **710:20-2-5** has been amended to require the electronic reporting of low-point beer excise tax. [37:163.5]

Section **710:20-2-6** has been amended to conform with the provisions of House Bill 1106 [2003] and Senate Bill 353 [2003], which modified Section 163.7 of Title 37 of the Oklahoma Statutes, changing the license fees for manufacturers, wholesalers and retailers of low-point beer.

Section **710:20-3-3** has been amended to require the electronic reporting of excise tax on alcoholic beverages. [37:553]

Section **710:20-5-6** has been amended to reflect Commission policy regarding the due date for the reporting and remittance of mixed beverage tax that falls on a day that the Federal Reserve banks are closed. [37:579]

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 MAY 11, 2012:

SUBCHAPTER 2. LOW-POINT BEER

PART 1. GENERAL PROVISIONS

710:20-2-5. Reporting requirements

(a) **Manufacturers.** Each and every manufacturer doing business within this state must report to the Commission no later than the tenth of each month, all sales of low-point beer made during the preceding month, including sales from any retail places of business, as described by 37 O.S. §163.7. ~~The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.~~

(b) **Wholesalers.** Each and every wholesaler doing business within this state must report to the Commission no later than the tenth of each month, all sales of low-point beer made during the preceding month, regardless to whom the sale was made. At the same time, each and every wholesaler must report to the Commission each and every purchase or consignment of low-point beer received. ~~The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.~~

(c) **Retailers.** Each and every retailer doing business within this state must report and pay the tax to the Commission no

later than the tenth of each month, on all purchases of low-point beer made during the preceding month, on which the tax was not paid, in the same manner as a wholesaler. A retail dealer who manufactures low-point beer for consumption on the licensed premises must report and pay the tax in the same manner as a wholesaler. ~~The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.~~

(d) **Common carriers.** Monthly reports by common carriers transporting low-point beer to points within the state, are required to be furnished to the Commission. The reports will show the point of origin, the consignor, consignee, the date, and the amount of each shipment or consignment of low-point beer. ~~The reports must be upon forms prepared and furnished by the Commission, be accompanied by supporting data, and be submitted via magnetic media.~~

(e) ~~**Magnetic media.** Supporting data conforming to the Oklahoma Tax Commission's *Low-point Beer Magnetic Media Guide* is required to be submitted with each monthly report by all manufacturers, wholesalers and common carriers. In the event that a manufacturer, wholesaler or common carrier does not have computerized records, substitute supporting data approved by the Commission may be submitted in lieu of the magnetic media supporting data. **Reports must be filed electronically.** All required reports and supporting data must be filed electronically in the format prescribed by the Compliance Division.~~

710:20-2-6. Annual state permits and license taxes

(a) **Manufacturers.** Annual permits are required and license taxes are payable to the Oklahoma Tax Commission with respect to low-point beer, and are in addition to licenses which are required to be procured from the judge of the district court. The permit or license shall be for the privilege of doing business in Oklahoma as a manufacturer of low-point beer. Permits will not be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission.

(1) **In-state manufacturers.** Before commencing the manufacture of low-point beer, in-state manufacturers of low-point beer must obtain a permit from the Oklahoma Tax Commission. A license tax of Four Hundred Fifty Dollars (\$450.00) must be paid as a condition to the issuance of the initial permit, which covers a three-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid every three years. Additionally, an in-state manufacturer may sell not more than five thousand (5,000) barrels annually of its own products directly to consumers by procuring a retail license.

(2) **All other manufacturers.** Before selling or offering for sale low-point beer within this state, each and every other manufacturer of low-point beer, must qualify with the Secretary of State of the State of Oklahoma for a permit to do business within Oklahoma. After so qualifying, each and every other manufacturer must obtain an annual permit from the Oklahoma Tax Commission. A license tax of Five Hundred Dollars (\$500.00) must be paid as a condition to the issuance of the initial permit, which covers

a one-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid annually.

(b) **Wholesalers.** Annual permits are required and license taxes must be paid to the Oklahoma Tax Commission with respect to low-point beer, and are in addition to any licenses required to be procured from the judge of the district court. Permits are not transferable from one person to another person, but may be transferred from one location to another location. Permits will not be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission.

(1) **In-state wholesalers.** Wholesalers located and doing business in this state must obtain an annual permit from the Oklahoma Tax Commission. A license tax of Two Hundred Fifty Dollars (\$250.00) must be paid as a condition to the issuance of the initial permit, which covers a one-year period from its effective date. Thereafter, the permit must be renewed and the license tax paid annually. An annual permit must be secured and an annual license tax must also be paid by wholesalers for each city or incorporated town from which deliveries of low-point beer are made to retail dealers. Provided, if the wholesaler is also the holder of a current in-state manufacturer's permit, the cost of the wholesaler's permit shall be reduced by seventy-five percent.

(2) **Out-of-state wholesalers.** Wholesalers located and doing business outside of Oklahoma, who desire to pay the excise tax on sales to retail dealers, must obtain the annual permit and pay the license tax annually as is required of in-state wholesalers.

(c) **Retail dealers.** Retailers must obtain a permit from the Oklahoma Tax Commission before offering low-point beer for sale to the public. A license tax shall be paid to the Commission before issuance of the permit, and no permit will be issued or renewed if the applicant has outstanding liabilities for any taxes or fees administered by the Oklahoma Tax Commission. With the exception of permits issued for special events, as described in (c)(4) of this Section, permits are not transferable from one person to another person, but may be transferred from one location to another location, with approval of the Commission, and the judge of the district court. Permits are required for each place of business at which low-point beer is served (each room, bar, or other serving unit). An applicant for a retailer permit must supply evidence that a county permit has been obtained, including the date effective and the expiration date of the county permit. Cancellation of the retailer's county permit shall be cause for the Commission to cancel the permit issued to the retail dealer. Payment of the license tax must be by cash, cashier's check, bank draft, or money order, made payable to the Oklahoma Tax Commission. The permits and the license tax required for specific types of retailers are as follows:

(1) **Sale by draught or in original packages, for consumption on or off premises.** A three-year permit is issued upon payment of the license tax of ~~Four Hundred Dollars~~ Five Hundred Dollars (\$400.00\$500.00), and compliance with all other requirements. If the dealer has previously been issued a permit to sell in original packages

only for consumption off premises, and such permit has not expired, the Commission may credit the retailer with the unused portion of the former permit.

(2) **Sale in original packages only, for consumption on or off premises.** A three-year permit is issued upon payment of the license tax of ~~Two Hundred Fifty Dollars~~ Three Hundred Fifty Dollars (~~\$250.00~~)\$350.00), and compliance with all other requirements.

(3) **Sale of low-point beer, either purchased or manufactured by a retailer.** A three-year permit is issued upon payment of the license tax of ~~Five Hundred Fifty Dollars~~ Six Hundred Fifty Dollars (~~\$550.00~~)\$650.00), and compliance with all other requirements. A retail dealer who is licensed under this paragraph may sell the low-point beer which the dealer manufactures at any of the dealer's places of business, or from any place owned and operated by an entity which has common owners with the dealer. "**Common owners**" means owners, who together with the dealer, own more than fifty percent (50%) of the interest in the place or entity.

(4) **Sale at a special event.** A per-day license may be issued upon payment of the Five Dollar (\$5.00) license tax and compliance with all other requirements. Retail dealers holding special event licenses are not required to obtain a separate permit for each bar or service unit, provided the bars or service units are within the same enclosed area, or if located outdoors, are within the general vicinity. However, if the event is a state or county fair which meets for more than five (5) days in any year, a special license must be issued at a charge of Twenty-five Dollars (\$25.00).

(5) **Sale by original packages only, for consumption off premises; exception.** A three-year permit is issued upon payment of the license tax of ~~One Hundred Thirty Dollars~~ Two Hundred Thirty Dollars (~~\$130.00~~)\$230.00) and compliance with all other requirements. Except for the situation described in paragraph (6) of this subsection, it is unlawful for the retailer to allow any low-point beer container to be opened or broken or consumed in or on the licensed premises.

(6) **Samples produced and provided by an in-state manufacturer.** An in-state manufacturer, selling its own products for off-premises consumption, may serve visitors on the premises free samples of low-point beer produced on the premises, provided that the samples shall not exceed twelve (12) fluid ounces per customer, per visit.

(7) **A dealer who ceases to offer low-point beer.** A dealer who ceases to offer low-point beer is entitled to receive a refund of license tax, in a prorated amount to be determined by the Commission, with respect to the amount of time remaining until expiration of the current permit.

~~(8) **Fee increases.** Retail dealers who have obtained permits prior to July 1, 2003, shall not be subject to the increased fees until the existing permit is renewed.~~

SUBCHAPTER 3. ALCOHOLIC BEVERAGES

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710:20-3-3. Monthly tax reports required

(a) **General requirements.** Every licensed distributor and wholesaler and every bonded warehouseman who is licensed by the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission to ship or cause to be shipped into this State or to sell, distribute, use, possess or in any manner deal with alcoholic beverages, except beer, in this State, shall report monthly to the Oklahoma Tax Commission, all sales, distributions, receipts and shipments of all such alcoholic beverages in this State during the preceding month, ~~on verified monthly alcoholic beverage tax report forms~~ All required reports must be filed electronically in the format as prescribed by the Compliance Division of the Oklahoma Tax Commission. Each such monthly report shall include the minimum information required by the Oklahoma Alcoholic Beverage Control Act and any additional information and attachments that may be required by the prescribed tax report form.

(b) **Incomplete or insufficient reports.** Any monthly alcoholic beverage tax report form that does not include all information requested on the prescribed form or that is not duly executed and verified shall not constitute the mandatory report.

(c) **Failure to file.** In the event a complete monthly report is not filed on or before the due dates in accordance with 710:20-3-4, of the Oklahoma Tax Commission Rules, the report shall be delinquent. [See: 37 O.S. §§ 502 et seq.]

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-6. Due dates for timely filing of monthly tax reports and paying gross receipts tax

(a) **Date due.** On or before the twentieth (20) day of the calendar month immediately following the calendar month in which the mixed beverages were sold, prepared or served, the monthly gross receipts tax report and payment of the tax due shall be submitted to the Oklahoma Tax Commission.

(b) **Date due not a working day.** If the due date is a Saturday, Sunday, or a holiday recognized by the executive department of this State, or a date when the Federal Reserve Banks are closed then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following the Saturday, Sunday, or holiday or Federal Reserve bank closure date.

(c) **Date mailed given effect.** Any report or payment mailed and postmarked by the United States Postal Service on or prior to the due date shall be considered to have been filed or paid on the due date.

(d) **Delinquency.** All such gross receipts tax or monthly reports due and not paid or submitted to the Commission on or before the due date shall be delinquent. [See: 37 O.S. § 579]

[OAR Docket #12-386; filed 4-9-12]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 22. BOATS AND MOTORS

[OAR Docket #12-390]

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PERMANENT final adoption

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Subchapter 5. Procedures for Registration
710:22-5-11 [AMENDED]

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68 O.S. § 203; 63 O.S. § 4004; Oklahoma Tax Commission

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n/a

ANALYSIS:

Section 710:22-5-11 has been amended to reflect the provisions of Senate Bill 1398, Second Regular Session of the 52nd Legislature (2010), which relates to annual vessel and outboard motor registration renewal notices. Armed Forces personnel eligible for the reduced military registration fee set forth in 63 OS § 4021 may continue to receive mailed boat/motor renewal notices at no charge.

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 MAY 11, 2012:

SUBCHAPTER 5. PROCEDURES FOR REGISTRATION

710:22-5-11. Registration renewal notification

(a) **Notification options.** Boat and outboard motor registrants may choose from the following three (3) registration expiration notification methods.

(1) **Mail notification.** Registrants may choose to receive mailed renewal notices, for an additional fee set

by statute, by advising the registering tag agency of their choice and paying the applicable fee. If renewing by mail, the registrant may indicate their choice on the renewal form and remit the applicable fee. Armed Forces personnel eligible for the reduced military registration fee set forth in 63 OS § 4021 may continue to receive mailed boat/motor renewal notices at no charge. If the mail notification fee is not remitted by the registrant, no notice will be mailed. Failure to receive the mailed notification shall not relieve the taxpayer from their responsibility to timely renew their registration(s).

(2) **Email notification.** Registrants may choose to receive an email renewal notification, at no charge, by either signing up for email notification via the Commission's online renewal website; or by advising the registering tag agency of their choice and providing to the agent an email address to which the notification is to be sent; or by indicating the email option and providing an email address to which the notification is to be sent on the mail-in renewal registration postcard. Email notification will supersede any other type of registration expiration notification. Failure to receive the email notification shall not preclude the taxpayer from their responsibility to timely renew their registration(s).

(3) **No notification.** Registrants may choose to receive no notification by advising the registering tag agency of their choice, or by indicating their choice on the mail-in registration renewal postcard.

(b) **Motor license agent responsibility.** It shall be the duty of motor license agents to advise all in-person registrants of their renewal notification options and process the chosen options per Commission guidelines. When the taxpayer chooses the email reminder notification option, the agent shall obtain the taxpayer's email address to which the notification is to be sent and enter that email address to the Commission's registration system in the manner prescribed by the Commission.

[OAR Docket #12-390; filed 4-9-12]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 25. COIN OPERATED VENDING DEVICES**

[OAR Docket #12-389]

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68 O.S. §§ 203 and 1504, Oklahoma Tax Commission

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Section 710:25-1-5 has been amended to implement House Bill 1634, enacted into law by the 53rd Legislature 1st Regular Session, effective July 1, 2011, which modified Section 1503 of Title 68 of the Oklahoma Statutes, decreasing the annual fee for each coin-operated music device, coin-operated amusement device and any coin-operated vending device requiring a coin or thing valued at more than \$.25 cents or more from \$150.00 to \$75.00.

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 MAY 11, 2012:

710:25-1-5. Decals for general use

A music/amusement device requires a ~~One Hundred Fifty Dollar (\$150.00)~~ Seventy-five Dollar (\$75.00) annual decal. Coin-operated vending devices which require a coin or thing of value of Twenty-five Cents (25¢) or more must display a ~~One Hundred Fifty Dollar (\$150.00)~~ Seventy-five Dollar (\$75.00) annual decal. If the device requires a coin or thing of value less than Twenty-five Cents (25¢), then an annual decal of Ten Dollars (\$10.00) will be required. [See: 68 O.S. §1503(1)-(3)]

[OAR Docket #12-389; filed 4-9-12]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION**

[OAR Docket #12-385]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Exemptions and Exclusions

Part 5. Horizontally Drilled Production Wells

710:45-9-21 [AMENDED]

710:45-9-23 [AMENDED]

710:45-9-24 [AMENDED]

710:45-9-27 [AMENDED]

710:45-9-28 [AMENDED]

Part 7. Incremental Production from Enhanced Recovery Projects or Properties

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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]
710:45-9-62 [AMENDED]
710:45-9-62.1 [AMENDED]
710:45-9-64 [AMENDED]
Part 15. New Discovery Wells
710:45-9-70 [AMENDED]
710:45-9-71 [AMENDED]
710:45-9-73 [AMENDED]
Part 17. Economically At-Risk Leases
710:45-9-82 [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-90 [AMENDED]
710:45-9-92 [AMENDED]
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n/a

ANALYSIS:

Proposed amendments to **Subchapter 9, "Exemptions and Exclusions"**, have been made to:

- Implement the provisions of House Bill 2432 [Second Regular Session of the 52nd Legislature (2010)], which provides for the payment deferral of certain gross production tax rebates by the Tax Commission for the production periods ending June 30, 2010, and June 30, 2011, for horizontally drilled and deep wells completed below 15,000 feet; provides for a change in the method that certain exemptions are perfected; amends the rebate period for horizontal wells which eliminates the payback limitation and provides for an incentive period of forty-eight (48) months; and provides for an annual adjustment to the calendar year price cap based on the consumer price index.

- Implement the provisions of House Bill 1488 [First Regular Session of the 53rd Legislature (2011)], which removes gold and silver from the levy of gross production tax, as well as extends the sunset date for certain gross production tax incentives from July 1, 2012, to July 1, 2014, for secondary and tertiary projects, reestablished production, production enhancements, certain deep wells, new discovery and 3-D seismic wells.

- Implement the provisions of Senate Bill 885 [First Regular Session of the 53rd Legislature (2011)], which clarifies provisions in 68 O.S. Section

1001 that were previously amended under House Bill 2432 [Second Regular Session of the 52nd Legislature (2010)], relating to certain horizontal and deep wells that qualify for a reduction of the gross production tax rate. The previous amendment inadvertently excluded qualifying wells which exist prior to July 1, 2011.

- Implement the provisions of Senate Bill 1882 [Second Regular Session of the 52nd Legislature (2010)], which extends the sunset provision for the variable rate on Gross Production Tax from June 30, 2010, to June 30, 2013, and also extends the Gross Production Tax rebate for economically at-risk oil and gas leases for calendar years 2011, 2012 and 2013.

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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 MAY 11, 2012:

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 well-bore 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, ~~2012~~2015.

"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. Applicable to production periods prior to July 1, 2011.

"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.

710:45-9-23. Costs allowed in computing horizontally drilled well payout

Costs allowed in computing horizontally drilled well payout shall include only the costs of drilling and completing the well and shall not include any cost incurred after the completion date. Neither shall it include lease acquisition costs, tank batteries, meters, pipelines or other external equipment. Applicable to production periods prior to July 1, 2011.

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, ~~2012~~2015, 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)]

710:45-9-27. Qualification procedure

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~~may apply for qualification of the production from horizontally drilled wells, at the Oklahoma Corporation Commission on OCC Form 1534. In lieu of the OCC Form 1534, an OCC Form 1002A Completion Report accepted by the Commission reflecting that the well is a horizontally drilled producing well as addressed in this Part constitutes approval by the Commission of an application for qualification for the exemption.

(1) If an OCC Form 1534 is submitted to the Commission, such form shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, a copy shall be available to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

710:45-9-28. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** ~~If the Oklahoma Corporation Commission grants the application~~Upon being certified as a qualifying horizontal well producing prior to July 1, 2011, 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) A copy of the application approved by the Corporation Commission certifying the well as a horizontally drilled well;

(2) A copy of an approved OTC Form 320A that shows the date of initial production;

(3) ~~A~~For production periods prior to July 1, 2009, a properly completed OTC Form 328 Gross Production 841/495 Refund Report; ~~and~~

(4) For the production periods of July 1, 2010 through June 30, 2011, an electronically filed OTC Form 328 DR Gross Production Deferred Rebate Report; and

(5) 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 "Horizontal Drilling 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, ~~and prior to July 1, 2011,~~ 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~~For production periods prior to July 1, 2011, 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

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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, and prior to July 1, 2011, 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, and prior to July 1, 2009, 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. Electronic claims for refund applicable to the production periods beginning July 1, 2009, and prior to July 1, 2011, shall be filed with the Oklahoma Tax Commission no later than December 31, 2011.

(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 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, ~~2012~~2014, 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, ~~2012~~2014.** For any tertiary enhanced recovery project with a project beginning date on or after July 1, 1993, and before July 1, ~~2012~~2014, **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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014, any downhole operation in an existing oil well or gas well that is conducted to

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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, ~~2012~~2014, **"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, ~~2012~~2014, 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, ~~2012~~2014.** The duration of the ~~exemption tax~~ incentive 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, ~~2014~~2015.** The duration of the ~~exemption tax~~ incentive 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~~2015.** The duration of the ~~exemption tax~~ incentive for wells drilled to this depth is sixty (60) months.

710:45-9-62. Qualification procedure

~~The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well at the Oklahoma Corporation Commission on OCC Form 1534. An OCC Form 1002A Completion Report accepted by the Oklahoma Corporation Commission reflecting that a well was spudded during the applicable time period and drilled to the prescribed depth appearing in OAC 165:10-21-45 constitutes approval by the Commission of an application for qualification for the exemption.~~

~~(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review. When processing OCC Form 1002A Completion Reports by which approval of deep well exemptions are sought as provided in this Section, the Oklahoma Corporation Commission shall give priority to those Completion Reports filed for an exemption pursuant to OAC 165:10-21-45(c), OAC 165:10-21-45(e)(2) and OAC 165:10-21-45(e)(4) in order for such Completion Reports to comply with the six-month filing period as provided for in Title 68 O.S., § 1001(H)(5).~~

~~(2) If the Department approves the application, a copy of the approved application shall be forwarded to the operator.~~

~~(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.~~

~~(4) When processing applications for qualifications for an exemption for Deep Wells as provided in this Section, The Oklahoma Corporation Commission shall give priority to those applications filed for an exemption pursuant to OAC 165:10-21-45(e)(2) and (3) in order for applicants to comply with the six-month filing period as provided for in Title 68 O.S., § 1001(H)(5).~~

~~(5) Claims for refund for qualifying deep wells spud on or after July 1, 2005 which are completed at a depth of fifteen thousand (15,000) feet or greater for the production periods beginning July 1, 2006, and prior to July 1, 2009, and certified by the Oklahoma Corporation Commission must be filed with the Tax Commission no later than six (6) months after the first day of the fiscal year in which the refund is initially available.~~

~~(3) Claims for refund for qualifying deep wells which are completed at a depth of fifteen thousand (15,000) feet or greater for the production periods beginning July 1, 2009, and prior to July 1, 2011, must be electronically filed with the Tax Commission no later than December 31, 2011.~~

710:45-9-62.1. Rebates - Refund procedure

(a) **Request to Oklahoma Tax Commission for a tax refund.** If the Oklahoma Corporation Commission grants the application for production periods prior to July 1, 2011, 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 an application approved by the Corporation Commission certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in OAC 165:10-21-45;

(2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(3) ~~A~~For production periods prior to July 1, 2009, a properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(4) For the production periods of July 1, 2010 through June 30, 2011, an electronically filed OTC Form 328 DR Gross Production Deferred Rebate Report.

(5) 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 "Deep Well 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 and prior to July 1, 2011, 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~~For production periods prior to July 1, 2011, 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~~For production periods beginning July 1, 2004 and prior to July 1, 2011, 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

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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 ~~and prior to July 1, 2006~~, 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. ~~Claims for refund for deep wells spud on or after July 1, 2005 which are completed at a depth of fifteen thousand (15,000) feet or greater and certified by the Oklahoma Corporation Commission must be filed with the Tax Commission no later than six (6) 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.

710:45-9-64. Limitation on total amount of refunds paid by the Tax Commission

(a) For all wells spudded after July 1, 2005 which are exempt from gross production tax pursuant to paragraphs (2) and (3) of subsection (e) of Section 710:45-9-60, the amount of refund paid by the Tax Commission shall be limited as follows:

(1) For the fiscal year ending June 30, 2006, no claims for refund shall be paid,

(2) For the fiscal year ending June 30, 2007, the total amount of refunds paid shall be equal to or less than \$17,000,000.00.

(3) For fiscal year ending June 30, 2008, the total amount of refunds paid shall be equal to or less than \$20,000,000.00.

(4) For fiscal year ending June 30, 2009, and ~~any each~~ thereafter through June 30, 2011, the total amount of refunds paid each fiscal year shall be equal to or less than \$25,000,000.00.

(b) In the event the total amount of claims for refund requested within the six month filing period July 1st through December 31st, for a fiscal year exceeds the total amount of refunds allowed for that fiscal year as provided for in this Section, the Tax Commission will proportionally reduce the amount of each claim so that the total amount of claims equal the total amount allowed for refunds.

(c) In the event the total amount of claims for refund filed within the six month filing period July 1st through December 31st, is less than the total amount of refunds allowed for that fiscal year, the Tax Commission will pay the claims that have been filed and extend the claims filing period for three additional months immediately following the expiration of the initial six month filing period until March 31st. If the total amount of claims for refund filed within the extended three month filing period is greater than the remaining funds, the Tax Commission will proportionally reduce the amount of each claim so that the total amount of claims equals the funds remaining to pay refund claims.

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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014, 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, ~~2012~~2014;
- (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 17. ECONOMICALLY AT-RISK LEASES

710:45-9-82. Exemption period

The exemption for economically at risk oil leases is limited to calendar years 1997 and 1998. The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through ~~2010~~2013.

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, ~~2012~~2014, 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, ~~2012~~2014, 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. § 1001(J).

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

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(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, ~~2012~~2014; 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 #12-385; filed 4-9-12]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 60. MOTOR VEHICLES

[OAR Docket #12-388]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Registration and Licensing

Part 1. General Provisions

710:60-3-12 [AMENDED]

710:60-3-24 [AMENDED]

Part 14. All-Terrain Vehicles, Off-Road Motorcycles and Utility Vehicles

710:60-3-140 [AMENDED]

710:60-3-141 [AMENDED]

Part 17. Special Permits

710:60-3-201 [AMENDED]

Subchapter 5. Motor Vehicle Titles

Part 1. General Provisions

710:60-5-2 [AMENDED]

710:60-5-8 [NEW]

Part 5. Certificates of Title

710:60-5-51 [AMENDED]

710:60-5-61 [AMENDED]

710:60-5-64 [NEW]

Part 7. Transfer of Title

710:60-5-77 [AMENDED]

Part 9. Affidavits for Use in Titles

710:60-5-91 [AMENDED]

Subchapter 7. Motor Vehicle Excise Tax

710:60-7-3 [AMENDED]

Subchapter 9. Motor Vehicle License Agents/Agencies

Part 5. Specific Recordkeeping Duties

710:60-9-54 [AMENDED]

Part 13. Provisions for Motor License Agent Application and Appointment 710:60-9-132 [AMENDED]

AUTHORITY:

27A O.S. § 2-11-401.6; 47 O.S. §§ 1140, 1146 and 1149; 68 O.S. § 203; Oklahoma Tax Commission

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ANALYSIS:

Section 710:60-3-12 has been amended to clarify language to reflect established policy and practice of allowing the new owner of a currently registered vehicle to change the vehicle's month of expiration either at the time of transfer, or upon their first registration renewal. [47:1116]

Sections 710:60-3-24 and 710:60-3-141 have been amended to reflect the provision of House Bill 1939, changing "waste tire recycling fees" to "tire recycling fees". [27A:2-11-401.2]

Section 710:60-3-140 has been amended to reflect the provisions of Senate Bill 325 regarding the definition change of "all-terrain vehicles". [47:1102]

Section 710:60-3-201 has been amended to reflect the provisions of Senate Bill 1699 (2008) wherein the Oklahoma Corporation Commission assumed complete responsibility for issuance of 72-hour permits. [47:1124]

Section 710:60-5-2 has been amended and New Section 710:60-5-8 has been added to reflect the provisions of Senate Bill 38 which adds "rebodied title" as an additional type of certificate of title that may be issued by the Oklahoma Tax Commission. [47:1105]

Section 710:60-5-51 has been amended to clarify language to reflect established policy and practice of allowing a new vehicle to be registered, but the title placed on document hold, when the owner has yet to receive complete documentation from the selling dealership. [47:1105]

Section 710:60-5-61 has been amended to provide a procedural recourse for the owner/possessor of a recovered vehicle with an unrecovered-theft title, for which the recovering insurance company refuses to provide a damage declaration. [47:1105]

New Section 710:60-5-64 has been added to provide necessary application and issuance procedures for rebodied vehicle certificates of title. [47:1102; 1105]

Section 710:60-5-77 has been amended to provide a reference to the No Administrator Affidavit (OTC Form 798), used to transfer ownership of a vehicle to descendants, when the owner has died intestate. [84:232]

Section 710:60-5-91 has been amended to provide for proper lienholder notification when the vehicle or component on which they have loaned is to be utilized to construct a newly assembled vehicle that will reflect a new vehicle identification number. [47:1105; 1110]

Section 710:60-7-3 has been amended to clarify policy regarding the consecutive three (3) year period applicable to the 100% disabled veterans' excise tax exemption. [68:2105]

Section 710:60-9-54 has been amended to reflect current policies relating to tag agency processes and responsibilities regarding inventory verification and accountability. [47:1140]

Section 710:60-9-132 has been amended to allow the Tax Commission to consider applications for appointment as a motor license agent who are believed to be qualified, but fall short of current criteria. [47:1140]

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 MAY 11, 2012:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

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 registration expiration month upon their initial registration of the vehicle. If the vehicle's registration has expired, the new owner may adjust the expiration month at the time the ownership is transferred. If the vehicle's registration is current at the time ownership is transferred, the new owner may adjust the expiration month either at the time the ownership is transferred, or upon their subsequent 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.

710:60-3-24. ~~Waste tire~~ Tire recycling fee collection by motor license agents

~~Waste tire~~ Tire recycling fees are to be collected by the Motor Vehicle Division and motor license agents upon the initial registration of a motor vehicle in this state. In addition to the statutorily authorized audits and reviews of motor license agent operations conducted by the Tax Commission, such collections

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are subject to inspection by the Department of Environmental Quality.

- (1) The fee is applicable to motor vehicles, with the following exceptions:
 - (A) Apportioned (IRP) vehicles;
 - (B) All-terrain vehicles;
 - (C) Off-road motorcycles; and
 - (D) Utility vehicles.
- (2) The fee is not applicable when a motor vehicle is being titled only.
- (3) The fee is to be assessed per tire, including any spare tires carried in or on the vehicle, based on the tire rim size. Motor license agents retain a portion of the fee collected as their compensation, as set forth by statute.

PART 14. ALL-TERRAIN VEHICLES, OFF-ROAD MOTORCYCLES AND UTILITY VEHICLES

710:60-3-140. All-terrain vehicles, off-road motorcycles and utility vehicles

(a) **Title and registration requirement.** All-terrain vehicles (ATV's) and off-road motorcycles (ORM's) purchased, or on which ownership is transferred, on or after July 1, 2005 are required to be titled and registered, unless statutorily exempted. Utility vehicles purchased, or on which ownership is transferred, on or after July 1, 2008 are required to be titled and registered, unless statutorily exempted.

(b) **Definitions.** The following terms when used in this Part, shall have the following meaning unless the context clearly indicates otherwise:

- (1) **All-Terrain Vehicles (ATV's).** A vehicle ~~powered by an internal combustion engine~~, manufactured and used exclusively for off-highway use, traveling on four or more ~~low pressure non-highway~~ tires, and having a seat designed to be straddled by the operator and handlebars for steering.
- (2) **Off-Road Motorcycles (ORM's).** A motorcycle manufactured for and used exclusively off roads, highways, and any other paved surfaces. Small street or sidewalk mini-motorcycles or scooters are not included in this category.
- (3) **Utility Vehicle.** A vehicle powered by an internal combustion engine, manufactured and used exclusively for off-highway use, equipped with seating for two or more people and a steering wheel, traveling on four or more wheels.

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 recycling 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 \$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.

PART 17. SPECIAL PERMITS

710:60-3-201. 72-hour permit

~~(a) **Purpose of permit; validity.** The 72-hour permit provides full registration to certain commercial vehicles, trucks, truck tractors, trailers, semitrailers and motor buses which are not otherwise registered in Oklahoma. The permit is valid for either an interstate or intrastate movement. This permit cannot be issued for a vehicle which has been apprehended by law enforcement officers for improper registration. Effective October 1, 2011, the Oklahoma Corporation Commission assumed complete issuance responsibility for such permits.~~

~~(b) **Eligible out-of-state vehicles.** Out-of-state vehicles eligible for apportioned registration, but not registered as such, will be required to purchase a 72-hour trip permit before proceeding through the State of Oklahoma.~~

~~(c) **Where permit may be obtained; costs.** Trip permits are available from local tag agencies and from the Motor Vehicle Division. The cost of the permit is set forth by statute and they may be purchased in advance through the Division.~~

~~(d) **Effect of expired, altered, or undated permit.** An operator of a motor vehicle possessing an expired, altered or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.~~

~~(e) **Newly purchased trucks to be registered in another state.** A permit must be issued on newly purchased trucks carrying a load and driving to another state for registration.~~

~~(f) **Receipt.** Only one copy of a 72-Hour Permit receipt will be given to applicant.~~

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 1. GENERAL PROVISIONS

710:60-5-2. Types of certificates

(a) **Title certificate color designation.** Oklahoma utilizes several different colors in designating vehicle types. The title types and corresponding certificate colors are as follows:

- (1) Standard Title (Green)
- (2) Salvage Title (Red)
- (3) Rebuilt Title (Orange)
- (4) Junked Title (Blue)
- (5) Classic Title (Green)
- (6) Remanufactured Title (No color designation at this time)
- (7) Unrecovered Theft Title (Purple)
- (8) Rebodied Vehicle Title (Yellow)

(b) **Title suffix designation.** Letter suffixes are utilized to designate the sequence of Oklahoma certificates of title issued to a specific vehicle. The original Oklahoma title issued will have no suffix following the designated title number. All subsequent Oklahoma titles, regardless of type, issued to that vehicle will be designated by a letter suffix. The letter "a" will be assigned as a suffix to the first Oklahoma title issued following the original title, "b" to the next title issued, etc. Only the most recent Oklahoma certificate of title issued is considered valid.

710:60-5-8. Oklahoma assigned identification number

An Oklahoma assigned identification number, when required for an assembled or rebodied vehicle, or upon written request from an authorized state or federal court or law enforcement agency, or when otherwise deemed necessary by the Commission, shall be assigned by the Motor Vehicle Division of the Commission. Once assigned, the Oklahoma assigned number is 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 Commission.

PART 5. CERTIFICATES OF TITLE

710:60-5-51. Original certificate of title

(a) **Completed application required.** An application for Oklahoma Certificate of Title (form 701-6), must be completed and forwarded to the Commission upon application for an original Oklahoma title.

(b) **Manufacturer's statement of origin.** A Manufacturer's Statement of Origin (MSO) must accompany the title to a vehicle which has never been titled or registered. If no MSO has yet been provided to the owner at time of initial title application, an original Oklahoma title may be placed on document hold upon presentation of ownership documentation acceptable to the Commission, such as a completed contract of sale from the selling dealership.

(c) **Out-of-state titles; negotiable titles; memorandum titles.** When issuing an original title from an out-of-state title to the individual whose name appears on the face, all information must be correctly transcribed from the out-of-state title. When presented with any document other than a negotiable

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out-of-state title, the Oklahoma Title will be placed on document hold and not be released until the negotiable out-of-state title is surrendered. When the Oklahoma title is to be placed on document hold, the applicant is to be asked whether the vehicle is subject to any lien and, if so, is to complete an affidavit outlining the lienholder information. When an out-of-state title is submitted reflecting a secured party, the lien will be carried forward to the Oklahoma record, as outlined in OAC 710:60-5-113. If the negotiable out-of-state title is being held by the secured party, the owner of the vehicle shall file an affidavit with the Commission or the motor license agent stating that title to the vehicle is being held by a secured party and has not been issued pursuant to the laws of the state where titled, and that there is an existing lien or encumbrance on the vehicle. The current name and address of the secured party or lienholder shall also be stated in the affidavit. The form of the affidavit shall be prescribed by the Oklahoma Tax Commission. In most instances, negotiable titles are those containing ownership assignment sections. Lack of assignments ordinarily indicates the title is non-negotiable.

(d) **Assigned or reassigned out-of-state titles.** An out-of-state title which has been assigned or reassigned on the reverse with an out-of-state notary is acceptable and an original title will be issued.

(e) **Title issued only to assignee.** Under no circumstances shall an Oklahoma Certificate of Title be issued to an individual other than to whom the assignment is made.

(f) **Actual sales price.** The actual sales price, commonly referred to as "purchase price", is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The documentation described in this subsection is required to establish the actual sales price:

(1) For new vehicles, a purchase contract or bill of sale from the selling dealer will be required.

(2) For used vehicles, a purchase price reflected in the ownership assignment area of those title certificates which provide an area for that information, or a purchase contract, or bill of sale will be required. If none of those documents are available, a "Declaration of Vehicle Purchase Price" (OTC Form 722-1) must be completed by the purchaser.

(3) A purchase contract or bill of sale offered only to establish the actual sales price pursuant to this subsection, and not to convey ownership, need not be notarized.

710:60-5-61. Unrecovered-theft title

An unrecovered-theft title may be issued to an insurance company that has paid a total loss on an unrecovered stolen vehicle. Provided, the ownership of any such vehicle which has been declared a total loss by an insurer licensed by the Oklahoma Insurance Department and maintaining a multi-state motor vehicle salvage processing center in this state shall be transferred to the insurer by a salvage or an unrecovered-theft title without the requirement of a visual inspection of the vehicle identification number by the insurer.

(1) **Documentation required.** The requesting insurance company must provide at least one of the following

three (3) documents at time of application for an unrecovered-theft title:

(A) Stolen vehicle report;

(B) Insurer's proof of loss; or

(C) Statement from insurer confirming unrecovered theft.

(2) **Subsequent recovery of vehicle.** When/if an unrecovered-theft titled vehicle is subsequently recovered, the appropriate title type (i.e. standard, salvage or junk) is to be issued, based on the amount of damage, if any. A letterhead statement from the insurance company, declaring the percentage of damage, is required to support the type of new title issued. Regardless of type, the new title will be branded "recovered-theft".

(3) **Subsequent owner unable to obtain insurance company damage declaration.** Should the subsequent owner/possessor of the recovered, unrecovered-theft titled vehicle claim the recovering insurance company has refused to provide the damage declaration outlined under paragraph (2) of this subsection and it is their contention the vehicle has suffered less than a total loss, the owner/possessor may:

(A) Obtain from the Motor Vehicle Division a prepared letter of instruction, outlining the Oklahoma statutory damage declaration obligation of a recovering insurance company. The owner/possessor is to send that letter via certified mail, return receipt requested, to the recovering insurance company, along with a request for their compliance. A damage declaration from the recovering insurance company received in response to such correspondence will be processed as outlined in paragraph (2) of this subsection.

(B) Should the recovering insurance company respond with a written refusal of the request to provide a damage declaration, or no response is returned by the recovering insurance company within thirty (30) days of delivery of the request, as evidenced by the certified mail return receipt, the owner/possessor may establish the level of damage to the vehicle by providing a formal, written cost estimate to repair the vehicle to a roadworthy condition from a certified mechanic &/or body shop (business - not individual), or certified appraiser (i.e. insurance damage appraiser), that is not affiliated with the prospective owner/possessor. Upon review and approval by the Commission, such damage estimate will be utilized to make the appropriate title type determination. Regardless of type, the new title will be branded "recovered-theft".

710:60-5-64. Rebodied titles

(a) **Rebodied vehicle defined.** A "rebodied vehicle" is a vehicle which has been assembled using a new body or new major component which is of the identical type as the original vehicle and is licensed by the manufacturer of the original vehicle and other original, new or reconditioned parts. For purposes of this definition, "new body or new major component" means a new body, cab, frame, front end clip or rear

end clip. A rebodied vehicle may not be a salvage, rebuilt, or junked vehicle as defined by paragraph 1, 2, or 5 of subsection A of Section 1105 of Title 47. A rebodied vehicle is assigned a new identification number by the Tax Commission.

(b) **Title color and notations.** Rebodied vehicle certificates of title are of a distinctive color and will display the year, make and model of the originally manufactured vehicle which has been rebodied. The face of the title certificate will reflect "REBODIED", as well as the notation "This vehicle has been assembled with new major components licensed by the original manufacturer".

(c) **Subsequent change of title type.** If a rebodied titled vehicle goes into salvage, rebuilt or junked title status, that new title type and color will take precedence over the rebodied title type. Regardless of subsequent title type(s), a rebodied brand notation will remain on the record.

(d) **Application for rebodied title.** Applicants for a rebodied certificate of title must complete an Affidavit of Rebodied Vehicle (OTC Form 761B), providing all information and documentation as described thereon, including appropriate ownership documentation for the components referenced on the affidavit. All rebodied title applications are to be submitted to the Motor Vehicle Division for review and approval. Following review, the Division will return the affidavit and documentation to the applicant with either titling instructions, or an explanation of denial.

(1) **Original vehicle titling requirement.** The original (base) vehicle - i.e. the vehicle which is being reconstructed and will reflect as the year, make and model on the rebodied certificate of title - must be titled in Oklahoma in the name of the applicant before application for a rebodied title may be made for the finished vehicle. This base vehicle titling requirement applies to all applicants, including those possessing an Oklahoma used vehicle dealer license.

(2) **Assignment and verification of vehicle identification number.** The Division will designate the new vehicle identification number (VIN) which is to be affixed to the vehicle. The Division will assign either an Oklahoma assigned number, or designate the identification number of a new, licensed, major component of the vehicle as the identification number to be utilized for the rebodied vehicle. The identification number assigned by the Division will be considered the valid vehicle identification number (VIN) for that vehicle and is to be affixed to the vehicle in the manner and location determined by the Division. The rebodied vehicle must be inspected by a motor license agent to confirm the assigned vehicle identification number (VIN), before a rebodied title will be issued. A rebodied title may not be placed on serial inspection hold.

(3) **Active liens.** If an active lien is reflected on any serial or vehicle identification number (VIN) of a component used to build a rebodied vehicle, the following will apply:

(A) The applicant must provide either a proper lien release(s), or written acknowledgement from the active lienholder(s) of their knowledge of the application for a rebodied vehicle which will display a newly assigned VIN and their understanding that any other

liens reflected on other components of the rebodied vehicle will also be reflected on the vehicle record, listed in order of original perfection date.

(B) Upon receipt of the lienholder acknowledgement, the Motor Vehicle Division will issue a revised lien entry form, reflecting the newly assigned vehicle identification number and will forward copies of the entry forms and written notification of the new vehicle identification number (VIN) to any lienholder of record in the Division's files.

(4) **Recognition of model year designation.** For purposes of tax/fee assessment and odometer disclosure requirements, a rebodied vehicle is to be considered as a vehicle of the model year that is reflected on the rebodied certificate of title.

PART 7. TRANSFER OF TITLE

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.~~ When a person dies intestate leaving a vehicle, that vehicle becomes the property of the surviving spouse, if any. If the decedent held title to more than one (1) vehicle, the surviving spouse may choose one (1) vehicle. If there are additional vehicles, or there is no surviving spouse, the vehicles may be distributed by the law of descent, upon submission of a properly completed **No Administrator Affidavit** (OTC Form 798) and the death certificate of the deceased vehicle owner.

(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 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.

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- (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 identification number required.** An Oklahoma Assigned ~~assigned~~ identification number, when required for an assembled vehicle or motorcycle, shall be assigned by the Motor Vehicle Division. ~~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 an active lien is reflected on any vehicle identification number (VIN) of a component used to build a vehicle or motorcycle on which an Oklahoma Assigned Identification Number assigned identification number has been, or will be, assigned, or on which an identification number from a major component has been, or will be, approved by the Commission to be assigned to the completed vehicle, and is now displayed, the paperwork must be returned to the Motor Vehicle Division, and the following procedure will apply:~~
- (1) The applicant must provide either a proper lien release(s), or written acknowledgement from the active lien holder(s) of their knowledge of the application for an assembled vehicle which will display a newly assigned VIN and their understanding that any other liens reflected on other components of the assembled vehicle will also be

reflected on the vehicle record, listed in order of original perfection date.

~~(2) Upon receipt of the lienholder acknowledgment, The Lien Department of the Motor Vehicle Division will issue a corrected revised Lien Entry Form, reflecting the new Oklahoma newly assigned vehicle identification number. (2) The Lien Department of the Motor Vehicle Division will then notify and will forward the forms and written notification of the new vehicle identification number (VIN) to any lienholder of the new vehicle identification number (VIN) of record.~~

(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, cab, frame, front end clip, or rear end clip.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-3. Excise tax levy and exemptions

(a) **General levy on transfer of legal ownership.** Excise Tax is levied on every exchange of legal ownership on any vehicle registered or being registered in Oklahoma unless a specific tax exemption applies.

(b) **Exemptions.** Following is information on some of the more frequently encountered exempt situations:

(1) **Husband and wife; parent and child.** Only transfers made without consideration between husband and wife, parent and child, or vice versa, are exempt. A Family Affidavit (Form 794) must be included with the other supporting documentation and is to be attached to the Title documentation. This exemption does not apply to transfers between in laws or grandparents to grandchildren.

(2) **Out-of-state residence and registration; nonresident military.** Any vehicle brought into Oklahoma by a person formerly living in another state is exempt, if the person owned and registered the vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in Oklahoma. Nonresident members of the Armed Forces stationed in Oklahoma may register their vehicle without excise tax if the vehicle has been registered by them in another state (60 day limit does not apply).

(3) **Governmental entities.** Any vehicle is exempt if registered by the State of Oklahoma or any political

subdivision thereof. Additionally, vehicles leased by a county, municipality, or a school district are exempt from the excise tax.

(4) **Title by inheritance.** Any vehicle on which legal ownership was obtained by inheritance is exempt from the levy of the excise tax.

(5) **Certain transfers of corporations and partnerships.** Legal Ownership of vehicles obtained by transfer as set out in Section 2105(9) of Title 68 may also be exempt.

(6) **Moped.** A motorized bicycle (moped) is exempt if sales tax was paid.

(7) **Rural water districts.** A Rural Water District is exempt.

(8) **Rural electric cooperatives.** A Rural Electric Coop is exempt.

(9) **Federal reserve banks.** Federal Reserve Banks are exempt.

(10) **Vehicles registered under International Registration Plan.** Transfer of vehicles registered under the International Registration Plan between lessor and lessee at the termination of the lease are exempt from the excise tax.

(11) **Short term rentals by rental companies.** Vehicles acquired by rental companies not to be rented for terms of more than 90 days may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance of the title, the rental agency must pay the excise tax that would have been due on the vehicle, plus a 20% penalty before transferring the vehicle, unless the vehicle is being transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

(12) **Foreclosure of lien or mortgage; insurance contracts.** Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract, is exempt from excise tax.

(13) **New vehicles registered by new car dealers.** A new vehicle registered by a new vehicle dealer is exempt for a period of four (4) months.

(14) **Insurance companies.** An insurance company may obtain title to a vehicle on which they paid a loss exempt from excise tax.

(15) **Revocable trusts.** Transfers made without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke are exempt.

(16) **Limited liability companies.** A limited liability company is a combination of a corporate and a partnership business organization structure. Excise tax exemption applies to the following transfers:

(A) Transfers to the limited liability company if former owners are members of the limited liability

company and the interest in the company is in proportion to interest in the vehicle prior to the transfer. A notarized bill of sale indicating such will be required as supporting documentation.

(B) Transfers of ownership from a limited liability company to members when a dissolution is made. A notarized affidavit indicating such is required.

(17) **Vehicle lease or lease-purchase agreements.** Transfers of ownership of a vehicle acquired by a lessee are exempt from excise tax, provided the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement and an Oklahoma title was issued.

(18) **Fire Protection Districts.** Vehicles acquired by a Fire Protection District are exempt from the levy of excise tax.

(19) **Exemption for disabled veterans in receipt of compensation at the one hundred percent rate.** Persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service is exempt from vehicle excise tax for one (1) vehicle in a consecutive three (3) year period.

(A) To prove eligibility a disabled veteran must submit either an Oklahoma Tax Commission exemption card with the notation "Sales Tax Exemption:100% Disabled Veteran" or a letter from the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States, certifying that the veteran is receiving disability compensation at the 100% rate.

(B) In order to qualify for the exemption, the vehicle must have been purchased on or after July 1, 2005 and the name of the eligible disabled veteran must be included as an owner on the vehicle title.

(C) The consecutive three (3) year period computation is to be based upon the actual purchase date of the vehicle(s), as reflected in the ownership assignment date on the MSO or title certificate surrendered to the Commission at time of title application. To qualify for this excise tax exemption, the actual date of purchase of the vehicle must be more than three (3) years removed from the date of purchase of the prior vehicle to which the exemption was most recently applied.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 5. SPECIFIC RECORDKEEPING DUTIES

710:60-9-54. Ordering supplies and inventory control of accountable items

~~Supplies should be ordered at least two weeks in advance. Agents are to check their inventories before ordering and include all items needed. Agents should continually monitor their inventory of all OTC-supplied items and order all needed items on a timely basis. When ordering by mail, OTC Form 701-27 is to be utilized and sent under separate cover directly to the Motor Vehicle Division Supply Section. If the order is to be picked up, the agent is to call at least place the order no less than twenty-four (24) hours in advance and specify that the supplies will be picked up of their requested designated pick up date and timeframe. At time of placing the order, the agent is to advise of their intention to pick it up and select the pick up date and timeframe from the options designated by OTC. If the agent is unable to retrieve the items on the selected date/timeframe, it is the agent's responsibility to timely contact OTC to reschedule. Absent timely rescheduling, the order will be cancelled.~~

(1) **Verification of consignment order.** Upon receipt of consigned numbered items from the Commission, the agent is to ~~check to insure~~ verify all items listed on the consignment sheet have been received, pursuant to the provisions under paragraph (2) of this subsection. ~~The original copy of the consignment sheet is to be signed by the agent and returned to the Motor Vehicle Division. The second copy of the receipt is to be retained by the agent. If received items do not correspond with the list consignment sheet, the agent is to notify the Commission immediately within ten (10) days of receipt of the consignment. The original copy of the consignment sheet, with any necessary adjustments noted, is to be signed by the agent and returned to the Motor Vehicle Division within ten (10) days of receipt of the consignment. The second copy of the consignment sheet is to be retained by the agent. Failure to advise the Commission of consignment discrepancies within ten (10) days of receipt of the consignment will result in the entire consignment being considered as received by the agent and the agent will be held accountable for all items therein, with the exception of the individual sealed box/container process outlined in (2)(B) of this Section.~~

(2) **Verification of contents of all boxes, containers, packages.**

(A) If the manufacturer's seal on the box and/or package has been broken, the receiving agent is to open it and physically verify all items upon receipt of the consignment.

(B) If the manufacturer's seal has not been broken, the numbered items in each box/package may be verified as each container is opened prior to issuance ~~it is not necessary to confirm the contents of the package upon receipt of the consignment - only that the contents listing on the outside of the package coincides with the consignment sheets.~~ As the sealed individual boxes and/or packages of numbered items are opened prior to issuance, all numbered items should

be checked to make sure all were received in the individual package or box. If the package contents do not correspond to the contents listing on the outside of the package, the agent is to notify the Commission within ten (10) days of opening the container. Failure to advise the Commission of individual items missing from the box/package within ten (10) days of the first item issued from that box/package will result in the entire contents of the box/package being considered as received by the agent and the agent will be held accountable for all items therein.

(3) **Procedure for reporting discrepancies, missing items.** ~~If discovered upon opening the individual boxes/packages that numbered items are missing, To report consignment discrepancies pursuant to the process outlined in this Section, a notarized affidavit of fact from the motor license agent should be completed and sent into submitted to the Motor Vehicle Division within ten (10) days of discovering the item/items missing.~~

(4) **Procedure for mutilated or defective items.**

(A) **License plates.** ~~Occasionally, a license plate containing an error (mutilated) will be received. These plates are~~ Any license plate received that has a noticeable graphics error (i.e. discoloring, smearing, etc.) or is mis-numbered (i.e. out of sequence; duplicated number, etc.) is not to be issued, but returned to the Commission for inventory credit and cancellation.

(B) **Other items.** ~~The remains of any registration decal or boat sticker that is of inferior quality (i.e. inadequate adhesive), or is torn or otherwise mutilated,~~ must be returned to the Oklahoma Tax Commission for inventory credit and cancellation, accompanied by a statement of fact from the motor license agent.

(5) **Procedure for transferring accountable items to another agent.** ~~When releasing numbered accountable items to another agent, the releasing agent is to immediately notify the Motor Vehicle Supply Division by telephone. The agent originally consigned numbered the accountable items is responsible for numbered items transferred to another agent until such time as the Motor Vehicle Supply Office Division is notified of the transfer.~~

(6) **Agent liability for missing items.** ~~Following an inventory audit, normally conducted in conjunction with a field audit, agents will be notified of any unaccounted for items and will be given the opportunity to provide any information/documentation they may have relating to the items. Any numbered item for which the motor license agent remains unable to account for will be charged to the agent's account as a missing item. The missing item rate is based upon the average amount received throughout the state for that type of item during the period of time in which it became unaccountable, except for tags and certain forms which have a fixed fee established. If a numbered item which a motor license agent is previously unable to account for is found by the Oklahoma Tax Commission to have been issued, the agent will be charged the amount the taxpayer remitted to the motor license agent.~~

(7) **Reconciliation of statements of missing items to inventories.** ~~All statements submitted to account for missing items must be signed by the agent and notarized by a notary public. All information submitted for consideration for credit is subject to approval by the Motor Vehicle Division. Upon receipt, the statements may be filed by the Division and subsequently reviewed at the time an inventory audit is completed. Agents are to keep a copy of all statements sent into this office for consideration of credit.~~

(8) **Preservation of accountable items.** ~~Agents are to never destroy accountable items. They must be properly reported as issued, reconsigned to another agent, or returned to the Motor Vehicle Division for credit and deletion from the agent's inventory.~~

(9) **Forms.** ~~Forms supplied to agents by the Motor Vehicle Division are to be used only for the purposes for which they have been provided.~~

PART 13. PROVISIONS FOR MOTOR LICENSE AGENT APPLICATION AND APPOINTMENT

710:60-9-132. Necessary job skills and experience

(a) ~~In order to be appointed as a Motor License Agent~~ motor license agent, an Applicant shall have the following necessary knowledge and skills:

(1) Skill in establishing and maintaining effective relationships with others; in directing and reviewing the work of others; in analyzing complex situations and adopting an effective course of action.

(2) Thorough knowledge of the principles and practices of business organization and management and of public relations.

(3) Knowledge of accounting practices; of the method and techniques of public and business administration; of financial report writing; and of modern office machines and procedures.

(b) ~~In order to be appointed as a Motor License Agent~~ motor license agent, an Applicant shall have the following education and/or experience:

(1) Completion of the curriculum requirements for a baccalaureate degree in business or a closely related field and two (2) years experience in accounting, bookkeeping, auditing, including one (1) year in a supervisory capacity; or

(2) Any equivalent combination of education and experience; or

(3) Six (6) years of business experience which should include accounting or bookkeeping experience, as determined by the Oklahoma Tax Commission; ~~or~~

(4) A combination of education and experience satisfactory to the Commission.

[OAR Docket #12-388; filed 4-9-12]

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TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 65. SALES AND USE TAX

[OAR Docket #12-384]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
710:65-1-7 [AMENDED]
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Part 1. General Provisions
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710:65-3-3 [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-6 [AMENDED]
710:65-7-9 [AMENDED]
710:65-7-13 [AMENDED]
Subchapter 9. Permits
710:65-9-10 [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 3. Agricultural Transactions
710:65-13-15 [AMENDED]
710:65-13-16 [REVOKED]
Part 25. Governmental Entities
710:65-13-130 [AMENDED]
Part 29. Manufacturing
710:65-13-152.1 [AMENDED]
Part 39. Schools and Higher Education
710:65-13-210 [AMENDED]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-337 [AMENDED]
710:65-13-338 [AMENDED]
Part 51. Sales Tax Holiday
710:65-13-511 [AMENDED]
Subchapter 18. Sourcing Pursuant To the Streamlined Sales and Use Tax
Administration Act
710:65-18-4 [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 5. "C"
710:65-19-45 [AMENDED]
710:65-19-49 [AMENDED]
710:65-19-52 [AMENDED]
710:65-19-55 [AMENDED]
710:65-19-56 [AMENDED]
Part 7. "D"
710:65-19-76 [REVOKED]
Part 11. "F"
710:65-19-109 [AMENDED]
710:65-19-116 [NEW]
Part 23. "L"
710:65-19-193 [AMENDED]
Part 25. "M"
710:65-19-210 [AMENDED]
Part 39. "T"
710:65-19-329 [AMENDED]
Part 43. "V"
710:65-19-350 [AMENDED]

AUTHORITY:
Oklahoma Tax Commission; 68 O.S. §§ 203 and 1354.18

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n/a

ANALYSIS:
Sections 710:65-1-7, 710:65-7-13, 710:65-19-56 have been amended to reflect the provisions of HB 1954 which allows a contractor, or a subcontractor to such contractor, to make purchases of tangible personal property or services exempt from sales/use tax pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries). [68:1359]

Section 710:65-3-1 has been amended to provide directions to taxpayers regarding requests to file semiannual sales tax reports. [68:1365]

Section 710:65-3-3 has been amended to set forth the Commission's policy regarding a due date for the reporting and remittance of sales tax that falls on a day that the Federal Reserve banks are closed.

Section 710:65-7-9 has been amended to outline the properly completed documentation that a vendor must obtain when making sales to purchasers claiming exemption pursuant to a contractual relationship for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation which is classified under NAICS 324110 (Petroleum Refineries). [68:1359]

Section 710:65-13-15 has been amended to update provisions regarding exempt and nonexempt transactions relating to the sales tax exemption for sales of items directly used in the production of agricultural products. [68:1358]

Section 710:65-13-16 has been revoked as unnecessary because the provisions have been combined with those in 710:65-13-15. [68:1358]

New Section 710:65-19-116 has been added to implement the provisions of Section 1 of House Bill 1475, effective August 26, 2011 which modified Section 1634 of Title 68 of the Oklahoma Statutes, by removing all exemptions from the sale of fireworks other than for resale purposes. [68:1634]

Section 710:65-13-130 has been amended to outline the sales tax exemption afforded certain foreign diplomats, consular missions and their personnel and eligible family member evidenced by cards issued by the U.S. Department of State, Office of Foreign Missions.

Section 710:65-13-210 has been amended in accordance with the provisions of Section 1356(13) of Title 68 of the Oklahoma Statutes. [68:1356]

Section 710:65-19-45 has been amended consistent with the statutory provision exempting certain sales of prosthetic devices and to outline examples of taxable items sold by chiropodists, osteopaths and chiropractors. [68:1354 & 68:1357]

Section 710:65-19-52 has been amended to clarify the circumstances upon which the purchase of optional computer software maintenance agreement is subject to sales/use tax. [68:1354]

Section 710:65-19-76 has been revoked as obsolete and unnecessary. [68:1404]

Section 710:65-19-109 relating to the computation of sales tax on free and reduced price meals has been amended consistent with the definitions of "gross receipts, gross proceeds and sales price" and "sales value". [68:1352]

Section 710:65-19-193 has been amended consistent with the definition of "gross receipts, gross proceeds and sales price" to include layaway service charges in the calculation of sales tax regardless of whether the charge is separately stated. [68:1352]

Section 710:65-19-329 has been amended consistent with the provisions of paragraphs (4) and (5) of Section 1354 of Title 68.

Sections 710:65-7-6, 710:65-9-10, 710:65-13-152.1, 710:65-13-337, 710:65-13-338, 710:65-13-511, 710:65-18-4, 710:65-19-49, 710:65-19-55, 710:65-19-210, 710:65-19-350 have been amended along with other sections that may be amended to clarify policy, improve readability, correct scrivener's

errors, remove obsolete language, update statutory citation, and insure accurate internal cross-references.

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 MAY 11, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

710:65-1-7. Consumer/user defined; specific applications

"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.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, including those owned or operated by churches, fraternities, cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its "sales value", as defined in *OAC 710:65-1-2*. The business withdrawing tangible personal property from inventory should include the "sales value" of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based

on the exempt status of another entity to the following situations: [**See: 710:65-7-6 and 710:65-7-13**]

(A) 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.

(B) 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.

(C) 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.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, 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.

(E) 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

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procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(F) 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.

(G) 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.

(H) 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.

(I) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services exempt from sales tax pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries).

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [See: 68 O.S. § 1352]

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-1. Reports, payments, and penalties

(a) **Monthly reporting.** Every vendor, except as noted in (b), (c) and (d) of this Section, shall file with the Commission on or before the 20th day of each month, a report on forms to be obtained from the Commission, covering sales for the previous calendar month.

(b) **Semiannual reporting.** Any vendor who is classified as a Group Three vendor or whose total tax liability for any one (1) month does not exceed Fifty Dollars (\$50.00) must notify the Commission of its intent to file a Semiannual return and remittance in lieu of a monthly return and remittance, provided the vendor qualifies.

(1) **Qualification.** To qualify, the vendor must substantiate that the vendor is in business making sales incidental to that business, or is seasonal or transient, or makes sales through peddlers, solicitors or other salesmen without an established place of business. Otherwise, to qualify, filing records will have to substantiate the fact that the vendor's sales tax liability, for the past six (6) consecutive months immediately preceding the date of the application, has not exceeded Fifty Dollars (\$50.00) in any one month. Requests to file semiannually should be directed to the Registration Section of the Taxpayer Assistance Division, P.O. Box 269057, Oklahoma City, Oklahoma 73126-9057 or by FAX at (405) 521-3826.

(2) **Commencement of semiannual reporting.** It should be clearly understood that semiannual filing should not be commenced until the Commission notifies taxpayer, in writing, that Commission records have been amended to reflect semiannual filing status. Failure to follow this procedure may result in taxpayer receiving assessments, adjustments, etc. for the months of February through June and August through December.

(3) **Semiannual reporting due dates.** When the application for semiannual filing has been approved, returns shall be filed on or before the 20th day of January and July of each year for the preceding six (6) months' period.

(4) **Revocation of authorization.**

(A) Conditions that could cause revocation of the authorization to report semiannually are:

(i) In the event that the vendor filing the return on a semiannual basis becomes delinquent in either the filing of the return or the payment of the taxes due thereon, or

(ii) In the event that the liability of a vendor, who has been authorized to file returns and to make payments on a semiannual basis, exceeds Fifty Dollars (\$50.00) in sales tax for any one month, or

(iii) In the event that the Commission determines that any semiannual filing or return or any payment of tax due thereon would unduly jeopardize the proper administration of the Oklahoma Sales Tax Law.

(B) If the Commission decides it is necessary to revoke the authorization to file semiannually in relation to any of the conditions in (A) of this paragraph, the taxpayer will be required to file returns and to pay the tax due on a monthly basis.

(c) **Semimonthly electronic reporting.** Persons owing an average of Two Thousand Five Hundred Dollars (\$2,500.00) or more, per month, in total sales taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:

(1) For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with

the requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month; and

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer; [See: 68 O.S. § 1365(D)(2)]*

(d) **Electronic reporting.** Beginning June 1, 2007, all new sales tax registrants required to report and remit sales tax shall file their monthly sales tax report in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program unless the vendor receives an exception to the electronic filing requirement pursuant to OAC 710:65-3-4(c).

(e) **Electronic reporting; due dates; delinquency dates.** Persons required to remit the tax due pursuant to subsection (c) and (d) shall file a monthly sales tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the sales occurred. Taxes not paid on or before the due dates specified in subsection (c) shall be delinquent from such dates.

(f) **Payment.** Remittances covering the sales tax liability reported shall accompany the sales tax return. Sales taxes will be considered delinquent and interest as provided by law will be charged, if payment is not received or postmarked by the date the return is due.

(g) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(h) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(i) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day of delinquency from the date the tax becomes delinquent until it is paid.

(j) **Penalty for failure to file and remit.** Penalties - A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent of the amount of tax due.

(k) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after written demand has been served upon the taxpayer by the Commission, a penalty of twenty-five (25) percent may be assessed and collected.

(l) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent shall be added, collected, and paid.

(m) **Waiver of penalty; interest.** At the discretion of the Commission, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [See: 68 O.S. §§ 217, 1365, 1405]

710:65-3-3. Due date that falls on Saturday, Sunday or holiday

If a due date falls on Saturday, Sunday, ~~or a Holiday~~ or dates when the Federal Reserve Banks are closed, such due date shall be considered to be the next business date. [See: 68 O.S. §1365]

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-6. Vendors' or certified service providers' relief from liability and duty to collect sales tax

(a) **Presumption of taxability.** All sales are presumed to be subject to sales tax unless specifically exempted by the Sales Tax Code. Vendors are liable for the sales tax collected as well as for tax that should have been collected.

(b) **When vendor or certified service provider may be relieved of liability.** A vendor or certified service provider shall be relieved of any liability for the tax and of the duty to collect imposed by Section 1361 of Title 68 of the Oklahoma Statutes if the vendor, in good faith, timely accepts from a consumer, properly completed documentation certified by the Oklahoma Tax Commission that such consumer is exempt from the taxes levied by the Oklahoma Sales Tax Code.

(c) **General requirements.** Three requirements must be met before the vendor or certified service provider is relieved of liability.

(1) **Vendor or certified service provider good faith.** Good faith requires that the vendor strictly comply with statutory requirements.

(2) **Timely acceptance from a consumer.** Timely acceptance from a consumer requires that documentation be in the possession of the vendor within ninety (90) days subsequent to the date of sale. In the case of continued sales to the same purchaser, the vendor must have, on file, a sales tax permit, card, or exemption letter for each renewal interval. If no renewal interval is provided by statute, the renewal period will be deemed three (3) years, except in

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the case of entities with specific statutory exemptions who have established eligibility as set out in 710:65-7-15 and 710:65-7-17 through ~~710:65-7-19~~710:65-7-20.

(3) **Properly completed documentation certified by the Oklahoma Tax Commission.** Examples of properly completed documentation certified by the Oklahoma Tax Commission are described in 710:65-7-8 through 710:65-7-15 and 710:65-7-17 through ~~710:65-7-19~~710:65-7-20.

(d) **When vendor or certified service provider may not be relieved of liability.** Relief from liability for the tax and of the duty to collect imposed by Section 1361 of Title 68 shall not apply to:

- (1) a seller or certified service provider who fraudulently fails to collect tax;
- (2) a seller who solicits purchasers to participate in the unlawful claim of an exemption; or
- (3) a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when:
 - (A) the subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and
 - (B) the Tax Commission provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in this state.

(e) **Specific applications.** The items of information described in 710:65-7-8 through 710:65-7-15 and 710:65-7-17 through ~~710:65-7-19~~710:65-7-20 shall constitute minimum requirements to establish "**properly completed documentation certified by the Tax Commission**" for each respective category of purchasers.

710:65-7-9. Vendors' responsibility - sales to a manufacturer

(a) In the case of sales to purchasers claiming exemption for manufacturing, the vendor must obtain a **copy** of the purchaser's manufacturer's exemption permit issued pursuant to 68 O.S. § 1359.2 (hereafter referred to as "Sales/Manufacturers Permit"), **or if unavailable**, the name, address, and Sales/Manufacturers Permit Number of the purchaser **or**, a statement that contains the information that would appear on the Sales/Manufacturers Permit. If a copy of the Sales/Manufacturers Permit is unavailable and if the information provided has not been previously verified, it must be verified by either calling the Taxpayer Assistance Division or by reference to the sales tax permit list obtained pursuant to *OAC* 710:65-9-6.

(b) In the case of sales to purchasers claiming exemption pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation which is classified NAICS 324110 (Petroleum Refineries) the vendor must obtain the following:

- (1) A copy of the Manufacturers Sales Tax Exemption card issued to the entity described in (b) of this Section;
- (2) Documentation indicating the contractual relationship between the contractor and the manufacturer; 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.

710:65-7-13. 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.

(9) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services exempt from sales tax pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries).

(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), or (b)(9) 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 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.

SUBCHAPTER 9. PERMITS

710:65-9-10. Direct payment permits (DPP)

(a) **General provisions.** The holder of a valid Oklahoma direct payment permit may make purchases of taxable items, for use in its Oklahoma enterprises and not for resale, and defer the taxes imposed by the Oklahoma Sales and Use Tax Codes until such time as the items are first used or consumed in a taxable manner, if all requirements described in this Section are met. [See: 68 O.S. § 1364.1]

(b) **Qualification for direct payment permit.** In addition to any other conditions mandated by statute, all applicants for a direct payment permit must comply with all conditions, prerequisites and qualifications described in (1) through (5) of this subsection:

(1) **Qualifying purchases threshold.** The applicant must be making purchases of \$800,000.00 annually in taxable items for the use in its Oklahoma enterprises, and not for resale.

(A) **Documentation for established businesses.** Annual purchases of \$800,000.00 must be verifiable from the applicant's sales or use tax records.

(B) **Documentation for new or expanding businesses.** An applicant without any qualifying sales and use tax reporting history in Oklahoma must submit to the Commission along with its application, a sworn statement that "applicant shall purchase \$800,000.00 of taxable items and services annually for use in its Oklahoma enterprises and not for resale." Adequate records or documentation must be available to support the statement of projected purchases.

(2) **Overall compliance with tax provisions.** The applicant must be in compliance with all pertinent tax laws of the State of Oklahoma and with the respective rules of the Commission.

(3) **Applicant must establish reliability and accuracy of accounting methods.** The applicant must be able to establish to the satisfaction of the Commission that the applicant is or will be using an accounting method which clearly distinguishes between taxable and nontaxable purchases. An explanation of the accounting procedures which will be used to determine the taxability of any purchase and to ensure that any tax due is correctly accrued and remitted must accompany the application for a direct payment permit.

(4) **Compliance with reporting and remitting requirements; waiver of discount.** The applicant must agree to accrue and pay all taxes imposed by the Sales and Use Tax Codes, on the applicable direct payment sales or use tax return, for items not specifically exempted. The applicant must agree to make the payments to the State

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on or before the ~~15th~~^{20th} day of the month following each monthly period in which the items become subject to the tax by reason of their consumption in this State. A written agreement to this effect, signed by an officer or other person authorized to legally bind the applicant, and an acknowledgement that the discount allowed by Section 1367.1 of Title 68 is waived on all purchases which are taxable to the applicant, must be furnished to the Commission and it must be signed and returned along with the application for a direct payment permit.

(5) **Compliance with restrictions on purchases for resale.** The applicant must agree to give a resale certificate, rather than a direct payment permit, for any item that will be resold, as provided by the Sales or Use Tax Codes.

(c) **Application for direct payment permit.** Application for a direct payment permit may be made to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194.

(d) **Granting of permit discretionary; options available upon denial.** The Oklahoma Tax Commission shall be the sole judge of an applicant's qualifications and may deny an application or refuse to issue a direct payment permit. However, an applicant is not precluded from submitting an amended application or may submit a new application after a reasonable period of time from the date of the original application. For purposes of this subsection "**reasonable period of time**" means a period of time of not less than twelve (12) calendar months duration from the date of the Commission denial or refusal to issue the permit.

(e) **Issuance, scope, limitations of direct payment permit.** When a direct payment permit is issued to a particular legal entity, it will include all branches and divisions of that entity which are purchasing taxable items. A direct payment permit issued to a supplier by one branch or division shall apply to purchases made by all branches or divisions from the same supplier. For purposes of this Section, "**branches and divisions**" shall be limited those subunits or groups associated with a single unique federal employers' identification number. A direct payment permit-holder may not authorize any other person or entity to purchase any taxable items under the permit. Use by unauthorized persons may result in revocation of the permit.

(f) **Use of direct payment certification procedure with vendors.** A direct payment permit-holder must provide its vendors with the direct payment certification defined in this Section and a copy of its direct payment permit in order to make those purchases to which the permit is applicable.

(g) **"Direct payment certification" described. "Direct payment certification"** means the procedure by which a direct payment permit-holder provides a vendor with properly completed documentation and certification as to its deferred status. Properly completed documentation may consist of a copy of the direct payment permit, multi-state exemption certificate, or other document, so long as it contains the information described in (1) through (4) of this subsection.

(1) A **copy** of the purchaser's Direct Payment Permit (DPP), or if unavailable, the name, address, and DPP number of the purchaser;

(2) A statement that the permit-holder claims deferral of the payment of state, city and county sales or use taxes upon its purchases of taxable tangible personal property or services;

(3) A statement that the articles purchased are for use in the purchaser's Oklahoma enterprises, and not for resale;

(4) The signature of the purchaser or a person authorized to legally bind the purchaser, and date signed.

(h) **Limitations on use of direct payment procedure.** Direct payment certification procedures are not applicable to the purchase of materials or supplies used, transferred, or consumed by a third party in performing services for the direct payment permit-holder, regardless of whether the third party is a contractor, service provider, or other person.

(i) **Incidence of tax for purchases made pursuant to direct payment permit and stored in Oklahoma.** For taxable items purchased under a direct payment permit, the incidence of Oklahoma sales and use taxes to be accrued and remitted on items stored in Oklahoma is to be determined by reference to this subsection, as well as to the provisions of the Oklahoma Sales and Use Tax Codes. [**See:** 68 O.S. § 1361(C)]

(1) **Use tax to be accrued on items and goods purchased outside Oklahoma.** Items and goods purchased outside Oklahoma pursuant to an Oklahoma direct payment permit, which are intended solely for use in other states, but which are stored in the State pending shipment to such other states, or which are temporarily retained for the purpose of fabrication, repair, testing, alteration, maintenance, or other service, are not subject to Oklahoma use tax. However, if the items purchased out-of-state are first used or consumed in Oklahoma, then Oklahoma use tax and any applicable city use tax shall be accrued and remitted to the Commission by the direct payment permit-holder.

(2) **Sales tax to be accrued on items and goods purchased in Oklahoma.** Items and goods purchased in Oklahoma pursuant to a valid Oklahoma direct payment permit are subject to Oklahoma sales and applicable city and county sales taxes at the time they are first used or consumed in a taxable manner. Removal of goods originally purchased tax-free in Oklahoma from an inventory held in this State, even if the goods are intended for transfer to another state, constitutes a taxable event or incidence upon which Oklahoma sales tax and applicable city and county sales taxes must be accrued and remitted to the Commission by the direct payment permit-holder.

(j) **Monthly reports required.** All direct payment permit-holders must file monthly sales and use tax returns, in the manner set out in this subsection, whether or not they have either sales tax or use tax to report.

(1) Purchases made in Oklahoma, using the taxpayer's DPP, such that the Sales Tax otherwise due has been deferred, are to be reported monthly on the Sales Tax Report Form which bears taxpayer's Direct Payment Permit Number. This report is in addition to any Sales Tax Report which is required to be filed using taxpayer's Sales Tax Permit Number.

(2) Purchases made outside Oklahoma, using the taxpayer's DPP, such that the Use Tax otherwise due has been deferred, are to be reported monthly on the taxpayer's Use Tax Report Form, using the Use Tax Account Number.

(k) **Cancellation, suspension, revocation of permit.** A direct payment permit may be cancelled by the Commission if the annual purchases fall below the qualifying threshold. Further, the Commission may revoke a permit upon information that the permit has been used by persons other than to whom it was issued. Finally, the Commission may suspend, cancel, or revoke a direct payment permit, at any time, 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 license or permit 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.

(l) **Procedure upon cancellation, revocation, or forfeiture.** Any entity whose direct payment permit is either voluntarily forfeited, or is cancelled or revoked by action of the Commission, must immediately notify all vendors from whom purchases of taxable items are made advising them that any certification provided to them pursuant to the forfeited, cancelled or revoked direct payment permit is no longer valid.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 3. AGRICULTURAL TRANSACTIONS

710:65-13-15. "Agricultural production" defined; taxable and exempt transactions

- (a) **Definitions.** For the purposes of this Section:
- (1) **"Agricultural production"** and **"production of agricultural products"** is limited to what would ordinarily be considered a farming or ranching operation undertaken for profit. The term refers to the raising of food crops or livestock for sale. Included within the meaning of **"agricultural production"** and **"production of agricultural products"** are ranches, orchards, and dairies. Also included is any feedlot operation, whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot.
 - (2) **"Farmers"** means persons engaged in agricultural production or production of agricultural products.
 - (3) **"Farming"** or **"ranching"** means the production, harvesting or processing of agricultural products.
 - (4) **"Livestock"** means cattle, horses, sheep, goats, asses, mules, swine and also chickens, turkeys, and other domesticated fowl. It also includes american bison, emus, ostriches and llamas.
- (b) **Examples of persons engaged in farming, ranching or agricultural production.** Besides the persons defined as farmers and ranchers above, the law recognizes persons

engaged in the following types of activities, whose aim is the making of a profit, to also be engaged in farming, ranching or agricultural production:

- (1) Wholesale divisions of nurseries are considered to be farmers and the planting, growing, cultivation and harvesting of shrubs, flowers, trees and other plants for sale in the wholesale division of a nursery operation are defined to be farming operations.
 - (2) Persons who plant, cultivate, and harvest sod for commercial sale are also considered to be farmers.
- (c) **Examples of persons who are not engaged in farming, ranching, or agricultural production.** The following activities **do not** qualify as farming, ranching, or agricultural production:
- (1) Operation of commercial greenhouses;
 - (2) Operation of plant nurseries, except their wholesale divisions;
 - (3) Catfish raising;
 - (4) Beekeeping;
 - (5) Ownership of livestock solely for one's own use for pleasure riding, trail riding, performance riding, participation in horse shows, or racing; and,
 - (6) The raising of cats, dogs, other fur-bearing animals not included in the definition of livestock, or non-domesticated fowl.
- (d) **Sales of feed, fertilizers, biologicals, and pharmaceuticals.** The statute provides an exemption from sales tax for sales of certain items, such as feed, fertilizer, pharmaceuticals, biologicals, seeds, plants, and pesticides, when sold to a person regularly engaged in farming or ranching, for profit, and the items are to be used and in fact are used in agricultural production. Sales of agricultural fertilizer, pharmaceuticals and biologicals sold to a person engaged in the business of applying such materials on a contract or custom basis are specifically exempted from sales and use tax.
- (e) **Sales to persons other than farmers or ranchers.** Sales of tangible personal property are subject to the sales or use tax under this rule, if the sales are to persons other than a farmer or rancher, regularly engaged in business for profit, or if the sales are made to a farmer or rancher, but the property is used or consumed for a purpose other than the production of agricultural products for sale.
- (f) **Sales for personal use.** Sales to a farmer or rancher of fuel, clothing, and all other tangible personal property for personal living or human consumption or use are taxable. Sales of tangible personal property are taxable when the property is used in producing food or other products for personal consumption and not for sale. Similarly, sales of seed, fertilizer, equipment, etc. to anyone for use on homes, gardens, lawns, parks and golf courses or for use by landscape gardeners are taxable.
- (g) **Farm machinery.** Sales of farm machinery used directly on a farm or ranch in the production of agricultural products are exempt. Such machinery is also exempt if sold to a custom harvester, baler, producer or planter performing service on a farm or a ranch.
- (1) **"Farm machinery"** includes:

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- (A) Expendable supplies, such as baling wire, and binders twine, hand tools, and implements such as fence stretchers, picks, posthole diggers, scoops and shovels;
- (B) Lubricants for farm machinery;
- (C) Repair or replacement parts for machinery used directly on a farm or ranch in production of agricultural products;
- (D) Fencepost, cattleguards, gates and chutes;
- (E) Buildings and structures which are essentially an item of equipment or machinery for agricultural production if the structure is specifically designed for such use and the structure can not be economically used for any other purpose, for example: an automated laying house or farrowing house.
- (2) **"Farm machinery"** does not include any motor vehicle licensed for highway use.
- (h) **Exemption limited to use in agricultural production.** The fact that an item is purchased for use on a farm or ranch, or that a piece of equipment is convenient, does not necessarily make the purchase exempt from sales tax. The items purchased must be directly used on the purchaser's farm or ranch in the production of agricultural products. "To be directly used by the purchaser on a farm or ranch in the production of food or agricultural products" requires that the property in question must have a direct effect on the article being produced.
- (i) **Examples of taxable items.** The following is a partial list of taxable items:
- (1) Water supply systems for personal use.
 - (2) Repair parts for all motor vehicles (licensed with a farm tag or any other tag).
 - (3) Household appliances.
 - (4) Garden and lawn equipment.
 - (5) Personal apparel.
 - (6) Pets and their supplies.
 - (7) All equipment, supplies and tools to maintain personal home and/or vehicle/ equipment storage buildings.
 - (8) Electricity for non-agricultural use.
 - (9) LPG storage tanks for fuels used for domestic purposes.
 - (10) Livestock, not including horses, but including cattle, mules or other domestic or draft animals except those sold for resale to a person who holds a valid sales tax permit or those sold by the producer by private treaty or at a special livestock sale.
 - (11) All computers and software, except that which is to be used directly on a farm or ranch in the production, cultivation, planting, sowing, harvesting, processing, spraying, preservation or irrigation of any livestock, poultry, agricultural or dairy products produced from such lands.
 - (12) Home and or office furnishings and supplies.
 - (13) Groceries and purchases of meals and beverages at restaurants.
- (j) **Examples of items not commonly exempt, except when used in agricultural production.** The following items are taxable, unless used directly in agricultural production:
- (1) Liquefied petroleum gas (LPG).
 - (2) Communication radios.
 - (3) Building materials, including:
 - (A) Roofing cement.
 - (B) Lumber.
 - (C) Electrical wiring.
 - (D) Nails, staples, and other fasteners.
- (k) **Examples of exempt items.** The following items are **exempt** if used directly in agricultural production, or as otherwise stated:
- (1) Electric fence insulators.
 - (2) Electric fence chargers.
 - (3) Cattle electric water warmer & tank.
 - (4) Cattle water tank.
 - (5) Cattle squeeze chute.
 - (6) Welding machines and associated equipment, including the lease or rental of both the equipment and the cylinders used to store the gases used in welding. Welding rod, oxygen, acetylene are exempt, providing welding machine with which they are used is qualified for the exemption.
 - (7) Sprays for control of flies & lice, insect repellent.
 - (8) Pinkeye patches, livestock wormers.
 - (9) Disinfectants (alcohol, iodine).
 - (10) Breeding supplies (includes semen, biostate sales & liquid nitrogen for storage).
 - (11) Drugs for disease or bacteria control such as penicillin, milk fever medicines, mastitis treatment.
 - (12) Supplies for administering drugs to farm animals for production (syringes, needles).
 - (13) Vaccines for preventive disease.
 - (14) Bottles, nipples & mixing containers for feeding calves.
 - (15) Farm tractors.
 - (16) Combines.
 - (17) Hay balers, mowers, rakes & loaders.
 - (18) Cultivators.
 - (19) Harrows, disks, planters, drills.
 - (20) Windmills (except for domestic use).
 - (21) Spray machines.
 - (22) Mechanical brush cutters, ensilage cutters.
 - (23) Grain grinders.
 - (24) Electric milking machines & separators.
 - (25) Standby generators (except those for domestic use).
 - (26) Silo unloaders, silage distributor.
 - (27) Augers-power take off.
 - (28) Bale loaders.
 - (29) Crust busters.
 - (30) Diamond packers
 - (31) Rotary hoes.
 - (32) Bulk milk tanks & pipeline milkers.
 - (33) Power take off post hole diggers.
 - (34) Motor chain saw (to clear land).
 - (35) Repair parts for farm equipment (includes tires, batteries, oil filters, belts, air filters & other parts).
 - (36) Diesel & special fuels (for agricultural use).
 - (37) Antifreeze (for agricultural use).
 - (38) Oil & grease (for agricultural use).
 - (39) Stock tanks.
 - (40) Grain storage bins.

- (41) Stock trailers.
- (42) Wire fencing.
- (43) Fence posts.
- (44) Air conditioner (for agricultural use).
- (45) Feed racks.
- (46) Bulk feed bins & associated equipment.
- (47) Silo loading chutes.
- (48) Farm wagons, farm plows, truck unloaders.
- (49) Fertilizer spreading equipment.
- (50) All farm animals for production.
- (51) Containers used to package farm products for sale.
- (52) Cattle chutes.
- (53) Hay wire or twine, hay hooks.
- (54) Ear tags, neck tags for cattle.
- (55) Seeds, plants.
- (56) Fertilizers.
- (57) Insecticides.
- (58) Packaging materials, such as sacks, wrappers, and crates, for use in packing, shipping or delivering of agricultural products. This exemption shall not apply to any packaging material which can be used more than once or which is ordinarily known as a returnable container, except those specifically noted under 68 O.S. § 1359(3), 68 O.S. § 1359(4), and 68 O.S. § 1359(14).
- (59) *"Returnable cartons, crates, pallets, and containers used to transport mushroom products from a farm for resale to the consumer or processor."* [See: 68 O.S. § 1359(14)]
- (60) Salt blocks (for agricultural use).
- (61) Irrigation equipment (for agricultural use).

(l) **Examples not exhaustive.** Activities and items enumerated in this Section as examples and illustrations are not intended to be exclusive or exhaustive.

(m) **Purchases of taxable personal property or services by a contractor.** 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 farmer 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 farmer. However, sales of materials, supplies, and equipment may be made exempt from sales tax to any person who has contracted to construct facilities which are or will be **used directly** in the production of any livestock. For purposes of this subsection, **"used directly in the production of any livestock"** includes facilities used in the production and storage of feed for livestock owned by the permit holder. To receive the exemption, the contractor must follow the applicable requirements of Section 710:65-13-17.

(n) **The exemption as it pertains to horses, ranching, and ranches.**

- (1) The exemption is allowed only to those persons breeding or raising horses for marketing.
- (2) The exemption is not extended to persons who own horses for personal use or who are solely engaged in activities such as boarding horses, giving riding lessons, or providing horses for recreational riding.

(o) **The exemption as it extends to feed and similar products for livestock, including horses.** The holder of an agricultural exemption permit may purchase generally recognized animal feeds, stock tonics, water purifying products, stock sprays, disinfectants, and other such agricultural supplies subject to the following limitations:

- (1) The purchaser must obtain an Agricultural Permit; and
- (2) The purchaser must follow the applicable requirements of Section 710:65-13-17.

710:65-13-16. Sales and use tax exemption for salt and salt blocks sold for consumption by livestock and poultry [REVOKED]

~~Salt and salt blocks sold for consumption by livestock and poultry, for the purpose of producing eggs, poultry, milk, or meat for human consumption, may be purchased exempt from sales and use tax.~~

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 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:

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- (i) The **fleet card** prefix (first 4 digits) must be 4486, 4614, 4716, 5565, 5568 or 8699;
 - (ii) The **fleet card** platform must be Voyager, MasterCard, Wright Express, or Visa; and
 - (iii) The Voyager **fleet card** must be issued by Citibank, or U.S. Bank; the MasterCard **fleet card** must be issued by Citibank, 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, 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, JP Morgan Chase or U.S. Bank; The MasterCard **purchase card** must be issued by Citibank, 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, 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, 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, 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, U.S. Bank or JP Morgan Chase.
- (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)]
- (4) **Sales to foreign diplomats, consular mission and mission employees.** Foreign diplomats and consular missions and their personnel and eligible family members who have been issued a *Diplomatic Tax Exemption Card* by the United States Department of State, Office of Foreign Missions may make eligible purchases exempt from sales tax. The *Diplomatic Tax Exemption Card* is not transferable and each category of tax exemption card bears an animal image indicating the purchases eligible for sales tax exemption by the cardholder as follows:
- (A) **Owl image card** exempts the cardholder from sales tax on all official mission purchases.
 - (B) **Buffalo image card** exempts the cardholder from sales tax on all official mission purchases subject to the restrictions listed on the card. For example, the card may read: "Exempt from tax on purchases over \$300; not valid for hotels."
 - (C) **Eagle image card** exempts the cardholder from sales tax on all personal purchases.
 - (D) **Deer image card** exempts the cardholder from sales tax on personal purchases, subject to the restrictions listed on the card. For example, the card may read: "Exempt from tax on purchases over \$150; not exempt for hotels, restaurants, and services."
- (5) **Exemption requirements.** To qualify for exemption, official mission purchases made with either an Owl or Buffalo Card must be invoiced to the cardholder and payments made with mission check or mission credit card. For personal purchases made pursuant to an Eagle or Deer Card to qualify for the exemption, they must be invoiced

to the cardholder and payment may be in any form including cash, check, or credit card.

- (b) **Sales by a lease or lease-purchase agreement with a municipality or county.** 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.

PART 29. MANUFACTURING

710:65-13-152.1. Manufactured goods transported out of Oklahoma

- (a) A manufacturer may sell tangible personal property it manufactures, exempt from sales tax, to a person who immediately takes the manufactured item outside Oklahoma for immediate and exclusive use outside Oklahoma. Provided however, that sales at a retail outlet shall not qualify for the exemption.
- (b) In order to qualify for this exemption, the purchaser must give a written statement to the manufacturer-seller that the property will leave the State and will not be used in Oklahoma.
- (c) For purposes of this section, "**retail outlet**" means any place where sales of tangible personal property are made in small quantities to ultimate consumers to meet personal needs, rather than for commercial or industrial uses of the articles sold. [See: 68 O.S. §~~1359(6)~~ 1359(5)]

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 (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

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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-teacher organizations or associations.** Private schools, public schools, public or private school boards, public school districts, and public or private school student organizations (~~to include and parent-teacher organizations or associations~~) can make sales of tangible personal property, ~~including admission tickets and concessions at athletic events,~~ exempt from sales tax. Public or private school personnel can make sales for fund-raising projects to benefit the school, school district, school board or student group or the organization without collecting and remitting sales tax. [See: 68 O.S. § 1356(13)] For purposes of subsections (k) and (l) tangible personal property includes the sale of admission tickets and concessions at athletic events. [See: 68 O.S. § 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.

(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.

(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.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

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. § ~~4357(11)(a)~~ 1357(13)(a), and which are commonly referred to as "Meals on Wheels," "Mobile Meals," and the like.

(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 (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.

(c) **Exemption limited to eligible, properly documented transactions.** Only sales of food, 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.

(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)~~ 1357(13)(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)~~ 1357(13)(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 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.

(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.

(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.

PART 51. SALES TAX HOLIDAY

710:65-13-511. Exemption for sales of clothing and footwear during three-day period in August

(a) **General provisions.** Beginning at 12:01 a.m. on the first Friday in August and ending at twelve midnight on the following Sunday, sales of any item of clothing or footwear with a sales price of less than one hundred dollars (\$100) per article will be exempt from sales and use tax.

(b) **Exemption applicability.** This exemption does not apply to the sale of any accessories or to the sale of any special

clothing or footwear primarily designed for athletic activity or protective use or to the rental of clothing or footwear.

(c) **Definitions.** For purposes of this section:

(1) "Accessories" means any item, other than clothing or footwear that is carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing or footwear. Such items include jewelry, nonprescription eyewear, handbags, wigs, hair pieces, wallets, purses, umbrellas, watches, cosmetics, briefcases, luggage, barrettes, cuff links, hair bows, hair clips, hair nets, handkerchiefs, and other similar type items.

(2) "Clothing" means all human wearing apparel suitable for general use.

(A) A nonexclusive list of clothing is as follows:

- (i) Aprons, household and shop;
- (ii) Athletic supporters;
- (iii) Baby receiving blankets;
- (iv) Bathing suits and caps;
- (v) Beach capes and coats;
- (vi) Belts and suspenders;
- (vii) Boots;
- (viii) Coats and jackets;
- (ix) Costumes;
- (x) Diapers, children and adult, including disposable diapers;
- (xi) Ear muffs;
- (xii) Footlets;
- (xiii) Formal wear;
- (xiv) Garters and garter belts;
- (xv) Girdles;
- (xvi) Gloves and mittens for general use;
- (xvii) Hats and caps;
- (xviii) Hosiery;
- (xix) Insoles for shoes;
- (xx) Lab coats;
- (xxi) Neckties;
- (xxii) Overshoes;
- (xxiii) Pantyhose;
- (xxiv) Rainwear;
- (xxv) Rubber pants;
- (xxvi) Sandals;
- (xxvii) Scarves;
- (xxviii) Shoes and shoe laces;
- (xxix) Slippers;
- (xxx) Sneakers;
- (xxxi) Socks and stockings;
- (xxxii) Steel toed shoes;
- (xxxiii) Underwear;
- (xxxiv) Uniforms, athletic and non-athletic; and
- (xxxv) Wedding apparel.

(B) "Clothing" shall not include:

- (i) Belt buckles sold separately;
- (ii) Costume masks sold separately;
- (iii) Patches and emblems sold separately;
- (iv) Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins,

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scissors, sewing machines, sewing needles, tape measures, and thimbles; and

(v) Sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

(3) "Eligible item" means tangible personal property that is exempt from tax under this Section that is purchased during the three day period in August and includes certain clothing and footwear with a sales price of less than \$100.00 per article of clothing or pair of footwear.

(4) "Footwear" means any shoe, boot or other similar article that is designed to be worn on a foot.

(5) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(6) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(7) "Special clothing or footwear primarily designed for protective use that is not normally worn except when used for the protective use for which it is designed" or "protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. This type of clothing and footwear includes, but is not limited to, breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welder's gloves and masks.

(8) "Special clothing or footwear that is primarily designed for athletic activity that is not normally worn except when used for the athletic activity for which it is designed" or "sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. This type of clothing and footwear includes, but is not limited to, ballet and tap shoes; cleated or spiked athletic shoes; gloves for athletic or recreational activity such as baseball, bowling, boxing, football, hockey, golf and other sports gloves; goggles; elbow, hand, knee and shin guards or pads; life preservers and vests; mouth guards; roller and ice skates; shoulder pads; fishing and ski boots; and wetsuits and fins.

(ed) **Exemption applications.** The application of the exemption to the sale of clothing or footwear during the exemption period is illustrated by the following examples:

(1) A customer purchases three shirts for \$45.00 per shirt. All three items qualify for the exemption, even though the customer's total purchase price (\$135.00) exceeds \$99.99.

(2) A customer purchases a pair of shoes for \$110.00. The purchase does not qualify for the exemption because the customer's purchase price exceeds \$99.99.

(3) A customer purchases a tie for \$50.00, a shirt for \$55.00 and a suit for \$300.00. The purchase of the tie and shirt qualify for the exemption, but the suit does not qualify.

(4) A customer purchases a sport's team jersey for \$35.00. The purchase would qualify for the exemption.

(5) A customer purchases a football uniform for \$75.00 and football cleats for \$50.00. The purchase of the football uniform would qualify for the exemption, but the football cleats do not qualify.

(6) A customer purchases a gold pin for \$99.00. The purchase would not qualify for the exemption because the item is an accessory.

(de) **Application of rules to exemption.**

(1) **Articles normally sold as a unit.** Articles that are normally sold as a unit may not be priced separately and sold as individual items in order to be exempt. The following examples illustrate the application of the rule to the exemption:

(A) A pair of shoes sells for \$198.00. The pair of shoes cannot be split in order to sell each shoe for \$99.00 to qualify for the exemption.

(B) A suit is normally priced at \$300.00. The suit cannot be split into a coat and slacks so that one of the articles may be sold for less than \$100.00 to qualify for the exemption. However, articles that are normally sold as separate articles, such as a sport coat and slacks, may continue to be sold as separate articles and qualify for the exemption.

(C) A packaged gift set consisting of a wallet (ineligible item) and tie (eligible item) would not qualify for the exemption.

(2) **"Buy One, Get One Free" and other similar offers.** If a seller offers "buy one, get one free" or "two for the price of one" on eligible items, the purchase shall qualify for the exemption when all other conditions of the exemption are met. However, if a seller offers a "buy one, get one for a reduced price" the two prices cannot be averaged to qualify both items for the exemption. The following examples illustrate the application of the rule to the exemption:

(A) A seller offers "buy one, get one free" on a pair of shoes. The first pair of shoes has a sale price of \$99.00 and the second pair is free. Both pairs of shoes will qualify for the exemption because the first pair of shoes does not exceed the less than \$100.00 exemption limitation.

(B) A coat is purchased for \$120.00 and a second coat is purchased for half price (\$60.00) at the time the first coat is purchased. The second coat will qualify for the exemption, but the tax will be due on the first coat. In this example, the sales price of the items may not be averaged in order to qualify for the exemption.

(3) **Discounts, coupons, and rebates.** The application of the exemption to discounts, coupons and rebates extended on an eligible item during the exemption period is illustrated by the following examples:

(A) Discounts offered by the retailers at the time of sale and which are taken by the customer at the time of sale affect the sales price of the purchased item. For example, if a seller sells a pair of jeans with a sales price of \$110.00 and offers to discount the item 10 percent at the time of sale, the exemption would apply because the actual sales price of the jeans is \$99.00.

(B) Coupons offered by the seller or vendor and used at the time of sale to reduce the sales price of an eligible item affect the sales price of the purchased item. For example, if a seller offers a reduction in sales price of \$10.00 through a store coupon for an item of clothing with a sales price of \$100.00, the exemption would apply to the purchase because the seller's actual sales price to the customer is \$90.00.

(C) Coupons offered by a manufacturer that are used to pay for an eligible item do not affect the sales price of the purchased item. For example, if a customer gives to a seller a manufacturer's coupon for \$20.00 for a pair of tennis shoes with a sales price of \$100.00, the exemption would not apply.

(D) Rebates generally occur after the sale, thus the amount of the rebate does not affect the sales price of the purchased item. For example, if a pair of jeans was purchased for \$100.00 with a manufacturer's rebate for \$10.00, the exemption would not apply because the sales price is in excess of \$99.99.

(4) **Exchanges.** The application of the exemption to an exchange of an eligible item purchased during the exemption period is illustrated by the following examples:

(A) A customer purchases an eligible item during the exemption period, but later exchanges the item for a different size, color, or other feature. No additional tax is due even though the exchange is made after the exemption period.

(B) A customer purchases an eligible item during the exemption period. After the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item. Sales tax is due on the total sales price of the newly purchased item.

(C) A customer purchases an eligible item before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different eligible item, no sales tax is due on the sale of the new item if the new item is purchased during the exemption period.

(5) **Gift certificates and gift cards.** Eligible items purchased during the exemption period using a gift certificate or gift card will qualify for the exemption, regardless of when the gift certificate or gift card was purchased. Eligible items purchased after the exemption period using a gift certificate or gift card are taxable even if the gift certificate or gift card was purchased during the exemption

period. A gift certificate or gift card cannot be used to reduce the selling price of an eligible item in order for the item to qualify for the exemption.

(6) **Layaways.** For the purposes of this exemption, an eligible item will qualify for the exemption when final payment on the layaway is made by, and the item is given to the customer during the exemption period. The application of the exemption to a layaway of an eligible item purchased during the exemption period is illustrated by the following examples:

(A) A dress with a sales price of \$75.00 is placed in layaway during the exemption period. The customer picks up the dress and makes final payment after the exemption period. The exemption does not apply.

(B) A coat with a sales price of \$95.00 is placed in layaway before the exemption period. The customer makes the final payment and picks up the coat out of layaway on August 3, 2007. The exemption would apply because the coat was paid for and picked up during the exemption period.

(7) **Mail, telephone, e-mail, and internet sales.** The sale of an eligible item of clothing or footwear may qualify for the exemption when sold through the mail, telephone, e-mail or internet sales if:

(A) The item is both paid for and delivered to the customer during the exemption period; or

(B) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. An order is considered for immediate shipment when the customer does not request delayed shipment. The seller must accept an order during the exemption period even if delivery is not made during the exemption period. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. If the seller delays shipment of an order because of a backlog, or because stock is currently unavailable, the order is still for immediate shipment.

(8) **Out of stock sales.** A purchase where a customer orders and pays for the eligible item and the seller accepts the order during the exemption period will be eligible for the exemption, even if delivery is made after the exemption period.

(9) **Rain checks.** Eligible items purchased during the exemption period with the use of a previously issued rain check will qualify for the exemption. However, a rain check that is issued during the exemption period will not qualify an eligible item for the exemption if purchased after the exemption period.

(10) **Preorder sales.** The preorder of an eligible item of clothing or footwear may qualify for the exemption if the payment occurs during the exemption period.

(ef) **Records.** The retailer is not required to obtain an exemption certificate on sales of eligible items during the exemption period. However, the retailer's records should clearly identify

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the type of item sold, the date on which the item was sold, the sales price of all items and, if applicable, any tax charged.

(fg) **Refunds, receipts.** For the period of sixty (60) calendar days following the last day of the exemption period, when a customer returns an item that would qualify for the exemption, no refund of tax shall be given unless the customer provides a receipt or invoice showing tax was paid, or the retailer has sufficient documentation to show that tax was paid on the specific eligible item.

(gh) **Time zones.** The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

710:65-18-4. Sourcing for lease or rental of tangible personal property

(a) For a lease or rental of tangible personal property, ~~other than property identified in 710:65-18-2, as "transportation equipment", and those motor vehicles, trailers, semitrailers, or aircraft that do not qualify as "transportation equipment":~~

(1) Where the lease or rental requires recurring periodic payments:

(A) The first payment will be sourced as set out in 710:65-18-3.

(B) For those payments made after the first payment, the payment will be sourced to the "primary property location", as defined by 710:65-18-2, for each period covered by the payment. The periodic rental or lease payments shall be sourced to the primary property location even though the property may be used intermittently at different locations.

(2) Where the lease or rental does not require periodic payments, the payment is sourced in accordance with the provisions of 710:65-18-3.

(3) Where the lease or rental is based on a lump sum or accelerated basis, the payment is sourced in accordance with the provisions of 710:65-18-3.

(b) This Section does not apply to motor vehicles, trailers, semitrailers, aircraft and "transportation equipment" as defined in OAC 710:65-18-2.

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 5. "C"

710:65-19-45. Chiropodists, osteopaths and chiropractors

(a) When chiropodists, osteopaths or chiropractors sell such items as ~~shoes, arch supports, trusses, braces, over-the-counter~~

~~drugs, heating pads, appliances or other tangible personal property to purchasers apart from their rendering of service as chiropodists, osteopaths or chiropractors, they must collect, report and remit sales tax. Sales of vitamins, minerals and dietary supplements by a licensed chiropractor to a person who is the patient of such chiropractor at the physical location where the chiropractor provides chiropractic care or services to such patient are exempt from sales tax. [68 O.S. § 1357(37)]~~

(b) Chiropodists, osteopaths and chiropractors are engaged in professions and primarily render service. To the extent to which they engage in such professions, they are not engaged in the business of selling tangible personal property to purchasers within the meaning of the Code. Consequently, they are not required to remit sales tax measured by their receipts from engaging in such professions, including receipts from both services and tangible personal property dispensed incidentally to such service. However, the chiropodist, osteopath, and chiropractor must pay sales or use tax when purchasing such tangible personal property.

710:65-19-49. Golf and country clubs

(a) Sales and leases of tangible personal property, including but not limited to food, beverages, locker rental, club storage, cart service charges, pool rental, room rental, golf shop sales, and pro shop sales are subject to sales tax.

(b) Membership dues, tennis dues, pool dues and any other dues charged by a club, or similar business or establishment, required as a condition precedent to membership, are subject to sales tax.

(c) Swim, tennis, golf and other lessons given at a club or country club are subject to sales tax unless the club or country club is merely a conduit for the instructor and the entire fee charged for the lesson is turned over to the instructor who taught the lesson and reported for income purposes.

(d) Fees for instructional services at locations where no membership dues are charged and there is no member/non-member difference in fees, will be considered the provision of nontaxable services.

(e) Club and country club initiation fees, defined as any payment, contribution, or loan, required as a condition precedent to membership, whether or not such payment, contribution or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed or loaned, greens fees and other fees charged to members and fees charged to members who bring guest(s) to enjoy a club's swimming, golf, tennis or other facility are subject to sales tax. "Fees" include free or complimentary dues or fees which shall have the value equivalent to the charge that would have otherwise been made.

(f) Cart fees, cart rider fees, cart service charges, driving range fees, cart rental, and cart storage fees are subject to sales tax.

(g) Gross receipts from sales of stock certificates received by a country club from its members when members must purchase stock to gain access to the club's facilities constitute dues or fees for the use of facilities or services rendered at a health spa, club or any similar facility or business and are

subject to sales tax. Furthermore, where members must purchase stock to gain access to the club's facilities, any stock transfer fee is similarly subject to sales tax. [See: 68 O.S. §~~1354(11)-(14)~~1354(12)-(14)]

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. § 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. § 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. § 1352(9)]
- (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.
- (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. § 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 mandatory or optional.

(1) If the contract is mandatory, the entire sale price, including the charge for the contract, is subject to tax.

(2) The charge for an optional contract ~~may~~shall be subject to taxation:

(A) If it provides **only** upgrades or 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. § 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.

710:65-19-55. Taxability of sales to contractors

Unless specifically exempt by statute, a contractor shall pay the sales or use tax as a consumer on the purchase of all materials, supplies, tools and equipment, including rentals thereof and all replacement parts used by him in fulfilling either a lump-sum contract, a cost-plus contract, a time and

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material contract with an upset or guaranteed price which may not be exceeded, or any other kind of construction contract for the development and/or improvement of real property. [See: 68 O.S. §§~~1354(20)~~1354(21);1356(10)]

710:65-19-56. Contractors and subcontractors

(a) **Definition.** The term "**contractor**" as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

(b) **General provisions.** As consumer/users, contractors 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.

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(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.

(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: 710:65-7-6 and 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.

(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 a construction contract, which has been duly entered into between a contractor and a church, may make purchases, exempt from sales tax of tangible personal property or services necessary for carrying out the construction 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.

(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.

(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.

(9) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a manufacturer for the construction and improvement of manufacturing goods, wares, merchandise, property, machinery and equipment for use in a manufacturing operation classified under NAICS No. 324110 (Petroleum Refineries).

(d) **Fabrication by contractors.** A contractor may fabricate part or all of the articles to be used in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items from sheet metal purchased and used pursuant to a contract for the construction or improvement of real property. In such a contract the purchase by the contractor is a purchase by a consumer or user and the contractor is required to pay the sales or use tax at the time of purchase. This is so, whether the articles

fabricated are used in the alteration, repair or reconstruction of an old building, or in new construction.

PART 7. "D"

710:65-19-76. Drilling contractors [REVOKED]

~~When property has been used in another state and is imported into this State for use, the taxable basis is the value of the property at the time of importation. Credit for sales or use tax paid to another state in which the property was acquired or used may be taken in computing the amount of use tax due this State, but such credit must be computed by applying the rate of sales or use tax paid to another state to the value of the property at the time it enters Oklahoma. [See: 68 O.S. §1404(C)]~~

PART 11. "F"

710:65-19-109. Food; vendors of meals

(a) Vendors engaged in the business of selling meals to purchasers must collect, report and remit sales tax on their receipts from such sales. It is immaterial that no profit is realized from the operation of any such business if the vendor is engaged in business. It is also immaterial that the class of purchasers may be a limited one, such as the employees of a particular employer who operates a cafeteria or other dining facilities for the benefit of his employees.

(b) Meals provided to employees at no cost or at a reduced cost are subject to sales tax. The "gross receipts" or "gross proceeds" in the case of a meal sold to an employee at a reduced price is the amount received for that meal from the employee in the form of cash, check or credit card chit. Each person required to make a sales tax report shall include in the gross proceeds the sales value of all tangible personal property which has been purchased for resale and has been withdrawn from stock in trade for use or consumption. Meals provided to employees free of charge are withdrawals from inventory used or consumed by the employer and sales tax is due on the sales value. "Sales value" in the case of meals is the cost of materials withdrawn from inventory to provide such meals.

(c) Complimentary meals provided free of charge to customers are subject to sales tax. Each person required to make a sales tax report shall include in the gross proceeds the sales value of all tangible personal property which has been purchased for resale and has been withdrawn from stock in trade for use or consumption and shall pay tax on such sales value. Meals provided to customers free of charge are withdrawals from inventory used or consumed by the employer and sales tax is due on the sales value.

(d) Meals served free of any actual charge or cost to an employee or customer constitute a withdrawal from inventory of items purchased free of sales tax and such withdrawals are subject to sales tax. For purposes of calculating sales tax liability, the sales value of free, ~~reduced price~~, or complimentary meals is presumed to be the greater of any consideration received, or the cost or price paid by the vendor/taxpayer for the food items

included in the free, ~~reduced price~~, or complimentary meal served, pursuant to OAC 710:65-1-2.

(e) When an establishment provides a second meal in place of the first meal which was discarded because it did not meet the customer's specification, only one sale has been made and sales tax is levied only on the replacement meal. If, rather than discarding the first meal, the establishment serves the meal to another customer or employee, two sales have been made and sales tax is levied on both meals.

(f) Meals provided to customers at a reduced cost (i.e., discount or advertised special) are taxable. The "gross receipts" or "gross proceeds" in the case of a meal sold to a customer at a reduced price is the amount received for that meal from the customer in the form of cash, check or credit card chit less any amount designated by the customer as voluntary tip(s) ~~plus the value of any other benefit acknowledged in the books and records of the restaurant as a result of the sale of the meal.~~

(g) In cases where two items are provided by a restaurant, club or similar establishment (i.e., buy one, get one free or two for one sale), the "gross receipts" or "gross proceeds" derived from the sale of two items for the price of one is the total amount of cash, check or credit card chit received ~~plus any additional benefit acknowledged in the books and records of the establishment as a result of providing the two items~~ less any amount designated by the customer as voluntary tip(s).

710:65-19-116. Fireworks

Effective August 26, 2011, no exemption shall apply to the sale of fireworks other than for resale purposes and all retail fireworks locations must possess a current sales tax permit which is to be conspicuously posted and immediately available for examination. Fireworks retailers make application for a sales tax permit by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 40003 available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

PART 23. "L"

710:65-19-193. Layaway fees

If a handling or service charge is made to the customer for the privilege of putting merchandise in layaway; that charge is subject to the sales tax, ~~if such charge is not separately stated on the invoice.~~

PART 25. "M"

710:65-19-210. Vendors of machinery, tools, patterns, and similar items

(a) Vendors of machinery, tools, dies, jigs, production patterns, gauges and the like to users or consumers must collect, report and remit sales tax liability except as provided in the exemption for equipment used directly in manufacturing. This is true whether the vendor installs such tangible personal property for the purchaser or not.

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- (b) The fact that it is not a stock item and is only produced after an order is received, or is an alteration of a standard item, is not sufficient to exempt it from sales or use tax unless it is otherwise exempt. [See: 68 O.S. §§1354, 1359]
- (c) Provided, however, from and after September 1, 1994, patterns used in the commercial production of metal castings shall be exempt from the levy of sales and use tax. [See: 68 O.S.Supp.1994, §~~1359(12)~~ 1359(11)]
- (d) Patterns sold to a manufacturer to be used in a manufacturing operation may be purchased exempt, regardless of possession of the pattern.

PART 39. " T "

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 associated with the installation, connection, change or initiation of telecommunication services received by a customer~~ are subject to sales tax, regardless of whether the charge is stated separately from charges for ~~either telecommunications service or for tangible personal property services.~~
- (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) **Maintenance contracts.** The sale of maintenance contracts for services subject to sales tax as described in this Section is subject to sales tax.
- (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 43. " V "

710:65-19-350. Veterinarians

- (a) **General provisions.** Persons engaged in the practice of rendering veterinary services are consumer/users of all tangible personal property used in their veterinary practices. Items of tangible personal property to be used or sold for the prevention, diagnosis, or treatment of animals are subject to sales tax upon their purchase by the veterinarian rendering the services.

(b) **When a sales tax permit is needed.** Veterinarians who hold inventories and market products to the public outside the client/patient relationship are engaged in selling tangible personal property and must obtain a sales tax permit to allow the purchase of inventory exempt from sales tax.

(c) **Withdrawals from inventory.** If a veterinarian with a sales tax permit, withdraws items from inventory which were purchased for resale and consumes the items in the practice of veterinary medicine, the veterinarian must remit sales tax on the "sales value" of the items, as defined in OAC 710:65-1-2, unless the veterinarian can document that the items were applied on a contract or custom basis pursuant to an agreement with the holder of an agricultural exemption permit. [68 O.S. §~~1358(3)~~ 1358(4)]

(d) **Examples of taxable products.** Examples of items upon which sales tax must be collected and remitted if not dispensed for the prevention, diagnosis or treatment of animals may include:

- (1) beds
- (2) books
- (3) clothing
- (4) decorative collars
- (5) combs
- (6) grooming products
- (7) halters
- (8) leashes
- (9) lint brush
- (10) livestock equipment
- (11) riding equipment
- (12) ropes
- (13) snack products
- (14) toys
- (15) food

(e) **Transactions in which the veterinarian is acting as a vendor.** A person, who is not a client, walks into the clinic and buys an item displayed or available in the clinic. The person is charged sales tax on the product because it is not being dispensed by the veterinarian for use in treating an animal. There is no patient/client relationship.

(f) **Transactions in which the veterinarian is acting as a consumer/user.** Where a course of prevention, diagnosis, or treatment is reflected in patient records kept by the veterinarian, the dispensing of tangible personal property used in the prevention, diagnosis, or treatment of an animal is not subject to sales tax. For example, if the veterinarian examines a client's animal and prescribes a specific type of preventive, the client is not charged sales tax on the treatment product. Moreover, if the client comes back to the clinic in a few weeks to get a prescription refill, and does not bring the animal to see the veterinarian, the client may, nevertheless, purchase the prescribed product without incurring sales tax on the purchase. Notation in the patient record must be made, however, to reflect the subsequent purchase.

(g) **Dispensing of products and services to agricultural exemption permit-holders.** Veterinarians may **dispense or administer**, tax exempt, products for the prevention, diagnosis, or treatment of animals, on a contract or custom basis,

pursuant to an agreement with the holder of an agricultural exemption permit:

(1) **Veterinarians holding a sales tax permit.** If a veterinarian holds a sales tax permit, sales tax exempt purchases may be made of items to be used on a contract or custom basis, with documentation that the client has an agricultural exemption permit. For example, the veterinarian may purchase antibiotics, using his sales tax permit and not pay tax. The veterinarian may then dispense or administer the antibiotics to the client who has an agricultural exemption permit, and the use of the antibiotic is not subject to sales tax. If the veterinarian purchases antibiotic tax exempt, using his sales tax permit, but subsequently dispenses or administers the antibiotic to a client without an agricultural exemption permit, the veterinarian must remit sales tax on the "sales value" of the product.

(2) **Veterinarians without a sales tax permit.** If a veterinarian does not hold a sales tax permit, all products purchased are subject to sales tax upon their purchase. However, if the veterinarian holds an agricultural exemption permit, purchases may be made free from sales tax only of items to be dispensed or administered on a contract or custom basis to another agricultural exemption permit-holder.

[OAR Docket #12-384; filed 4-9-12]

**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 65. SALES AND USE TAX**

[OAR Docket #12-391]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-6 [AMENDED]

AUTHORITY:

68 O.S. §§ 203, 1354.18, Oklahoma Tax Commission

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n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Section 710:65-18-6, dealing with the sourcing of sales of direct mail, has been amended to clarify that Oklahoma law complies with the Streamlined Sales Tax Agreement as it relates to the sourcing of "advertising and promotional direct mail" and that "other direct mail" transactions are not taxable in Oklahoma.

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 MAY 11, 2012:

SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

710:65-18-6. Sourcing of sales involving direct mail

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

(1) **"Advertising and promotional direct mail"** means printed material that meets the definition of "direct mail," in *OAC 710:65-18-2*, the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this definition, the word "product" means tangible personal property, a product transferred electronically or a service.

(2) **"Other direct mail"** is defined as not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. "Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

(B) Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

(C) Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

(b) Notwithstanding the provisions of 710:65-18-3, a purchaser of advertising and promotional direct mail that is not a holder of a direct pay permit shall provide to the seller in

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conjunction with the purchase either a Direct Mail Form or information to show the jurisdictions to which the advertising and promotional direct mail is delivered to recipients. [68 O.S.Supp.2003, § 1354.29(A)]

(1) Upon receipt of the Direct Mail Form, the seller is relieved of all obligations to collect, pay or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A Direct Mail Form shall remain in effect for all future sales of advertising and promotional direct mail by the seller to the purchaser until it is revoked in writing. [68 O.S.Supp.2003, § 1354.29(A)]

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the advertising and promotional direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser. [68 O.S.Supp.2003, § 1354.29(A)]

(b) If the purchaser of advertising and promotional direct mail does not have a direct pay permit and does not provide the seller with either a Direct Mail Form or delivery information, as required by subsection (a)(b) of this Section, the seller shall collect the tax according to paragraph (5) of 710:65-18-3. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the advertising and promotional direct mail is delivered. [68 O.S.Supp.2003, § 1354.29(B)]

(d) If a purchaser of advertising and promotional direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a Direct Mail Form or delivery information to the seller. [68 O.S.Supp.2003, § 1354.29(C)]

(e) The sale of "other direct mail" as defined herein is not taxable under the provisions of the Oklahoma Sales Tax Code.

[OAR Docket #12-391; filed 4-9-12]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #12-393]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. Cigarette Stamp Tax

Part 1. General Provisions

710:70-2-15 [NEW]

Subchapter 5. Excise on Tobacco Products

710:70-5-3 [AMENDED]

710:70-5-14 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. §§ 203, 304, 322, 415 and 420

DATES:

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Subchapter 5. Excise on Tobacco Products
710:70-5-3. [AMENDED]

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11-972

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

New Section 710:70-2-15 has been added to provide instructions specific to the filing of cigarette reports and will require copies of invoices of sales made the previous month to be attached to the monthly report. [68:312]

Section 710:70-5-3 has been amended to provide for electronic filing of monthly tobacco products tax reports; to allow better tracking of product; and provide easier verification that the tax on tobacco products found at retail locations has been paid. [68:403.1]

Section 710:70-5-14 has been amended to provide better tracking of tobacco products from the wholesaler who remits the tax, to the retailer. [68:304]

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 MAY 11, 2012:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-15. Minimum requirements of monthly cigarette tax reports of licensed manufacturers and wholesalers

(a) Every licensed manufacturer and every wholesaler licensed by the Oklahoma Tax Commission, to possess, use or in any manner deal with cigarettes 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 cigarettes and merchandise subject to such excise tax monthly, on

the monthly cigarette tax report form prescribed by the Commission. Each monthly report shall include the following information:

- (1) Name, business address and cigarette license number of the tax reporter;
- (2) All purchases or deliveries, stated separately according to the dates of delivery in this State, of all cigarettes received, possessed, used or in any manner dealt with in the previous calendar month;
- (3) Invoice numbers of all purchases or deliveries of such cigarettes 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 cigarettes 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. §301 et seq.]

(b) Monthly reports due after October 31, 2011, must be filed electronically in the format prescribed by the Commission.

(c) Copies of each invoice for sales of cigarettes made during the previous calendar month shall be attached to the monthly report form. If the number of invoices is voluminous, reporter may request and obtain authorization to submit a schedule of sales in lieu of copies of invoices.

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-3. Minimum requirements of monthly tobacco products tax reports of licensed manufacturers or wholesalers

(a) Every licensed manufacturer and every wholesaler 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.]

(b) Monthly reports due after October 31, 2011, must be filed electronically in the format prescribed by the Commission.

(c) Copies of each invoice for sales of tobacco products made during the previous calendar month shall be attached to the monthly report form. If the number of invoices is voluminous, reporter may request and obtain authorization to submit a schedule of sales in lieu of copies of invoices.

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.

(f) A licensed retailer is prohibited from selling tobacco products to another licensed tobacco products retailer unless the purpose of the sale is to move inventory between stores which are owned by the same legal entity.

[OAR Docket #12-393; filed 4-9-12]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #12-392]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Returns and Payments
710:90-3-11 [AMENDED]

AUTHORITY:

Oklahoma Tax Commission; 68 O.S. § 203

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n/a

ANALYSIS:

Section 710:90-3-11 has been amended to correct a scrivener's error.

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 MAY 11, 2012:

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

- (A) A shareholder of an S-Corporation;
- (B) A partner in a general partnership;
- (C) A partner in a limited partnership;
- (D) A partner in a limited liability partnership;
- (E) A member of a limited liability company; or,
- (F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

- (A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;
- (B) A general partnership;
- (C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefore exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under ~~OAC 710:50-17-47~~ 710:50-19-1 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return

will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

- (1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
- (2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
- (3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
- (4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;
- (5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars (\$500.00); or,
- (6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars (\$500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars (\$500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social

security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-Bs, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form OW-9-C) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Compliance Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Compliance Division.

[OAR Docket #12-392; filed 4-9-12]

Permanent Final Adoptions

TITLE 730. DEPARTMENT OF TRANSPORTATION CHAPTER 20. ACQUISITION AND DISPOSAL OF PROPERTIES

[OAR Docket #12-372]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Rights-of-Way [NEW]

Subchapter 3. Improvement Removal and Contract Administration [NEW]

730:20-3-1. Processes for Right-of-Way Improvement Removal Contracts Below \$50,000 [NEW]

730:20-3-2. Selection Process for Right-of-Way Improvement Removal Contracts Below \$50,000 [NEW]

AUTHORITY:

Oklahoma Department of Transportation; 61 O.S. § 103.5; 69 O.S. §§ 101, 301, 303, 304, 1209, and 1403

DATES:

Comment Period:

November 1, 2011 through December 1, 2011

Public Hearing:

January 6, 2012

Adoption:

January 9, 2012

Submitted to Governor:

January 9, 2012

Submitted to House:

January 9, 2012

Submitted to Senate:

January 9, 2012

Gubernatorial Approval:

February 13, 2012

Legislative Approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 29, 2012.

Final Adoption:

March 29, 2012

Effective:

May 11, 2012

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The proposed rulemaking action is to reflect Department policy regarding the administration and processes for right-of-way improvement removal contracts below \$50,000.

CONTACT PERSON:

Brian Bigbie, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73102, 405-522-6002 or bbigbie@odot.org

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 MAY 11, 2012:

SUBCHAPTER 1. RIGHTS-OF-WAY

SUBCHAPTER 3. IMPROVEMENT REMOVAL AND CONTRACT ADMINISTRATION

730:20-3-1. Processes for right-of-way improvement removal contracts below \$50,000.00

(a) In accordance with 61 O.S. § 103.5, contracts not exceeding Fifty Thousand Dollars (\$50,000.00) entered into solely for right-of-way clearance projects by the Transportation Commission shall not be considered as public construction contracts and are not required to be competitively bid. Right-of-way clearance contracts not required to be competitively bid pertain exclusively to:

- (1) demolition and removal of buildings
- (2) foundations
- (3) slab floors
- (4) stem walls
- (5) steps
- (6) brush
- (7) shrubs
- (8) brickbats or stone and all rubbish
- (9) scrap Iron
- (10) fencing
- (11) debris
- (12) installation of new right-of-way fencing.

(b) Contracts not exceeding Fifty Thousand Dollars (\$50,000.00) entered into solely for right-of-way clearance, as described in this section, shall be used only upon the written approval of the Department's Chief of Right-of-Way & Utilities Division prior to initiation. The needs to utilize non-competitive bids are as follows:

- (1) Specific Needs. When specialized expertise is required and is only available from a highly qualified single source, a fair and reasonable fee will be negotiated with a specific contractor who is specially equipped to meet a specific need for a project.
- (2) Emergency Needs. When public need will not permit the delay resulting from competitive solicitation, a fair and reasonable fee will be negotiated with a contractor in the issuance of an emergency project, such as emergency demolition, fencing, hardship acquisition, and/or public safety.

730:20-3-2. Selection process for right-of way improvement removal contracts below \$50,000.00

(a) Unless otherwise noted, upon approval of the request to contract for services for contracts not exceeding Fifty Thousand Dollars (\$50,000.00), the contractor selection process shall proceed according to one of the following selection methods:

- (1) A Competitive Proposal (Quote Solicitation and Bid Tabulation) determines pre-qualified service providers capable of performing right-of-way contracts. Upon tabulation of responsive bid proposals for a contracted project, the lowest responsible bid will be selected. Responsible bids are determined to be those that are received in a timely manner, have all elements of the Request For Proposal (RFP) completed, and provide a full list of pre-qualified personnel intended to be used to perform the work described in the scope of services.

RFP's that do not identify personnel or that identify personnel that have not been pre-qualified to perform work for the Department of Transportation will be deemed as unresponsive.

(2) Qualifications Based Selection (QBS). This selection process is intended to be utilized on large, complex projects when there is sufficient time available in the project development schedule.

(b) Notice to Proceed should contain a reference to the portion of the contract relevant to liability insurance. If proof of

liability insurance is not provided as stipulated, the Oklahoma Department of Transportation may terminate the agreement.

(c) Contracts shall be reviewed by the Chief of Legal Division as to form and legality.

[OAR Docket #12-372; filed 4-4-12]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code*.

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2012-6.

EXECUTIVE ORDER 2012 -06

I, Mary Fallin, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Thursday, April 12, 2012, to honor State Representative Virginia Sue Tibbs, who died on Friday, April 6, 2012.

Representative Tibbs was first elected to the Oklahoma House of Representatives in 2000 to represent District 23 in Tulsa County. Representative Tibbs served as chairman of the State House Public Safety Committee and was a member of the State Human Services, Judiciary, and General Government Committees. She was a tireless public servant who cared very deeply about her constituents and the State of Oklahoma. Representative Tibbs will be remembered for her hard work, dedication, and the influence she had on the State of Oklahoma.

This executive order shall be forwarded to the Administrator of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 9th day of April, 2012.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

MARY FALLIN

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #12-407; filed 4-11-12]

1:2012-7.

EXECUTIVE ORDER 2012-07

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Tornadoes, severe storms, straight line winds, and flooding beginning April 13, 2012, and that are continuing, have caused extensive damage to public and private properties with the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, straight line winds, and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The counties included in this declaration are:

Alfalfa, Caddo, Canadian, Cleveland, Ellis, Harper, Jackson, Kiowa, Logan, Oklahoma, Woods, Woodward.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on April 13, 2012, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extend necessary to protect lives and to prevent, minimize and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

Executive Orders

6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 15th day of April 2012.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #12-420; filed 4-16-12]
