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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 #13-623]

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 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-623; filed 4-16-13]

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

[OAR Docket #13-624]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

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

SUBMITTED TO GOVERNOR:

April 5, 2013

SUBMITTED TO HOUSE:

April 5, 2013

SUBMITTED TO SENATE:

April 5, 2013

[OAR Docket #13-624; filed 4-16-13]

TITLE 92. OKLAHOMA STATE ATHLETIC COMMISSION CHAPTER 1. GENERAL AGENCY RULES

[OAR Docket #13-652]

PERMANENT RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 5. General Course and Method of Operations
92:1-5-1 [AMENDED]

SUBMITTED TO GOVERNOR:

March 15, 2013

SUBMITTED TO HOUSE:

March 15, 2013

SUBMITTED TO SENATE:

March 15, 2103

[OAR Docket #13-652; filed 4-24-13]

TITLE 92. OKLAHOMA STATE ATHLETIC COMMISSION CHAPTER 10. RULES FOR BOXING AND OTHER ACTIVITIES

[OAR Docket #13-653]

PERMANENT RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 1. General Provision

92:10-1-2 [AMENDED]

92:10-1-5 [AMENDED]

92:10-1-6 [AMENDED]

92:10-1-7 [AMENDED]

92:10-1-8 [AMENDED]

Subchapter 3. Boxing and Kickboxing Participants

92:10-3-2 [AMENDED]

92:10-3-5 [AMENDED]

92:10-3-13 [AMENDED]

Subchapter 5. Professional Boxing and Kickboxing Events

92:10-5-2 [AMENDED]

92:10-5-11 [AMENDED]

92:10-5-14 [AMENDED]

92:10-5-15 [AMENDED]

Subchapter 11. Mixed Martial Arts

92:10-11-3 [AMENDED]

SUBMITTED TO GOVERNOR:

March 15, 2013

Submissions for Review

SUBMITTED TO HOUSE:

March 15, 2013

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March 15, 2103

[OAR Docket #13-653; filed 4-24-13]

**TITLE 92. OKLAHOMA STATE ATHLETIC
COMMISSION
CHAPTER 10. RULES FOR BOXING AND
OTHER ACTIVITIES**

[OAR Docket #13-654]

PERMANENT RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 1. General Provision
92:10-1-4 [AMENDED]

SUBMITTED TO GOVERNOR:

March 15, 2013

SUBMITTED TO HOUSE:

March 15, 2013

SUBMITTED TO SENATE:

March 15, 2103

[OAR Docket #13-654; filed 4-24-13]

**TITLE 135. COMMISSION ON CHILDREN
AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS,
AND COUNCILS: OPERATION AND
ADMINISTRATION**

[OAR Docket #13-651]

PERMANENT RULEMAKING ACTION:

Submission for gubernatorial and legislative review

PROPOSED RULES:

Subchapter 21. Child Death Review Board
135:10-21-2 [AMENDED]
135:10-21-3 [REVOKED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2103

[OAR Docket #13-651; filed 4-22-13]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #13-561]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

265:1-1-2 [AMENDED]
265:1-1-3 [AMENDED]
265:1-1-4 [AMENDED]
265:1-1-5 [AMENDED]
265:1-1-6 [AMENDED]
265:1-1-7 [AMENDED]
265:1-1-8 [AMENDED]
265:1-1-10 [AMENDED]
265:1-1-11 [AMENDED]

SUBMITTED TO GOVERNOR:

April 10, 2013

SUBMITTED TO HOUSE:

April 10, 2013

SUBMITTED TO SENATE:

April 10, 2013

[OAR Docket #13-561; filed 4-12-13]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 3. INDIVIDUAL PROCEEDINGS**

[OAR Docket #13-562]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. General Provisions
265:3-1-2 [AMENDED]
265:3-1-4 [AMENDED]
Subchapter 3. Procedures
265:3-3-4 [AMENDED]
265:3-3-7 [AMENDED]
265:3-3-10 [AMENDED]
Subchapter 5. Hearings
265:3-5-3 [AMENDED]
265:3-5-4 [AMENDED]
265:3-5-6 [AMENDED]

SUBMITTED TO GOVERNOR:

April 10, 2013

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April 10, 2013

SUBMITTED TO SENATE:

April 10, 2013

[OAR Docket #13-562; filed 4-12-13]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 10. SMOKE DETECTORS**

[OAR Docket #13-563]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Rationalization

265:10-3-1 [AMENDED]

265:10-3-2 [AMENDED]

265:10-3-3 [AMENDED]

265:10-3-4 [AMENDED]

Subchapter 5. Compliance

265:10-5-1 [AMENDED]

265:10-5-2 [AMENDED]

SUBMITTED TO GOVERNOR:

April 10, 2013

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April 10, 2013

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April 10, 2013

[OAR Docket #13-563; filed 4-12-13]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 20. EXPLOSIVES**

[OAR Docket #13-564]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

265:20-1-1 [REVOKED]

265:20-1-2 [REVOKED]

265:20-1-3 [REVOKED]

265:20-1-4 [REVOKED]

265:20-1-5 [REVOKED]

265:20-1-6 [REVOKED]

265:20-1-7 [REVOKED]

265:20-1-8 [REVOKED]

265:20-1-9 [REVOKED]

Appendix A. American Table of Distances [REVOKED]

SUBMITTED TO GOVERNOR:

April 10, 2013

SUBMITTED TO HOUSE:

April 10, 2013

SUBMITTED TO SENATE:

April 10, 2013

[OAR Docket #13-564; filed 4-12-13]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 25. ADOPTED NATIONAL
CODES AND STANDARDS**

[OAR Docket #13-565]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

265:25-1-3 [AMENDED]

265:25-1-4 [AMENDED]

SUBMITTED TO GOVERNOR:

April 10, 2013

SUBMITTED TO HOUSE:

April 10, 2013

SUBMITTED TO SENATE:

April 10, 2013

[OAR Docket #13-565; filed 4-12-13]

**TITLE 265. STATE FIRE MARSHAL
COMMISSION
CHAPTER 35. FIELD CITATIONS**

[OAR Docket #13-566]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

265:35-1-1 [AMENDED]

SUBMITTED TO GOVERNOR:

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SUBMITTED TO SENATE:

April 10, 2013

[OAR Docket #13-566; filed 4-12-13]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 1. OKLAHOMA MINING
COMMISSION**

[OAR Docket #13-543]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 1. Oklahoma Mining Commission [AMENDED]

Submissions for Review

SUBMITTED TO GOVERNOR:

April 5, 2013

SUBMITTED TO HOUSE:

April 5, 2013

SUBMITTED TO SENATE:

April 5, 2013

[OAR Docket #13-543; filed 4-10-13]

**TITLE 460. DEPARTMENT OF MINES
CHAPTER 20. THE PERMANENT
REGULATIONS GOVERNING THE COAL
RECLAMATION ACT OF 1979**

[OAR Docket #13-544]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 20. The Permanent Regulations Governing the
Coal Reclamation Act of 1979 [AMENDED]

SUBMITTED TO GOVERNOR:

April 5, 2013

SUBMITTED TO HOUSE:

April 5, 2013

SUBMITTED TO SENATE:

April 5, 2013

[OAR Docket #13-544; filed 4-10-13]

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

[OAR Docket #13-567]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 1. Organization of the Department of Public
Safety

595:1-1-3 [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-567; filed 4-15-13]

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

[OAR Docket #13-568]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Rules of Practice

595:1-3-4 [AMENDED]

595:1-3-19 [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-568; filed 4-15-13]

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

[OAR Docket #13-569]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 5. Medical Aspects

Part 1. Medical Conditions

595:10-5-5 [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-569; filed 4-15-13]

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

[OAR Docket #13-570]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 11. Certified Schools and Designated Class D Examiners [NEW]
- 595:10-11-1 [NEW]
- 595:10-11-2 [NEW]
- 595:10-11-3 [NEW]
- 595:10-11-5 [NEW]
- 595:10-11-6 [NEW]
- 595:10-11-7 [NEW]
- 595:10-11-8 [NEW]
- 595:10-11-9 [NEW]
- 595:10-11-10 [NEW]
- 595:10-11-11 [NEW]
- 595:10-11-12 [NEW]
- 595:10-11-13 [NEW]
- 595:10-11-14 [NEW]
- 595:10-11-15 [NEW]
- 595:10-11-16 [NEW]

SUBMITTED TO GOVERNOR:

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SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-570; filed 4-15-13]

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

[OAR Docket #13-571]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
- Part 2. Application for Initial Driver License
- 595:10-1-3 [AMENDED]
- Part 13. Motor License Agents
- 595:10-1-51 [AMENDED]
- Part 19. Driver License and Identification Card Content
- 595:10-1-92 [AMENDED]

SUBMITTED TO GOVERNOR:

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March 29, 2013

[OAR Docket #13-571; filed 4-15-13]

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

[OAR Docket #13-572]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
- Part 3. Driver License Renewal
- 595:10-1-12 [AMENDED]
- Part 5. Driver License Replacement
- 595:10-1-19 [AMENDED]

SUBMITTED TO GOVERNOR:

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SUBMITTED TO HOUSE:

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SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-572; filed 4-15-13]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 11. COMMERCIAL DRIVER LICENSES

[OAR Docket #13-573]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

- Subchapter 1. Commercial Driver Licensing
- Part 2. Application for Initial Commercial Driver License
- 595:11-1-15 [AMENDED]
- 595:11-1-16 [AMENDED]
- 595:11-1-17 [NEW]
- 595:11-1-18 [NEW]

SUBMITTED TO GOVERNOR:

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SUBMITTED TO HOUSE:

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SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-573; filed 4-15-13]

Submissions for Review

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

[OAR Docket #13-574]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 25. Wreckers and Towing Services [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-574; filed 4-15-13]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 30. SIZE AND WEIGHT PERMITS**

[OAR Docket #13-575]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 30. Size and Weight Permits [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

March 29, 2013

SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-575; filed 4-15-13]

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

[OAR Docket #13-576]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

595:35-1-6 [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

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SUBMITTED TO SENATE:

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[OAR Docket #13-576; filed 4-15-13]

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

[OAR Docket #13-577]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

595:35-1-1 [AMENDED]

595:35-1-2 [AMENDED]

595:35-1-3 [AMENDED]

595:35-1-4 [AMENDED]

595:35-1-5 [AMENDED]

595:35-1-6 [AMENDED]

595:35-1-7 [AMENDED]

595:35-1-8 [AMENDED]

595:35-1-9 [AMENDED]

595:35-1-10 [AMENDED]

595:35-1-11 [NEW]

SUBMITTED TO GOVERNOR:

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SUBMITTED TO SENATE:

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[OAR Docket #13-577; filed 4-15-13]

**TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 70. SPECIAL TRAFFIC RELATED ENFORCEMENT DESIGNATION**

[OAR Docket #13-578]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Chapter 70. Special Traffic Related Enforcement Designation [NEW]

SUBMITTED TO GOVERNOR:

March 29, 2013

SUBMITTED TO HOUSE:

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SUBMITTED TO SENATE:

March 29, 2013

[OAR Docket #13-578; filed 4-15-13]

**TITLE 610. STATE REGENTS FOR HIGHER
EDUCATION
CHAPTER 25. STUDENT FINANCIAL AID
AND SCHOLARSHIPS**

[OAR Docket #13-655]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 23. Oklahoma Higher Learning Access Program

610:25-23-4. Program requirements [AMENDED]

610:25-23-5. Securing Program Benefits [AMENDED]

610:25-23-6. Retaining eligibility in postsecondary education [AMENDED]

SUBMITTED TO GOVERNOR:

April 23, 2013

SUBMITTED TO HOUSE:

April 23, 2013

SUBMITTED TO SENATE:

April 23, 2013

[OAR Docket #13-655; filed 4-24-13]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 10. LICENSURE
REQUIREMENTS**

[OAR Docket #13-540]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

675:10-1-6. Continuing education [AMENDED]

SUBMITTED TO GOVERNOR:

January 25, 2013

SUBMITTED TO HOUSE:

January 25, 2013

SUBMITTED TO SENATE:

January 25, 2013

[OAR Docket #13-540; filed 4-10-13]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR
CONTINUING EDUCATION**

[OAR Docket #13-541]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

675:15-1-2. Introduction [AMENDED]

SUBMITTED TO GOVERNOR:

January 25, 2013

SUBMITTED TO HOUSE:

January 25, 2013

SUBMITTED TO SENATE:

January 25, 2013

[OAR Docket #13-541; filed 4-10-13]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 25. POST-MILITARY SERVICE
OCCUPATION, EDUCATION AND
CREDENTIALING RULES**

[OAR Docket #13-542]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

675:25-1-1. Education, training and experience completed as a member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4(A) [NEW]

675:25-1-2. Automatic extension of license, payment of fees and continuing education for active-duty military service members [NEW]

675:25-1-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States [NEW]

SUBMITTED TO GOVERNOR:

January 25, 2013

SUBMITTED TO HOUSE:

January 25, 2013

SUBMITTED TO SENATE:

January 25, 2013

[OAR Docket #13-542; filed 4-10-13]

Submissions for Review

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #13-602]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 7. Local Programs, Career Majors or Instructional Positions: Application; Student Accounting; Evaluation

780:10-7-2. [AMENDED]

Subchapter 9. Service Contracts and Equipment Guidelines

780:10-9-2. [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2013

SUBMITTED TO HOUSE:

March 28, 2013

SUBMITTED TO SENATE:

March 28, 2013

[OAR Docket #13-602; filed 4-16-13]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #13-603]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Technology Centers Education

780:15-3-2. [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2013

SUBMITTED TO HOUSE:

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SUBMITTED TO SENATE:

March 28, 2013

[OAR Docket #13-603; filed 4-16-13]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #13-604]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs

780:20-3-2. [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2013

SUBMITTED TO HOUSE:

March 28, 2013

SUBMITTED TO SENATE:

March 28, 2013

[OAR Docket #13-604; filed 4-16-13]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 25. BUSINESS AND INDUSTRY SERVICES

[OAR Docket #13-605]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review

RULES:

Subchapter 5. Business and Industry Development

780:25-5-1. [AMENDED]

SUBMITTED TO GOVERNOR:

March 28, 2013

SUBMITTED TO HOUSE:

March 28, 2013

SUBMITTED TO SENATE:

March 28, 2013

[OAR Docket #13-605; filed 4-16-13]

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

[OAR Docket #13-636]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 1. Description of Organization
158:1-1-1. Purpose [AMENDED]
- Subchapter 3. General Operation and Procedures
158:1-3-1. Address [AMENDED]
- Subchapter 5. Procedure in Individual Proceedings
158:1-5-2. Notice of hearing [AMENDED]
158:1-5-3. Service of petition and notice of hearing [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-636; filed 4-22-13]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 10. FINE SCHEDULE

[OAR Docket #13-637]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

- Subchapter 1. General Provisions
158:10-1-1. Purpose [AMENDED]
- Subchapter 3. Administrative Fine Schedule
158:10-3-1. Common requirements under the Electrical License Act, the Mechanical Licensing Act, the Plumbing License Law of 1955, and Home Inspectors Licensing Act [AMENDED]
158:10-3-4. Payment of fines [AMENDED]
- Subchapter 5. Oklahoma Small Business Regulatory Flexibility Act
158:10-5-1. Purpose [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-637; filed 4-22-13]

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

[OAR Docket #13-638]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

- Subchapter 1. General Provisions
158:30-1-1. Purpose [AMENDED]
158:30-1-2. Definitions [AMENDED]
158:30-1-4. Standard of installation [AMENDED]
- Subchapter 3. Procedures of the Committee and Hearing Board
158:30-3-1. Procedures of the Committee [AMENDED]
158:30-3-2. Procedures of the hearing board [AMENDED]
- Subchapter 5. License Types, Bond Requirements, and Display of License Number and Firm Name
158:30-5-4. Plumbing journeymen and contractor licenses by reciprocity [AMENDED]
- Subchapter 9. Examination Procedures, License and Registration Fees and Duration of Licenses
158:30-9-1. Examination procedures [AMENDED]
158:30-9-3. Duration of licenses [AMENDED]
158:30-9-4. Continuing Education [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-638; filed 4-22-13]

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

[OAR Docket #13-639]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

- Subchapter 1. General Provisions
158:40-1-4. Standard of installation [AMENDED]
- Subchapter 3. Procedures of the Committee and the Hearing Board
158:40-3-1. Procedures of the committee [AMENDED]
- Subchapter 7. License Classifications
158:40-7-1. Unlimited electrical license [AMENDED]
158:40-7-5. Electrical journeyman and contractor licenses by reciprocity [AMENDED]

Gubernatorial Approvals

Subchapter 9. Examination Applications, Examinations and License and Registration Fees and Renewals

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

158:40-9-4. Continuing education [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-639; filed 4-22-13]

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

[OAR Docket #13-640]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

Subchapter 1. General Provisions

158:50-1-2. Definitions [AMENDED]

158:50-1-3. License requirement and exemptions [AMENDED]

158:50-1-4. ~~Standard of installation~~ Adopted references and standard of workmanship [AMENDED]

Subchapter 5. License Types, Limitations of Licenses, Contractor Special Requirements and Display of License Number and Firm Name

158:50-5-1. License types [AMENDED]

158:50-5-2. Limitations of licenses [AMENDED]

Subchapter 9. Qualifications for Mechanical Licensure, License and Registration Fees, Duration of License, Mechanical License Application, and Apprentice Registration

158:50-9-1. Qualifications for mechanical licensure [AMENDED]

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

158:50-9-3. Duration of licenses [AMENDED]

158:50-9-7. Continuing Education [AMENDED]

Subchapter 11. License Revocation or Suspension and Prohibited Acts

158:50-11-2. Prohibited acts [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-640; filed 4-22-13]

TITLE 158. CONSTRUCTION INDUSTRIES BOARD CHAPTER 60. INSPECTORS REGULATIONS

[OAR Docket #13-641]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

Subchapter 1. General Provisions

158:60-1-2. Definitions [AMENDED]

Subchapter 5. Categories and Classifications of Inspector Licenses, Qualifications for Inspector Licensure, License Requirements for Inspectors, Fees, Certification and Continuing Education for Inspectors, and Continuing Education Courses

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

158:60-5-2. Qualifications for inspector licensure [AMENDED]

158:60-5-3. License requirements for inspectors [AMENDED]

158:60-5-4. Fees, certification and continuing education for inspectors [AMENDED]

158:60-5-5. Continuing education courses [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-641; filed 4-22-13]

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

[OAR Docket #13-642]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

PROPOSED RULES:

Subchapter 1. General Provisions

158:70-1-2. Definitions [AMENDED]

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

158:70-1-4. Sample Forms or Formats [NEW]

Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, Substantial Compliance and Reciprocity

158:70-9-1. Qualifications and examination applications [AMENDED]

158:70-9-5. Continuing education [AMENDED]

158:70-9-6. Denied application appeal [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-642; filed 4-22-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

[OAR Docket #13-609]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 1. General Provisions
- 252:4-1-3. Organization [AMENDED]
- 252:4-1-5. Availability of a record [AMENDED]
- Subchapter 7. Environmental Permit Process
- Part 1. The Process
- 252:4-7-13. Notices [AMENDED]
- 252:4-7-15. Permit issuance or denial [AMENDED]
- 252:4-7-18. Pre-issuance permit review and correction [AMENDED]
- 252:4-7-20. Agency review of final permit decision [NEW]
- Subchapter 9. Administrative Proceedings
- Part 3. Individual Proceedings
- 252:4-9-32. Individual proceedings filed by others [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-609; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

[OAR Docket #13-610]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 7. Environmental Permit Process
- Part 7. Water Quality Division Tiers and Time Lines
- 252:4-7-73. Water quality applications - Tier I [AMENDED]
- 252:4-7-74. Water quality applications - Tier II [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-610; filed 4-16-13]

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

[OAR Docket #13-611]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 2. Incorporation by Reference
- 252:100-2-3. [AMENDED]
- Appendix Q. Incorporation by Reference [REVOKED]
- Appendix Q. Incorporation by Reference [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-611; filed 4-16-13]

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

[OAR Docket #13-612]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 13. Open Burning
- 252:100-13-2 [AMENDED]
- 252:100-13-5 [AMENDED]
- 252:100-13-7 [AMENDED]
- 252:100-13-8 [NEW]
- 252:100-13-9 [AMENDED]
- 252:100-13-10 [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-612; filed 4-16-13]

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

[OAR Docket #13-613]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 25. Visible Emissions and Particulates
- 252:100-25-5. [AMENDED]
- Subchapter 31. Control of Emission of Sulfur Compounds
- Part 5. New Equipment Standards
- 252:100-31-25. [AMENDED]

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-613; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

[OAR Docket #13-614]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

252:515-1-2 [AMENDED]

Subchapter 19. Operational Requirements

Part 5. Cover and Soil Borrow Requirements for Land

Disposal Facilities

252:515-19-50 [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-614; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE**

[OAR Docket #13-615]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 41. Roofing Material Recycling Facilities
[NEW]

252:515-41-1 [NEW]

252:515-41-2 [NEW]

252:515-41-3 [NEW]

252:515-41-4 [NEW]

252:515-41-5 [NEW]

252:515-41-6 [NEW]

252:515-41-7 [NEW]

252:515-41-8 [NEW]

252:515-41-9 [NEW]

252:515-41-10 [NEW]

252:515-41-11 [NEW]

252:515-41-12 [NEW]

252:515-41-14 [NEW]

252:515-41-15 [NEW]

252:515-41-16 [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-615; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS**

[OAR Docket #13-617]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Introduction

252:606-1-4. Date of federal regulations incorporated

[AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-617; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 616. INDUSTRIAL WASTEWATER SYSTEMS**

[OAR Docket #13-618]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Introduction

252:616-1-2. Definitions [AMENDED]

Subchapter 3. Permit Procedures

252:616-3-3. Fees [AMENDED]

Subchapter 7. Surface Impoundment Standards

252:616-7-4. ~~Flexible membrane~~ Synthetic liners

[AMENDED]

252:616-7-5. Composite liners [AMENDED]

Subchapter 9. Tank System Standards

252:616-9-1. Authorized use of tank systems

[AMENDED]

Subchapter 11. Land Application Standards

252:616-11-5. Recordkeeping [AMENDED]

Subchapter 13. Closure Standards

252:616-13-3. Closure plan submittal and amendment

[AMENDED]

Appendix C. Table of Rainfall and Evaporation Data

[REVOKED]

Appendix C. Table of Rainfall and Evaporation Data [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-618; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

[OAR Docket #13-619]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Introduction

252:631-1-3. Adoption of U.S. EPA regulations by reference [AMENDED]

Subchapter 3. Operations

252:631-3-3. Disinfection requirements [AMENDED]

252:631-3-21. Public water supply annual service fees [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-619; filed 4-16-13]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

[OAR Docket #13-620]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Introduction

252:690-1-4. Incorporation of EPA regulations by reference [AMENDED]

Subchapter 3. Point Source Discharges

252:690-3-5. CE(mean) for effluent characterization for determining reasonable potential for parameters other than temperature [AMENDED]

252:690-3-8. C95 for determining reasonable potential for parameters other than temperature [AMENDED]

252:690-3-12. Background monitoring and frequency [AMENDED]

252:690-3-19. TREs, TIEs and WET limits [AMENDED]

252:690-3-32. Test failure notification and retesting [AMENDED]

252:690-3-86. Implementation of bacteriological criteria to protect the Primary Body Contact Recreation (PBCR) and the Secondary Body Contact Recreation (SBCR) beneficial use [AMENDED]

252:690-3-89. Effluent monitoring frequency ~~where~~-when permit limitations are required [AMENDED]

252:690-3-91. Performance-based monitoring frequency reductions and increases [AMENDED]

APPENDIX C. Methodology and Equations for Characterizing Effluent and Background Concentrations in Determination of Reasonable Potential to Exceed Numerical Criteria [REVOKED]

APPENDIX C. Methodology and Equations for Characterizing Effluent and Background Concentrations in Determination of Reasonable Potential to Exceed Numerical Criteria [NEW]

APPENDIX I. Performance-Based Effluent Monitoring Frequency Reductions [REVOKED]

APPENDIX I. Performance-Based Effluent Monitoring Frequency Reductions and Increases [NEW]

APPENDIX J. Background Monitoring [REVOKED]

APPENDIX J. Background Monitoring [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-620; filed 4-16-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS**

[OAR Docket #13-580]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-1 [AMENDED]

340:2-3-12 [AMENDED]

340:2-3-26 [AMENDED]

Part 3. Investigations

340:2-3-32 [AMENDED]

340:2-3-35 through 340:2-3-37 [AMENDED]

Part 5. Grievances

340:2-3-45 [AMENDED]

340:2-3-47 [AMENDED]

340:2-3-50 [AMENDED]

Part 7. Grievance and Abuse Review Committee

340:2-3-62 [AMENDED]

(Reference WF 12-09)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-580; filed 4-15-13]

Gubernatorial Approvals

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #13-581]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 7. Office of Inspector General

Part 3. ~~Single Audit Guide~~ Audits of Grant Recipients and Subrecipients

340:2-7-25 through 340:2-7-30 [AMENDED]

(Reference WF 12-11)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-581; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #13-582]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions

340:5-1-3 [AMENDED]

340:5-1-8 [AMENDED]

Subchapter 3. Reports of Maltreatment of Vulnerable Adults

340:5-3-4 [AMENDED]

340:5-3-6 [AMENDED]

Subchapter 5. Investigation of Adult Protective Services Referrals

340:5-5-3 through 340:5-5-4 [AMENDED]

340:5-5-6 [AMENDED]

(Reference APA WF 12-16)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-582; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #13-583]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program

340:10-2-3 [AMENDED]

340:10-2-6 [AMENDED]

Subchapter 3. Conditions of Eligibility - Need

Part 3. Income

340:10-3-33 [AMENDED]

340:10-3-40 [AMENDED]

Part 5. Assistance Payments

340:10-3-56 [AMENDED]

Subchapter 10. Conditions of Eligibility - Deprivation

340:10-10-3 [AMENDED]

(Reference APA WF 12-15 and 12-20)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-583; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES

[OAR Docket #13-584]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. Scope and Applicability

340:25-1-2.1 [AMENDED]

340:25-1-3.1 [AMENDED]

Subchapter 3. Commissioned Peace Officers

340:25-3-3 [AMENDED]

Subchapter 5. Operational Policies

Part 9. Disclosure of Information

340:25-5-67 through 340:25-5-67.1 [AMENDED]

Part 15. Case Initiation, Case Management, and Case Closure

340:25-5-114 [AMENDED]

340:25-5-123 [AMENDED]

340:25-5-133 [AMENDED]

Part 17. Past Support

340:25-5-140 through 340:25-5-140.1 [AMENDED]

Part 21. Establishment

340:25-5-176.1 [AMENDED]

Part 23. Enforcement

340:25-5-213 [AMENDED]
Part 37. Recovery
340:25-5-305 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-345.2 [AMENDED]
340:25-5-350.1 [AMENDED]
340:25-5-350.3 [AMENDED]
340:25-5-351 through 340:25-5-352 [AMENDED]
(Reference WF 12-12)

GUBERNATORIAL APPROVAL:
March 25, 2013

[OAR Docket #13-584; filed 4-15-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

[OAR Docket #13-585]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-3.1 [AMENDED]
340:40-7-7 through 340:40-7-8 [AMENDED]
340:40-7-12 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 [AMENDED]
340:40-9-3 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-2 through 340:40-13-3 [AMENDED]
Subchapter 16. Improper Authorization Initiative Payments
Error Rate Review Process
340:40-16-1 [AMENDED]
(Reference APA WF 12-13 and 12-21)

GUBERNATORIAL APPROVAL:
March 25, 2013

[OAR Docket #13-585; filed 4-15-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM**

[OAR Docket #13-586]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Application Process

340:50-3-1 through 340:50-3-3 [AMENDED]
Subchapter 5. Non-Financial Eligibility Criteria
Part 1. Household Definition
340:50-5-7 [AMENDED]
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-22 [AMENDED]
Subchapter 9. Eligibility and Benefit Determination Procedures
340:50-9-4 through 340:50-9-6 [AMENDED]
Subchapter 11. Special Procedures
Part 1. Households Entitled to Expedited Service
340:50-11-3 through 340:50-11-6 [AMENDED]
Part 3. Simplified Supplemental Nutrition Assistance Program (SSNAP) for Temporary Assistance for Needy Families (TANF) and Companion State Supplemental Payment (SSP) Recipient(s)
340:50-11-22 [AMENDED]
340:50-11-27 [AMENDED]
Part 7. Replacement When Food Purchased with Food Benefits Is Destroyed
340:50-11-64 [AMENDED]
Subchapter 15. Overpayments and Fraud
Part 1. Overpayments
340:50-15-7 [AMENDED]
340:50-15-9 [AMENDED]
(Reference APA WF12-19)

GUBERNATORIAL APPROVAL:
March 25, 2013

[OAR Docket #13-586; filed 4-15-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES**

[OAR Docket #13-587]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Eligibility for Benefits
340:65-3-1 [AMENDED]
340:65-3-2.1 [AMENDED]
340:65-3-5 [AMENDED]
340:65-3-7 through 340:65-3-9 [AMENDED]
Subchapter 5. Procedures Relating to Case Changes
Part 1. General Provisions
340:65-5-1 [AMENDED]
Subchapter 11. Voter Registration [NEW]
340:65-11-1 through 340:65-11-4 [NEW]
(Reference APA WF 12-14)

Gubernatorial Approvals

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-587; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 70. SOCIAL SERVICES

[OAR Docket #13-588]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 10. Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) [NEW]

340:70-10-1 through 70-10-3 [NEW]

(Reference WF 12-17)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-588; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 75. CHILD WELFARE

[OAR Docket #13-589]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions of Child Welfare Services

Part 1. Scope and Applicability

340:75-1-2 [AMENDED]

340:75-1-13 through 340:75-1-14 [AMENDED]

340:75-1-16 through 340:75-1-18.1 [AMENDED]

340:75-1-18.4 [AMENDED]

340:75-1-20 through 340:75-1-23 [AMENDED]

340:75-1-23.1 [AMENDED AND RENUMBERED TO 340:75-6-40.8]

340:75-1-24 [REVOKED]

340:75-1-26 through 340:75-1-26.2 [AMENDED]

340:75-1-28 through 340:75-1-31 [AMENDED]

Part 3. Child Welfare Confidentiality

340:75-1-42 [AMENDED]

340:75-1-45 through 340:75-1-46 [AMENDED]

Part 7. Interstate Compact on the Placement of Children

340:75-1-86 [AMENDED]

Part 9. Rules Regarding Human Immunodeficiency Virus (HIV)

340:75-1-114 [AMENDED]

340:75-1-115 through 340:75-1-120 [REVOKED]

Part 10. Oklahoma Children's Services (OCS)

340:75-1-150 through 340:75-1-152 [AMENDED]

340:75-1-152.3 [AMENDED]

340:75-1-152.5 through 340:75-1-152.7 [AMENDED]

340:75-1-152.8 [REVOKED]

340:75-1-152.9 [AMENDED]

340:75-1-154 through 340:75-1-155 [AMENDED]

Part 15. ~~Training~~ for Child Welfare Specialist Training Workers

340:75-1-230 through 233 [AMENDED]

340:75-1-240 through 340:75-1-241 [AMENDED]

Subchapter 3. Child Protective Services

340:75-3-1 [AMENDED AND RENUMBERED TO 340:75-3-100]

340:75-3-2 [AMENDED AND RENUMBERED TO 340:75-3-120]

340:75-3-4 [AMENDED AND RENUMBERED TO 340:75-3-100]

340:75-3-5 [AMENDED AND RENUMBERED TO 340:75-3-110]

340:75-3-6 [AMENDED AND RENUMBERED TO 340:75-3-130]

340:75-3-6.1 [AMENDED AND RENUMBERED TO 340:75-3-400]

340:75-3-7 [AMENDED AND RENUMBERED TO 340:75-3-140]

340:75-3-7.1 [AMENDED AND RENUMBERED TO 340:75-3-140]

340:75-3-7.4 [AMENDED AND RENUMBERED TO 340:75-3-200]

340:75-3-7.5 [AMENDED AND RENUMBERED TO 340:75-3-210]

340:75-3-8 [AMENDED AND RENUMBERED TO 340:75-3-220]

340:75-3-8.1 [AMENDED AND RENUMBERED TO 340:75-3-410]

340:75-3-8.2 [AMENDED AND RENUMBERED TO 340:75-3-420]

340:75-3-8.3 [AMENDED AND RENUMBERED TO 340:75-3-430]

340:75-3-8.4 [AMENDED AND RENUMBERED TO 340:75-3-440]

340:75-3-8.7 [AMENDED AND RENUMBERED TO 340:75-3-450]

340:75-3-9.1 [AMENDED AND RENUMBERED TO 340:75-3-460]

340:75-3-10.1 [AMENDED AND RENUMBERED TO 340:75-3-300]

340:75-3-10.2 [AMENDED AND RENUMBERED TO 340:75-3-500]

340:75-3-10.3 [AMENDED AND RENUMBERED TO 340:75-3-120]

340:75-3-11 [AMENDED AND RENUMBERED TO 340:75-3-510]

340:75-3-12 [AMENDED AND RENUMBERED TO 340:75-3-140]

340:75-3-13 [AMENDED AND RENUMBERED TO 340:75-3-520]
 340:75-3-20 [AMENDED AND RENUMBERED TO 340:75-3-530]
 340:75-3-110 [NEW]
 340:75-3-120 [NEW]
 340:75-3-130 [NEW]
 340:75-3-140 [NEW]
 340:75-3-200 [NEW]
 340:75-3-210 [NEW]
 340:75-3-220 [NEW]
 340:75-3-400 [NEW]
 340:75-3-410 [NEW]
 340:75-3-420 [NEW]
 340:75-3-430 [NEW]
 340:75-3-440 [NEW]
 340:75-3-450 [NEW]
 340:75-3-460 [NEW]
 340:75-3-500 [NEW]
 340:75-3-510 [NEW]
 340:75-3-520 [NEW]
 340:75-3-530 [NEW]
 Subchapter 6. Permanency Planning
 Part 1. General Provisions
 340:75-6-1 [AMENDED]
 Part 5. Permanency Planning Services
 340:75-6-30 [AMENDED]
 34:75-6-31.1 through 340:75-6-31.5 [AMENDED]
 Part 7. Family and Child Individualized Service Planning Components
 340:75-6-40 through 340:75-6-40.6 [AMENDED]
 340:75-6-40.8 [NEW]
 340:75-6-44 through 340:75-6-46 [AMENDED]
 Part 8. ~~Role of the Child Welfare Worker~~ Specialist Role
 340:75-6-48 [AMENDED]
 340:75-6-48.2 [REVOKED]
 340:75-6-48.3 through 340:75-6-50 [AMENDED]
 Part 11. Permanency Planning and Placement Services
 340:75-6-85.2 through 340:75-6-86 [AMENDED]
 340:75-6-88 through 340:75-7-89 [AMENDED]
 340:75-6-91 through 340:75-6-92 [AMENDED]
 Part 13. Independent Living
 340:75-6-110 [AMENDED]
 Subchapter 7. Foster Home Care
 Part 1. General Provisions
 340:75-7-2 [AMENDED]
 Part 2. Development of Resources
 340:75-7-10 [AMENDED]
 340:75-7-12 [AMENDED]
 340:75-7-14 [AMENDED]
 340:75-7-18 [AMENDED]
 340:75-7-19 [AMENDED]
 340:75-7-24 [AMENDED]

Part 4. Roles and Responsibilities
 340:75-7-37 through 340:7-37.1 [AMENDED]
 340:75-7-41 [AMENDED]
 Part 5. Eligibility and Payments
 340:75-7-51 through 340:75-7-53 [AMENDED]
 Part 6. Foster Home Care Support Services
 340:75-7-65 [AMENDED]
 Part 8. Continuous Quality Assessment of a Resource Home
 340:75-7-94 [AMENDED]
 Part 27. Contracted Foster Care Program
 340:75-7-280 [AMENDED]
 Part 28. Foster Parent Helpline and ~~Mediation~~ Meditation
 340:75-7-290 through 340:75-7-291 [AMENDED]
 Subchapter 13. Other Child Welfare Services and Medication Services for Children in Out-of-Home Care
 Part 7. Medical Services
 340:75-13-75 [AMENDED]
 340:75-13-80 [AMENDED]
 Subchapter 15. Adoptions
 Part 2. Legal Base and Scope of the Adoption Program
 340:75-15-5 through 340:75-15-7 [AMENDED]
 340:75-15-9 [AMENDED]
 Part 6. Adoption Process
 340:75-15-42 [REVOKED]
 340:75-15-45 [REVOKED]
 340:75-15-47 [AMENDED]
 Part 10. Integrated Family Assessment and Preparation Process
 340:75-15-82 [AMENDED]
 340:75-15-83 [REVOKED]
 340:75-15-84 [AMENDED]
 340:75-15-88 through 340:75-15-89 [AMENDED]
 340:75-15-91 [AMENDED]
 Subchapter 18. Continuous Quality Improvement
 340:75-18-1 through 340:75-18-2 [AMENDED]
 Subchapter 19. Working with Indian Children
 340:75-19-1 through 340:75-19-3 [AMENDED]
 340:75-19-4 [REVOKED]
 340:75-19-5 through 340:75-19-14 [AMENDED]
 340:75-19-15 through 340:75-19-17 [REVOKED]
 340:75-19-18 through 340:75-19-21 [AMENDED]
 340:75-19-22 [REVOKED]
 340:75-19-23 through 340:75-19-26.1 [AMENDED]
 340:75-19-28 through 340:75-19-33 [AMENDED]
(Reference WF 12-10)
GUBERNATORIAL APPROVAL:
 March 25, 3013

[OAR Docket #13-589; filed 4-15-13]

Gubernatorial Approvals

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION

[OAR Docket #13-590]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Administration
Part 3. Administration
340:100-3-29
340:100-3-38.10 [AMENDED]

(Reference WF 12-08)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-590; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 115. FIELD OPERATIONS DIVISION [REVOKED]

[OAR Docket #13-591]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions [REVOKED]
Part 1. General Provisions
340:115-1-1 [REVOKED]
340:115-1-3 [REVOKED]
Part 3. Voter Registration [REVOKED]
340:115-1-21 through 340:115-1-22 [REVOKED]
340:115-1-24 [REVOKED]
340:115-1-27 [REVOKED]
Subchapter 5. Acquired Immune Deficiency Syndrome (AIDS) and Coordination and Information Services (ACIS) [REVOKED]
340:115-5-1 [REVOKED]
340:115-5-3 [REVOKED]

(Reference WF 12-18)

GUBERNATORIAL APPROVAL:

March 25, 2013

[OAR Docket #13-591; filed 4-15-13]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #13-553]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Administrative Components of the Department
612:1-3-2. The Director of Rehabilitation Services [AMENDED]
612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]
612:1-3-8.1. Executive Officers [AMENDED]
Subchapter 11. Compliance with the Americans with Disabilities Act of 1990
Part 1. Purpose and Legal Basis
612:1-11-2. Definitions [AMENDED]
Subchapter 17. Availability of Information, Scope and Description of Open Meetings
612:1-17-3. News media contacts [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-553; filed 4-12-13]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #13-554]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
612:10-1-2. Definitions [AMENDED]
612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]
612:10-1-8. Vendor contracts [AMENDED]
Subchapter 7. Vocational Rehabilitation and Visual Services
Part 3. Case Processing Requirements
612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
Part 23. Self-Employment Programs and Other Services
612:10-7-232. Placement [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-554; filed 4-12-13]

**TITLE 612. STATE DEPARTMENT OF
REHABILITATION SERVICES
CHAPTER 20. SPECIAL SCHOOLS**

[OAR Docket #13-555]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
612:20-1-4. Information for School Districts [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-555; filed 4-12-13]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 10. LICENSURE
REQUIREMENTS**

[OAR Docket #13-537]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

675:10-1-6. Continuing education [AMENDED]

GUBERNATORIAL APPROVAL:

March 11, 2013

[OAR Docket #13-537; filed 4-10-13]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 15. GUIDELINES FOR
CONTINUING EDUCATION**

[OAR Docket #13-538]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

675:15-1-2. Introduction [AMENDED]

GUBERNATORIAL APPROVAL:

March 11, 2013

[OAR Docket #13-538; filed 4-10-13]

**TITLE 675. STATE BOARD OF LICENSED
SOCIAL WORKERS
CHAPTER 25. POST-MILITARY SERVICE
OCCUPATION, EDUCATION AND
CREDENTIALING RULES**

[OAR Docket #13-539]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

675:25-1-1. Education, training and experience completed as a member of the Armed Forces of the United States pursuant to 59 O.S. § 4100.4(A) [NEW]

675:25-1-2. Automatic extension of license, payment of fees and continuing education for active-duty military service members [NEW]

675:25-1-3. Reciprocal licensing of spouses of active-duty members of the Armed Forces of the United States [NEW]

GUBERNATORIAL APPROVAL:

March 11, 2013

[OAR Docket #13-539; filed 4-10-13]

**TITLE 730. DEPARTMENT OF
TRANSPORTATION
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #13-592]

RULEMAKING ACTION:

Notice of gubernatorial approval of permanent rules

PROPOSED RULES:

Subchapter 5. Department of Transportation
730:1-5-1. [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-592; filed 4-15-13]

**TITLE 730. DEPARTMENT OF
TRANSPORTATION
CHAPTER 30. HIGHWAY DESIGN**

[OAR Docket #13-536]

RULEMAKING ACTION:

Notice of gubernatorial approval of permanent rules

RULES:

Subchapter 9. Permitting of Oversize, Overweight and Special Combination Vehicles

730:30-9-2. [AMENDED]

730:30-9-6. [AMENDED]

730:30-9-7. [AMENDED]
730:30-9-9. [AMENDED]
730:30-9-16. [AMENDED]
Appendix A. Gross Weight Load Table for Overweight Permits Based on Bridge Inventory [REVOKED]
Appendix D. Split or "Trunnion" Axles [REVOKED]
Appendix D. Dual Lane Axles [NEW]
Appendix E. Oklahoma Department of Transportation Weight Supplement Sheet for Annual Envelop Permit Not to Exceed 120,000 [REVOKED]
Appendix E. Oklahoma Department of Transportation Weight Supplement Sheet for Annual Envelope Permit Not to Exceed 120,000 [NEW]

GOVERNATORIAL APPROVAL:

February 18, 2013

[OAR Docket #13-536; filed 4-10-13]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 25. DAMS AND RESERVOIRS**

[OAR Docket #13-630]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 1. General Provisions
785:25-1-2. Definitions [AMENDED]
Subchapter 3. Responsibility, Classification and Design Standards
785:25-3-6. Minimum spillway performance standards [AMENDED]
Subchapter 5. Applications and Approval of Construction
785:25-5-1. Application and fee required [AMENDED]
785:25-5-3. Content of plans and specifications [AMENDED]
Subchapter 7. Post Approval Actions
785:25-7-5. Changes to plans and specifications after approval [AMENDED]
785:25-7-6. Notice of completion and filing of supplementary drawings or descriptive matter [AMENDED]
Subchapter 9. Actions After Construction
785:25-9-1. Inspections of dams [AMENDED]

GOVERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-630; filed 4-19-13]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 30. TAKING AND USE OF GROUNDWATER**

[OAR Docket #13-631]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 7. Amendments to Groundwater Rights
785:30-7-8. Consolidation of permits [NEW]
Subchapter 15. Water Trapped in Producing Mines [NEW]
Part 1. General Provisions [NEW]
785:30-15-1. Purpose, scope and applicability [NEW]
785:30-15-2. Definitions [NEW]
Part 3. Mines With and Without Exemptions [NEW]
785:30-15-3. Mines with no exemption [NEW]
785:30-15-4. Mines with preexisting exemptions [NEW]
Part 5. Augmentation and Management Plans [NEW]
785:30-15-5. Augmentation [NEW]
785:30-15-6. Management Plans [NEW]
Appendix C. Guidelines to Estimate Consumptive Use of Pit Water [NEW]

GOVERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-631; filed 4-19-13]

**TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING**

[OAR Docket #13-632]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
Subchapter 9. Minimum Standards for Pump Installation
785:35-9-1. Minimum standards for pump installation [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-1. Plugging and capping requirements for groundwater wells, fresh water observation wells, heat exchange wells and water well test holes [AMENDED]
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-632; filed 4-19-13]

**TITLE 785. OKLAHOMA WATER
RESOURCES BOARD
CHAPTER 45. OKLAHOMA'S WATER
QUALITY STANDARDS**

[OAR Docket #13-633]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 5. Surface Water Quality Standards
- Part 3. Beneficial Uses and Criteria to Protect Uses
- 785:45-5-12. Fish and wildlife propagation [AMENDED]
- 785:45-5-13. Agriculture [AMENDED]
- 785:45-5-19. Aesthetics [AMENDED]
- 785:45-5-20. Fish consumption [AMENDED]
- Appendix A. Designated Beneficial Uses of Surface Waters [REVOKED]
- Appendix A. Designated Beneficial Uses of Surface Waters [NEW]
- Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [REVOKED]
- Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [NEW]
- Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 2, Lower Arkansas River Basin [REVOKED]
- Appendix A.2. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 2, Lower Arkansas River Basin [NEW]
- Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 3, Upper Red River Basin [REVOKED]
- Appendix A.3. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 3, Upper Red River Basin [NEW]
- Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 4, Lower Red River [REVOKED]
- Appendix A.4. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 4, Lower Red River [NEW]
- Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 5, Canadian River [REVOKED]
- Appendix A.5. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 5, Canadian River [NEW]

Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 6, Upper Arkansas River [REVOKED]

Appendix A.6. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 6, Upper Arkansas River [NEW]

Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 7, Panhandle Region [REVOKED]

Appendix A.7. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 7, Panhandle Region [NEW]

Appendix G. Numerical Criteria to Protect Beneficial Uses [REVOKED]

Appendix G. Numerical Criteria to Protect Beneficial Uses [NEW]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [REVOKED]

Appendix H. Beneficial Use Designations for Certain Limited Areas of Groundwater [NEW]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-633; filed 4-19-13]

**TITLE 785. OKLAHOMA WATER
RESOURCES BOARD
CHAPTER 46. IMPLEMENTATION
OF OKLAHOMA'S WATER QUALITY
STANDARDS**

[OAR Docket #13-634]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

- Subchapter 1. General Provisions
- 785:46-1-6. Determination of regulatory low flow [AMENDED]
- Subchapter 9. Implementation of Criteria to Protect the Agriculture Beneficial Use
- 785:46-9-3. Regulatory flows [AMENDED]
- Subchapter 15. Use Support Assessment Protocols
- 785:46-15-7. Assessment of public and private water supply support [AMENDED]
- Subchapter 19. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation
- 785:46-19-3. Reasonable potential determination [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-634; filed 4-19-13]

Gubernatorial Approvals

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #13-635]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 7. Water and Sewer Program (Bond Proceed Loans and Emergency Grants) Requirements and Procedures

785:50-7-5. Emergency grant priority point system [AMENDED]

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

785:50-8-4. Applicable law; deadline for applications; eligible project costs [AMENDED]

785:50-8-5. REAP grant priority point system [AMENDED]

Subchapter 9. Clean Water State Revolving Fund Regulations

Part 1. General Provisions

785:50-9-9. Definitions [AMENDED]

Part 3. General Program Requirements

785:50-9-21. Eligible project [AMENDED]

Part 7. SRF Environmental Review Process

785:50-9-60. Requirement of environmental review [AMENDED]

785:50-9-61. Environmental information required by the Board [AMENDED]

GUBERNATORIAL APPROVAL:

April 8, 2013

[OAR Docket #13-635; filed 4-19-13]

Gubernatorial Disapprovals

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

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

**TITLE 252. DEPARTMENT OF
ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID
WASTE**

[OAR Docket #13-616]

RULEMAKING ACTION:

Gubernatorial disapproval of permanent rules

RULES:

Subchapter 41. Roofing Material Recycling Facilities
[NEW]

252:515-41-13 [NEW]

GUBERNATORIAL DISAPPROVAL:

April 8, 2013

[OAR Docket #13-616; filed 4-16-13]

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

[OAR Docket #13-629]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

Subchapter 5. Client Records and Confidentiality
75:15-5-4.2 Exceptions to confidentiality [NEW]

DATES:

Adoption:

March 29, 2013

Submitted to Governor:

March 29, 2013

Submitted to House:

March 29, 2013

Submitted to Senate:

March 29, 2013

WITHDRAWN:

April 18, 2013

[OAR Docket #13-629; filed 4-18-13]

TITLE 75. ATTORNEY GENERAL CHAPTER 35. OFFICE OF CIVIL RIGHTS ENFORCEMENT - ADMINISTRATIVE PROCESS

[OAR Docket #13-622]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

75:35-1-6. Hearings, depositions and answers [NEW]

DATES:

Adoption:

April 1, 2013

Submitted to Governor:

April 1, 2013

Submitted to House:

April 1, 2013

Submitted to Senate:

April 1, 2013

Withdrawn:

April 16, 2013

[OAR Docket #13-622; filed 4-16-13]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING CHAPTER 35. REGULATION OF PRIVATE SECURITY INDUSTRY

[OAR Docket #13-552]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

Subchapter 9. Violations and Investigations
390:35-9-6 [AMENDED]

DATES:

Adoption:

March 12, 2013

Submitted to Governor:

March 14, 2013

Submitted to House:

March 14, 2013

Submitted to Senate:

March 14, 2013

Withdrawn:

April 11, 2013

[OAR Docket #13-552; filed 4-12-13]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES CHAPTER 55. ALTERNATIVE FUELS PROGRAM

[OAR Docket #13-621]

RULEMAKING ACTION:

Withdrawal of permanent rulemaking

WITHDRAWN RULE:

Subchapter 5. Testing, Certification and Recertification
580:55-5-8. Processing and handling of applications and
examinations [AMENDED]
580:55-5-13. Insurance requirements [AMENDED]

Withdrawn Rules

580:55-5-14. Guidelines for certificate renewal
[AMENDED]

Subchapter 7. Standards for Alternative Fuels Technicians -
Conversion and Compression

580:55-7-4. Decals and conversion reporting procedure
[AMENDED]

DATE:

Adoption:

March 29, 2013

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April 1, 2013

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April 1, 2013

Submitted to Senate:

April 1, 2013

Withdrawn:

April 16, 2013

[OAR Docket #13-621; filed 4-16-13]

**TITLE 770. OKLAHOMA DEPARTMENT OF
VETERANS AFFAIRS
CHAPTER 1. ADMINISTRATIVE
OPERATIONS**

[OAR Docket #13-657]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

RULES:

Subchapter 5. Open Records Act

770:1-5-3. Photocopy charges [AMENDED]

ADOPTION:

March 5, 2013

SUBMITTED TO GOVERNOR:

March 15, 2013

SUBMITTED TO HOUSE:

March 15, 2013

SUBMITTED TO SENATE:

March 15, 2013

WITHDRAWN:

April 19, 2013

[OAR Docket #13-657; filed 4-25-13]

**TITLE 770. OKLAHOMA DEPARTMENT OF
VETERANS AFFAIRS
CHAPTER 10. CENTER DIVISION
PROGRAM**

[OAR Docket #13-656]

RULEMAKING ACTION:

Withdrawal of PERMANENT rulemaking

WITHDRAWN RULES:

Subchapter 3. Maintenance Charges, Patient Funds and
Assets

770:10-3-4. Discharges [NEW]

770:10-3-5. Appeals process for residents objecting to
discharge [NEW]

ADOPTION:

March 5, 2013

SUBMITTED TO GOVERNOR:

March 15, 2013

SUBMITTED TO HOUSE:

March 15, 2013

SUBMITTED TO SENATE:

March 15, 2013

WITHDRAWN:

April 19, 2013

[OAR Docket #13-656; filed 4-25-13]

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 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #13-545]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Fuel Specialists, Testing, Accessibility, and Assistance

Part 7. Storage Tanks and Ancillary Equipment

165:15-3-20. Water in storage tanks [AMENDED]

Subchapter 15. Liquid Measuring Devices

Part 3. Calibration and Tolerances

165:15-15-9. Tolerances [AMENDED]

Part 9. Equipment and Operations

165:15-15-40.1. Dispenser Filters [NEW]

AUTHORITY:

17 Okla. Stat. §§ 306, 307, 340 and 52 Okla. Stat. § 325; Corporation Commission

DATES:

Comment Period:

November 19, 2012 to January 21, 2013.

Public Hearing:

January 31, 2013

Adoption:

January 31, 2013

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February 7, 2013

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Gubernatorial approval:

February 18, 2013

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Failure of the Legislature to disapprove the rules resulted in approval on April 5, 2013.

Final Adoption:

April 5, 2013

Effective Date:

July 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The rules were amended to clarify the water removal reporting process and the amount of water that requires removal, establishes retail dispenser filtering and reforms measurement standards to current available equipment.

CONTACT PERSON:

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

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2013:

SUBCHAPTER 3. FUEL SPECIALISTS, TESTING, ACCESSIBILITY, AND ASSISTANCE

PART 7. STORAGE TANKS AND ANCILLARY EQUIPMENT

165:15-3-20. Water in storage tanks

(a) **Inspection.** All underground storage tanks must be checked for water by the Fuel Specialist from time to time.

(b) **Area surrounding fill pipe.** The area surrounding the fill pipe to the storage tank must not contain any water. When water is present, the owner or operator is responsible for promptly removing the water. Upon the second notice of violation of this subsection, the owner or operator must make whatever system modifications are necessary to prevent water from entering the spill containment and may be subject to citation or formal enforcement action.

(c) **Fill pipe.** All fill pipes to storage tanks must have watertight caps that must be securely fastened at all times, except when servicing the tank(s).

(d) **Water removal; repairs.** When a Fuel Specialist checks a motor fuel storage tank at a retail outlet and finds water in it, it is the responsibility of the owner or operator of the retail outlet to completely remove the water and make necessary repairs to prevent any water intrusion to the storage tank. ~~If two (2) inches or more of water is present the tank will be shut down.~~ Water shall not exceed one inch (1") in depth when measured with water indicating paste or other acceptable means in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends, and kerosene sold at retail. No water phase greater than one-fourth inch (1/4") as determined by an appropriate detection paste or other acceptable means is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel blends, E85 fuel ethanol, aviation gasoline, and aviation turbine fuel. The owner or operator is required to find the source of the water including, but not limited to, ~~digging up~~ excavating and replacing the product lines and/or the storage tanks as necessary. This must be done as quickly as possible. The Fuel Specialist ~~or Compliance Manager~~ may be notified orally, but verbally or by written confirmation must be submitted to notify when the water is removed and when the necessary repairs have been completed.

Permanent Final Adoptions

(e) **Water from dispensing nozzle.** When a Fuel Specialist checks a retail outlet for water and finds water coming through the dispensing nozzle, it is the responsibility of the Fuel Specialist to immediately take the affected dispensing unit or units out of operation. The owner or operator is required to find the source of the water, including but not limited to, ~~digging up~~ excavating and replacing the product lines and/or the storage tanks as necessary. The product dispensing units are to remain out of operation until the problem(s) are corrected and permission to commence operation is given by the Fuel Specialist to the owner or operator.

SUBCHAPTER 15. LIQUID MEASURING DEVICES

PART 3. CALIBRATION AND TOLERANCES

165:15-15-9. Tolerances

(a) The official tolerances prescribed by the Commission for commercial equipment are the limits of inaccuracy officially permissible within the State of Oklahoma. Tolerances are established, to fix the range of inaccuracy within which equipment will be officially approved for commercial use. Tolerances using a five (5) gallon test measure are ± 3 cubic inches when applied to new or newly reconditioned or adjusted equipment. Tolerances using a five (5) gallon test measure on all measuring devices must not exceed ± 6 cubic inches. More than ~~+9-15~~ cubic inches in accuracy will result in immediate ~~tank~~ shut down of the affected meters.

(b) Tolerances for new or newly reconditioned equipment apply as follows:

- (1) To any equipment about to be put into commercial use for the first time.
- (2) To equipment that has been placed in commercial service within the preceding 30 days and is being officially tested for the first time.
- (3) To equipment that has been returned to commercial service following official rejection for failure to conform to performance requirements and is being officially tested for the first time within 30 days after corrective service.
- (4) To equipment that is being officially tested for the first time within 30 days after major reconditioning or overhaul.

(c) Tolerances for retail and wholesale liquid measuring devices are as set forth in the charts in Appendix A to this Chapter.

PART 9. EQUIPMENT AND OPERATIONS

165:15-15-40.1. Dispenser Filters

(a) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 fuel ethanol and M85 methanol dispensers located at retail facilities shall have a 10 micron or smaller pore-sized filter.

(b) All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a 30 micron or smaller sized filter.

[OAR Docket #13-545; filed 4-11-13]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #13-546]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

Part 11. Recordkeeping

165:25-1-54. Repair records [AMENDED]

Part 15. Shutdown of Operations

165:25-1-67. Shutdown of operations [AMENDED]

Part 17. Licensing Procedures

165:25-1-101. Licensing procedure for UST Installers [AMENDED]

165:25-1-102. Licensing procedure for UST Removers [AMENDED]

Subchapter 2. General Requirements for Underground Storage Tank Systems

Part 7. Dispensers

165:25-2-71. Dispensers [AMENDED]

AUTHORITY:

17 Okla. Stat. §§ 306, 307, 340; Corporation Commission

DATES:

Comment Period:

November 19, 2012 to January 21, 2013.

Public Hearing:

January 31, 2013

Adoption:

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Submitted to the Governor:

February 7, 2013

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Gubernatorial approval:

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Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 5, 2013.

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July 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The rules will impact retail fuel facilities regarding the quantity of water in fuel that must be removed, and require system operators to add fuel filters to dispensers (estimated from informal Agency study at 10% of the tank universe). The rules also expand situations of shutdown for failure to keep release detection records, excess water in the tank system, retail fuel dispensers out of calibration in excess of tolerances and provides for license testing by Career Tech. The rules provide staff additional system shut down authority for violations that pose a threat to the environment and the motoring public. In addition, the rules adapt to the current version of fuel measurement devices, provide for fuel filtering at retail facilities and allow an alternative testing facility for prospective licensees and removal of excess water from storage tank systems.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 11. RECORDKEEPING

165:25-1-54. Repair records

Owners and operators of underground storage tank systems regulated by this Chapter must maintain documentation that identifies the location and nature of all repairs.—These records must be kept for the remaining operating life of the storage tank system, as follows:

- (1) Tank system repairs meant to restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release or a suspected release of product from the UST system or has failed to function properly must be scheduled using the OCC scheduling form.
(2) These records shall include a complete description of all repairs made, photographs before and after repair, sample results if required, an updated site map, and testing following repairs.
(3) The records must be readily available at the facility or submitted to PSTD and kept for the remaining operating life of the storage tank system.
(4) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system or dispensers.

PART 15. SHUTDOWN OF OPERATIONS

165:25-1-67. Shutdown of operations

- (a) The PSTD may close (shut down) a UST system:
(1) If the system poses an imminent threat to health, safety, or the environment.
(2) If the owner or operator is operating tanks for which permit fees have not been paid.
(3) If the owner or operator fails to comply with a Commission order.
(4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.
(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a

written notice of violation and has failed to take corrective action.

(6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.

(7) Failure to have a Class A, B, or C operator on premises during business hours.

- (b) The PSTD must close (shut down) a UST system:
(1) If required spill prevention equipment is not installed.
(2) If required overfill protection equipment is not installed.
(3) If required leak detection equipment is not installed.
(4) If required corrosion equipment is not installed.
(5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2" or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.
(6) If a meter is found to be off in calibration by more than 49-15 cubic inches per every 5 gallons.
(c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any UST system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the UST system is being locked or sealed.
(d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).
(e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.
(f) Upon confirmation that the UST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:
(1) Verbal or written permission from the PSTD employee who placed the lock or seal on the device; or
(2) Verbal or written permission from the Manager of Compliance and Inspection; or
(3) Application to and order of the Commission.
(g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 17. LICENSING PROCEDURES

165:25-1-101. Licensing procedure for UST Installers

- (a) Any individual who would like to become a licensed UST Installer must:
(1) Complete the OCC UST Installer application form.

- (2) Provide sufficient proof of two years related work experience, completed within the last five years. Applicants must have active participation in the completion of at least three UST installations. If applicant is a current UST installer license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.
- (3) The individual must pass an examination ~~administered~~approved by PSTD.
- (4) Installers must pay fees for applications, examinations, and licensing ~~according to the schedule provided in OAC 165:5, the Commission's Rules of Practice~~prior to examination and license issuance.
- (5) Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks.
- (b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete the exam and licensing procedures will result in forfeiture of fees and will require a new application and appropriate fees.
- (c) Continuing education is required to maintain a UST Installer license; this consists of four hours of continuing education through a PSTD-accredited program every two years.

165:25-1-102. Licensing procedure for UST Removers

- (a) Any individual who would like to become a licensed UST Remover must:
- (1) Complete the OCC UST Remover application form.
- (2) Provide sufficient proof of two years related work experience, completed within the last five years. Applicants must have active participation in the completion of at least three (3) UST removals. If applicant is a current UST remover license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.
- (3) Pass an examination ~~administered~~approved by the PSTD.
- (4) Pay fees for applications, examinations, and licensing ~~according to the schedule provided in OAC 165:5, the Commission's Rules of Practice~~prior to examination and license issuance.
- (5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks.
- (b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.
- (c) Continuing education is required to maintain a UST Removers license; this consists of four hours of continuing education through a Commission approved program every two years.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 7. DISPENSERS

165:25-2-71. Dispensers

- (a) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually activated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.
- (b) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.
- (c) If a submersible pump system is used, a UL listed emergency shutoff/shear valve must be installed at each dispensing device. Both the emergency shutoff/shear valve and dispensing device shall be rigidly anchored in place.
- (d) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
- (e) Dispensing devices for Class I and Class II liquids must be listed.
- (1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by PSTD.
- (2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to PSTD upon request.
- (f) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 fuel ethanol, and M85 methanol dispensers located at retail facilities shall have a 10 micron or smaller nominal pore-sized filter. All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a 30 micron or smaller nominal pore-sized filter.

[OAR Docket #13-546; filed 4-11-13]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #13-547]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- Part 9. Recordkeeping
- 165:26-1-56. Repair records [AMENDED]
- Part 13. Shutdown of Operations
- 165:26-1-90. Shutdown of operations [AMENDED]
- Part 15. Licensing Procedures
- 165:26-1-110. Licensing procedure for aboveground storage tank licensee [AMENDED]
- Subchapter 2. General Requirements for Aboveground Storage Tank Systems
- Part 9. Dispenser Requirements
- 165:26-2-91. Dispensers [AMENDED]

AUTHORITY:

17 Okla. Stat. §§ 306, 307, 340; Corporation Commission

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The rules clarify the need for keeping repair records, expand shutdown authority, provide an alternative testing facility for prospective licensees, and require fuel filters on retail dispensers. The new rules have nominal financial impact on approximately 10% of the regulated retailers of motor fuels to install fuel filters on aboveground storage tank system dispensers. Beyond this, the balance of the rules impose no additional burdens on the regulated community. The rationale behind the rule amendments is to allow shutdown authority for rule violations that protect the environment and motoring public, instill public confidence in retail fuel sales based on filtered fuel and protect the retailer and consumer from adulterated, contaminated or water saturated fuels. The rules also provide for an alternative testing site for licensees and align fuel dispenser calibration to present measurement tools.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 9. RECORDKEEPING

165:26-1-56. Repair records

Owners and operators of regulated aboveground storage tank systems must maintain records that identify the location and nature of the repair, ~~including documentation regarding the repair. These records must be kept for the remaining operating life of the storage tank system.~~ as follows:

- (1) Tank system repairs meant to restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other AST system component that has caused a release or a suspected release of product from the AST system or has failed to function properly must be scheduled using the OCC scheduling form.
- (2) These records shall include a complete description of all repairs made, photographs before and after repair, sample results if required, an updated site map, and testing following repairs.
- (3) The records must be readily available at the facility or submitted to PSTD and kept for the remaining operating life of the storage tank system.
- (4) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system or dispensers.

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

- (a) The PSTD may close (shut down) a system:
 - (1) If the system poses an imminent threat to health, safety, or the environment.
 - (2) If the owner or operator is operating tanks for which permit fees have not been paid.
 - (3) If the owner or operator fails to comply with a Commission order.
 - (4) For failure to properly install, operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.
 - (5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.
 - (6) Failure to perform, maintain, have readily available or present records for the previous twelve (12) months.
- (b) The PSTD must close (shut down) a system:
 - (1) If required spill prevention equipment is not installed.
 - (2) If required overfill protection equipment is not installed.
 - (3) If required leak detection equipment is not installed.
 - (4) If required corrosion equipment is not installed.
 - (5) If 2" or more of water is found in the tank where conventional gasoline or diesel fuel is stored and if 1/2" or more of water is found in the tank of gasoline blended with alcohols, E85 fuel ethanol, or diesel blended with biodiesel.

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- (6) If meter is found to be off in calibration by more than ~~49~~15 cubic inches per every 5 gallons
- (c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the AST system is being locked or sealed.
- (d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).
- (e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.
- (f) Upon confirmation that the AST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:
- (1) Verbal or written permission from the PSTD employee who placed the lock or seal on the device; or
 - (2) Verbal or written permission from the Manager of Compliance and Inspection; or
 - (3) Application to and order of the Commission.
- (g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.

PART 15. LICENSING PROCEDURES

165:26-1-110. Licensing procedure for aboveground storage tank licensee

- (a) Any individual who would like to become an aboveground storage tank licensee must:
- (1) Complete an application form.
 - (2) Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.
 - (3) Pass an examination ~~administered~~approved by PSTD.
 - (4) Pay fees for applications, examinations, and licensing ~~according to the schedule provided in OAC 165:53-2~~prior to examination and license issuance.
 - (5) Certify that they will comply with all PSTD rules and requirements for aboveground storage tanks.
- (b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.
- (c) Continuing education is required to maintain an AST license; this consists of four hours of continuing education through a Commission approved program every two years.

- (d) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:
- (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
 - (2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.
 - (3) Knowingly making false statements or signing false statements, certificates or affidavits to PSTD or to clients with the intention to induce payment.
 - (4) Aiding or assisting another person in violating any provision of this Chapter.
 - (5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.
 - (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
 - (7) Being under indictment or convicted for a criminal act.
- (e) Prior to any license suspension, revocation, or refusal to renew, the Director of the PSTD shall have the matter investigated and a report made to the Director for consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of substantial evidence rests upon PSTD.
- (f) This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.
- (g) Any person who holds an AST license may install or remove AST systems.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 9. DISPENSER REQUIREMENTS

165:26-2-91. Dispensers

- (a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
- (b) Dispensing devices for Class I and Class II liquids must be listed.
- (1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by PSTD.
 - (2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to PSTD upon request.

(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

(e) All gasoline, gasoline-alcohol blends, gasoline-ether blends, E85 Fuel ethanol, and M85 methanol dispensers located at retail facilities shall have a 10 micron or smaller nominal pore-sized filter. All biodiesel, biodiesel blends, diesel, and kerosene dispensers located at retail facilities shall have a 30 micron or smaller nominal pore-sized filter.

[OAR Docket #13-547; filed 4-11-13]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 27. INDEMNITY FUND**

[OAR Docket #13-548]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions
- 165:27-1-1. Purpose [AMENDED]
- Subchapter 3. Eligibility Requirements
- 165:27-3-1. General requirements [AMENDED]
- Subchapter 5. Qualifications for Reimbursement
- 165:27-5-1. Qualifications for reimbursement [AMENDED]
- Subchapter 7. Reimbursement
- 165:27-7-2. Reimbursement [AMENDED]
- 165:27-7-6. Conditions for reimbursement [AMENDED]
- 165: 27-7-7. Exclusions from reimbursement [AMENDED]

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The rules were promulgated to formalize the existing case priority system, clarify eligibility requirements, establish consultant supervision of corrective action activities, clarify that motor fuel throughput is to be evidenced by an Indemnity Fund applicant, provide for responsible person participation in bid review and further define exclusions from Indemnity fund reimbursement. Past litigation has evidenced a need for rule clarity and certain questions have been posed by the regulated community seeking clarification of existing rules.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

165:27-1-1. Purpose

The Indemnity Fund Program will provide reimbursement for ~~rehabilitation~~ corrective action performed of as many PSTD regulated pollution sites as possible that have resulted from releases of petroleum from storage tank systems. The Indemnity Fund Program as a good steward of monies entrusted to it, will also encourage voluntary corrective action in a manner and to a level of completion which will prioritize cases to most effectively protect the public health, safety and welfare and minimize-damage to the environment. In order to accomplish these purposes, the Indemnity Fund Program will reimburse allowable costs incurred for corrective action to eligible parties; for eligible releases from eligible tank systems and advise, consult, cooperate with and assist other agencies of this state.

SUBCHAPTER 3. ELIGIBILITY REQUIREMENTS

165:27-3-1. General requirements

In order to qualify for reimbursement from the Fund, a person must meet the following requirements:

- (1) The person must be an eligible storage tank owner or operator, property owner, adjacent property owner, or impacted party who has met applicable criteria for Fund reimbursement, to include Fund eligibility for an OCC confirmed release case, or a PSTD-authorized Purchase Order for a Suspicion of Release, that does require modified eligibility. The Director of PSTD may make an formal administrative application without meeting eligibility criteria.

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(2) The claimant must have incurred eligible expenses for an eligible release for which reimbursement is requested.

(3) The claimant must submit timely and properly completed forms for reimbursement to the Fund in accordance with governing statutes and the Rules of this Chapter set forth in OAC 165:27 et seq.

(4) The release of substances must be from an eligible tank system, either present, abandoned, or formerly present at the facility where the release occurred. It is the sole duty and responsibility of the Indemnity Fund applicant to establish to the satisfaction of the PSTD that a tank system is/was formerly present, and that the tank system contains/contained regulated substances.

(5) If tanks were in service after November 8, 1984, the person who owns either the tank system or the property or both, where a tank system is located, is the responsible person regardless of the person never having sold, stored or otherwise owned or operated the storage tank system while the storage tank system contained regulated substances.

SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

165:27-5-1. Qualifications for reimbursement

In order to receive reimbursement from the Indemnity Fund, a person must, among other requirements:

(1) In order to receive reimbursement every scope of work must have a pre-approved Purchase Order and/or a Pay for Performance Contract. The scope of work must be completed in accordance with the standards, requirements, rules, and regulations of the PSTD. Initially submitted claims and resubmitted claims shall be evaluated by the Division under the system of evaluation employed by the program at the time the claim is originally submitted or re-submitted unless otherwise directed by PSTD.

(2) The Applicant must be eligible and approved in the Fund for a confirmed release case. Modified eligibility in the Fund is required for reimbursement on Suspicions of Release, and other investigations.

(3) The Applicant must apply for reimbursement with timely and properly completed forms, including a certified affidavit by a Licensed Remediation Consultant that the corrective action costs incurred are true and correct and that the Licensed Remediation Consultant supervised the corrective action performed accompanied with supporting documentation as set forth on the Purchase Order.

(4) Investigation and remediation work must be supervised/performed by a Licensed Remediation Consultant. Reimbursement will be paid to the Applicant unless the Applicant provides the Fund with a written "Assignment of Benefit" directing reimbursement be paid directly to an Assignee. Any revocation of "Assignment of Benefits" must be provided to the PSTD in writing. The Fund may also reimburse directly to a vendor engaged by PSTD for ancillary services deemed necessary to support a project

upon presentation of a reimbursement request form accompanied by an original invoice.

~~(5) Investigation and remediation costs expended prior to Commission submission of a release report to the Commission, shall be subject to Commission audit and reimbursement of costs based upon allowed costs at the time the submitted costs were incurred not be eligible for Indemnity Fund reimbursement.~~

SUBCHAPTER 7. REIMBURSEMENT

165:27-7-2. Reimbursement

(a) Among other requirements an applicant for reimbursement is required to show:

(1) Allowable costs were incurred on or after December 23, 1988.

(2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.

(3) The eligible person, ~~to the extent possible,~~ has fully cooperated with PSTD in responding to the release.

(b) The Petroleum Storage Tank Division ~~shall~~ will reimburse from the Indemnity Fund an eligible person, with an eligible release from an eligible tank system for allowable costs in excess of 1% co-pay not to exceed Five Thousand Dollars (\$5,000.00) but not more than:

(1) One million five hundred thousand dollars (\$1,500,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, (throughput to be established by clear and convincing documentary records that are deemed sufficient by PSTD staff) and

(A) Two Million Dollars (\$2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or

(B) Three million dollars (\$3,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems or,

(2) Five hundred thousand dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, ~~and~~ or if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and

(A) Two million dollars (\$2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,

(B) Three million dollars (\$3,000,000.00) for owners with more than one hundred storage tank systems.

(c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were ~~actually~~ incurred on behalf of an eligible person, of an eligible release from an eligible tank system and were reasonable.

(d) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the \$5,000.00 deductible has been prepaid or a payment arrangement concerning the deductible has been agreed to by PSTD and significant compliance with the payment agreement is achieved.

(e) All corrective action or assessment costs incurred shall be subject to reimbursement in accordance with ~~the unit cost pricing sheet established~~ recommended by the Unit Cost Committee as approved by the PSTD Director and any adaptations, amendments or changes thereto.

(f) All ~~remediation~~ corrective action costs incurred shall be subject to reimbursement that is deemed allowable, fair and reasonable by the PSTD.

165:27-7-6. Conditions for reimbursement

(a) Action taken as a result of an eligible release, other than in an emergency, may be made by competitive bid of at least two (2) bidders. When a requirement for bidding is made by PSTD, all bids received shall be forwarded to PSTD and the bid results discussed between the responsible person, PSTD and the environmental consultant. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest ~~and or~~ best bidder as determined by PSTD. Professional engineering, geological, land surveying and other professional services or services provided by a PSTD Licensed Remediation Consultant required for investigation and the preparation of work plan and/or purchase orders, proposed corrective action plans and oversight of remediation will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.

(b) When current costing systems cannot accommodate specific situations, contracts awarded ~~should~~ shall be to the lowest ~~and or~~ best bidder. The Indemnity Fund Program requires ~~proof of such~~ review and approval of all competitive bidding bid actions.

(c) The owner/applicant and Licensed Remediation Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These records include but are not limited to:

- (1) Corrective action plans.
- (2) Remedial action plans
- (3) Contracts and contract negotiations.
- (4) Accounts
- (5) Invoices
- (6) Sales tickets
- (7) Subcontractor invoices
- (8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.

(d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.

(e) Reimbursement shall be made by the Fund only for costs that the PSTD determines were actually incurred, were

reasonable, allowable and are integral and necessary towards the ~~cleanup of the site~~ corrective action performed.

(f) An Applicant with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a 10% interest.

(g) An Applicant shall provide application information that will enable the Fund to determine which reimbursement method to use,

(1) Initial, supplemental and final payments. Applicants may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed by a Final Reimbursement Request after case closure if they:

- (A) Make application within two years from the date of a closure letter ~~from~~ issued by PSTD.
- (B) Been determined to be eligible (eligible person, eligible release, eligible tank system) to access the Fund.

(2) An application for eligibility and all claims for reimbursement to the Fund must be made within two (2) years of the case closure letter issued by the PSTD or the date the Final Claim Confirmation form is received by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

165:27-7-7. Exclusions from reimbursement

(a) Tanks and/or systems owned or operated by state and federal governments are not eligible for reimbursement from the Fund.

(b) Tanks or systems are not eligible if owned or operated by a Class I Railroad.

(c) No reimbursement shall be made by the Indemnity Fund to any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for the corrective action taken or to any person for the same cost.

(d) No reimbursement shall be made for loss of time.

(e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.

(f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.

(g) No reimbursement shall be made for attorney's or legal fees incurred by or rendered against an eligible person for any reason associated with the release case.

(h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items.

(i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.

(j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation unless costs of an emergency response are approved in advance by the PSTD.

(k) No reimbursement shall be made to an otherwise ineligible person, or for a release of regulated substances that cannot

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be tied back to an existing or former storage tank system, or for non-regulated petroleum storage tank system releases or releases of non-regulated substances.

(l) No reimbursement for corrective action costs will be made for the portion of PSTD-regulated releases commingled with non-regulated substances.

[OAR Docket #13-548; filed 4-11-13]

TITLE 165. CORPORATION COMMISSION CHAPTER 28. STORAGE TANK ADVISORY COUNCIL [REVOKED]

[OAR Docket #13-549]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions [REVOKED]

165:28-1-1. Purpose [REVOKED]

165:28-1-2. Scope [REVOKED]

165:28-1-3. Definitions [REVOKED]

165:28-1-4. Description of Council [REVOKED]

165:28-1-5. Administration [REVOKED]

165:28-1-6. Meetings [REVOKED]

165:28-1-7. Public forum procedures [REVOKED]

Subchapter 3. Rulemaking [REVOKED]

165:28-3-1. Rulemaking procedures [REVOKED]

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

Pursuant to 75 Okla. Stat. §251(B)(b) rules are not to be repetitive of enacting statutes. The rules being revoked are repetitious of 17 Okla. Stat. §340. Revocation of this chapter will have no impact on the regulated community.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JULY 1, 2013:**

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

165:28-1-1. Purpose [REVOKED]

~~This Chapter describes the practices of the Council, its organization, meetings and records, and its procedures to review and recommend the adoption of rules.~~

165:28-1-2. Scope [REVOKED]

~~(a) **Scope.** The rules in this Chapter are not intended to limit the lawful authority of the Council or the Commission. The Council may address any matter under its jurisdiction and change any procedure for good cause.~~

~~(b) **Severability.** The repeal or invalidity of any particular rule of this Chapter shall not affect the remainder of the rules.~~

165:28-1-3. Definitions [REVOKED]

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

~~"**Commission**" means the Oklahoma Corporation Commission.~~

~~"**Council**" means the Storage Tank Advisory Council.~~

~~"**Recommendation**" means written formal advice given by the Council to the Commission regarding the proposed adoption of new or amended rules or the repeal of existing rules.~~

165:28-1-4. Description of Council [REVOKED]

~~(a) **Composition.** The nine members of the Council are appointed as follows:~~

~~(1) The Governor appoints three (3) members:~~

~~(A) Two storage tank owners or operators.~~

~~(B) A certified UST consultant.~~

~~(2) The President Pro Tempore of the Senate appoints three (3) members:~~

~~(A) Two storage tank owners or operators.~~

~~(B) A geologist.~~

~~(3) The Speaker of the House of Representatives appoints three (3) members:~~

~~(A) Two storage tank owners or operators.~~

~~(B) A registered professional engineer.~~

~~(b) **Quorum.** Five (5) members constitutes a quorum. Provided a quorum is present, action may be taken by a majority vote of those present.~~

~~(c) **Authority.** The Council has the following authority:~~

~~(1) Recommend to the Commission rules to implement the Underground Storage Tank Regulation Act, the Aboveground Storage Tank Regulation Act, and the Oklahoma Petroleum Tank Release Indemnity Fund Program.~~

(2) Write recommendations to the Commission which have been concurred upon by at least a majority of the membership of the Council present at an open meeting wherein the decision to make written recommendations was posted on the agenda.

(3) Provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction.

(A) Pass nonbinding resolutions expressing the sense of the Council.

(B) Recommend to the Commission the need and desirability of conducting public meetings, workshops, and seminars.

(d) **Duties.** The Council shall meet as required for rule development, review and recommendations, and for other matters.

(e) **Officers.** The Council shall elect a chair and a vice chair from among its members.

(f) **Committees.** The Council may establish committees to assist it for any lawful purpose.

(g) **Compensation.** Members of the Council serve without compensation, but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act.

165:28-1-5. Administration [REVOKED]

(a) **Office.** The Council has no office separate from the Commission. The Council receives administrative assistance from the Commission and depends on the Commission to maintain records and compliance with the Open Meeting Act, the Open Records Act, and the Administrative Procedures Act. Communications to the Council may be made through the administrative head of the programs with which the Council works, P.O. Box 52000 2000, Oklahoma City, Oklahoma 73152 2000, as follows:

- (1) Fuel Storage Department.
- (2) Oklahoma Petroleum Tank Release Indemnity Fund Program.

(b) **Documents.** Copies of all official records of the Council not privileged from disclosure by law shall be available for inspection and copying at the Commission's office during normal business hours. The Commission's open records fee schedule will apply.

165:28-1-6. Meetings [REVOKED]

(a) **Schedule.** Beginning in 1997, the Council shall hold a regularly scheduled meeting at least twice each calendar year. Three members may call a special meeting by delivering a written notice to each Council member and giving notice to the Commission. Special and emergency meetings may be called by the Chair. The Commission shall notify each Council member of the date, time and place of each meeting, and of any cancellation or rescheduling.

(b) **Location.** The Council may meet at any location convenient and open to the public in Oklahoma. Unless otherwise specified by the Council, meetings shall be held at the Commission's offices in Oklahoma City, Oklahoma.

(c) **Open Meeting Act.** All meetings of the Council shall follow the requirements of the Oklahoma Open Meeting Act.

(d) **Format.** The meetings shall be conducted by the Chair, Vice chair or the Council's designee, respectively.

(e) **Agenda.** Subject to the provisions of subsection (g) of this Section, the proposed agenda of a meeting may be developed with the advice of members and modified by the Chair. Time permitting, a copy of the proposed agenda shall be sent to each Council member at least ten (10) days before the regularly scheduled meeting. The final agenda shall be posted by the Commission twenty four (24) hours prior to the Council's meeting as required by the Open Meeting Act.

(f) **Comment.** The agenda shall specify when and on what topics public comment will be accepted during a meeting. The Commission shall provide sign in sheets at each meeting for persons who wish to present written or oral comments during a specified public comment period. The Chair may set reasonable time limits on oral comment and may accept written submittals on behalf of the Council. The Chair reserves the right to rearrange agenda items during the meeting.

(g) **Planning.** The Council may by majority vote during a meeting continue an agenda item to, or specify a new agenda item for, another meeting or forum.

165:28-1-7. Public forum procedures [REVOKED]

(a) **Purpose.** The Council shall conduct public forums for the discussion of issues relating to the Oklahoma Underground Tank Regulation Act, the Oklahoma Aboveground Tank Regulation Act, and the Oklahoma Petroleum Storage Tank Release Indemnity Program. Issues to be addressed may include an appropriate review process for claims denied by the Indemnity Fund Program, the effects of cleanup levels on property adjacent to a remediated tank site, the responsibility of the Indemnity Fund Program for the adverse impact to property adjacent to remediated tank sites and such other issues the Council deems appropriate or raised by the public.

(b) **Scheduling.** Such forums shall be scheduled as deemed necessary by the Council.

(c) **Open Meeting Act.** All forums of the Council shall follow the requirements of the Oklahoma Open Meeting Act.

(d) **Format.** The forum shall be conducted by the Chair, Vice chair or the Council's designee, respectively.

(e) **Agenda.** Subject to the provisions of subsection (g) of this Section, the proposed forum agenda may be developed with the advice of members and modified by the Chair. Non-members may submit suggested agenda items to the Council at least twelve (12) calendar days prior to the forum. Time permitting, a copy of the proposed agenda shall be sent to each Council member at least ten (10) calendar days in advance of the forum. The agenda of each forum shall include a period for public comment on items not on the agenda.

(f) **Comment.** The Commission shall provide sign in sheets at each forum for persons who wish to present written or oral comment on an agenda item. The Chair reserves the right to rearrange agenda items during the forum to accommodate public comment. The Chair may set reasonable time limits on oral comment and may accept written submittals on behalf of the Council.

(g) **Planning.** The Council may by majority vote during a meeting continue an agenda item to, or specify a new agenda item for, another meeting or forum.

(h) **Report.** The Council shall issue a report setting forth its findings and conclusions based upon its study of the issues and shall make any recommendations, if any, which it deems appropriate. Copies of the report shall be submitted to the Corporation Commissioners, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairman of the Senate Committee on Natural Resources or successor committee, and the Chairman of the House of Representatives Energy, Environment and Natural Resources Committee or successor committee.

SUBCHAPTER 3. RULEMAKING [REVOKED]

165:28-3-1. Rulemaking procedures [REVOKED]

(a) **Authority.** The Council has the authority to recommend to the Commission rules to implement the Underground Storage Tank Regulation Act, the Oklahoma Aboveground Storage Tank Regulation Act, and the Oklahoma Petroleum Tank Release Indemnity Fund Program. The staff of the aboveground and underground storage tank regulatory program and the Indemnity Fund Program shall not have standing to recommend to the Commission en banc proposed permanent rules or changes to such rules which have not previously been submitted to the Council for action at least fifteen (15) days prior to the hearing for adoption of the rules by the Commission en banc.

(b) **Processes.** For rulemakings initiated by the Council, the Council shall depend on the Commission to follow the applicable rulemaking procedures of the Administrative Procedures Act. Such procedures may include notices, rulemaking hearings, receipt of comments, preparation of rule impact statements, the rulemaking record and other documentation. All actions of the Council with regard to rulemaking shall be deemed actions of the Commission for the purposes of complying with the Administrative Procedures Act.

(c) **Emergency rules.** The Commission may promulgate emergency rules without the advice of the Council when time constraints of the emergency, as determined by the Commission, do not permit timely development of recommendations by the Council.

(d) **Adoption of rules without Council advice.** The Commission may adopt permanent rules without the advice of the Council or not in accord with the advice of the Council. However, if any permanent rules are so adopted, the Commission shall detail the reason on the rule report submitted to the Governor and the Legislature pursuant to the Administrative Procedures Act.

[OAR Docket #13-549; filed 4-11-13]

TITLE 165. CORPORATION COMMISSION CHAPTER 29. REMEDIATION OF PETROLEUM STORAGE TANK RELEASES

[OAR Docket #13-550]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Release Prevention, Detection and Correction

Part 1. Release Prohibition, Reporting, and Investigation

165:29-3-2. Release reporting [AMENDED]

Part 5. Corrective Action Requirements

165:29-3-81. Property owners affected by releases; notice [AMENDED]

Part 7. Licensing for Remediation Consultants

165:29-3-90. Licensing for Remediation Consultants involved with closures, investigation and the remediation of releases from underground or aboveground storage tanks [AMENDED]

AUTHORITY:

17 Okla. Stat. §§ 306, 307, 322, 340; Corporation Commission

DATES:

Comment Period:

November 19, 2012 to January 21, 2013.

Public Hearing:

January 31, 2013

Adoption:

January 31, 2013

Submitted to the Governor:

February 7, 2013

Submitted to the House:

February 7, 2013

Submitted to the Senate:

February 7, 2013

Gubernatorial approval:

February 18, 2013

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 5, 2013.

Final Adoption:

April 5, 2013

Effective Date:

July 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The rules provide for a new afterhours emergency telephone number, expand and clarify public comment on closure of pollution release sites and provide for an alternative testing site at Career Tech for prospective remediation consultant licensees. The new rules have no financial impact nor impose additional burdens on the regulated community.

CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,
THE FOLLOWING RULES ARE CONSIDERED
FINALLY ADOPTED AS SET FORTH IN 75 O.S.
SECTION 308.1(A), WITH AN EFFECTIVE DATE
OF JULY 1, 2013:**

SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

165:29-3-2. Release reporting

(a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.

(b) All petroleum storage tank system owners, operators, their agents and employees must report any of the following events to the PSTD by telephone at 405-521-4683 or 1-888-621-5878 (and if after hours or on weekends or holidays, they must leave a message on the answering machine) within 24 hours of discovering the substances, conditions or monitoring results. Release reports may also be made by telephone to PSTD personnel at the following numbers: 405-522-1437; ~~or 405-522-5266; 405-522-1439 or 405-522-5264.~~ Owners or operators must send written confirmation within 20 days in accordance with the release investigation and confirmation requirements of this Subchapter.

(1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including but not limited to the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water whether on-site or off-site.

(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for diesel storage tanks, must be reported to the PSTD within 24 hours of receiving the report by the owner or operator or any of his or her employees at the facility. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within 10 days, the owner or operator must submit to the PSTD all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the PSTD will advise the owner or operator what action, if any, he or she needs to take. Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.

(c) Monitoring results must be reported within 24 hours of the owner or operator's receipt of them; and the PSTD will advise what action should be taken to determine whether or not a release has occurred, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and non-reportable events listed in 165:29-3-2 sufficient to permit adequate inspection and review by the PSTD. These records shall be kept in permanent form for 3 years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.

(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by the PSTD. These records must be kept for 3 years following the date of the event.

(f) While aboveground petroleum releases of less than 25 gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately.

(g) Any releases requiring emergency corrective action must be reported immediately to the PSTD. After office hours, weekends or holidays, calls must be reported to the PSTD's pager at ~~405-752-5255~~405-575-5255 or the Oklahoma Department of Environmental Quality (DEQ) at 1-800-522-0206 (in state) or 405-271-4468 (out of state).

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-81. Property owners affected by releases; notice

(a) Upon confirmation that soil and/or groundwater contamination is above action levels, owners or operators must, at a minimum, notify adjacent or abutting property owners that have been, or may be impacted by the release. This notice should be made just after delineation of the release to Tier 2 clean-up levels or prior to a case closure based on Tier 1A modified RBSL's. The notice, unless otherwise directed by the PSTD, must include at a minimum:

(1) The origin and extent of the release; impacted party, upon written request to owner/operator may receive reports;

(2) The nature of the substance(s) released;

(3) The name, address and telephone number of the owner or operator or his or her designee who may be contacted for more information about the release;

(4) The phone number and name of the Project Environmental Analyst at the PSTD whom the property owner can contact for additional information.

(5) If an adjacent or abutting property owner that has been or may be impacted by a release requests, in writing, copies of all reports, it is the responsibility of the owner/operator to assure past and future reports are delivered to the requesting property owner.

(b) For each confirmed release that requires remediation or closure by a risk assessment or Risk-Based Corrective Action,

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the owner or operator must notify property owners that have been or may be impacted by the release and provide:

- (1) The origin and extent of the release;
 - (2) The nature of the substance(s) released;
 - (3) A description of any planned remedial action or closure based upon a risk assessment of the release;
 - (4) The name, address and telephone number of the owner or operator or his or her designee and of the PSTD Project Environmental Analyst working on the case who may be contacted for more information about the release, including any planned response action; and
 - (5) A statement that additional information about the release, including any planned response action, is on file with the PSTD and available for public review.
- (c) The notices required by this Section must be given by certified mail/return receipt requested. Copies of the return receipts must be included in the Public Participation Report submitted to the PSTD.
- (d) The PSTD must ensure that any and all information concerning the release is made available to the public for review upon request.
- (e) Before approving a remediation plan or closure based upon risk assessment, the PSTD may hold a public meeting to consider comments on the proposed remediation plan or closure if there is sufficient public interest, or for any other reasons. If no comments have been received within (30) days of the receipt date of the certified mail notice letters required by paragraph (c) of this Section, then remediation or closure activities may commence. Any public comments related to the proposed remediation or case closure must be submitted in writing to the OCC to the attention of the PSTD Project Environmental Analyst working on this case, whose name and address will be on the notice letter.
- (f) The notice required by this Section must also be given;
- (1) after implementation, see OAC 165:29-3-80(c), of an approved Remedial Action Plan that does not achieve the cleanup levels established in the plan, and
 - (2) and, when termination of the plan is subsequently approved by the PSTD.

PART 7. LICENSING FOR REMEDIATION CONSULTANTS

165:29-3-90. Licensing for Remediation Consultants involved with closures, investigation and the remediation of releases from underground or aboveground storage tanks

- (a) Any individual seeking a license as a Remediation Consultant involved with closures, investigation and/or the remediation of releases from either underground or aboveground storage tank sites must complete an application form prepared by PSTD. The application form requires information regarding education, experience, knowledge of applicable state and federal regulations, industry standards and practices and references.
- (b) All applicants must qualify in the following manner:

(1) Satisfy requirements of the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 (HAZWOPER) 40 hour course with eight- (8-) hour annual updates and the eight- (8-) hour supervisor course; must provide evidence of the successful completion of a PSTD-approved Risk-Based Corrective Action course, seminar or school. At a minimum this course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport of chemicals in the environment and eight (8) hours of hands-on computer training with appropriate software; and

(2) Have seven (7) years' environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities and pass an examination, which must be taken no more frequently than once every six (6) months, authorized by the State of Oklahoma, which demonstrates knowledge of reference materials published by EPA:NWWA (Technical Enforcement Guidance Document-TEGD) and all applicable federal, state, and local regulations; or

(3) Have a four- (4-) year degree from an accredited college or university recognized by the state in Geology, Hydrology, Environmental Science, Environmental Engineering, Petroleum Engineering, Civil Engineering, Geologic Engineering or an equivalent engineering degree and at least four (4) or more years of environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities, and pass an examination ~~administered~~ approved by the PSTD. The examination will test an applicant's knowledge of industry standards, reference materials, laws and regulations, and may be taken no more frequently than once every six (6) months.

(c) Licensed Remediation Consultants are required to pay fees for applications, examinations, and certifications ~~according to the schedule provided in OAC 165:5-3-2, the Commission's Rules of Practice prior to examination and license issuance.~~

(d) Licensed Remediation Consultants must provide proof of sixteen (16) hours of PSTD-approved continuing professional education to PSTD every two (2) years.

(e) Sampling, sampling at tank closures, investigations, and remediation or any other activities directed by PSTD must be under the supervision of a licensed Remediation Consultant. All work requiring supervision by Licensed Remediation Consultants must contain a verification statement signed by the consultant in supervisory control.

(f) Licensed Remediation Consultants must supervise and/or perform work only in the areas in which they are educated and/or experienced.

(g) PSTD has the responsibility and for good cause shown, to deny, suspend, refuse to renew or revoke the license, or reprimand any Remediation Consultant.

(h) Prior to any license suspension, revocation, or refusal to renew, the Director will have the matter investigated and a report prepared for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Licensee will be officially notified by the Director by Notice sent to the Licensee by certified mail/return receipt requested.

The Notice will state the date and time of the hearing scheduled before a Commission Administrative Law Judge. The burden of proof of violations of this Chapter, as well as adherence to applicable State law, rests upon the PSTD.

(i) This Section in no way exempts the Remediation Consultant from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

[OAR Docket #13-550; filed 4-11-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #13-606]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Office of Client Advocacy

Part 1. Administration

340:2-3-1 [AMENDED]

340:2-3-12 [AMENDED]

340:2-3-26 [AMENDED]

Part 3. Investigations

340:2-3-32 [AMENDED]

340:2-3-35 through 340:2-3-37 [AMENDED]

Part 5. Grievances

340:2-3-45 [AMENDED]

340:2-3-47 [AMENDED]

340:2-3-50 [AMENDED]

Part 7. Grievance and Abuse Review Committee

340:2-3-62 [AMENDED]

(Reference WF 12-09)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (10A O.S. § 162); 10A O.S. § 1-1-101 et seq.; 43A § 10-102 et. seq.; and Section 5101 et seq. of Title 42 of the United States Code.

DATES:

Comment period:

January 2, 2013 through February 1, 2013

Public hearing:

None requested

Adoption:

February 8, 2013

Submitted to Governor:

February 14, 2013

Submitted to House:

February 14, 2013

Submitted to Senate:

February 14, 2013

Gubernatorial approval:

March 25, 2013

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:

April 12, 2013

Effective:

July 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed amendments to Chapter 2 Subchapter 3 amend the rules to: (1) comply with statutory changes effective January 1, 2013, created as a result of the child welfare lawsuit settlement and related Oklahoma Department of Human Services (OKDHS) Pinnacle Plan; and (2) reflect clarification on processing grievances.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013:

SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

PART 1. ADMINISTRATION

340:2-3-1. Purpose Office of Client Advocacy purpose Rules governing OCA

The purpose of this Subchapter is to outline the rules governing the operation of the Office of Client Advocacy (OCA). Policies relating to:

(1) administrative investigations conducted by OCA are found in OAC 340:2-3-32 through 340:2-3-38;

(2) investigations of alleged Oklahoma Department of Human Services (OKDHS) retaliation or discrimination against a foster parent are found in OAC 340:2-3-38;

(3) disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees in response to OCA investigation findings are found in OAC 340:2-3-12;

(4) administrative investigations involving the death or near-death of a child known to OKDHS, or administrative investigations in other circumstances, upon request by the OKDHS Director, per Section 162 of Title 56 of the Oklahoma Statutes;

(5) grievance systems maintained by OCA are found in OAC 340:2-3-45 through 340:2-3-55;

(6) the Grievance and Abuse Review Committee (GARC) are found in OAC 340:2-3-61 through 340:2-3-65; and

(7) OCA Advocacy Programs are found in OAC 340:2-3-71 through 340:2-3-75.

340:2-3-12. Disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees

(a) Application. This Section applies to a final finding in an administrative investigation conducted by the Office of Client Advocacy (OCA) in accordance with per OAC 340:2-3-32 through 340:2-3-37 that an OKDHS employee has engaged in abuse, sexual abuse, neglect, verbal abuse, caretaker misconduct, or exploitation. A finding is final when:

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- (1) OCA has disseminated its final report and the time for requesting review by the Grievance and Abuse Review Committee (GARC) ~~in accordance with per OAC 340:2-3-62(b) has expired without OCA receipt of a timely request having been received by OCA; or~~
- (2) a timely request for GARC review ~~has been~~ received and ~~has been~~ processed to conclusion ~~in accordance with per OAC 340:2-3-62.~~
- (b) **Supplemental investigations.**
- (1) Upon receipt of an OCA investigation report, ~~if when~~ the applicable state office administrator or designee determines a need for specific additional information necessary to make a determination whether to request review by GARC or what personnel action to initiate, the state office administrator or designee may request OCA ~~to~~ conduct a supplemental investigation.
- (A) A request for a supplemental investigation is made within 30 calendar days of receipt of the OCA report and ~~it~~ sets out the specific information needed.
- (B) No more than one such request may be made in an individual case.
- (C) OCA conducts a prompt supplemental investigation, commencing ~~at the~~ the investigation within 30 calendar days and completing ~~at the~~ the investigation within 60 calendar days of receipt of a request for a supplemental investigation, unless these time periods are extended for good cause as determined by the advocate general or the OKDHS Director.
- (2) Within 30 calendar days of receipt of the OCA supplemental investigation, the state office administrator or designee may request the case be submitted to GARC ~~in accordance with per OAC 340:2-3-62.~~
- (c) **Disciplinary guidelines regarding OKDHS employees.** These guidelines are used by state office administrators and their designees to determine appropriate OKDHS personnel action, based on the nature of the abuse, sexual abuse, neglect, caretaker misconduct, or exploitation and consistent with OKDHS corrective discipline policies.
- (1) **Abuse, sexual abuse, or neglect.**
- (A) **First offense.** The first offense ~~can~~ may result in discharge, demotion, suspension without pay, or such other discipline deemed reasonable, depending on the severity of the incident.
- (B) **Second offense.** Unless the OKDHS Director approves a less severe disciplinary action, the second offense results in discharge.
- (2) **Caretaker misconduct resulting in physical injury or mental anguish to a vulnerable adult.**
- (A) **First offense.** The first offense ~~can~~ may result in discharge, demotion, suspension without pay, or written reprimand, depending on the severity of the incident.
- (B) **Second offense.** The second offense ~~can~~ may result in discharge, demotion, or suspension without pay.
- (3) **Caretaker misconduct not resulting in physical injury or mental anguish to a vulnerable adult.**

- (A) **First offense.** The first offense ~~can~~ may result in suspension without pay, written reprimand, verbal reprimand, or corrective action plan, depending on the severity of the incident.
- (B) **Second offense.** The second offense ~~can~~ may result in discharge, demotion, suspension without pay, or written reprimand and corrective action plan.
- (4) **Second offense.** The term second offense as used in this Section means an offense occurring after any other act of abuse, neglect, or caretaker misconduct. Nothing in this Section limits disciplinary actions based in part on acts of abuse, neglect, or caretaker misconduct and based in part on other cause. The imposition of any demotion, suspension without pay, or reprimand must be accompanied by a corrective action plan.

340:2-3-26. Customer complaint process

(a) **Purpose and scope of the customer complaint process.** ~~This~~ The customer complaint process provides Office of Client Advocacy (OCA) customers an opportunity to raise concerns about the OCA services they receive ~~from OCA~~ and to request a review from the advocate general or designee. ~~This~~ The process is available to OCA customers and clients, client relatives and associates, employees of other Oklahoma Department of Human Services (OKDHS) ~~divisions~~ programs, providers, and any other ~~customer~~ of OCA customers.

(b) Procedure.

- (1) Any customer who is dissatisfied with or has a concern about OCA services, practices, or procedures, or who considers the action or inaction of an OCA employee to be improper or discourteous, submits a written complaint detailing their concerns to the advocate general ~~a written complaint detailing their concerns~~. The complaint is sent either electronically to OCA.advocategeneral@okdhs.org or by regular mail to Office of Client Advocacy, P-O: Box 25352, Oklahoma City, OK: 73125.
- (2) The advocate general or designee reviews the complaint and informs the complainant of the results of the review within 20 business days after receipt of the complaint.

PART 3. INVESTIGATIONS

340:2-3-32. Office of Client Advocacy (OCA) investigation protocols

(a) Legal authority, scope, and purpose.

(1) Legal authority.

(A) Section 1-9-112(A)(3)(d) and (e) of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112(A)(3)(d) and (e)) gives the Office of Client Advocacy (OCA) the responsibility to investigate allegations of ~~caretaker~~ abuse, neglect, sexual abuse, sexual exploitation, and misconduct by a person responsible for the child:

- (i) residing outside their own homes regardless of custody, other than children in foster care;

- (ii) receiving services from a community services provider or a community services worker, as defined in 56 O.S. § 1025.1;
 - (iii) in a day treatment program as defined in ~~per~~ 10 O.S. § 175.20; and
 - (iv) residing in a state institution listed in 10 O.S. § 1406.
- (B) 43A O.S. § 10-105 gives the Oklahoma Department of Human Services (OKDHS) responsibility to investigate allegations of caretaker abuse, neglect, verbal abuse, and exploitation of vulnerable adults. OKDHS confers on OCA the responsibility to conduct those investigations that involve:
- (i) Hissom class members;
 - (ii) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer); and
 - (iii) vulnerable adults receiving services from a community services provider, a community services worker, a Medicaid personal care services provider, or a Medicaid personal care assistant, as those terms are defined in 56 O.S. § 1025.1.
- (C) OCA investigates, pursuant to OAC 340:75-3-8.3(3), reports alleging denial of medically beneficial treatment by a medical provider to a handicapped infant.
- (2) **Scope.** OCA conducts administrative investigations of maltreatment allegations of ~~maltreatment~~ listed in this subsection. All of the individuals listed, who are clients of the facilities and providers that provide ~~them~~ residential care, vocational services, or day treatment, are referred to as the "client" throughout this Section and OAC 340:2-3-33 through 340:2-3-37. OCA investigates allegations of:
- (A) abuse and neglect of children by persons responsible for a child's health, safety, or welfare, and caretaker misconduct with regard to children in residential care above the level of foster care regardless of custody, including, but not limited to children:
 - (i) ~~children~~ in OKDHS operated or licensed shelters and group homes;
 - (ii) ~~children~~ and youth in facilities operated by, licensed by, or contracting with the Office of Juvenile Affairs (OJA);
 - (iii) ~~children~~ in community-based youth services shelters and community intervention centers that contract with ~~Office of Juvenile Affairs (OJA)~~ pursuant to 10A O.S. § 2-7-305;
 - (iv) ~~children~~ in facilities operated by or contracting with Oklahoma Department of Mental Health and Substance Abuse Services (ODMH-SAS);
 - (v) ~~children~~ in facilities operated by the J.D. McCarty Center of Oklahoma;
 - (vi) ~~children~~ residing in or attending educational classes at facilities operated by the Oklahoma Department of Rehabilitation Services

- (ODRS); the Oklahoma School for the Blind and the Oklahoma School for the Deaf; and
 - (vii) ~~children~~ receiving services from a community services worker or a community services provider as those terms are defined in 56 O.S. § 1025.1;
- (B) abuse and neglect of, and caretaker misconduct with regard to, children in day treatment programs as ~~defined in per~~ 10 O.S. § 175.20, including sanctions programs certified by OJA to provide programming for children who are court ordered to participate in that program;
 - (C) abuse, neglect, verbal abuse, and caretaker misconduct with regard to, residents of SORC, NORCE, and Greer;
 - (D) abuse, neglect, verbal abuse, and exploitation of Hissom class members ~~who live~~ living in Oklahoma and who do not reside in a private intermediate care facility for the ~~mentally retarded~~ intellectually disabled (ICF/MRID); and
 - (E) abuse, neglect, verbal abuse, and exploitation of vulnerable adults receiving services from a community services worker, a community services provider, a Medicaid personal care services provider, or a Medicaid personal care assistant, ~~as those terms are defined in per~~ 56 O.S. § 1025.1.
- (3) **Purpose.** OCA conducts independent and objective administrative investigations of suspected maltreatment of clients by PRFCs and vulnerable adult caretakers (VACs) in order to:
- (A) protect clients from further maltreatment;
 - (B) deter and prevent maltreatment;
 - (C) provide relevant evidence in administrative and judicial proceedings;
 - (D) rule out unfounded allegations; and
 - (E) hold violators accountable.
- (b) **Confidentiality of Office of Client Advocacy records.** State and federal statutes and regulations, including, but not limited to, 10A O.S. § 1-9-112(C); 10A O.S. § 1-6-102; 56 O.S. § 183; 43A O.S. § 10-110; and OAC 340:65-1-2, require confidentiality for ~~many~~ certain OKDHS records. Information ~~about~~ regarding clients is confidential and ~~is~~ protected from unauthorized use. Only authorized individuals are ~~given~~ permitted access to case records or provided information from ~~those~~ OCA case records.
- (1) **OCA investigations involving children and youth.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving children and youth include, but are not limited to, the confidentiality provisions of the statutes and policies listed in (A) through (C) of this paragraph.
- (A) 10A O.S. §§ 2-6-102 through 106 apply to OCA investigations involving children and youth in OJA custody and in facilities that contract with OJA.
 - (B) 10A O.S. §§ 1-2-106, 1-2-107, 1-6-102 et seq., and 1-6-107 apply to investigations involving children, regardless of custody, residing outside their own homes.

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(C) OAC 340:75-1-42 through 340:75-1-46 apply to OCA investigations involving children in OKDHS custody, including information regarding placement.

(2) **OCA investigations involving vulnerable adults.** Statutes and policies regarding the confidentiality of OCA files, records, and reports relating to investigations involving vulnerable adults, include, but are not limited to, (A) through (C) of this paragraph.

(A) **Disclosure to meet client's protection and other needs.** When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, OCA staff may disclose information necessary to ensure that the client is protected and the client's needs are met. Information may be disclosed for this purpose without a court order to specific persons acting in an official capacity with regard to the investigation, including:

- (i) a district attorney or employees of the district attorney's office;
- (ii) the attorney representing an alleged victim in the matter under investigation;
- (iii) staff of an Oklahoma law enforcement agency or a law enforcement agency of another state;
- (iv) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult;
- (v) the guardian of the vulnerable adult, in the form of a summary of the allegations in the referral;
- (vi) the provider for a vulnerable adult; and
- (vii) other public or private agencies or persons authorized by OKDHS to diagnose, or provide care, treatment, supervision, or other services to a person who is the subject of an OCA investigation.

(B) **Disclosure to district attorney and law enforcement.** District attorneys, their staff, the attorney representing the alleged victim, and law enforcement agencies may receive information from or review the entire case record. All other disclosures are limited to summaries of information provided for a specific purpose. Case information from OCA records is not released for research purposes without the prior approval of the advocate general.

(C) **Disclosure to others and the news media.** In other situations, OCA investigative information is considered confidential under 43A O.S. § 10-110(A) and may be disclosed only by court order. Confidentiality applies to members of the news media as well as the general public. News media representatives requesting information on a specific case are referred to the advocate general, the OCA programs administrator for investigations, or the OKDHS Office of Communications for a detailed explanation of OKDHS confidentiality rules.

340:2-3-35. Processing referrals received by the Office of Client Advocacy (OCA)

(a) **Disposition OCA referral screening options.** ~~The~~ Except for referrals received from the Oklahoma Department of Human Services (OKDHS) Abuse & Neglect Hotline (Hotline) involving a child, the Office of Client Advocacy (OCA) intake records on Form 15GN001E, Office of Client Advocacy-Intake Referral, or ~~its~~ the electronic equivalent, the specifics of each referral received and makes an appropriate disposition ~~regarding how the referral is to be handled.~~ Consideration is given to all known information to determine and is considered when determining the appropriate disposition and course of action. The screening disposition options and criteria include, but are not limited to, the options described in (1) through (7) of this subsection.

(1) **Assign for OCA investigation.** This screening disposition means OCA opens an investigation of an allegation of the person responsible for the child of interest (PRFCI) or vulnerable adult caretaker (VAC) maltreatment.

(2) **Assign for caretaker conduct review.** This screening disposition means the facility or provider named in the referral is given responsibility to conduct an internal caretaker conduct review per OAC 340:2-3-37. Within one working day of receiving a referral given this disposition, OCA intake notifies the administrator or designated contact person. ~~OCA intake documents the notification on Form 15GN001E or its electronic equivalent. This disposition does not apply.~~ This screening disposition applies to allegations involving vulnerable adults other than residents of residing at the Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer) and facilities for children that that are not licensed by or contracted with OKDHS.

(3) **Refer to OCA advocate.** This screening disposition is made when the referral involves a Hissom class member or a resident of SORC, NORCE, or Greer, and involves a concern ~~that~~, based on the information provided, does not rise to the level of maltreatment. ~~Within one working day of receipt of the reported incident, the applicable OCA advocate and his or her supervisor are notified of the matter by email or telephone for appropriate follow up inquiry. If the advocate knows or learns of facts that indicate a more appropriate disposition, the advocate immediately notifies OCA intake.~~

(4) **Refer to another administrative entity for handling.** This screening disposition means OCA intake forwards the information to another state agency or the Oklahoma Department of Human Services (OKDHS) division program or office for handling. This screening disposition is appropriate when information provided by the reporting party does not include an allegation of caretaker maltreatment within the OCA purview of OCA, but ~~rather~~ involves complaints about employee performance or allegations within the scope of another administrative entity. ~~When this disposition is made, OCA intake makes the referral within one working day of receipt of the~~

reported incident. These referrals are not assigned to OCA investigators for handling or intervention.

(5) **Refer to law enforcement.** This screening disposition is used when the referral involves possible criminal activity and ~~it is the reported allegations are~~ not within OCA investigative authority as ~~described in~~ OAC 340:2-3-32(a). This disposition is not used when OCA opens an investigation on a referral even though a law enforcement agency ~~also~~ is investigating the matter.

(6) **Refer for grievance.** ~~When a referral to a grievance system is made, OCA intake notes the specifics of that referral on Form 15GN001E, or its electronic equivalent. The~~ This screening disposition means the referral is directed to the appropriate entity for ~~handling processing~~ as a grievance, when the content of the referral is not caretaker maltreatment, but a complaint or concern that can be addressed by a grievance. ~~If~~ When the complaint can be addressed as a grievance and is referred for grievance by OCA, the entity promptly notifies its local grievance coordinator. A referral may be appropriate for ~~handling processing~~ as a grievance when the ~~complaint(s) complaint~~ concerns:

- (A) conditions that do not endanger clients or residents;
- (B) staff improprieties that do not constitute maltreatment; and
- (C) privileges and restrictions not involving the use of isolation, force, or restraints.

(7) **No action required.** This screening disposition is made when OCA takes no action in response to the referral because the information provided is for notification purposes only and does not include an allegation, complaint, or concern appropriate for another screening disposition.

(8) **Refer to administration.** This screening disposition means the matter is not within the purview of OCA, another OKDHS unit, or another state agency, but is relevant to the ~~operations of a facility or provider operations.~~ When this disposition is used, OCA intake contacts the administrator of the facility or provider to inform the administrator of relevant information relating to the referral.

(9) **Refer to DDSD Quality Assurance (QA).** This screening disposition is made when an allegation involves an alleged contract violation that does not involve caretaker maltreatment.

(10) **Refer for special advocacy.** This screening disposition is made when the referral constitutes a request for advocacy services ~~under~~ OAC 340:2-3-75.

(b) **Notifying law enforcement notification.** Law enforcement is notified when a referral opened as an OCA investigation involves possible criminal activity on the part of a caretaker or a person responsible for a child's health, safety, or welfare, PRFCI or a VACOCA intake determines from the reporting party or the designated contact person for the facility or provider whether law enforcement was notified. If law enforcement has already been notified, OCA intake documents

that information on Form 15GN001E or its electronic equivalent. OCA intake also notifies the appropriate law enforcement authority and notes the specifics on Form 15GN001E or its electronic equivalent.

(c) **Assignment process for referrals opened for investigation.** A referral accepted for investigation is assigned to a specific OCA investigator. Investigations involving ~~Hisson class members~~ vulnerable adults are assigned within one working day of making a disposition to investigate the allegation. When urgent circumstances exist in a case opened for investigation, an assignment is made and the investigation commenced immediately.

340:2-3-36. Investigation Office of Client Advocacy investigation procedures

(a) **Initiation of Office of Client Advocacy (OCA) investigation.** The assigned OCA investigator conducts a prompt investigation of the referral.

(1) Per Section 1-9-112 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-112), Oklahoma Department of Human Services (OKDHS) OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, sexual abuse, or sexual exploitation of a child within priority guidelines per 10A O.S. §1-2-105 and OAC 340:75-3-130.

(2) Per 43A O.S. § 10-105 OKDHS OCA within its investigative scope and authority, conducts a prompt and thorough investigation upon receiving a report of abuse, neglect, verbal abuse, financial neglect, or exploitation of a vulnerable adult.

(b) **Joint investigations with law enforcement conducted when report regards a child.** Per 10A O.S. § 1-9-102, the multidisciplinary team (MDT) approach is used:

(1) whenever feasible for investigations involving cases of child sexual abuse, serious physical abuse, and serious neglect;

(2) to enhance the investigative process and maximize services provided to affected children and families; and

(3) to consult with other MDT team members, as appropriate.

(c) **Notice of investigation provided to person responsible for the child of interest (PRFCI).** Per 10A O.S. § 1-2-106, at initial contact with a PRFCI who is the subject of an investigation pursuant to the Oklahoma Children's Code, OKDHS advises the PRFCI of the specific complaint or allegation made against him or her.

(d) **Written description of the investigation process provided to PRFCI.** When OKDHS is unable to locate the PRFCI who is the subject of an investigation, OKDHS as soon as possible after initiating the investigation of the person, provides the person a brief and easily understood written description of the investigation process that includes information detailed in 10A O.S. § 1-2-106.

(e) **Reportable incident regarding vulnerable adult reported by OKDHS to law enforcement.** Per 43A O.S. § 10-104, the investigation of a vulnerable adult by OKDHS includes notification of the allegation to the local law enforcement agency.

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(f) Notice of investigation provided to vulnerable adult's caretaker, legal guardian, and next of kin.

(1) Per 43A O.S. § 10-105.1, as soon as possible after initiating an investigation of a referral regarding a vulnerable adult, OKDHS provides to the alleged victim's caretaker, legal guardian, and next of kin, notice that includes a brief oral summary and easily understood written description of the investigation process, whether or not the caretaker, guardian, or next of kin is alleged to be the perpetrator of the abuse, neglect, or exploitation of the vulnerable adult.

(2) If the vulnerable adult retains capacity to consent to voluntary services and does not wish for a caretaker or next of kin to receive notification of the investigation, OKDHS abides by the vulnerable adult's wishes.

(g) Facility or provider responsibility to arrange document production, visits, and interviews. The investigator ~~contacts the applicable facility administrator or designee to arrange for~~ arranges document production, site visits, and interviews per OCA request.

(1) The facility or provider administrator who employed ~~an~~ the accused caretaker PRFCI or VAC at the time of the alleged incident informs ~~that~~ the employee of:

(A) the OCA investigator's name and telephone number of the OCA investigator;

(B) the investigative process described in this Section;

(C) except as stated in paragraph (2) of this subsection, the employee's rights and responsibilities relating to the investigation described in subsection (e)(1) of this Section, using Form 15IV005E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused Caretakers; Form 15IV006E, Investigations of Foster Parent Retaliation Complaints - Rights and Responsibilities of Accused OKDHS Employees; Form 15IV004E, Investigations of Client Maltreatment - Rights and Responsibilities of Accused OKDHS Employees; or a substantially similar provider or agency form, a copy of which is provided to the OCA investigator except as stated in paragraph (2) of this subsection; and

(D) the allegation made against the ~~accused caretaker~~ PRFCI or VAC without divulging the identity of the reporting party or the substance of the evidence.

(2) ~~In cases involving caretakers~~ When the PRFCI or VAC is subject to the Community Services Worker (CSW) Registry maintained by ~~DDSD~~ the OKDHS office of General Counsel, the rights and responsibilities of the accused community services ~~workers~~ worker and Medicaid personal care ~~assistants~~ are assistant is found in OAC 340:100-3-39.

(A) The facility or provider administrator or designee promptly completes Form 06PE059E, Rights and Responsibilities of Community Services Worker or Medicaid personal care assistant in an Investigation of Abuse, Neglect, or Exploitation, per OAC 340:100-3-39(e)(2)(C).

(B) The facility or provider administrator or designee mails Form 06PE059E to the worker when it is not possible to ~~personally give and~~ deliver it to ~~the~~ worker who is no longer employed by the provider.

(3) ~~On request and for good cause shown, OCA expedites the time frames contained in this subsection for conducting an investigation.~~

(b) **Notice of Investigation.** ~~The assigned OCA investigator provides notice to the caretaker of the alleged victim, the legal guardian, and next of kin of a vulnerable adult as provided by Section 10-105.1 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105.1). The assigned OCA investigator provides notice to a person responsible for the health, safety, or welfare of a child who is the subject of an investigation as provided by 10A O.S. § 1-2-106.~~

(eh) Access OCA access to victims, employees, clients, facilities, files, and other records.

(1) The applicable facility or provider administrator arranges for the OCA investigator to have immediate and direct access to any alleged victim in the referral who is still a client of the facility or provider.

(2) During an OCA investigation, ~~Oklahoma Department of Human Services (OKDHS), Office of Juvenile Affairs (OJA), Oklahoma Department of Rehabilitation Services (ODRS), Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS), the J.D. McCarty Center, providers, and facilities, and persons who contract with them, provide OCA access to all employees, clients, facilities, locations, files, and records of any nature that may pertain to the investigation.~~

(3) Denial of access may be grounds for a contract termination of ~~a contract~~ between OKDHS and ~~the~~ contractor.

(i) Court order allowing entry to premises, access to and exam of the child, and access to child's medical, psychological, or psychiatric records. Per 10A O.S. § 1-2-105:

(1) the investigation may include a medical, psychological, or psychiatric examination of any child in the home or in out of home placement. When admission to the home, school, or any place where the child may be located cannot be obtained, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the PRFCI, or the person in charge of any place where the child may be located, to allow entrance for the interview, examination, and investigation;

(2) when the PRFC does not consent to the OKDHS requested medical, psychological, or psychiatric examination of the child, the district court having jurisdiction, upon application by the district attorney and upon cause shown, orders the examination to be made at the times and places designated by the court; and

(3) the investigation may include an inquiry into the possibility the child has a history of mental illness. When the PRFC does not allow OKDHS access to requested behavioral health records or treatment plans that may be relevant to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney

and upon good cause shown, allows OKDHS by order, access to the records pursuant to terms and conditions prescribed by the court.

(j) Court order allowing entry to premises, private access to the vulnerable adult, or records and documentation.

(1) Per 43A O.S. § 10-105, the OKDHS investigation includes:

- (A) a visit to the home or other place of residence of the person who is the subject of the report;
- (B) a private interview with the person who is the subject of the report; and
- (C) consultation with persons who have knowledge of the circumstances.

(2) When in the course of an investigation, OKDHS is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective services, or is denied a private interview with the vulnerable adult, OKDHS may petition the court for an order allowing entry to the premises or private access to the vulnerable adult per 43A O.S. § 10-105.

(3) The court makes a finding of probable cause of the vulnerability of the adult before issuing the order.

(4) When documentation, or access to records, or other information relating to the alleged vulnerable person is denied, OKDHS may petition the court for an order allowing entry or access. The petition states the name and address of the person who is the subject of the report and alleges specific facts sufficient to show the circumstances of the person are in need of investigation.

(5) When it is necessary to forcibly enter the premises, OKDHS enters, accompanied by a peace officer per 43A O.S. § 10-105.

(k) Interference prohibition Discrimination, retaliation, or interference in an OCA investigation prohibited.

(1) 10A O.S. § 1-2-101(B)(4) prohibits discrimination or retaliation against a person who in good faith provides information about a reportable incident or testifies in a proceeding.

(2) 21 O.S. § 455 makes it a felony to interfere with a child abuse investigation or a vulnerable adult investigation under 43A O.S. An OKDHS employee who interferes with an OCA investigation also may be subject to administrative action. Interference includes, but is not limited to:

- (A) intimidating, harassing, or threatening a party to the investigation;
- (B) retaliation against an employee for reporting an allegation; or
- (C) denial of access to clients, employees, facilities, witnesses, records, or evidence.

(3) 43A O.S. § 10-104(K) states that an employer shall not terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act, 43A O.S. §§ 10-101 et seq.

(l) Rights and responsibilities of accused caretakers PRFCI or VAC. The rights and responsibilities of ~~an~~

accused ~~caretaker~~ PRFCI or VAC during an OCA investigation are outlined in this subsection, except ~~those of a caretaker who is~~ when the accused is a community services worker or a Medicaid personal care assistant, whose rights and responsibilities are found at OAC 340:100-3-39.

(1) **Rights.** During the investigation process, an accused ~~caretaker~~ PRFCI or VAC has the right to:

- (A) be advised ~~by the facility or provider administrator~~ of the nature of ~~the allegation(s)~~ each allegation made against him or her ~~in the referral~~;
- (B) be advised by OCA of the investigative process involving caretaker maltreatment;
- (C) be interviewed by the investigator and allowed to give his or her position regarding the ~~referral~~ allegation;
- (D) be advised by the investigator of the substance of the evidence against him or her, but not the identity of the person reporting the allegation;
- (E) submit or supplement a written statement relating to the allegations;
- (F) seek advice from other parties concerning a ~~caretaker's~~ PRFCI or VAC's rights and responsibilities in OCA investigations, including the right to seek counsel;
- (G) decline to answer any question when he or she reasonably believes the answer to the question may incriminate him or her in a criminal prosecution; and
- (H) be notified in writing by his or her employer of the outcome of the investigation when the investigation involves a VAC; and
- (I) be notified in writing by OCA of the outcome of the investigation when the investigation involves a PRFCI.

(2) **Responsibilities.** During the investigative process, ~~an~~ the accused ~~caretaker~~ PRFCI or VAC has the responsibility to:

- (A) prepare written statements and reports relevant to the investigation upon request;
- (B) be available for interviews and accommodate the investigator in scheduling ~~of~~ interviews;
- (C) refrain from ~~any~~ action that interferes with the investigation, including any action that intimidates, threatens, or harasses any person who has or may provide information relating to the allegation; and
- (D) provide pertinent information and respond fully and truthfully to questions asked.

(m) Educational employees. This subsection applies to an employee of a school district providing contract educational services on-site at a facility, as defined in OAC 340:2-3-2, who is either a witness or ~~an~~ the accused ~~caretaker~~ PRFCI or VAC in an OCA investigation ~~opened by OCA.~~

(1) The administrator of the facility where the incident took place notifies the principal of the school of the nature of the allegation and the name of the assigned OCA investigator.

(2) The principal of the school is responsible for notifying the school employee of the reason for the investigative interview, advising the employee of his or her rights and

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responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process and does not extend to ensuring the protection of the alleged victim(s) or other clients at the facility where the educational services are provided. The administrator of the facility where the alleged incident took place is responsible for client protection of clients.

(3) OCA investigates educational employees who meet the definition of a caretaker in OAC 340:2-3-2.

~~(gn)~~ **Contractor's employees.** This subsection applies to an employee of a contractor of a provider or facility when the employee is an accused caretaker, PRFCI or VAC in an investigation opened by OCA.

(1) The facility or provider administrator where the incident took place notifies the contractor chief administrative officer of the contractor of the nature of the allegation against the contractor's employee and the name of the assigned OCA investigator.

(2) The contractor chief administrative officer of the contractor is responsible for notifying the contract employee of the reason for the investigative interview, advising the employee of his or her rights and responsibilities relating to the OCA investigation, and arranging for the employee's appearance at an investigative interview. This requirement is for purposes of notification and coordination of the investigative process. The facility or provider administrator where the alleged incident took place is responsible for client protection of clients.

~~(ho)~~ **Document collection and review.**

~~(1)~~ The investigator gathers and reviews relevant documents including, but not limited to:

~~(A1)~~ incident reports and other written reports, accounts, and statements prepared during the preliminary assessment;

~~(B2)~~ medical records;

~~(C3)~~ photos; and

~~(D4)~~ facility or provider logs, activity and tracking documents.

~~(2)~~ If the OCA investigator is denied access to records, documentation, or other information relevant to an investigation involving a vulnerable adult, OKDHS Adult Protective Services is contacted for assistance in petitioning the court for an order allowing access.

~~(3)~~ If the OCA investigator is denied access to the place where the child is located, access to records or treatment plans, or other documentation relevant to the alleged abuse or neglect of a child, the investigator contacts the district attorney. The district attorney may make application to the district court for an order allowing access.

~~(ip)~~ **Investigative interviews.** The investigator interviews or attempts to interview persons known or identified to have information about the referral. If an injury is alleged, the investigator or other appropriate person observes, notes, and documents apparent injuries, and obtains pertinent medical documentation, including photographic evidence. Interviews are conducted in private. No person other than the investigator

and the person interviewed is allowed to attend an interview except a person necessary to facilitate communication. An attorney or other representative of the person interviewed attends an interview only as a silent observer with prior permission of the advocate general or designee.

~~(jq)~~ **Interview protocols.** The OCA investigator conducts a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each caretaker accused of the maltreatment. ~~When possible, all other witnesses are interviewed prior to interviewing the accused caretaker(s).~~

~~(r)~~ **Conducting the investigation.** OCA investigators conduct investigations in a professional manner.

~~(st)~~ **Recording investigation interviews.** OCA investigators record every interview. Interviews are audio recorded. To maintain information confidentiality of the information provided in an interview, no recording by the person interviewed or by anyone else in attendance is not permitted. Recordings of interviews remain with the OCA investigative file. OCA files and recordings are not public documents.

~~(2)~~ **Explanation of the process.** The investigator informs persons interviewed of the investigative process.

~~(13)~~ **Presentation of the allegation.** The OCA investigator verbally informs each accused caretaker of the substance of the allegation(s). In general, the investigator discloses only the nature of information learned during the investigation and does not identify the persons who provided information. The identity of the reporter of the allegation is never disclosed during the investigation. If during the course of an investigation a witness is identified as a potential accused caretaker, the investigator interviews the witness again to inform the witness that he or she is a potential accused caretaker. At that time, the witness is informed of the substance of the evidence and relevant information learned during the investigation and provided an opportunity to respond. The OCA investigator informs the administrator of the facility or provider of the new allegation and the new potential accused caretaker.

~~(u4)~~ **Opportunity for accused caretakers to respond.** During the interview with an accused caretaker, the OCA investigator provides the caretaker an opportunity to respond to the allegation(s) and to supplement any information previously provided in written statements. Following the initial interview of the accused caretaker, if the investigator obtains information that the accused caretaker did not have an opportunity to respond, the investigator conducts another interview with the caretaker. The investigator advises the accused caretaker of the substance of the new information and provides an opportunity to present a response.

~~(v5)~~ **Interpreter services for persons who are deaf or hard of hearing.** When the investigator needs to interview a When the person who is deaf or hard of hearing is interviewed by OCA, the facility or provider agency that employed the person at the time of the alleged incident provides, at no cost to OCA, oral or sign language interpreter services by an independent and qualified interpreter. Interpreter services for OKDHS employees and clients are provided per OAC 340:1-11-10.

(w6) **Scheduling interviews.** To schedule an interview with an accused caretaker, the investigator contacts by phone or regular mail the facility, provider administrator, or designee that employs the caretaker. If a reasonable time has passed without being able to schedule an interview, the investigator contacts the facility or provider administrator to request the administrator to compel the employee to participate. If unsuccessful, the investigator sends a letter by regular mail to the caretaker's last known address notifying the caretaker of the investigation and offering an opportunity to be interviewed, setting a date and time for a response. The letter informs the caretaker that the consequence of failure to participate is for the OCA investigative report to be completed without the caretaker's statement and a finding is made based on available information. For other persons needing to be interviewed, the investigator follows the same sequence as for an accused caretaker, but the letter only requests their participation in an interview.

~~(7) **Failure to appear.** If a person fails to appear for a scheduled interview without good cause, as determined by the advocate general, the investigator completes the investigative report without interviewing that person. The investigative report includes an explanation of why the interview was not conducted, including documentation of efforts to interview the person.~~

(xk) **Exit notice.** Within 30 calendar days of assignment of a referral to be investigated, the assigned OCA investigator contacts by email the applicable facility or provider administrator or designee when the information gathering portion of the investigative process is completed. The investigator informs the facility or provider administrator of any areas of concern identified and that a written report will be prepared with the final finding. Preliminary findings are not required.

(y4) **The written investigative report.** After completing the information gathering portion of the investigative process, the investigator prepares a written investigative report containing:

- (1) the allegation(s) ~~contained~~ in the referral investigated including the date, time, and location of the alleged incident(s), the date the allegation was reported to OCA, and the assigned OCA case number;
- (2) a statement of any physical injuries sustained by the alleged victim(s);
- (3) information regarding any involved law enforcement entities;
- (4) a recommendation for the district attorney whether to consider further investigation;
- (5) the applicable definition(s) of caretaker misconduct or the type of maltreatment at issue, such as abuse, neglect, verbal abuse, exploitation, or caretaker misconduct;
- (6) the finding(s) per ~~subsection (m)~~ this (t) - (v) of this Section;
- (7) a list of the involved parties, their titles and ~~roles~~ roles in the matter, if they were interviewed and, if so, when, and whether interviewed face-to-face or by telephone;
- (8) the name, address, and telephone numbers of any interpreter ~~used~~ employed during the investigation;
- (9) an explanation of the basis for the finding(s);

- (10) a summary of relevant information obtained during each interview conducted during the investigation;
- (11) ~~any~~ areas of concern relating to the referral identified during the investigation regarding facility, provider, or OKDHS practices or procedures that have implications for the safety, health, or welfare of clients but do not rise to the level of abuse or neglect;
- (12) a list of relevant documents and records reviewed during the investigation;
- (13) a list of attachments to the report ~~that are~~ provided upon request; and
- (14) an explanation for any delays in meeting the time ~~frames~~ requirements for completing the investigation report contained in this Section.

(z) **OCA findings and completion time requirements regarding investigations involving a child in OKDHS custody.** Per 10A O.S. § 1-9-112.1, the OCA investigation of a report of abuse or neglect of a child in OKDHS custody results in a written report within 30 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

- (1) "Substantiated" means OCA OKDHS custody and based upon some credible evidence, that child abuse or neglect occurred;
- (2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child in OKDHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or
- (3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child in OKDHS custody, that no child abuse or neglect occurred.

(aa) **OCA findings and completion time requirements regarding investigations involving a child not in OKDHS custody.** OCA investigations involving a child not in OKDHS custody results in a written report within 30 calendar days from the date of the referral stating one of the findings in (1) through (3) of this subsection.

- (1) "Substantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in OKDHS custody and based upon some credible evidence, that child abuse or neglect occurred;
- (2) "Unsubstantiated" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in OKDHS custody, that insufficient evidence exists to fully determine whether child abuse or neglect occurred; or
- (3) "Ruled out" means OCA determined, after an investigation of a report of child abuse or neglect of a child not in OKDHS custody, that no child abuse or neglect occurred.

(abb) **OCA findings regarding investigations involving a vulnerable adult.** The OCA investigation of a report of abuse or neglect of a vulnerable adult results in a written response within 60 calendar days from the date of the referral stating one of the findings in (1) through (4) of this subsection. The OCA investigator determines the appropriate finding for each allegation contained in the referral investigated. Findings are

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made based on a greater weight of the evidence standard. The finding options are:

- (1) **"confirmed"** "substantiated" which means that the greater weight of the available evidence establishes the alleged maltreatment occurred;
- (2) **"not confirmed"** "substantiated" which means the greater weight of the available evidence indicates the alleged maltreatment did not occur; or
- (3) **"ruled out"** which means no evidence was discovered that indicates the alleged maltreatment occurred; or
- (4) **"defer"** which means OCA will defer the completion of an investigation and the issuance of a finding upon reasonable request to do so by a law enforcement agency having investigative authority.

(ccc) Identification of the responsible caretaker/VAC. ~~When a confirmed finding is made, the investigator determines the caretaker(s) responsible for the maltreatment. If~~ Regarding investigations involving a vulnerable adult, when the evidence gathered during the investigation is sufficient to confirm/substantiate maltreatment of a vulnerable adult but the person responsible for the maltreatment cannot be identified by the greater weight of the evidence, the confirmed/substantiated finding is made on an unknown caretaker/VAC. The administration may be named as responsible when the policies, procedures, or practices adopted by the administration of a facility, or provider, or day treatment program are the primary factor resulting in the maltreatment of individual clients.

(dd) Notice of findings of child abuse or neglect.

- (1) After completion of the OCA investigation, a findings letter is mailed to the:
 - (A) alleged PRFC; and
 - (B) facility administrator.
- (2) When a facility administrator is named as an accused PRFC, a findings letter is mailed to the chair of the board of directors of the facility, or to the director of the state agency operating the facility, as applicable.
- (3) The OCA investigator verbally provides the findings to the child victim's parents or guardian.

(ee) Appeal process for substantiated findings of child abuse or neglect. The 2010 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires that OKDHS provide an appeal process for persons who disagree with a substantiated finding of child abuse or neglect. The appeal process is detailed in OAC 340:75-3-20.

(ff) OCA investigation report submitted to Child Welfare Services (CWS). Per 10A O.S. § 1-9-112.1, in addition to the requirements of 10A O.S. § 1-9-112, the OCA investigation report concerning a report of abuse or neglect of the child in OKDHS legal custody of OKDHS is submitted to the CWS director or designee within 30 calendar days from the referral date.

(egg) Dissemination of the OCA investigative reports involving caretakers/PRFCIs and VACs not subject to the Community Services Worker (CSW) Registry. ~~Within 60 calendar days from the assignment of a referral to be investigated, the OCA written investigative report is completed.~~

(1) Except as provided in subsection ~~(p)~~(aa) of this Section, a copy of the final OCA investigation report involving a vulnerable adult client is sent to the administrator of an affected facility or provider agency. The administrator is responsible for notifying the client ~~or the client's legal representative~~ of the OCA finding. OCA notifies the caretaker, legal guardian, and next of kin of a vulnerable adult of the OCA finding.

(2) If the referral alleged abuse, verbal abuse, sexual abuse, neglect, financial neglect, or exploitation, a copy ~~also~~ is sent to the applicable district attorney.

(3) A copy is sent to the appropriate OKDHS state office administrator, OJA executive director of OJA, the ODRS director of ODRS, the ODMHSAS director of ODMHSAS, or the J.D. McCarty Center director of the J.D. McCarty Center, whichever is applicable.

(4) When a facility or provider administrator is named as an accused ~~caretaker/VAC~~ in the allegation, OCA forwards the investigative report to the facility or provider agency chair of the board of directors of the facility or provider agency, or to the director of the state agency operating the facility, whichever is applicable.

(5) A copy of the OCA report is sent to the Oklahoma State Department of Health (OSDH) if the investigation involved a day treatment program.

(6) ~~The~~A copy of the OCA report is sent to the administrator of an OKDHS operated facility and applicable OKDHS director or designee. The administrator provides the accused OKDHS employee who work at the facility who is a VAC a letter that summarizes the allegation and states the OCA finding. If an accused ~~caretaker/PRFCI~~ is an OKDHS employee who does not work at an OKDHS operated facility, the applicable OKDHS ~~division~~ director or designee is responsible for providing the employee with a letter that summarizes the allegation and states the OCA finding.

(7) If client maltreatment by a licensed nurse is ~~confirmed/substantiated~~, a copy of the OCA report is submitted to the Oklahoma State Board of Nursing.

(8) When appropriate in cases involving a vulnerable adult, a copy of the OCA report is sent to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, but not limited to, OSDH and any appropriate state licensure or certification board, agency, or registry. ~~This and~~ includes sending OSDH a copy of any report when at least one of the accused ~~caretakers/PRFCIs or VACs~~ is a certified nurse aide (CNA).

(9) ~~OCA distributes its investigation reports by United States mail, fax, or email, whichever is appropriate.~~

~~(10)~~ If maltreatment by a guardian is ~~confirmed/substantiated~~, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(10) OCA distributes the investigation report by United States mail, fax, or email, whichever is appropriate.

(pjh) Dissemination of reports involving Hissom class members, PRFCIs, and caretakers—VACs subject to the

Community Services Worker (CSW) Registry or the Child Care Restricted Registry.

(1) All OCA investigations involving a ~~confirmed~~substantiated finding against a community services worker, or a Medicaid personal care assistant employed by a Medicaid personal care services provider, are processed for the CSW Registry per OAC 340:100-3-39 and 317:35-15.

(2) All OCA investigations involving a ~~confirmed~~substantiated finding against a ~~caretaker~~PRFC while the child is in the care of a child care facility are processed for the Child Care Restricted Registry per OAC 340:110-1-10.1.

(3) After the OCA investigation report has been approved, an email notice of the areas of concern in the report is sent to the facility or provider administrator, the Aging Services Division (ASD) director or designee, the Oklahoma Child Care Services (OCCS) director or designee, and the DDS director or designee, whichever are applicable.

~~(4) When the OCA finding does not confirm an allegation, OCA sends a copy of the report to the facility or provider administrator, the DDS director or designee, the ASD director or designee, or the OCCS director or designee, whichever is applicable. A copy of the report is sent to the district attorney in the county where the suspected maltreatment occurred pursuant to 43A O.S. § 10-104(I) if the victim is a vulnerable adult, or 10A O.S. § 1-2-105(E) if the victim is a child. A copy of the investigation report is sent to the district attorney in the county where the suspected maltreatment occurred per 10A O.S. § 1-2-105(E) when the victim is a child, or 43A O.S. § 10-104(I) when the victim is a vulnerable adult.~~

(4) In addition to (aa) of this Section, when the victim is a child receiving DDS services, OCA sends a copy of the report to the DDS director or designee.

~~(5) When the OCA finding confirms an allegation against a caretaker who is a community services worker or a Medicaid personal care assistant, OCA submits a copy of the report to the DDS director or designee or the ASD director or designee, whichever is applicable, and the applicable district attorney and processes the report per OAC 340:100-3-39. When the due process procedures relating to the CSW Registry have been completed, OCA sends a copy of the report to the applicable facility or agency administrator and the assigned OKDHS long term care nurse if applicable. OCA also notifies the caretaker, legal guardian and next of kin of a vulnerable adult of the result of the investigation when the investigative finding has become final.~~

(6) When the OCA finding ~~confirms~~substantiates an allegation against a ~~caretaker~~PRFC when the abuse or neglect occurred to a child when in the care of a child care facility, OCA submits a copy of the report to the Oklahoma Child Care Services (OCCS) Licensing Records Office per OAC 340:110-1-10.1~~(ef)~~ for processing under the Child Care Restricted Registry. OCA also ~~submits a copy of the report to the OCCS director or designee,~~

~~the facility or agency administrator, and the applicable district attorney.~~

(7) When the victim is a vulnerable adult, OCA sends the report to the facility or provider administrator, the DDS director or designee, the ASD director or designees, or the Oklahoma Health Care Authority (OHCA) director or designee, whichever is applicable.

(8) OCA notifies the caretaker, legal guardian, and next of kin of a vulnerable adult of the investigation finding. If the vulnerable adult is a Hissom class member, the class member's assigned OCA advocate notifies the class member and the class member's guardian or close family member of the investigation finding.

(89) If maltreatment by a guardian is substantiated, a copy of the OCA investigation report is submitted to the applicable guardianship court.

(qii) Confidentiality of OCA investigative reports.

(1) Persons receiving copies of OCA investigative reports regarding a child are bound by the confidentiality provisions of 10A O.S. §§ 1-6-102 through 1-6-107.

(2) Persons receiving copies of OCA investigative reports regarding a vulnerable adult are bound by the confidentiality provisions of, and 43A O.S. § 10-110, whichever is applicable.

(A) Pursuant to 43A O.S. § 110A of the Protective Services for Vulnerable Adults Act, all reports, records, and working papers used or developed in an investigation of the circumstances of a vulnerable adult are confidential, and can be disclosed only pursuant to rules promulgated by OKDHS, by court order, or as otherwise provided in the "Public Disclosure" provisions per 43A O.S. § 10-110.1 when a VAC is charged with committing a crime that resulted in the death or near death of the vulnerable adult.

(B) Pursuant to 43A O.S. § 10-110B, all reports, records, and working papers may be disclosed without a court order to:

(i) any district attorney and the staff of an office of a district attorney upon showing of proper credentials in the course of their official duties pursuant to this title or in the prosecution of crimes against vulnerable adult;

(ii) the attorney representing a vulnerable adult in a proceeding under the Protective Services for Vulnerable Adults Act;

(iii) employees of a law enforcement agency of this or another state and employees of adult protective services agencies of this or another state;

(iv) a physician examining or treating a vulnerable adult who the physician suspects may have been abused or neglected or any health care or mental health professional involved in the evaluation or treatment of the vulnerable adult;

(v) a caretaker, legal guardian, custodian or other family members of the vulnerable adult; provided, OKDHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure;

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- (vi) any public or private agency or person authorized by OKDHS to supervise or provide other services to a vulnerable adult who is the subject of a report or record of abuse or neglect; provided, OKDHS may limit such disclosures to summaries or to information directly necessary for the purpose of such disclosure; and
- (vi) any person or agency for research purposes, if all of the following conditions are met:
- (I) the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by OKDHS to conduct such research; and
- (II) the person or agency conducting the research ensures that all documents contained identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; and that all in identifying information is deleted from documents used in the research when the research is completed.
- (C) A summary disclosed per 43A O.S. § 10-110B excludes:
- (i) Social Security numbers and financial account numbers of the:
- (I) alleged victim;
- (II) alleged VAC;
- (III) OKDHS caseworker;
- (IV) other vulnerable adults identified in the investigation; and
- (V) any other person identified in the record; and
- (ii) all identifying information, including but not limited to, names, addresses, and phone numbers of the person(s) who reported the abuse, neglect, or exploitation, and all such identifying information of any other vulnerable adults in the home or facility.
- (D) The OCA investigation report may be provided in lieu of a separately created summary and the identifying information found in this subsection is redacted.
- (E) All investigative records received by OKDHS and created by other local or state agencies, including law enforcement agencies, are obtained directly from those local or state entities.
- (F) Persons seeking redacted identifying information listed in subparagraph (2)(C) that is contained in the OCA investigative report, in any summary, records, or working papers used or developed in the investigation must obtain a court order authorizing release of such information.
- (i) All reports, records, and working papers and all information contained therein remain confidential after the OKDHS release; and

- (ii) it is unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for any unauthorized purpose.

(~~g~~) **Confirmed Substantiated findings involving OKDHS operated facilities.** The ~~findings of an~~ OCA investigation report ~~findings~~ involving client maltreatment at an OKDHS operated facility are considered final when the time for requesting Grievance and Abuse Review Committee (GARC) review pursuant to OAC 340:2-3-62(b) has expired and review ~~has~~ ~~was~~ not ~~been~~ requested, or ~~that the~~ review was timely requested and ~~has~~ concluded.

(1) ~~When the Children and Family Services Division (CFSD), the Field Operations Division, CWS or DDSD receives a copy of a final OCA investigative report or notice that a review pursuant to OAC 340:2-3-62 has been concluded, within 60 working business days, the applicable division director notifies the advocate general in writing of:~~

- (A) ~~any~~ personnel action taken or to be taken with regard to each accused ~~caretaker~~ ~~PRFCI~~ or VAC named in the report;
- (B) ~~any~~ corrective action taken or to be taken regarding areas of concern noted in the report; and
- (C) for each worker found to have engaged in maltreatment, whether there ~~have been any~~ ~~were~~ prior OCA or facility confirmations by OCA or the facility for client maltreatment by the worker and, if so, the basis for each such finding, and the personnel action taken in response.

(2) If personnel action ~~has~~ ~~was~~ or will be taken, the ~~division~~ applicable director also notifies the OKDHS Human Resources Management ~~Division~~ director. If the final OCA finding does not ~~confirm~~ substantiate maltreatment, no information or material pertaining to the allegation or the investigation is placed in the personnel file of an accused ~~caretaker~~ ~~PRFCI~~ or VAC.

(3) OCA reports information regarding ~~confirmed~~ substantiated findings to the ~~Oklahoma Commission for Human Services (Commission) during executive session~~ OKDHS Director.

(~~s~~) **Findings involving a Hisson class member.** This subsection applies to the administrator of a provider that employed, or contracted with a contractor that employed, an accused ~~caretaker~~ ~~VAC~~ named in an OCA investigation report.

(1) Within 60 calendar days of receipt of a final OCA investigation report, the DDSD director or designee notifies the advocate general in writing:

- (A) if ~~any~~ personnel action ~~has~~ ~~was~~ or will be taken with regard to each accused ~~caretaker~~ ~~VAC~~ named in the report; and
- (B) of ~~any~~ corrective action taken or to be taken regarding areas of concern noted in the report.

(2) OCA reports information regarding ~~confirmed~~ substantiated findings to the Commission during executive session.

(~~t~~) **Storage and retention of OCA investigative records.** ~~OCA maintains the original report, supporting documents, and~~

applicable recordings per the applicable OKDHS records management and disposition plan. Access to investigative files and records is limited to OCA employees on a need to know basis. Requests by OKDHS employees for access to or copies of OCA investigative reports are made to the advocate general.

340:2-3-37. Caretaker conduct review (CCR)

(a) **Application.** This Section applies to referrals received by the Office of Client Advocacy (OCA) that OCA refers to a facility for an internal caretaker conduct review (CCR) per OAC 340:2-3-35(a)(2). Allegations of caretaker misconduct regarding children are screened by the Oklahoma Department of Human Services (OKDHS) Abuse & Neglect Hotline (Hotline) and referred to the appropriate facility contracting and licensing entities where the incident occurred. OCA may conduct an investigation when the OKDHS Specialized Placement Unit, OKDHS Child Care Licensing Unit, or other source, determines a pattern of misconduct exists by a person responsible for the child of interest (PRFCI) or facility administration, or facility administration fails to take appropriate corrective action. This Section does not apply to allegations involving caretaker misconduct of a Hissom class member or a vulnerable adult, other than a resident of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Robert M. Greer Center (Greer). OCA will continue to accept and process CCRs regarding children who are in facilities that are not licensed by or contracted with OKDHS.

(b) **Assignment to a facility to conduct a CCR.**

(1) When OCA receives a referral that indicates possible caretaker misconduct, in lieu of an investigation OCA intake may refer it to the facility where it allegedly occurred for handling as a CCR if:

- (A) there is no injury or evidence ~~that~~ the client might have been exposed to a significant risk of harm;
- (B) there is a minor physical injury and it is not a suspicious injury;
- (C) there is a serious physical injury and the known credible information makes it unlikely ~~that~~ the serious injury was the result of abuse or neglect; or
- (D) excessive or unauthorized use of force is alleged and there is no injury or only a minor injury that is not suspicious.

(2) In addition to the referrals in subsection (b)(1) of this Section, regarding vulnerable adults at Oklahoma Department of Human Services (OKDHS) operated facilities, and at Greer, a referral indicating possible maltreatment may be referred to the facility for handling as a CCR if the allegation involves a serious physical injury that occurred under unexplained or unusual circumstances.

(c) **Protocol for conducting a CCR.** When OCA intake assigns a facility the responsibility to conduct a CCR, the administrator or designee takes necessary steps to ensure the safety of all clients and to protect the integrity of all evidence. A facility employee designated to conduct a CCR follows the investigative procedures described in OAC 340:2-3-36, with the

exception of recording the interviews in OAC 340:2-3-36(j)(1), including:

- (1) reviewing pertinent documentation, records, and evidence collected;
- (2) viewing any injuries and photos of injuries, and obtaining photos of injuries;
- (3) obtaining written statements and conducting interviews with:
 - (A) each alleged victim;
 - (B) each eyewitness;
 - (C) other persons with knowledge relevant to the allegation; and
 - (D) each accused caretaker;
- (4) reviewing statutes, policies, directives, standards, rules, or practices relevant to the allegation;
- (5) analyzing the accused caretaker's actions in relation to relevant statutes, policies, directives, standards, rules and practices; and
- (6) determining the appropriate finding(s) per OAC 340:2-3-36~~(m)~~.

(d) **Returning the investigation responsibility to OCA.**

If at any time during the CCR information is learned that gives cause to believe that a client was the victim of caretaker misconduct resulting in a serious injury, abuse, or neglect, the administrator immediately discontinues the CCR and contacts OCA intake to report the new information warranting an OCA investigation. OCA intake notes the new information and changes the disposition on Form 15GN001E, Office of Client Advocacy-Intake Referral, or its electronic equivalent, and the case is assigned to an OCA investigator for investigation per OAC 340:2-3-35(c).

(e) **Written report of CCR.** After completion of the CCR process and determination of the appropriate finding, the person conducting the CCR prepares a written report. Facilities are encouraged, but not required, to use the OCA format for CCR reports, ~~Form 15IV007E, Caretaker Conduct Review Report.~~ The written report contains:

- (1) the allegation(s), including the dates, times, and location of the alleged incident(s), the date the allegation was reported to OCA, and the OCA case number;
- (2) a statement of any injury sustained by the alleged victim(s) and, in cases involving an injury, a statement whether photographs were taken of the injury and if so, the date they were taken;
- (3) the finding(s), whether caretaker misconduct did or did not occur, ~~per OAC 340:2-3-36(n)~~ based on a greater weight of the evidence standard;
- (4) a list of the involved parties, their titles and ~~roles~~ roles in the matter, whether they were interviewed and, if so, when;
- (5) citation to pertinent statutes, policies, directives, standards, rules, and practices, when applicable;
- (6) an explanation of the basis for the finding(s);
- (7) a summary of pertinent information obtained in interviews conducted during the review;
- (8) a list of relevant documents and records reviewed;
- (9) a list of attachments to the report;

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(10) a list of areas of concern identified during the course of the investigation regarding facility or OKDHS practices or procedures that have implications for the safety, health, or welfare of clients but that do not rise to the level of abuse or neglect; and

(11) either on a cover memo or at the end of the report, the date and signature of the person who conducted the CCR, and the signature of the person who reviewed and approved the report.

(f) **Time for completion of report.** The final written report is submitted to the advocate general within 30 calendar days from the date ~~that~~ OCA intake notified the administrator that an allegation is referred for CCR.

(g) **OCA processing of CCR reports.** The administrator transmits the completed CCR to the advocate general. The advocate general or designee reviews the CCR report for completeness and appropriateness of the finding. If a report is incomplete or the finding is questionable, OCA contacts the administrator to request further inquiry into the allegation. OCA opens an investigation if a report indicates the need.

(h) **Final CCR report.** If a final CCR report is not submitted to the advocate general within 45 calendar days from the date ~~that~~ OCA notifies the facility or provider administrator that the allegation is referred for CCR, OCA notifies the appropriate state agency, ~~division~~office, or regulatory entity that contracts with the facility or agency for the delivery of services.

(i) **Review by DDS director.** Within five ~~work-~~business days of completion of a CCR report at ~~the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), NORCE, or the Robert M. Greer Center (Greer),~~ the facility administrator or designee informs the client and the client's guardian or parent of the CCR result of the CCR. If the client or the guardian or parent does not concur with the finding(s), the facility administrator or designee notifies the advocate general in writing by email or letter. The advocate general refers the matter to the OCA grievance coordinator to process for review by the DDS director as a contested grievance per OAC 340:2-3-46 and 340:2-3-51(g) and the client or guardian or parent who did not concur with the finding(s) is considered the grievant for purposes of the review. If the grievant does not concur with the proposed resolution of the ~~division—~~applicable director or designee, the matter is reviewed by the Grievance and Abuse Review Committee (GARC) per OAC 340:2-3-62 and 340:2-3-64.

(j) **State office administrator's report.** The findings in a CCR are considered final when the time for requesting review pursuant to ~~paragraph~~subsection (i) of this Section has expired and review has not been requested, or the review was timely requested and has concluded.

(1) Within 60 calendar days of the finding becoming final, the state office administrator or designee informs the advocate general in writing of:

- (A) any personnel action taken or to be taken;
- (B) any corrective action taken or to be taken; and
- (C) for each worker found to have engaged in caretaker misconduct, whether there has been any prior

confirmation by OCA or the facility for client maltreatment by the worker and, if so, the basis for each finding and the personnel action taken in response.

(2) If personnel action is involved, the state office administrator also notifies the OKDHS Human Resources Management Division director.

(3) If a CCR has not resulted in a confirmed finding, no information or material pertaining to the allegation or the investigation is placed in the personnel files of any employee named in the report.

PART 5. GRIEVANCES

340:2-3-45. Grievance system protocols

(a) **Legal authority, scope, and purpose.**

(1) **Legal authority.**

(A) ~~Section 7004-3.4 of Title 101-9-112 of Title 10A~~ of the Oklahoma Statutes (10A O.S. § 1-9-112) confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) ~~Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes~~ 10 O.S. § 1415.1(A)(2) requires that OKDHS ~~to~~ establish an ombudsman program for each institution and residential facility for the ~~mentally retarded~~intellectually disabled operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and ~~their~~ court-appointed guardians. OKDHS ~~has~~ conferred this responsibility on OCA.

(C) OKDHS ~~also has~~ conferred on OCA, the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in ~~the~~OKDHS custody of ~~OKDHS~~ regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in OKDHS voluntary care of ~~OKDHS~~, refer to OAC 340:2-3-49;

(C) OKDHS approved foster parents ~~approved by OKDHS~~, refer to OAC 340:2-3-50;

(D) residents of the ~~Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer),~~ refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from ~~the~~OKDHS Developmental Disabilities Services Division (DDSD) of ~~OKDHS~~, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes 10 O.S. § 1430.1 et seq., refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS does not exist, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which where clients can may obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. ~~However;~~ however, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be ~~handled~~ resolved within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in Part 5, OAC 340:2-3-45 through 340:2-3-55, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director**~~Deputy director~~" means a director of one of the ~~six~~ five regional delivery areas designated by OKDHS ~~Field Operations Division (FOD)~~ Child Welfare Services (CWS).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDS.

(3) **"Business day" or "working day"** means Monday through Friday, not including federal or state holidays.

(4) ~~"CFSD" means the Children and Family Services Division of OKDHS.~~ **"CWS"** means OKDHS Child Welfare Services.

(5) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(6) **"Contested grievance"** means a grievance that ~~has~~ was not ~~been~~ resolved at the local level (first and second levels) and, at the request of the grievant or ~~decisionmaker~~ decision maker, is submitted to a higher authority for response.

(7) ~~"Decisionmaker~~ **Decision maker**" means the person ~~who has~~ with authority to decide whether to accept ~~any~~ a proposed resolution ~~proposed~~ at each level

of the grievance process. ~~It;~~ typically, ~~is~~ the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves, ~~(for example, such as~~ young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, ~~it might~~ the decision maker may be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDS clients who are adults, ~~it might~~ the decision maker may be a guardian or the individual support team for the client.

(C) When the grievant is not the ~~decisionmaker~~ decision maker, the local grievance coordinator (LGC) does not inform the grievant when the proposed resolution is issued or whether it ~~has been~~ was accepted or rejected. The ~~decisionmaker~~ decision maker may share this information with the person grieving on behalf of the client.

(8) **"District director"** means a director of a district within one of the regional delivery areas designated by OKDHS CWS.

(89) **"Due date"** means the date ~~by which~~ some response or action is required, ~~for example, such as~~ the date ~~by when~~ a respondent must respond to a grievance. ~~It~~ When calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(910) ~~"E-mail~~ **Email**" communication with OCA or with the advocate general means an ~~e-mail~~ email sent to the ~~e-mail~~ email address: *oca.grievances@okdhs.org.

(4011) **"Facility grievance"** means a grievance that involves:

(A) the substance or application of ~~any~~ policy, rule, or regulation, written or unwritten, of a facility ~~as defined in~~ per OAC 340:2-3-2; or

(B) a decision, act, or omission ~~of~~ by an employee, agent, or contractor of a facility.

(11) ~~"FOD" means the Field Operations Division of OKDHS.~~

(12) **"Grievance"** is defined in subsection (c) of this Section.

(13) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(14) **"Local grievance coordinator" or "LGC"** means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance coordinator in the OKDHS county office where the grievant resides;

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- (C) DDSD clients who are residents of ~~Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility Robert M. Greer Center (Greer),~~ or the OCA advocate staff assigned to each facility;
- (D) ~~OKDS approved~~ foster parents ~~approved by OKDHS, the county district director in the OKDHS county office where the grievant resides;~~
- (E) DDSD clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and
- (F) ~~all~~ other DDSD clients, the applicable DDSD area manager, or designee.
- (15) **"OCA grievance liaison"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances, and local grievance programs.
- (16) **"OKDHS grievance"** means a grievance that involves:
- (A) the substance or application of ~~any~~ OKDHS policy, rule, or regulation, written or unwritten, ~~of OKDHS (other than OKDHS policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or~~
- (B) a decision, act, or omission of an OKDHS employee ~~of OKDHS~~, including, but not limited to, a Child Welfare Services (CWS) specialist, a case manager, and OKDHS county district directors, but not including an employee of an OKDHS operated facility.
- (17) **"Placement grievance"** means a complaint about a present or proposed placement of a minor in OKDHS custody.
- (18) **"Respondent"** means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.
- (c) **Grievance defined.**
- (1) **"Grievance"** means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator ~~to assist in doing that~~ for assistance.
- (A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance includes:
- (i) the substance or application of ~~any~~ policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, ~~or a facility, agency, or provider which that~~
- contracts with OKDHS, or a child placing agency; or
- (ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.
- (B) **OKDHS grievances.** The subject of an OKDHS grievance includes:
- (i) the substance or application of ~~any~~ policy, rule, or regulation, written or unwritten, of OKDHS, but ~~this~~ does not include policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors;
- (ii) a decision, act, or omission of an employee in an OKDHS operated facility; ~~this and~~ includes a case manager, managers, a CW specialist, specialists, and county office employees; or
- (iii) a facility grievance filed by a ~~resident of SORC, NORCE, or Greer~~ resident.
- (C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.
- (2) **Summary dispositions.** If a grievance is submitted and it falls into ~~one of the categories listed in~~ subparagraphs (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories ~~below in (A) through (K) of this paragraph,~~ the LGC informs the client why the grievance is not being processed, using Form 15GR012E, Notice of Summary Disposition of Grievance - OKDHS County Offices, 15GR013E, Notice of Summary Disposition of Facility Grievance, 15GR014E, Notice of Summary Disposition of Grievance - Developmental Disabilities Services Division (DDSD) Clients, 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services Division (DDSD) Provider Grievance, or 15GR016E, Notice of Summary Disposition of Foster Parent Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form 15GR001P, Grievance Form, ~~and~~ then dates and signs the form. The grievance is logged on Form 15GR009E, Grievance Tracking Log. The form used to notify the grievant along with a copy of the grievance form is sent within three business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. If the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing.
- (A) **Untimely grievances.** A grievance ~~which that~~ is not timely filed ~~in accordance with per~~ OAC 340:2-3-45(g) may be accepted and processed

when good cause exists for the delay in filing the grievance. There are no time limits for filing grievances on behalf of individuals served by the OKDHS DDSD.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem that is moot.** A moot problem is one that ~~already~~ has been decided or settled or one that has no practical resolution. ~~For examples such as,~~ a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, or when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** ~~This is a~~ grievance ~~which that~~ duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** ~~This is a~~ grievance ~~which that~~ requests an action that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private, ~~or~~ public, individual, or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using ~~any~~ grievance or complaint ~~system which systems~~ that may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter ~~which that~~ is the subject of a pending civil, criminal, or administrative proceeding, ~~or~~ a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved ~~pursuant to~~ per OAC 340:2-5-50.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form 15GR001P as received, and notes on the form the reason the LGC does not process it. The grievant is informed of ~~this the reason and decision and the reason.~~ The grievance is logged in the grievance-tracking log and the form is filed in the client's grievance file. The LGC sends a copy of the Form 15GR001P and a copy of the applicable Notice of Summary Disposition to the advocate general, or designee, for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by, or on behalf of, a client, by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. ~~This includes~~ including OKDHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may ~~together~~ file a group grievance together. At any time during the processing of a group grievance, an individual grievant ~~can~~ may withdraw ~~from the group grievance.~~ ~~If~~ When separate grievances are filed by two or more grievants, regarding an identical issue, the interests of each grievant ~~is~~ are identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of ~~any~~ a particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of ~~that the~~ action. When a group grievance is filed, the LGC ~~can~~ may ask the grievants to designate in writing, a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including, but not limited to, facts ~~which that~~ constitute abuse, neglect, exploitation, or caretaker misconduct, ~~as defined in~~ per OAC 340:2-3-2, the LGC immediately reports it to OCA intake ~~pursuant to~~ per OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investing ation and as needed, is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts ~~which that~~ do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and ~~any~~ other law enforcement ~~agency agencies~~ investigating the matter to coordinate grievance processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma, is required to operate a system for grievance resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

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(A) Every public and private facility and provider subject to Part 5, OAC 340:2-3-45 through 340:2-3-55, OKDHS county office, and DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general of the name, phone number, mailing address, and ~~e-mail~~email address of its LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change by completing Form 15GR021E, Designation of Local Grievance Coordinator; Facilities and Provider Agencies, and submitting it to the Office of Client Advocacy. OCA advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

- (i) implements grievance policies and procedures;
- (ii) has experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) functions impartially and independently in ~~the processing of grievances~~grievance processing;
- (iv) reports directly to the administrator with regard to the LGC grievance duties and functions;
- (v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course;
- (vi) ensures that client requests regarding how to file a grievance are responded to within two business days; and
- (vii) is accessible and available to meet with grievants in person ~~with grievants~~.

(B) Each facility ~~and provider, subject to this Part,~~ ~~each~~ OKDHS county office, and each DDS area office subject to this Part, displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form 15GR017E, Grievance Poster - Child Welfare Contracted Facilities, Form 15GR018E, Grievance Poster - Oklahoma Department of Human Services (OKDHS) County Offices, Form 15GR019E, Grievance Poster - Developmental Disabilities Services Division (DDS) Providers, or 15GR020E, Grievance Poster - Oklahoma Department of Human Services (OKDHS) Developmental ~~Division~~Disabilities Services Division (DDS) Offices, whichever is applicable.

(2) **Advocate general review of grievance programs.** The grievance system operated by each facility and provider subject to Part 5, OAC 340:2-3-45 through 340:2-3-55, is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval, its grievance policies, procedures, forms, and any revisions which are adopted, along with proof that the policies or revisions have been approved

by the applicable approving authority. Revised policies are submitted to the advocate general for approval within 30 calendar days of the provider or facility adopting the revised policy.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to, and how to, access the grievance resolution procedures using Form 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody, Form 15GR005E, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form 15GR006E, Notice of Grievance Rights - DDS Service Recipients (General), Form 15GR007E, Notice of Grievance Rights - Hissom Class Members, or Form 15GR008E, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with OAC 340:2-3-52. Each provider or facility annually notifies the client and the guardian when applicable in writing of the right to file a grievance and how to access the grievance resolution procedures. Providers or facilities may use applicable form 15GR004E, 15GR006E, or develop an equivalent form. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and ~~through~~ an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-525-4850 or 1-800-522-8014, fax at 1-405-525-4855, or ~~e-mail~~email.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a deficiency report ~~of deficiency~~ to the administrator and, ~~where~~when applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

- (i) any aspect of the care of a client that ~~af-~~fectseffects the quality of the client's life;
- (ii) the substance, application, or interpretation of any policy, rule, or regulation, written or

unwritten, of OKDHS operated shelter or residential facility, or a facility or agency that contracts with OKDHS, or a placement provider; or

(iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report ~~which that~~ sets forth the inquiry subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form 15GR001P, filling it out, and turning it in to the LGC or to ~~any~~ facility or OKDHS staff, who immediately transmits it to the LGC.

(1) ~~OKDHS LGCs for OKDHS~~ order this form from the OKDHS Warehouse. Private provider and facility LGCs obtain copies of this form from ~~the OCA in Oklahoma City~~, 1-405-525-4850 or 1-800-522-8014.

(2) ~~Any person who needs~~ Those who need assistance in completing the grievance form is given assistance by the LGC or any other staff member.

(3) A grievance received on paper other than Form 15GR001P, is attached to a Form 15GR001P and filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance ~~shall be~~ retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance. All allegations of retaliation for filing a grievance, seeking advice, or inquiry about filing a grievance are reported to the OCA grievance unit, which may result in an OCA investigation or an advocate general inquiry or grievance.

(g) **Grievance time limits.** Except for DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC. When a foster parent requests an extension in order to pursue mediation through the Oklahoma Commission on Children and Youth (OCCY) Foster Parent Mediation Program as provided in Section 601.6 of Title 10 of the Oklahoma Statutes, an LGC must grant the requested extension. The grievance is ~~then~~ not processed until the mediation has been completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance, or the LGC may declare the grievance "administratively resolved" ~~consistent with OAC 340:2-3-45(h).~~ When a foster parent grieves, but has requested mediation of the

dispute through the OCCY mediation program before filing a grievance that alleges retaliation, the LGC counts from the date of the mediation when computing timeliness.

(1) ~~The filing time~~ Filing and all other time ~~periods~~ requirements contained in this Section are counted in business days unless otherwise specified. In computing any ~~period of time requirement~~, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time ~~period~~ requirement.

(2) If the LGC or ~~any~~ respondent fails to meet ~~any time limit for processing a grievance~~ processing time requirements without obtaining an extension, the LGC processes the grievance to the next step within three business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the grievant in person or by mail at the grievant's last known address ~~of the grievant~~. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified ~~in accordance with~~ per OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed, as well as summary information about the number, nature, and outcome of all grievances filed. ~~Records of grievances~~ Grievance records are kept separate and apart from other client records and files. Grievance records relating to DDS clients are retained ~~in accordance with~~ per OAC 340:100-3-40. OKDHS grievance records and files are retained ~~in accordance with~~ per state and federal laws governing record retention and destruction ~~of records~~.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every OCA numbered grievance form issued by ~~OCA~~. Form 15GR009E, Grievance Tracking Log, ~~can~~ may be used for this purpose. For grievances submitted by a client, the tracking log includes the:

- (A) ~~the~~ grievance number;
- (B) ~~the~~ name of the grievant given the form;
- (C) ~~the~~ date the form was submitted by the grievant;
- (D) ~~the~~ nature and outcome of the grievance;
- (E) ~~the~~ date of final resolution; and
- (F) ~~the~~ level where it was resolved.

(2) If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(3) Each LGC submits a quarterly grievance report, Form 15GR010E, Quarterly Grievance Report to the advocate general ~~a quarterly grievance report, Form~~

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~~15GR010E, Quarterly Grievance Report.~~ The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or ~~e-mail~~. The ~~e-mail~~ address is: *oca.grievances@okdhs.org. When ~~no~~ grievance activity ~~did not occur~~ or was pending during a particular fiscal year quarter, the LGC ~~so~~ indicates it on Form 15GR010E.

(34) If a grievance becomes moot at any point during the local processing of the grievance, the LGC ~~can~~ stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable ~~Form~~ Forms 15GR001P and ~~Form~~ 15GR009E, and sends a copy of Form 15GR001P to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form 15GR001P, the grievant submits the form directly to the LGC or ~~any~~ other facility employee of the facility or OKDHS. Form 15GR001P is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form 15GR001P, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form 15GR001P, if the grievance ~~has~~ was not ~~been~~ resolved to the ~~decisionmaker's~~ decision maker's satisfaction, the LGC fills out Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of ~~minors~~ children in OKDHS custody and ~~youths~~ in voluntary OKDHS care, the first level respondent may be the supervisor of the grievant's Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by ~~Children and Family Services Division (CFSD)~~ Child Welfare Services (CWS) placement services, the respondent is the applicable ~~CFSD~~ CWS programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable ~~county~~ district director.

(D) If the minor also is a DDSD client, this may be the DDSD case manager supervisor.

(E) For adults receiving services from DDSD, the first level respondent may be the DDSD case manager supervisor.

(2) The LGC completes the first box in the first level section on Form 15GR002E, attaches the corresponding Form 15GR001P, and other relevant documentation and information, and submits it to the first level respondent, by

the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form 15GR002E by completing the second box in the first level section on Form 15GR002E. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant ~~can~~ may contest the target date by taking the grievance to the next problem resolution level of ~~problem resolution~~.

(4) The LGC monitors the timely response by the first level respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E, and the grievance immediately proceeds to the second problem resolution level of ~~problem resolution~~.

(5) Within three business days of receipt of the first level response, the LGC or designee contacts the ~~decisionmaker~~ decision maker to inform the ~~decisionmaker~~ decision maker of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the ~~decisionmaker~~ decision maker is satisfied with the proposed resolution. The first level respondent may meet with the ~~decisionmaker~~ decision maker with or without the LGC present. If the ~~decisionmaker~~ decision maker needs time to decide whether to accept the proposed resolution, the ~~decisionmaker~~ decision maker has three business days to make a decision. If ~~no~~ a decision is not communicated to the LGC within three business days, the ~~decisionmaker~~ decision maker is deemed to have accepted the proposed resolution. The LGC is responsible for informing the ~~decisionmaker~~ decision maker that he or she has three business days to accept or appeal the respondent's proposed resolution.

(6) If the ~~decisionmaker~~ decision maker is satisfied with the proposed resolution, the LGC indicates his or her acceptance on Form 15GR002E, notifies those responsible for grievance resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the ~~decisionmaker~~ decision maker, but involves a future target date, the LGC monitors compliance with the target date. If the LGC determines that the resolution ~~has~~ was not ~~been~~ achieved by the target date, the LGC immediately reopens the grievance and processes it for the second problem resolution level of ~~problem resolution~~.

(8) If the ~~decisionmaker~~ decision maker does not accept the proposed resolution and elects to take the grievance to the second problem resolution level of ~~problem resolution~~, the LGC processes the grievance for the second problem resolution level of ~~problem resolution~~ in accordance with per subsection (1) of this Section.

(1) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution ~~pursuant to~~ per subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form 15GR002E, ensures the corresponding Form 15GR001P and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For OKDHS grievances, the OKDHS ~~county~~district director or the DDS area manager, whichever is applicable, is the second level respondent. ~~If the administrator, county~~However, if the district director, or DDS area manager was the first level respondent, then the second level respondent would be the applicable deputy director. If the provider administrator or DDS area manager is the first level respondent the second level review is skipped and is processed as a contested grievance pursuant to of problem resolution is skipped and the grievance may be processed as a contested grievance pursuant to per OAC 340:2-3-46.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form 15GR002E by completing the applicable box in the second level section on Form 15GR002E. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable ~~area~~deputy director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E and the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within three business days of receipt of the second level response, the LGC contacts the ~~decisionmaker~~decision maker to inform him or her of the proposed resolution and the right to contest the response to the grievance, and determines if the ~~decisionmaker~~decision maker is satisfied with the proposed resolution. If the ~~decisionmaker~~decision maker needs time to decide whether to accept the proposed resolution, the grievant has three business days to make a decision. If no decision is communicated to the LGC within three business days, the grievant is deemed to have accepted the proposed resolution.

(7) If the ~~decisionmaker~~decision maker is satisfied with the proposed resolution, the LGC documents the ~~decisionmaker's~~decision maker's acceptance on Form 15GR002E, notifies those responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the ~~decisionmaker~~decision maker, but involves a future target date, the LGC monitors compliance with the target date. If

the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the ~~decisionmaker~~decision maker does not accept the proposed resolution and elects to contest the response, a contested OKDHS grievance is processed in ~~accordance with~~per OAC 340:2-3-46. Contested facility grievances are processed in ~~accordance with~~per subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the ~~decisionmaker~~decision maker does not accept the proposed resolution or the target date of the second level proposed resolution, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This section does not apply to grievances of Hissom class members. Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of notice that the ~~decisionmaker~~decision maker does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to conduct an evidentiary hearing or hear argument. In the event the board determines ~~that an~~ evidentiary hearing evidence would assist ~~it~~ in resolving the grievance, the board has the option of conducting an informal hearing.

(3) Within ten business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds by submitting a written decision to the LGC.

(4) Within three business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the ~~decisionmaker~~decision maker of the decision and provides the ~~decisionmaker~~decision maker with a copy of the board's decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison may shorten the response time as circumstances warrant.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by ~~e-mail~~email, using the ~~e-mail~~email address *oca.grievances@okdhs.org.

(p) **Grievance training required.** LGCs are required to take the OCA online grievance training within 60 calendar days of their appointments, and annually thereafter.

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340:2-3-47. Grievances of minors in OKDHS custody living in private residential facilities

(a) **Application.** This Section describes processes relating to grievances of minors in the Oklahoma Department of Human Services (OKDHS) custody who are residing in a private residential child care center which contracts with OKDHS.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The applicable Child Welfare liaison staff gives Form 15GR004E, Notice of Grievance Rights -Minors in OKDHS Custody, to the client within 24 hours of placement of the client in a private residential placement, and annually thereafter. This form is used to identify the local grievance coordinator (LGC) for the facility and to explain the client's right to grieve. After the client signs the form, a copy is made for the client and the original is maintained in the permanent record for the client. If the designated LGC changes, the facility notifies the clients and the person(s) responsible for the clients' custody of the name and contact information of the new LGC within ten business days.

(d) **Filing and processing of grievance at the facility.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with per OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested OKDHS grievances of residents are processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with this subsection. When a decisionmaker decision maker elects to appeal a grievance, within three business days of the request the LGC transmits to the chair of the facility's board of directors, or an appeals committee designated by the board, Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, which has attached to it the corresponding Form 15GR001E, Grievance Form, and other documents and information relevant to the subject matter of the grievance. The chair of the board of directors or appeals committee responds within ten business days by sending a written response to the LGC. A copy is attached to the applicable quarterly grievance report sent to the OCA grievance liaison in accordance with per OAC 340:2-3-45(h)(2). Within three calendar days of receipt of the response, the LGC communicates the response to the ~~decisionmaker~~ decision maker. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

340:2-3-50. Grievances of foster parents

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section ~~72131-9-120~~ of Title 10A of the Oklahoma Statutes (10A O.S. § 1-9-120) confers on OKDHS the responsibility to establish grievance procedures for foster parents contracting with state agencies or child-placing agencies.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form 15GR008E, Notice of Grievance Rights -Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) specialist assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster parent. If the designated LGC changes, the state agency or child-placing agency notifies the foster parent(s) of the name and contact information of the new LGC within ten business days.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

- (A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or
- (B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (G), the LGC informs the foster parent why the grievance is not being processed, using Form 15GR016E, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

- (A) a decision of a court;
- (B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;
- (C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-94;
- (D) disputes with other foster parents;
- (E) written plans of compliance. The foster parents provide their written input on the compliance documentation;
- (F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC 340:75-1-12.6; and
- (G) complaint alleges retaliation by an employee of OKDHS, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

(3) **Allegations of retaliation.** Allegations of retaliation or discrimination, as those terms are defined in OAC 340:2-3-38(b), are processed in accordance with that Section.

(4) **Allegations of discrimination.** Allegations of discrimination based on sex, age, national origin, religion, color or disability, are referred to the OKDHS Office

for Civil Rights and the LGC immediately forwards the complaint to the OKDHS civil rights administrator, and so informs the foster parent using Form 15GR016E.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance ~~in accordance with~~ per OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The ~~county director~~ district director serves as the LGC for grievances filed by foster parents. For grievances involving specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE

340:2-3-62. Grievance and Abuse Review Committee (GARC) review of Office of Client Advocacy (OCA) investigation reports

(a) **Application.** GARC reviews OCA investigative reports involving allegations of abuse, neglect, verbal abuse, caretaker misconduct, or exploitation by a VAC with the exception of cases involving a community services worker that are processed ~~in accordance with~~ per OAC 340:100-3-39.

(b) **Requests for GARC review.** Requests for GARC review are submitted in writing to the advocate general within 30 calendar days of receipt of an OCA investigation report. Requests for GARC review include an explanation of the basis of the review and the reasons review is requested. Supporting documentation for the request for review is included with the request.

(1) With regard to investigations involving a facility operated by OJA or under contract with the Office of Juvenile Affairs (OJA), a request for GARC review may be made by the ~~facility administrator, the~~ OJA advocate general, or the executive director of OJA. ~~If a request is made by a facility administrator, he or she sends a copy of the request to the executive director of OJA.~~

(2) With regard to investigations involving Oklahoma Department of Human Services (OKDHS) operated facilities ~~and facilities which contract with OKDHS,~~ a request for GARC review can be made by the facility administrator, the applicable state office administrator, or the OKDHS Director. If a request is made by a facility administrator, he or she sends a copy of the request to the applicable state office administrator.

(3) With regard to investigations involving facilities that contract with OKDHS, a request for GARC review

may be made by the applicable state office administrator, or the OKDHS Director.

(34) With regard to investigations involving a Hisssom class member that result in a not ~~confirmed~~ substantiated finding or in which the accused caretaker is not a community services worker, a request for GARC review can be made by the administrator of the provider agency that employed the accused caretaker at the time of the incident(s) investigated, or by the Developmental Disabilities Services Division (DDSD) director or designee.

(45) With regard to investigations involving a facility operated by the Oklahoma Department of Rehabilitation Services (ODRS), a request for GARC review ~~can~~ may be made by the ~~facility administrator or the~~ ODRS director.

(56) With regard to all other investigations conducted pursuant to OAC 340:2-3-32, including investigations involving an OKDHS employee not working at an OKDHS operated facility, a request is made by the ~~facility administrator~~ applicable state office administrator or the OKDHS Director.

(67) The advocate general also can request GARC review.

(c) **Scope of GARC review.** GARC conducts a *de novo* paper review of the alleged incident(s) at issue in the OCA investigation.

(1) GARC does not consider prior unsubstantiated allegations.

(2) Involved administrators, state office administrators, the OJA advocate general, if applicable, and their designees may attend the GARC meeting. The OCA investigator involved in a case being reviewed, and his or her supervisor, may attend the GARC meeting to provide information. The level of participation of attendees is within the discretion of the chair of GARC.

(3) If an administrator, state office administrator, or OJA representative wants to submit additional evidence not considered during the OCA investigation, it is submitted to the advocate general contemporaneously with the request for GARC review. For good cause shown, evidence can be submitted to the advocate general no later than five business days before the GARC meeting.

(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a case until its next meeting. GARC may request additional information from OCA, an administrator, the OJA advocate general, or a state office administrator.

(d) **GARC report contents.** Within 15 business days of a GARC meeting to review a case, GARC prepares a report that includes items (1) through (4) in this subsection.

(1) GARC's opinion whether the evidence is sufficient, based on a preponderance of the evidence standard, to confirm maltreatment has occurred and the basis for GARC's opinion.

(2) If in GARC's opinion the evidence is sufficient to confirm maltreatment, the report specifies the maltreatment found to have occurred, the specific acts constituting

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the maltreatment, the dates and places the conduct occurred, the rules, policies, and statutes violated, and the nature of any injury to the alleged victim(s).

(3) GARC's recommendation as to any action needed to protect the victim and other clients.

(4) Areas of concern identified during GARC's review of the case regarding facility or OKDHS practices or procedures.

(e) **OKDHS Director's review.** The advocate general submits to the OKDHS Director the GARC report, the corresponding OCA investigation report, and other pertinent documents.

(1) Within 15 business days of receipt of the GARC report, the OKDHS Director decides whether to:

- (A) adopt GARC's findings;
- (B) adopt GARC's findings with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) reverse GARC's finding.

(2) If the OKDHS Director does not respond within 15 business days of receipt of the GARC report, the GARC finding becomes final.

(3) OCA notifies in writing all interested parties of the result of the OKDHS Director's review.

(f) **Routing the results of the OKDHS Director's review.**

(1) In cases involving OKDHS operated facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator of the facility and the appropriate state office administrator. Within two business days of receipt of the OKDHS Director's decision, the administrator informs each accused employee of the result of the OKDHS Director's review.

(2) In cases involving private or non-OKDHS operated public facilities, the advocate general sends a copy of the GARC report and the results of the OKDHS Director's review to the administrator and the director of any agency that contracts with or licenses the facility. When the administrator is named as an accused employee in the allegation, the GARC report and results of the OKDHS Director's review are sent to the chair of the facility's board of directors.

(g) **Response to results of the OKDHS Director's review.** After receipt of the results of the OKDHS Director's review of an OCA investigation involving an OKDHS employee, the affected state office administrator determines whether to initiate appropriate disciplinary action ~~in accordance with~~ per OAC 340:2-3-12. Within 30 calendar days of receipt of the results of the OKDHS Director's review, the state office administrator informs the advocate general of any disciplinary action taken or to be taken with regard to an employee found to have committed maltreatment and any corrective action taken or to be taken with regard to areas of concern identified by GARC in its report.

[OAR Docket #13-606; filed 4-16-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 2. ADMINISTRATIVE COMPONENTS

[OAR Docket #13-593]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 7. Office of Inspector General

Part 3. ~~Single Audit Guide~~ Audits of Grant Recipients and Subrecipients
340:2-7-25 through 340:2-7-30 [AMENDED]

(Reference WF 12-11)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and Section 7501 et seq. of Title 31 of the United States Code.

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n/a

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n/a

ANALYSIS:

The proposed revisions to Subchapter 7 of Chapter 2 amend the rules to: (1) align rules with current practices of the Office of Inspector General (OIG); (2) add clarifying language; and (3) remove unnecessary and outdated language.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2013:

SUBCHAPTER 7. OFFICE OF INSPECTOR GENERAL

PART 3. SINGLE AUDIT GUIDE AUDITS OF GRANT RECIPIENTS AND SUBRECIPIENTS

340:2-7-25. Purpose

The rules in this part conform to the Federal Single Audit Act of 1984 [Public Law 98-502] and implementation of Single Audit Policy for Recipients of Federal Grants and State Grants. The purpose of the rules in this Part is to assist DHS departments, nonprofit agencies and their auditors prepare annual organization wide financial and compliance audits describe the rules governing required audits of grant recipients and subrecipients contracted by the Oklahoma Department of Human Services (OKDHS) to perform services for OKDHS and its clients. The rules in this Part are not intended to be a complete manual of procedures, nor should they supplant the auditor's judgment of audit work required in a particular situation.

(1) The auditor should include special reports requested by program managers in the Supplemental Information Section of Single Audit Reports. Charges for additional audit work should be made to specific funding sources or individual programs. Although other performance audits, such as economy and efficiency and program audits are not required, they may be performed at an additional charge to funding sources or programs requesting such audits. However, all work performed must build upon completed financial and compliance audit work.

(2) The rules in this part are to be used as a supplement to the following publications:

- (A) American Institute of Certified Public Accountants (AICPA), Audits of State and Local Governmental Units.
- (B) General Accounting Office (GAO), Government Auditing Standards.
- (C) Office of Management and Budget (OMB):
 - (i) Circular A-133 Audits of Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations;
 - (ii) Circular A-122: Cost Principles for Nonprofit Organizations;
 - (iii) Circular A-128: Audits of State and Local Governments and "Common Rule";
 - (iv) Compliance Supplement for Single Audits of State and Local Governments—Uniform Requirements for Grants to State and Local Governments (Compliance Supplement, Revised);
 - (v) Compliance Supplement for Audits of Higher Learning and Other Nonprofit Institutions.

(3) Each Department of Human Services program area has the responsibility to ensure compliance to single audit report requirements. However, it is each division's responsibility to include single audit report requirements in their standard contract agreements. Prior to the start of audit work, DHS program personnel, nonprofit organizations and their auditors should have a clear understanding and agreement on single audit report requirements. A clear up front understanding of audit report requirements will insure acceptance of single audit reports by federal and state funding agencies and eliminate additional audit work resulting from desk reviews of audit reports.

340:2-7-26. Selection of auditors

When a grant recipient or subrecipient contracted by the Oklahoma Department of Human Services selects an independent auditor to perform a required audit, the auditor is required to be a certified public accountant, a registered municipal accountant, or a licensed public accountant licensed prior to December 31, 1970. In addition, the auditor must possess adequate organization to provide impartial opinions, conclusions, judgments, and recommendations. Auditors will be selected by bids and must be approved by the Office of Inspector General.

(1) The audit must be planned to ensure audit work and report requirements will be completed not later than one year from the end of audit period. However, each DHS department has discretion to require audit work and reports be completed more timely generally stipulated by contract to be within 90 days of the contractor's fiscal year end. Written audit reports are to be submitted to appropriate officials of DHS within 30 days after the completion of audit work.

(2) Each audit report will be desk reviewed by Office of Inspector General for the subrecipient to insure compliance with requirements of Single Audit act of 1984, OMB Circular A-133 or A-128, Government Auditing Standards, and the rules in this Part. Additional review of audit work will be performed on an as needed basis.

340:2-7-27. Audit scope

The Single Audit Act of 1984, OMB Circular A-128 and DHS policy require annual organization wide audits. All OMB Circular A-133 audits must be performed on an organization wide basis. The audit must be performed by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits (GAO's Government Auditing Standards).

(1) The Single Audit Report must fulfill requirements of all levels of government users. The auditor must:

- (A) determine that financial statements of organizations present fairly its financial position and results of its financial operations in accordance with generally accepted accounting principles (GAAP) applied on a basis consistent with the preceding period;
- (B) provide an opinion on fairness of:
 - (i) Schedule of Federal Awards;
 - (ii) Schedule of State Awards;
- (C) determine if organization has sufficient internal administrative and accounting control systems to provide reasonable assurance programs are being managed efficiently and adequate records are being maintained;
- (D) determine if organization has complied with laws and regulations having a material effect on its financial statements of each program to assure all costs are reasonable and applicable.

(2) Therefore, independent auditors must become fully aware of all applicable legal and regulatory requirements concerning all funds received by the organization being

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audited. This includes Federal, State, Local and other levels of government funding.

(3) Also, due professional care must be exercised when choosing tests and procedures in preparing reports. At a minimum, consideration must be given to the necessity of work to achieve audit objectives, materiality of audit samples when applying test procedures, effectiveness of internal controls, and cost versus benefits of audit work planned.

(a) **Audit work requirements.** Required audits of grant recipients and subrecipients contracted by the Oklahoma Department of Human Services (OKDHS) must be organization-wide audits. Each OKDHS program area must ensure compliance with audit requirements and include audit requirements in its standard contract agreements. Audit work must meet:

(1) applicable Government Auditing Standards established by the United States Government Accountability Office;

(2) auditing directives specified in circulars issued by the United States Office of Management and Budget;

(3) standards issued by the Financial Accounting Standards Board; and

(4) standards issued by the American Institute of Certified Public Accountants.

(b) **Audit completion.** All audit work and report requirements must be completed no later than nine months from the fiscal year end of the recipient or subrecipient. An OKDHS division may require audit work and reporting requirements to be completed in a shorter time frame when stipulated by contract.

(c) **Audit working papers.** All audit working papers:

(1) must be kept on file for three years or until all questioned items have been resolved;

(2) must be available for inspection by the audited organization, the federal and state funding agency, and other authorized individuals; and

(3) may be reviewed by the OKDHS Audit Oversight Committee.

340:2-7-28. Audit report content

(a) **Preparation of audit report.** The auditor should observe the following requirements in the preparation of the audit report: The audit report must include all reports required by the standards listed in OAC 340:2-7-27(a) and any contractually specified requirements.

(1) clearly identify each financial statement;

(2) clearly identify time period(s) audited;

(3) disclose any unaudited time period which report does not cover;

(4) clearly identify each program included in audit report;

(5) identify any limitation on scope of examination;

(6) identify any statutory or administrative provisions adversely affecting accounting principles in use by agency, program or activity;

(7) if a qualification is required, because of a lack of consistency that is material to the financial report, prepare a statement describing the reason for qualification, effect

upon financial reports, and an opinion on acceptability of change;

(8) note whether audit work was performed by more than one principal auditor. If noted in scope paragraph, also note in opinion paragraph. State division of responsibility and magnitude of portion of financial statements examined by each auditor;

(9) state whether financial statements are presented in accordance with generally accepted accounting principles;

(10) disclose any departures from generally accepted accounting principles in qualified opinion;

(11) include separate explanatory paragraphs disclosing each substantive reason for withholding an unqualified opinion;

(12) explain whether each reason for withholding an unqualified opinion results in a qualification, adverse or disclaimer of an opinion;

(13) under separate report, describe any fraud, abuse, or illegal acts and the possible effect upon entity's financial statements;

(14) include in audit report:

(A) a combining balance sheet;

(B) a combining statement of revenues, expenditures and changes in fund balances. (Funds must be separately identified by function, source or contract in basic financial statements or in a supplementary schedule.);

(C) a Statement of Cash Flows;

(D) a schedule of findings and questioned costs;

(E) a schedule of federal awards with notes. Placed in Supplemental Information section of report;

(F) a schedule of state awards placed in the Supplemental Information section of report;

(G) report(s) on internal controls;

(H) report(s) on compliance;

(I) Supplementary Schedule of Revenues and Expenditures—Budget and Actual (for cost reimbursement contracts with preapproved budgets);

(J) Supplementary Schedule—Supported Living Overpayments (DDSD supported living contractors only); and

(K) date and signature of the auditor.

(b) **Notes on financial statements.** The auditor should comment in the notes to the financial statements on the following:

(1) entity as being defined in such a manner that all known federal and state awards will be included in audit;

(2) accounting policies including those that might have an adverse effect upon federal and state awards;

(3) contingent liabilities payable to federal and state governments;

(4) any material violation of finance related legal and contractual provisions that affect or could affect federal and state awards;

(5) subsequent events that affected or could affect federal and state awards;

(6) identity of employee groups covered by entity's pension plan any pension obligations;

- (7) any changes in amortization of past and prior service costs, a change in treatment of actuarial gains and losses, a change in actuarial method or assumptions;
- (8) any new pronouncements by authoritative bodies that have been implemented;

(e) **Internal controls.** This Section discusses evaluation of internal controls (accounting and administrative), and auditing considerations and procedures that should be considered by auditors in conducting audits of nonprofit entities.

(1) The extent of the auditor's study and evaluation of internal control (accounting and administrative) systems used in administering major federal and state financial assistance programs should be the type of study and evaluation the auditor would perform in accordance with AICPA requirements (i.e., Audits of State and Local Governmental Units (50 percent rule), Statement on Auditing Standards (SAS) No. 55, Consideration of the Internal Control Structure in a Financial Statement Audit, etc.). (OMB) Circular A-110 states that recipient financial management systems should provide for:

- (A) an orderly set of records supported by source documentation;
- (B) current, accurate and complete disclosure of financial results of each Federal and State sponsored project or program;
- (C) adequate identification of source and application of funds for federal and state sponsored activity;
- (D) effective control and accountability for funds, property and other assets;
- (E) minimizing time elapsing between receipt and expenditure of funds for advance payments;
- (F) determining reasonableness, allocability and allowability of costs in accordance with provisions of applicable cost principles and terms and agreements of awards; and
- (G) assuring subrecipients also meet requirements of this Part.

(2) Auditors are expected to perform sufficient tests to form an opinion as to adequacy of described financial management system. The following five critical elements, having significant impact on federal and state funding, must be addressed to meet objectives discussed in this Part:

- (A) management information system (internal control);
- (B) accounting system;
- (C) cash management;
- (D) reporting systems; and
- (E) property management.

(3) Auditors should exercise professional judgment to determine any additional areas that need to be addressed to accomplish overall audit objectives set forth in this Part. It is recognized that some systems affecting federal and state activities, at major nonprofit organizations, are complex and require extensive effort to perform studies and evaluation of them. In addition, auditors should:

- (A) reference all financial statements presented;

- (B) comply with GAO's Government Auditing Standards, AICPA's Audits of State and Local Governmental Units and OMB Circulars A-133, Audits of Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations or OMB Circular A-128, Audits of State and Local Governments;
- (C) clearly describe examination and responsibilities on internal controls;
- (D) identify significant internal accounting controls and those controls designed to provide reasonable assurance that federal and state programs are being managed in compliance with laws and regulations;
- (E) identify controls not evaluated, as well as those evaluated;
- (F) identify any reportable conditions and whether they constitute material weaknesses in internal controls;
- (G) include recommendations for corrective action to improve problem areas noted in report;
- (H) include any recommendations for improvements in internal control process of entity's operation; and
- (I) date and sign audit report.

(d) **Compliance.** Compliance tests must be designed to meet federal testing levels or for state funds, to establish an opinion on compliance with laws and regulations per Government Auditing Standards.

(1) The auditor should:

- (A) use federal government's definition of major programs, as explained in OMB Circular A-128, for federal programs, or OMB Circular A-133 for Non-Profit Organizations;
- (B) use state government's definition of programs, as explained in state contracts;
- (C) identify compliance by using:
 - (i) OMB Compliance Supplement for Single Audits of State and Local Governments or Compliance Supplement for Audits of Higher Learning and Other Non-profit Institutions for federal compliance; and
 - (ii) Contract provisions and general assurances and DDS Supported Living Audit Guidelines for Supported Living contractors for state compliance;
- (D) test all major federal and state programs;
- (E) extend testing, if necessary, to include a sample of non-major federal and state programs to insure that programs representing at least fifty (50) percent of federal expenditures and fifty (50) percent of state expenditures have been tested;
- (F) reference all financial statements presented;
- (G) state whether examination was performed in compliance with GAO's Government Auditing Standards, AICPA's Audits of State and Local Governmental Units or OMB Circular Letters A-133, or A-128;

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- (H) clearly describe examination method used and degree of responsibility being taken, should more than one auditing entity be involved;
 - (I) include a statement of positive assurance with laws and regulations (including compliance with laws and regulations pertaining to reimbursements for those items tested);
 - (J) include an expression of negative assurance for those items not tested;
 - (K) include an opinion on compliance with specific requirements;
 - (L) identify questioned costs;
 - (M) include recommendations for corrective action to improve problem areas noted in report on compliance;
 - (N) identify status of prior year findings; and
 - (O) date and sign audit report.
- (2) ~~The auditor is responsible for having an exit conference with representatives of audited entity and cognizant agency. Copies of draft single audit report should be available to both parties one week prior to conference for review.~~

340:2-7-29. Audit report distribution

~~The provider should~~The grant recipient or subrecipient must submit the completed audit report to the Office of Inspector General, no later than thirty (30) working within 30 calendar days of the report's issuance, following the issuance of the audit report, three copies of the report to the Supervisor of Internal Audit. The report may be emailed to the Internal Audit Administrator or sent by paper copy. When the grant recipient or subrecipient submits the report by paper copy, two copies of the report are sent to Internal Audit Administrator, Oklahoma Department of Human Services, Office of Inspector General, P.O. Box 25352, Oklahoma City, Oklahoma 73125.

340:2-7-30. Resolution of audit findings

When noncompliance with terms and conditions of grant agreements, or state and federal laws and regulations is reported, a plan for corrective action must accompany the audit report. ~~This~~The plan must ensure corrective measures ~~will be~~are completed within six (6) months. ~~All audit working papers must be kept on file for three (3) years or until all questioned items have been resolved, and be available for inspection by audited organization, each federal and state funding agency and other authorized individuals.~~

[OAR Docket #13-593; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #13-594]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

340:5-1-3 [AMENDED]

340:5-1-8 [AMENDED]

Subchapter 3. Reports of Maltreatment of Vulnerable Adults

340:5-3-4 [AMENDED]

340:5-3-6 [AMENDED]

Subchapter 5. Investigation of Adult Protective Services Referrals

340:5-5-3 through 340:5-5-4 [AMENDED]

340:5-5-6 [AMENDED]

(Reference APA WF 12-16)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (10A O.S. § 162); and 43A O.S. §§ 10-105 and 10-108.

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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:

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Effective:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed permanent rule amendments to Subchapters 1, 3 and 5 of Chapter 5 amend the rules to: (1) change the division name and line of authority staff titles due to the reorganization of the Oklahoma Department of Human Services (OKDHS); (2) update terminology; (3) change timely completion of Adult Protective Services (APS) investigative reports for self-neglect referrals from 30 to 60 calendar days; and (4) add a notification requirement upon substantiated findings involving an administrator of a facility.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

340:5-1-3. Program coordination

Adult and Family Support Services Division, Adult Protective Services (APS) Unit, has responsibility for program planning, staff training, technical assistance, quality assurance, and policy development. ~~Field Operations Division, area APS program field representatives (PFR) district supervisors~~ assist in this process by providing local support for APS staff. The APS program is implemented in the field through APS specialists in local Oklahoma Department of Human Services offices.

340:5-1-8. Complaints concerning the APS program

Complaints regarding an investigation or the provision of services may be submitted to the Oklahoma Department of Human Services (OKDHS) by telephone or in written form, including ~~e-mail~~email. Complaints regarding:

- (1) Adult Protective Services (APS) policy and procedure are referred to the ~~county~~district director who performs a case review. The ~~county~~district director sends a written response to the complainant within 45 calendar days stating the general findings of the review. If not satisfied with the ~~county~~district director's findings, the complainant may, within 30 calendar days of the date of the letter, submit a written appeal to the, OKDHS Adult and Family Support Services Division (AFS), APS Unit, ~~P. O. Box 25352, Oklahoma City, OK 73125~~. A committee composed of ~~Family Support Services Division and Field Operations Division~~AFS staff reviews the appeal and sends the complainant ~~its~~the decision within 30 calendar days;
- (2) possible inappropriate ~~treatment~~conduct by an APS specialist or APS specialist IV are referred to the appropriate ~~county~~district director for action; and
- (3) involuntary services are handled through the appropriate judicial system.

SUBCHAPTER 3. REPORTS OF MALTREATMENT OF VULNERABLE ADULTS

340:5-3-4. Reports under the jurisdiction of agencies other than local Adult Protective Services (APS)

Some reports of alleged maltreatment of vulnerable adults are not investigated by local Adult Protective Services (APS) staff.

- (1) **Reports of alleged victims who are residents of Northern Oklahoma Resource Center of Enid (NORCE), Robert M. Greer Center (Greer), or Southern Oklahoma Resource Center (SORC) of Pauls Valley, or former residents of Hissom Memorial Center.** APS staff refer reports that allege a current resident of NORCE, Greer ~~Center~~, or SORC has suffered maltreatment by an employee of the facility or maltreatment of a former resident of Hissom Memorial Center by a current

caretaker to the Oklahoma Department of Human Services (OKDHS) Office of Client Advocacy (OCA).

(2) **Reports of maltreatment by persons providing services to alleged victims receiving services from a community services worker, a community services provider, a SoonerCare (Medicaid) personal care services provider, or Medicaid personal care assistant (MPCA).** APS staff refer reports to ~~the~~ OKDHS OCA when the alleged victim receives services from a community services worker, a community services provider, a SoonerCare (Medicaid) personal care services provider, or a MPCA, as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

(3) **Alleged victims of maltreatment in hospital settings.** APS staff ~~refer~~refers reports of alleged maltreatment of vulnerable adults who are receiving services in medical hospitals, rehabilitation facilities, or private psychiatric hospitals by staff of the facility to the Oklahoma State Department of Health (OSDH), Protective Health Services, Medical Facilities Service

(4) **Alleged victims of maltreatment by staff of the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) and its contracted providers.** APS staff refer reports of alleged maltreatment of a vulnerable adult by staff of a public or private community mental health agency to the Advocacy Division of ODMHSAS. If ODMHSAS declines to conduct an investigation, the report may be referred back to the local APS office.

(5) **Reports alleging maltreatment of residents by staff of nursing facilities.** APS staff send reports of alleged maltreatment of nursing facility residents to the Adult and Family Support Services Division (AFS), APS Unit, Long Term Care Investigations Section. These reports are also sent to the OSDH, Protective Health Services.

(6) **Reports involving local, state, or federal correctional facilities.** APS staff refer reports of abuse, neglect, or exploitation of residents by staff of state or federal public hospitals, jails, prisons, or similar facilities to the facility's regulatory department for investigation and to the local district attorney.

(7) **Reports involving deceased alleged victims.** Reports of maltreatment of persons who are already deceased at the time the report is made are not accepted by APS. Reporters are referred to the state or local Office of the Medical Examiner, local law enforcement, or, if the death occurred in a nursing facility, to the Medicaid Fraud Control Unit in the Office of the Attorney General.

340:5-3-6. Screening APS reports

(a) **Time frame for screening Adult Protective Services (APS) reports.** APS specialist IVs are responsible for screening new reports on the APS Computer System on a regular basis throughout the day to identify emergency situations and to ensure assignment to the correct ~~human services center (HSC)~~county office.

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(b) **Responsibility for screening reports.** APS specialist IVs are responsible for screening reports and either accepting them as APS referrals or classifying them as Information and Referral. When a request is accepted as an APS referral, the APS specialist IV determines whether an emergency response is indicated, ~~whether~~ if the referral is employee related, and which APS specialist is assigned the referral. APS specialist IVs complete screening in a manner to facilitate the timely initiation of the investigation ~~as defined in~~ per OAC 340:5-5-2.

(c) **Reports involving domestic violence.** APS situations are often forms of domestic violence. Reports received alleging maltreatment of an adult by a spouse or other family or household member are considered protective services requests ~~if~~ when the alleged victim is vulnerable ~~as defined in~~ per OAC 340:5-1-6.

(d) **Reports involving OKDHS employees or their families.** Specific procedures are followed when a report of maltreatment is received ~~which~~ that involves ~~an employee of the Oklahoma Department of Human Services (OKDHS) employees.~~

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REFERRALS

340:5-5-3. Elements of an investigation

Although the investigation process may vary depending on the initial allegations and other factors, all Adult Protective Services (APS) investigations include paragraphs (1) through (10).

(1) **Notification of local law enforcement.** Local law enforcement is provided notification of all APS referrals assigned for investigation.

(2) **Efforts to locate and notify others.** APS specialists must make every reasonable effort to locate and notify the alleged victim's (AV's) caretaker, guardian, and next of kin.

(3) **Visits to and interviews with the vulnerable adult.** As mandated by Section 10-105(C)(1)(a) of Title 43A of the Oklahoma Statutes (43A O.S. § 10-105(C)(1)(a)) each APS investigation includes at least one visit and private interview with the vulnerable adult, and may include as many as are necessary to reach a conclusion and determine what, if any, protective services are needed.

(4) **Consultation with others.** The APS specialist interviews other people who have or can reasonably be expected to have pertinent knowledge about the AV's circumstances during the investigation, including any alleged perpetrator (AP) of maltreatment.

(A) Consultation includes medical, psychiatric, or other evaluations as necessary to assist in the determination of a vulnerable adult's decision-making capacity and need for services.

(B) The AV's permission is not required for these contacts.

(5) **Photographs.** The APS specialist may take still photographs or video recordings to document injuries to the vulnerable adult, or conditions in the adult's residential

environment which have resulted or may result in an injury or serious harm to the adult.

(6) **Other relevant data.** The APS specialist collects ~~any~~ data relevant to the situation being investigated; including records, to arrive at a finding on the referral. If the APS specialist is denied access to pertinent records, documentation, or other information relevant to the investigation, the Oklahoma Department of Human Services (OKDHS) may petition the court for an order allowing access.

(7) **Determining the adult's decision-making capacity.** OKDHS is mandated by 43A O.S. § 10-106(C) to determine a vulnerable adult's risk and needs along with the vulnerable adult's capacity to consent to receive services, especially with regard to the need for involuntary services. Each investigation includes an evaluation of the vulnerable adult's decision-making capacity.

(A) Information is obtained from medical or psychiatric sources, ~~if~~ when available, to assist in the determination. In making ~~this~~ the determination, the APS specialist assesses and considers:

(i) the vulnerable adult's short and long term memory;

(ii) the vulnerable adult's executive functioning by ~~their~~ his or her ability to plan and execute a plan;

(iii) the vulnerable adult's ability to recognize risk factors;

(iv) denial of problems by the vulnerable adult or caretaker;

(v) the vulnerable adult's executive functioning by his or her ability to understand and follow directions;

(vi) indicators of affective disorders, such as depression or bipolar disorder; and

(vii) indicators of substance abuse, dementia, delirium, psychosis, traumatic brain injury, uncharacteristic socially inappropriate behaviors, impaired decision-making, and other factors.

(B) The APS specialist's assessment of a vulnerable adult's mental capacity to consent to protective services takes into account the vulnerable adult's awareness of ~~the~~:

(i) ~~the~~ limitations and deficiencies in the physical environment;

(ii) ~~the~~ vulnerable adult's own physical or mental limitations;

(iii) resources available to assist in meeting the vulnerable adult's needs; and

(iv) ~~the~~ consequences to the vulnerable adult if nothing is done to improve the situation.

(C) If a vulnerable adult is deficient in all or most of the areas in (B) of this paragraph, he or she may lack the capacity to consent to protective services and it may be appropriate to petition the district court for an order authorizing the provision of needed services.

(D) If a vulnerable adult expresses awareness of all four areas in (B) of this paragraph, it is likely that

the present circumstances are the vulnerable adult's choice, though in some cases a vulnerable adult might express awareness in these areas and still lack the capacity to consent to provision of services.

(E) If a vulnerable adult appears unaware of the consequences of the present situation, and an emergency exists, legal intervention is appropriate.

(8) **Evaluation to determine the need for protective services.** The evaluation consists of the APS specialist's analysis and consultation with the APS specialist IV of all evidence gathered during the initial phases of the investigation. The evaluation includes consideration of whether:

(A) the vulnerable adult needs protective services. If so, the need for protective services is documented to include the least restrictive services that will meet the person's needs;

(B) services that are identified as needed are available through OKDHS or in the community, and the sources and manner in which they can be provided. Options are explored with the vulnerable adult;

(C) the vulnerable adult is capable and willing to obtain services for himself or herself;

(D) the vulnerable adult can pay for needed services or is eligible for public assistance programs;

(E) a caretaker or guardian is willing to provide or agree to the provision of needed services; and

(F) the vulnerable adult desires the services.

(9) **Completion of investigative report.** From the date an APS referral is received, the APS specialist completes the investigative report within ~~30 calendar days for self-neglect referrals and 60 calendar days for referrals involving an AP.~~ The APS specialist IV may extend the time frame for completion of an investigation for an additional 30 calendar day period when it is in the vulnerable adult's best interest to do so. To complete the investigation, the APS specialist:

(A) completes necessary interviews and assessments including identification of any immediate service needs;

(B) completes all final documentation;

(C) submits a report to the local district attorney; ~~and~~

(D) submits a report to the court of jurisdiction if the alleged victim is currently under guardianship or conservatorship; and

~~(E)~~ makes a determination of substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6.

(10) **Findings.** The APS specialist, in conjunction with the APS specialist IV, makes a final determination of the investigative process on each allegation contained in the APS referral. Each allegation is determined to be substantiated or unsubstantiated and the investigation documented ~~in accordance with~~ per OAC 340:5-5-5. The APS specialist IV notifies the appropriate ~~area~~ district director and the APS field administrator immediately of substantiated referrals in which an OKDHS employee is named as perpetrator.

(11) **Follow-up.** The APS specialist, in consultation with the APS specialist IV, is responsible for determining what follow-up is needed in each case investigated.

(A) On cases not requiring court-ordered involuntary services, follow-up needs are determined on a case-by-case basis.

(B) For referrals that resulted in a vulnerable adult receiving involuntary services, OKDHS is responsible for ensuring basic needs for safety and security are met as required by the court. The APS specialist monitors the delivery of court-ordered protective services and continues to assess the need for additional services determined by the changing needs of the vulnerable adult. At least one follow-up visit is made at 30 calendar days regardless of whether OKDHS continues to hold temporary guardianship.

(i) If the vulnerable adult's situation is stable or improving after 30 calendar days and OKDHS no longer holds guardianship, the case is closed.

(ii) If OKDHS continues to hold guardianship after 30 calendar days, a follow-up visit to the vulnerable adult is required at least once each 30 calendar days for the duration of the temporary guardianship.

(iii) If the vulnerable adult's situation is deteriorating at any time during the follow-up period, the service plan is reassessed and changed as needed with the concurrence of the court.

(iv) Follow-up visits to vulnerable adults receiving involuntary services are made at least every 30 calendar days, but may be made as often as needed to comply with APS specialist guardianship responsibilities and to monitor the vulnerable adult's situation.

(v) If an out-of-home placement is used as a temporary or long term solution to identified needs, the APS specialist has regular contact with the vulnerable adult for the duration of the court ordered temporary guardianship. The frequency of this contact is determined by the APS specialist and APS specialist IV's determination of the specific situation and the availability of an independent objective third party to provide follow-up and notification to the APS specialist. The APS specialist visits the vulnerable adult at least once every 30 calendar days while the vulnerable adult is under APS guardianship. The APS specialist documents information from follow-up visits in the APS Computer System and makes it available to the court on review of the guardianship. Follow-up visits may be made as frequently as the APS specialist and specialist IV determine they are needed, based on an individual vulnerable adult's situation. For vulnerable adults placed:

(I) in medical facilities, such as geriatric psychiatric units or medical hospital for care, the worker follows-up with the vulnerable adult's assigned social worker;

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- (II) in group homes, residential care facilities, and assisted living centers, the APS specialist may contact other professionals not associated with the facility who provide treatment or services to the vulnerable adult for follow-up information every 30 calendar days or more often as indicated;
- (III) at any facility owned or operated by OKDHS, the APS specialist makes face-to-face visits every 30 calendar days with interim contacts with the social work staff or more often as indicated; and
- (IV) at any type of nursing home, the APS specialist visits the vulnerable adult, at least once every two weeks during the first month of placement to check for changes in the vulnerable adult's condition, such as injuries, signs of over-medication, and cognitive state. The APS specialist discusses concerns with the nursing home administrator or director of nursing, and the APS specialist IV. After the first month, the APS specialist visits the vulnerable adult at least once every 30 calendar days, reviews the nursing home charts and incident reports, and discusses care needs with the staff and vulnerable adult's family, if available.
- (C) The APS specialist may determine, as a result of follow-up contacts, that further placement options need exploring. This may be the result of inappropriate action on the part of the provider, current information about the facility's ability to provide care for the vulnerable adult, or the facility's request to relocate the vulnerable adult.
- (i) Placement alternatives are determined in accordance with this Section and approved by the specialist IV, ~~county and the district director, and the area APS program field representative (PFR).~~
- (ii) The court appointed attorney for the vulnerable adult and the family is notified of the problems and the alternatives that have been developed.
- (iii) The APS specialist submits a written report of the change of placement to the court, with a copy of the motion to the vulnerable adult's family and attorney of record.
- (D) The APS specialist makes frequent contact with vulnerable adults remaining at home in temporary guardianship at a minimum of every 30 calendar days ~~to assure that~~ to ensure the established service plan meets vulnerable adult's safety and needs ~~are being met by the established service plan.~~ The APS specialist:
- (i) makes modifications as needed to the service plan as well as provision of services by providers;
- (ii) evaluates the quality of care and the method of contact on a case-by-case basis depending on the

individual needs of the specific vulnerable adult including a face-to-face visit every 30 calendar days; and

- (iii) submits reports at the request of the court or a minimum of every 30 calendar days.
- (E) In the event the vulnerable adult is placed in a facility out-of-county, the APS specialist IV immediately contacts the APS specialist IV in the county of placement to notify the receiving county of the placement and that follow-up activities pursuant to this paragraph must be provided by the receiving county.
- (i) The APS specialist in the county where the vulnerable adult is residing is the ~~worker~~ specialist designated to provide follow-up services for temporary guardianship cases.
- (ii) The resident county APS specialist is responsible for all issues that require written consent and other problems or concerns and acts in coordination with the APS specialist in the county of court jurisdiction for reporting to the court as required by the court order with a minimum of every 30 calendar days.
- (iii) ~~The~~ APS specialists and specialist IVs from both counties discuss and determine the best course of action for renewals of temporary guardianships.

(I) The decision takes into account the vulnerable adult's specific situation, the family and their desires, the availability of the courts in the two counties, ~~and~~ the advice of the vulnerable adult's court appointed attorney, and the attorney(s) representing OKDHS in the matter.

(II) ~~The area APS PFR~~ district director, FSSD Adult and Family Services (AFS) APS Unit, and attorneys for the OKDHS Office of General Counsel are consulted as needed for assistance in determining the best course of action.

340:5-5-4. Special considerations during investigations

- (a) **Referrals regarding members of Indian tribes.** Referrals are accepted for an alleged victim (AV) who is a tribal member according to the Protective Services for Vulnerable Adults Act as set forth in Sections 10-101 through 10-110 of Title 43A of the Oklahoma Statutes (43A O.S. §§10-101 through 10-111). The Adult Protective Services (APS) specialist provides or arranges voluntary or involuntary services as indicated for a vulnerable adult regardless of whether the adult resides on tribal land.
- (b) **Referrals involving two or more counties.** If a referral involves two or more counties, as when the AV lives in one county and the alleged perpetrator (AP) in another or when the AV moves either temporarily or permanently to another county before the investigation has been completed, local APS staff from both ~~human services centers (HSCs)~~ county offices are involved in the investigation.

(c) **Referrals involving Soonercare (Medicaid) fraud.** When an APS investigation indicates fraud by a provider receiving Medicaid funds, APS staff immediately notifies the Medicaid Fraud Control Unit (MFCU) in the Office of the Oklahoma Attorney General. APS cooperates with any investigation by MFCU. If MFCU declines to investigate, APS staff completes the investigation and sends a summary report to MFCU upon completion of the investigation.

(d) **Referrals involving persons and provider agency employees.** Care providers who may be subject to APS investigation include, but are not limited to, home health providers, adult day care centers, independent living centers, residential care facilities, and assisted living centers.

(1) These agency investigations include all the elements of an APS investigation, with special emphasis placed on:

- (A) interviewing agency staff and other residents or participants who may have knowledge of the reported incident;
- (B) obtaining copies of applicable charts and records;
- (C) reviewing medication lists and schedules;
- (D) taking photographs;
- (E) examining habilitation or other care plans;
- (F) examining financial records and other money management documentation;
- (G) reviewing time schedules and time sheets; and
- (H) requesting any other information needed to complete the investigation.

(2) If assistance is needed in assessing medical issues in these cases, involvement of the OKDHS long-term care nurse may be requested.

(3) Any corrective action plan on the part of the provider agency becomes a part of the APS case record. If the provider agency fails to cooperate in addressing the substantiated elements of the investigation, APS staff notifies the licensing agency, any appropriate governing board, and the district attorney's (DA's) office of the failure to cooperate.

(e) **Referrals involving other licensed or certified persons.** APS staff sends findings to any state agency with concurrent jurisdiction over persons or issues identified in the investigation, including, where appropriate, the Oklahoma State Department of Health (OSDH), the Oklahoma Board of Nursing, and any other appropriate state licensure or certification boards, agency agencies, or registry registries.

(f) **Referrals alleging exploitation.** When referrals involve large amounts of funds, resources, or the need to access complex records regarding financial transactions, the APS specialist is authorized to request assistance from the OKDHS Office of Inspector General (OIG). If OIG declines to investigate, the APS specialist completes the investigation. Protective services that may be provided in cases of exploitation include:

- (1) changing the representative payee;
- (2) freezing all assets of the vulnerable adult;
- (3) petitioning the court for an order allowing access to records;

- (4) redirecting or stopping the flow of the vulnerable adult's assets into the alleged perpetrator's accounts; and
- (5) stopping perpetrator access to the alleged victim's account(s).

(g) **Persons referred to OKDHS by the courts.** Courts are not authorized to remand criminal defendants to OKDHS based on a finding of lack of competency. Courts are authorized to refer the alleged incompetent defendant to OKDHS for consideration of voluntary assistance or conditionally release the incompetent defendant according to 22 O.S. § 1175.6(b)(B). In order to qualify for such disposition, the court must make findings described in (1) or (2) of this subsection.

(1) Referral for voluntary services or conditional release occurs when the court finds ~~that~~ the person is incompetent for reasons other than the AV is a person requiring treatment under 43A O.S. and is found not to be dangerous.

(2) When a court, the DA, or the attorney for a criminal defendant notifies the APS specialist that a referral for voluntary OKDHS services or conditional release has been made, the APS specialist obtains a copy of the order from the person making the referral. If, after evaluation, it appears to the APS specialist the AV may also be developmentally disabled, the APS specialist immediately contacts the Developmental ~~Disability~~ Disabilities Services Division (DDSD) Area Intake office and requests their involvement in the process of determining in consultation with the Office of General Counsel if voluntary services are available and adequate or whether to propose a plan of services for conditional release. This is a joint effort between the APS specialist and the DDSD case manager.

(h) **AV receiving services from DDSD.** When an AV is receiving or may be eligible for services from DDSD, the APS specialist contacts the appropriate DDSD Area Intake office to coordinate activities to enhance the AV's safety.

(i) **Referrals involving residents of residential care facilities, assisted living facilities, and ~~continuum~~ of adult day care facilities.** The APS specialist sends a copy of the final investigative report to OSDH. Upon completion of an investigation involving an administrator named as the alleged perpetrator and the findings are substantiated, the APS specialist IV notifies the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA).

340:5-5-6. Provision of adult protective services (APS) to vulnerable adults receiving APS services

(a) **Voluntary protective services.** Protective services may be provided on a voluntary basis when a vulnerable adult consents to provision of services, requests services, and is willing to allow the Adult Protective Services (APS) specialist to provide or arrange for services as authorized by Section 10-106 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-106).

(b) **Payment for protective services.** The cost of providing voluntary or involuntary protective services is borne by the vulnerable adult if the APS specialist determines ~~that~~ the person is financially able to make payment or by any private or

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public programs for which the vulnerable adult is eligible. If a caretaker controls the person's funds and refuses to pay for necessary services, this may be construed as caretaker interference and is handled as described in (3) of this subsection.

- (1) **Payment for voluntary services.** If voluntary services are required to meet an emergency need and no other payment source is available, the APS specialist follows procedures described in (3) of this subsection. In cases where the services are not to meet an emergency need, the APS specialist arranges for voluntary services if:
 - (A) services can be provided free of charge;
 - (B) the vulnerable adult has funds and agrees to pay for the services; or
 - (C) there is a public or private assistance program available to pay for the services.
- (2) **Payment for involuntary services.** Payment for involuntary protective services is made from the vulnerable adult's funds only upon order of the court. If payment is required for involuntary services, procedures described in (3) of this subsection are followed if:
 - (A) no funds are available from the vulnerable adult's assets; and
 - (B) no private or public payment source is available.
- (3) **Payment for emergency protective services.** The Oklahoma Department of Human Services (OKDHS) maintains a limited APS Emergency Fund that may be accessed only when specific criteria are met. This fund is used as a short-term measure for crisis situations until other arrangements are made.
- (c) **Court-related services.** All petitions or motions filed with the court regarding a vulnerable adult require the signature of the district attorney (DA), assistant district attorney (ADA), or OKDHS Office of General Counsel attorney.
- (d) **Non-cooperation of caretaker.** When a vulnerable adult consents to receive protective services, but the caretaker refuses to allow the provision of services, OKDHS may petition the court for an injunction prohibiting the caretaker from interfering with the provision of protective services in accordance with subsection (e).
- (e) **Petitioning the court - order enjoining caretaker.** When the vulnerable adult's caretaker refuses to allow the provision of protective services to which the vulnerable adult has consented or otherwise interferes in the provision of services, OKDHS may petition the court for an Order to Enjoin Caretaker.
- (f) **Refusal to consent to protective services.** If a vulnerable adult does not consent to the provision of needed services, or withdraws consent after it is given, the APS specialist documents the vulnerable adult's refusal in the case narrative or on Form 08AP002E, Adult Protective Services Report of Investigation. Services are terminated unless OKDHS determines that the person lacks capacity to consent. In that case, the APS specialist considers action as outlined in per OAC 340:5-1-4.
- (g) **Religious beliefs.** A vulnerable adult has the right to depend on spiritual means for healing through prayer, in accordance with the practices of a recognized religious method

in accordance with the tenets and practices of said place of worship as mandated by 43A O.S. § 10-103(B).

(h) **Involuntary protective services.** Involuntary protective services are authorized by 43A O.S. § 10-107. If a vulnerable adult is suffering from abuse, neglect, or exploitation that presents a substantial risk of death or immediate and serious physical harm to self, or significant and unexplained depletion of the adult's estate, but lacks the capacity to consent to receive protective services and no consent can be obtained from anyone acting as caretaker, the services may be ordered by the court on an involuntary basis. In accordance with 43A O.S. § 10-107(B)(1), the court authorizes provision of specific services ~~that~~ the court finds least restrictive of the rights and liberty while consistent with the welfare and safety of the person involved.

(i) **Petitioning the court - emergency order for involuntary protective services.** OKDHS may petition the court for an order to provide emergency protective services. The petition is made in the county of the vulnerable adult's residence or in a county where ~~any of the~~ protective services are provided.

(1) If the court issues an emergency order to provide protective services, the order includes the appointment of a temporary guardian for the person in need of services. The temporary guardian may be ~~either~~ OKDHS or an interested person. The order gives the temporary guardian authority only to consent to the specified protective services on behalf of the person.

(2) The vulnerable adult, temporary guardian, or any other interested person may at any time petition the court to have the emergency order set aside or modified.

(j) **Do not resuscitate (DNR).** In accordance with 43A O.S. § 10-108(A), only the court may make decisions regarding the granting or denying of consent for a DNR order, the withdrawal of hydration or nutrition, or other life-sustaining treatment.

(k) **Notice to recipient.** The court sets a date to hear the case. The hearing is scheduled within five days of the date the judge signs the notice to the recipient of protective services. The vulnerable adult must receive notice 48 hours in advance of the hearing. Notice may be waived by the court in emergency cases, as described in (2) of this subsection.

(1) A court order is issued showing OKDHS has petitioned the court for an order to provide protective services, and giving the date, time, and place of the hearing. The order specifies who serves the notice to the vulnerable adult.

(2) When petitioning the court for an order for emergency protective services, OKDHS may file a motion to waive notice if there is a risk that immediate and reasonably foreseeable death or serious physical harm to the person will result from a delay. This action is authorized by 43A O.S. § 10-108(D). In response, the court may enter a 72-hour verbal order if not during regular court hours or issue a limited order during regular hours and order written notice be served on the vulnerable adult and attorney, if known, of a hearing to be held within that 72-hour period.

(3) If the hearing is declined, the court may either terminate the emergency temporary guardianship or enter a

temporary 30-day order to provide involuntary protective services.

(l) **Emergency services responsibilities for out-of-home placements.** As a result of a substantiated investigation, the APS specialist develops a service plan to address the identified needs and safety issues.

(1) All out-of-home placements, including any change of placement, of vulnerable adult's under APS guardianship, are reported to and subject to approval of the court. Only protective services ~~that are~~ necessary to remove the conditions immediately threatening the life and well-being of the person are ordered.

(A) Protective services ~~that may be~~ authorized by an emergency court order may include a change of residence only if the court gives specific approval for such action and names the facility in its order.

(B) Emergency placements may be made to nursing homes, personal medical institutions, other home placements, or other appropriate facilities that provide services appropriate for the vulnerable adult's age and condition.

(C) Emergency placement ~~shall~~ is not be made or construed as an alternative to emergency detention and protective custody as authorized under 43A O.S. § 5-206, et seq., or made or construed as an alternative to involuntary commitment under 43A O.S. § 5-410, et seq., when the person otherwise meets the criteria for involuntary commitment.

(D) Services provided to vulnerable adults are provided in a setting that is segregated from residents of a facility who have been determined to be a danger to others.

(2) When the service plan recommends out-of-home placement for safety, health, and care needs, the APS specialist discusses ~~this~~ the plan with the vulnerable adult. The vulnerable adult is provided with all the information necessary to make an informed decision. This may include visits to a variety of placement options arranged or facilitated by the APS specialist. The vulnerable adult's family, if appropriate and approved by the vulnerable adult, is included in the planning stages. The vulnerable adult or family is provided with all the information available to the APS specialist regarding the quality of care provided by the identified and selected placement.

(3) Information on current quality issues of specific nursing facilities are obtained from a variety of sources to determine the appropriateness of a facility for a vulnerable adult receiving APS services. Placements are determined by the local APS specialist and APS specialist IV, with approval from the ~~county district director and area APS program field representative (PFR).~~ If a facility has any Oklahoma State Department of Health (OSDH) deficiencies at or above the actual harm level, or has had more than three substantiated Long Term Care Investigations (LTCI) reports in the past year, the placement must be approved by the Adult and Family Support Services Division (AFSSD)(AFS)APS Unit.

(m) **Restricted visitation.** Supervised or restricted visitation with the vulnerable adult may be put in place only by court order as mandated in 43A O.S. § 10-111 when:

(1) consistent with the welfare and safety of a vulnerable adult; or

(2) the vulnerable adult needs protection as the OKDHS investigation determined that maltreatment occurred.

(n) **Time limits for providing involuntary emergency protective services.** Protective services under an emergency court order other than a 72-hour order may be provided for 30 calendar days. If the APS specialist determines protective services are required past this 30-day period, a petition is filed for continuation of involuntary protective services in accordance with (o) of this Section.

(o) **Continuation of services.** Continuation of services is authorized by 43A O.S. § 10-108(L).

(1) If, upon expiration of the original ~~30-day~~ 30 calendar day order, the vulnerable adult continues to require protective services, OKDHS immediately files a motion for the court to order either or both:

(A) appointment of a guardian; and

(B) placement of the vulnerable adult in a nursing home, personal medical institution, home placement, or other appropriate facility.

(i) Emergency placement ~~shall~~ is not be made or construed as an alternative to emergency detention and protective custody as authorized under 43A O.S. § 5-206, et seq., or made or construed as an alternative to involuntary commitment under 43A O.S. § 5-410, et seq., when the person otherwise meets the criteria for involuntary commitment.

(ii) Services provided to vulnerable adults are provided in a setting that is segregated from residents of a facility who have been determined to be a danger to others.

(2) Before the court enters a 180 calendar day order for continued protective services, the court directs that an evaluation of the vulnerable adult is conducted and submitted to the court within 30 calendar days at a review hearing. The evaluation ~~shall include~~ includes at least:

(A) the address where the person resides and the name of any persons or agencies presently providing care, treatment, or services;

(B) a summary of the professional treatment and services provided the person by OKDHS or other agency, if any, in connection with the problem creating the need for protective services; and

(C) a medical, psychological or psychiatric, and social evaluation and review, including recommendations for or against maintenance of partial legal rights and recommendations for placement consistent with the least restrictive environment required.

(3) The original order continues in effect until the evaluation is submitted and the hearing is held on the motion.

(4) Notice of this hearing is served as described in subsection (k) of this Section.

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- (5) The APS specialist is responsible for assembling the required information and submitting it to the court of jurisdiction.
- (6) When an investigation indicates ~~that~~ the vulnerable adult is likely to need assistance with his or her affairs for an extended period of time, consideration is given to identifying a relative, friend, or other person interested in the well-being of the vulnerable adult to serve as permanent guardian. Any person interested in the welfare of a person believed incapacitated or partially incapacitated may file a guardianship petition with the court. Procedures for filing the petition are given in 30 O.S. § 3-101, the Oklahoma Guardianship and Conservatorship Act. Interested persons are referred to the office of the district court for further information and assistance.
- (7) If the alleged victim's mental state is in question, the APS specialist may request the court to order a psychological or psychiatric evaluation.
- (p) **Continuation of services for an additional period.** If after the hearing the vulnerable adult is found in need of continued protective services, the court issues an order to continue the temporary guardianship to provide specified protective services for an additional period not to exceed 180 calendar days, as authorized by 43A O.S. § 10-108. If after the 180 calendar days the vulnerable adult is still found in need of protective services, the court may renew the order every 180 days as needed.
- (q) **Sale of real property.** In the event that temporary guardianship extends for more than one year or the vulnerable adult owns real property that must be sold in order to qualify for SoonerCare (Medicaid), OKDHS may as temporary guardian sell the real property of the vulnerable adult pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act and as directed by the OKDHS Office of General Counsel. The fact ~~that~~ the vulnerable adult would be in jeopardy for receipt of SoonerCare (Medicaid) if the property was not sold ~~shall be~~ stated in the court order directing the sale of the real property.
- (r) **Sale of personal property.** The court may issue an order authorizing OKDHS to sell personal property of a vulnerable adult when additional resources are required to pay for necessary care for the vulnerable adult.
- (s) **Responsibilities of the temporary guardian of the person or estate.** The APS specialist as temporary guardian is responsible for ensuring, to the extent possible, protection of the vulnerable adult residence, resources, and belongings. This includes:
- (1) securing the residence, checking and gathering the mail, and feeding or arranging for care for the vulnerable adult's domestic animals or livestock;
 - (2) inventorying the vulnerable adult's home and personal property, using a camera where available.
 - (A) For enhanced accountability a minimum of two people must be present during the inventory, one of whom is a law enforcement representative or non-OKDHS employee.
 - (B) All persons present during the inventory must sign a document attesting to the authenticity of the inventory and/or the photographic record noting the date and their professional affiliation;
 - (3) establishing an account at a local financial institution and depositing any cash and uncashed checks; and
 - (4) securing other valuables located during the inventory. The APS specialist:
 - (A) arranges to have the locks changed or padlocks the residence to secure it from intrusion, if necessary; and
 - (B) advises all parties that no one is allowed to enter the residence unless accompanied by an OKDHS representative of OKDHS, for as long as the temporary guardianship is in effect.
- (t) **Additional responsibilities of temporary guardian of the estate.** The APS specialist responsible for the temporary guardianship of the estate:
- (1) opens a guardianship account in a local financial institution and regularly collects and deposits monies due to the vulnerable adult;
 - (2) submits an accounting to the court as ordered by the court, no less than annually;
 - (3) works with the court, the vulnerable adult's attorney, the DA, and the OKDHS Office of General Counsel to obtain a professional accountant to manage the estate; and
 - (4) absent the availability of professional financial management, is responsible for regular financial activities as dictated by the vulnerable adult's circumstances that include, but are not limited to, the timely:
 - (A) payment and documentation of the vulnerable adult's expenses, and other bills as they occur.
 - (B) deposit of funds received;
 - (C) redirection of incoming funds to the new account; and
 - (D) protection of existing accounts.
- (u) **Responsibility of APS specialist - involuntary protective services.** In cases where temporary guardianship of the person ~~has been~~ was granted to OKDHS, the APS specialist provides, arranges, or facilitates the protective services ordered by the court. This may include, but is not limited to:
- (1) hiring of in-home caregivers to provide in-home care and protection for the vulnerable adult;
 - (2) placement in a medical facility for treatment of health related problems;
 - (3) placement in a safe and anonymous location;
 - (4) placement in a facility for either short or long term care needs. Long term care facilities include:
 - (A) residential care facilities;
 - (B) group homes;
 - (C) nursing homes;
 - (D) intermediate care facilities for persons with mental retardation;
 - (E) assisted living centers;
 - (F) skilled nursing facilities; or
 - (G) any other type of facility licensed to provide 24-hour care and/or services for vulnerable adults;
 - (5) making application or completing reviews for any state or federal programs on behalf of the vulnerable adult for which he or she is or may be eligible to receive; or

- (6) making arrangements for facilities to be paid from the vulnerable adult's funds or resources.
- (v) **Responsibility of APS specialist - emergency out-of-home placement - ex-parte hearing.** When an emergency situation requires immediate placement, the APS specialist places the vulnerable adult in a licensed facility that, to the best of the APS specialist's knowledge, provides the required services needed to ameliorate the current emergency situation. Reasons for this choice are documented in the case record and provided to the court at the 72-hour hearing.
- (w) **Enforcement of involuntary court orders.** To enforce an involuntary order of protective services, 43A O.S. § 10-108 provides ~~that~~ the court may order:
 - (1) forcible entry of the premises of the vulnerable adult to be protected;
 - (2) transportation by law enforcement of the vulnerable adult to another location; or
 - (3) the eviction of a person from any property owned, leased, or rented by the vulnerable adult and restricting that person from further access to any property of the vulnerable adult.
- (x) **Dismissal of involuntary court orders.** When the vulnerable adult is subject to an involuntary court order and OKDHS serves in the role of temporary guardian, after the temporary order has expired, the APS specialist is responsible for responding to a court's request to dismiss the guardianship by preparing a motion for the OKDHS attorney's consideration for an order of dismissal when it is no longer needed.

[OAR Docket #13-594; filed 4-15-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

[OAR Docket #13-596]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program
 - 340:10-2-3 [AMENDED]
 - 340:10-2-6 [AMENDED]
 - Subchapter 3. Conditions of Eligibility - Need
 - Part 3. Income
 - 340:10-3-33 [AMENDED]
 - 340:10-3-40 [AMENDED]
 - Part 5. Assistance Payments
 - 340:10-3-56 [AMENDED]
 - Subchapter 10. Conditions of Eligibility - Deprivation
 - 340:10-10-3 [AMENDED]
- (Reference APA WF 12-15 and 12-20)**

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (10A O.S. § 162); House Bill (HB) 2388 effective November 1, 2012; Sections 667.272(c) and 672.535 of Title 20 of the Code of Federal Regulations; and Section 2008 of Title XX of the Social Security Act.

DATES:

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Public hearing:

None requested

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Submitted to House:

February 14, 2013

Submitted to Senate:

February 14, 2013

Gubernatorial approval:

March 25, 2013

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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:

April 12, 2013

Effective:

June 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

- Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program
 - 340:10-2-3 [AMENDED]
 - 340:10-2-6 [AMENDED]
 - Subchapter 3. Conditions of Eligibility - Need
 - Part 5. Assistance Payments
 - 340:10-3-56 [AMENDED]
 - Subchapter 10 Conditions of Eligibility - Deprivation
 - 340:10-10-3 [AMENDED]
- (Reference WF 12-20)**

Gubernatorial approval:

December 5, 2012

Register publication:

30 Ok Reg 338

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13-150

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed revisions to Subchapters 2, 3, and 10 of Chapter 10 amend the rules to: (1) change terminology for clarification; (2) make substance abuse treatment a mandatory part of employability planning when recommended by a treatment provider for alcohol or prescription drug abuse; (3) correct a policy citation; (4) remove outdated language regarding earned income; (5) reword excluded federally funded grants and workforce training program income; (6) state when a child living with an ineligible parent may receive a TANF benefit; (7) exclude a parent or needy caretaker from inclusion in a TANF benefit when he or she screens positive for the illegal use of a controlled substance or substances; (8) explain how the income of an ineligible parent is counted in determining eligibility for child only TANF benefits; (9) require one parent to participate in 35 hours of work activities when the other parent is ineligible due to a positive drug screen for the use of a controlled substance; and (10) add option of receiving child only TANF benefits when both parents are ineligible due to a positive drug screen for the use of a controlled substance.

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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, 2013:

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

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340:10-2-3. Employability planning

(a) **Scope and applicability.** The employability planning process begins at intake and continues as long as there are employment barriers or family circumstances ~~which that~~ interfere with the participant obtaining and retaining employment. The worker and the participant initiate Form 08TW002E, TANF Work/Personal Responsibility Agreement. In the development of the employability plan, the worker takes into consideration the need for English as a second language, basic education, literacy, learning disabilities, counseling or treatment for substance abuse or mental health issues, and crisis intervention for domestic violence.

(1) Substance abuse screening is ~~required~~mandatory for every ~~new~~ Temporary Assistance for Needy Families (TANF) adult parent or needy caretaker applicant and participant. This includes when the client self declares a substance abuse problem.

(2) Literacy screening is ~~required~~mandatory for individuals who have not obtained a high school diploma or General Educational Development (GED) certificate and have demonstrated a lack of literacy skills.

(b) **Interest and ability assessments.** Assessments are required to determine the participant's skills, abilities, and barriers. Assessment tools used are the Washington State Learning Disability Screen, the Test of Adult Basic Education (TABE) locator, the TABE battery, the Career Occupation Preference System (COPS), Key Train, and Career Readiness Certification.

(1) The use of these assessments provides the worker, participant, assessment specialist, and/or community partners with:

- (A) an indication of possible learning disabilities;
- (B) a measurement of the participant's skills, abilities, interests, and aptitude; and
- (C) meaningful information to create a valid employability plan.

(2) Participants referred for testing are informed ~~of the use that is made of the~~how test results are used. Test scores are ~~kept~~ confidential but may be shared with community partners. ~~Referrals~~To refer the participant for testing, are made by use of the worker completes and sends Form 08TW003E, Interagency Referral and Information, to the community partner. Participants in formal assessments are eligible for participant allowances and child care.

(c) **Employability planning.** The worker and the participant use the information from the assessment and other relevant information to develop a plan for securing employment.

(1) The employability plan is a part of the social services plan for the entire family and includes establishing both short and long term goals, including specific occupational goals, activities, and services which are necessary to achieve the goals. The employability plan must be realistic and within the participant's ability to achieve.

~~(2)~~ The employability plan may include staffing with other community partners for assignment to specific work

activities, collaboration with other agencies for services such as job placement, training, and education, and the provision of social services. The employability plan must identify specific needs and activities required to reach the occupational goal and estimated achievement dates ~~for achievement.~~ The employability plan may include more than one activity at a time based on the participant's specific needs and ~~the available hours available.~~ ~~The employability plan is a part of the social services plan for the entire family. It must be realistic and within the participant's ability to complete.~~

~~(23)~~ The participant is informed that the employability plan is updated as necessary to account for situational changes. The employability plan is reviewed with the participant and updated as changes occur and at the completion of any work activity. If no changes ~~have~~ occurred, the worker reviews the employability plan within six months.

~~(34)~~ Participants who are employed with income insufficient to close the case must have a plan designed to upgrade employment. These plans must not interfere with current employment.

(d) **Work activities.** Participants are assigned to one or more activities and scheduled the required minimum number of hours ~~as required.~~ The participant signs Form 08TW002E, when any work activity other than the Work Experience Program or Subsidized Employment Program (SEP) is approved.

(1) Assignments must be within the scope of the participant's employability plan.

(2) The assignment must be related to the participant's capability ~~of the participant~~ to perform the task on a regular basis.

(3) The daily commuting time to and from home to the assigned education, employment, or training site is normally less than two hours. Commuting time does not include the time required to transport a child to and from a child care facility. ~~Where~~When longer travel time is normal in the community, the round trip commuting time may not exceed the general community standards.

(4) When child care is required, it must be of the participant's choosing. It must be available during the hours the participant is engaged in any work activity, plus any additional commuting time.

(5) Assignments ~~which that~~ are discriminatory in terms of age, sex, race, religion, ethnic origin, or physical or mental disability are not ~~made~~permitted.

(6) The assignment site ~~of the assignment~~ must not be in violation of established and applicable health and safety standards.

(7) The participant is not referred for a work activity unless supportive services necessary for participation are available. The cessation or withdrawal of such services constitutes good cause for refusal to participate.

(8) When the agreed upon employability plan requires hours in excess of the minimum requirement, the participant must participate the agreed upon number of hours.

340:10-2-6. Job readiness

Job readiness activities help prepare participants for work by ensuring that participants are familiar with general workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. The maximum amount of time spent in job readiness activities cannot exceed 240 hours at 20 hours per week or 360 hours at 30 hours per week for the preceding 12-month period for any person.

(1) **Orientation.** Participants are referred to orientation as the need is identified on Form 08TW002E, TANF Work/Personal Responsibility Agreement. Orientation consists of individual or group meetings designed to present information about:

- (A) building self-esteem ~~building~~;
- (B) activities and services available through the Temporary Assistance for Needy Families (TANF) Program;
- (C) the Oklahoma Department of Human Service (OKDHS) policies; and
- (D) the employment process, including job applications, interviewing, goal-setting, and managing home and work.

(2) **Counseling or Substance abuse or mental health treatment.** The worker assists TANF applicants and participants who have barriers that prevent by referring them for mental health or substance abuse treatment for alcohol or prescription drug abuse when these issues prevent them from obtaining or retaining a job, by meeting The worker meets with the participant and appropriate local partners to determine available resources to overcome those barriers. Referrals may include counseling or treatment for substance abuse or mental health problems. Treatment for these issues is a mandatory part of the participant's TANF Work plan when it is recommended by the provider as a result of screening and assessment.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 3. INCOME

340:10-3-33. Individual earned income exemptions

Exemptions from each individual's earned income include a monthly standard work related expense and one-half of the remaining earned income. Exemptions are also allowed for child and adult dependent care expenses the individual is responsible for paying if expenses are not paid through other state and federal funds and the dependent care is in a licensed facility or home. Exempt income is income ~~which that~~ by law is not considered in determining need for financial assistance in the Temporary Assistance for Needy Families (TANF) category. Income exempt for one individual is not taken into consideration in determining the need of any other individual for assistance in the State Supplemental Payment (SSP) for the aged, blind, and disabled and TANF.

(1) **Work related expenses.** The standard deduction for work related expenses such as income tax payment, Social Security taxes, and transportation to and from work, is automatically determined monthly for each full-time or part-time employed member of the assistance unit. The standard deduction for work related expenses is:

- (A) \$240 for an applicant or recipient employed a minimum of 30 hours per week;
- (B) \$120 for an applicant or recipient employed less than 30 hours per week; and
- (C) \$120 for an individual whose income is considered in determining the amount of the TANF cash assistance.

(2) **One-half remainder.** For all countable income earned by each member included in the assistance unit, as well as a stepparent who is not included in the assistance unit, one-half of the remaining earned income is exempted per OAC ~~340:10-3-57(f)(1)~~340:10-3-57(e)(1). The one-half remainder exemption is not applied to earnings received by participants while in the Subsidized Employment Program (SEP). ~~An applicant is only eligible for one half of the remainder exemption when:~~

- ~~(A) an individual in the TANF assistance unit was included in a TANF benefit in any of the 50 states in addition to the Virgin Islands, Puerto Rico, and Guam, during one of the four months preceding the application; or~~
- ~~(B) the total income of all members minus work related expenses and dependent care expenses is less than the TANF need standard found on Oklahoma Department of Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, for the appropriate number of individuals.~~

(3) **Dependent care expenses.** Dependent care expenses are applied after all other earned income exemptions.

(A) Dependent care expenses are not deducted from earnings of participants while in SEP. Dependent care expenses may be deducted when:

- (i) suitable care for a child or incapacitated adult included in the TANF assistance unit is not available from responsible individuals living in the home or through other sources;
- (ii) the employed TANF assistance unit member whose income is considered in computing the amount of the benefit must purchase care;
- (iii) the gross earned income equals or exceeds the work related and dependent care expenses combined;
- (iv) the child or incapacitated adult receives care in a properly licensed facility or from an approved in-home provider as required by Oklahoma law; and
- (v) the stepparent of the child(ren) for whom TANF is requested is living in the home and has dependents not included in the assistance unit who are also living in the home per OAC ~~340:10-3-57(f)(1)~~340:10-3-57(e)(1).

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(B) Dependent care expenses must be verified. The actual amount paid per month is deducted up to a maximum of \$200 for a dependent under the age of two years or \$175 for a dependent ~~age two or years of age~~ and older or for an incapacitated adult. ~~In~~ When considering the dependent care expense, only actual work hours and travel time between work and the care facility is allowed. Payment for dependent care is the individual's responsibility. The individual must immediately report any changes in the plan of care.

(C) Dependent care provided by another individual in the household who is not a member of the assistance unit may be considered ~~as~~ an expense as long as the caregiver meets applicable state, local, or tribal ~~law~~ laws.

340:10-3-40. Income disregards

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) is:

- (1) the food benefit allotment under the Food and Nutrition Act of 2008;
- (2) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veterans education benefits, and the like if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. When the educational assistance is serving the same purpose as TANF cash assistance such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;
- (4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.
 - (A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.
 - (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, is required to indicate that the loan is bona fide.
 - (C) If the loan agreement is not written, Form 08AD103E, Loan Verification, must be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan.
 - (D) When copies of written agreements or 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;

(5) Indian payments, ~~which include~~ including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount.

(A) 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 is disregarded.

(B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.

(C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowance(s) for school expenses made available upon petition in writing from trust funds of the student;

(7) income from trusts of a child(ren) included in a TANF benefit if it is determined by the worker that funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;

(8) income from accounts, stocks, and bonds held under the control of a third party if the funds are designated for educational purposes for a child(ren) in a TANF benefit even ~~if~~ when the child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V. Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000. Each state and various organizations receive some Title V funds. These organizations include:

- (A) Experience Works;
- (B) National Council on Aging;
- (C) National Council of Senior Citizens;
- (D) American Association of Retired Persons (AARP);
- (E) United States (US) Forest Service;
- (F) National Association for Spanish Speaking Elderly;
- (G) National Urban League;
- (H) National Council on Black Aging; and
- (I) National Council on Indian Aging;

(10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce Investment Act (WIA) including Job Corps income and WIA earned income received as wages;

- (11) payments for supportive services or reimbursement for 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);
- (12) payments to volunteers under the National and Community Service Trust Act of 1993 (NCSTA), such as AmeriCorps VISTA;
- (13) 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;
- (14) any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native; ~~which that~~ are exempt from taxation under the Settlement Act;
- (15) any income of an adult or child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. His or her individual income is considered by the Social Security Administration in determining eligibility for SSI. ~~This and~~ includes any payment made by the Developmental Disabilities Services Division through the Family Support Assistance Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;
- (16) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the US Housing Act of 1937, as amended;
- (17) earnings of a child(ren) in a TANF benefit who is a full-time student;
- (18) government rental or housing subsidies by governmental agencies, for example, Housing and Urban Development (HUD) which are received in-kind or in cash for rent, mortgage payments, or utilities;
- (19) reimbursements from an employer, the Department of Labor, or the Bureau of Indian Affairs, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies, ~~which could include~~ including uniforms, to the extent the funds are used for expenses directly related to such travel, training, meals or supplies;
- (20) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;
- (21) refunds of federal or state Earned Income Tax Credit (EITC) received after December 31, 2009, as a result of filing a federal or state tax return are exempt as income for 12 months following receipt per the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 [Public Law 111-312];
- (22) 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.);

- (23) 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;
- (24) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.) and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;
- (25) interests of individual Indians in trust or restricted lands;
- (26) income up to \$2,000 per calendar year received by individual Indians, ~~which that~~ is derived from leases or other uses of individually owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as unearned income;
- (27) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
- (28) payments made to persons because of their status as victims of Nazi persecution;
- (29) interest accrued from the deposits made by a person into an Individual Development Account (IDA) up to \$2,000;
- (30) stipends paid to students participating in the Indian Vocational Education Program (IVEP) through the Carl D. Perkins Vocational and Applied Technology Education Act;
- (31) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the United States Code (U.S.C.);
- (32) reimbursements made to a foster care parent(s) or a potential foster care parent(s);
- (33) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans;
- (34) ~~earned income received as wages, unearned income, cash assistance, allowances, stipends, earnings, compensation in lieu of wages, or an allowance from a program~~ other payments made for participation in WIA or other federally funded by WIA grants and workforce training programs paid to persons of all ages and student status; and
- (35) child support judgments or arrearage payments received for a child no longer age eligible for the TANF cash benefit.

PART 5. ASSISTANCE PAYMENTS

340:10-3-56. Structure of the assistance unit

- (a) The structure of the assistance unit is defined in this Section.
 - (1) Persons whose needs **must** be included in the assistance unit, unless otherwise excluded ~~in accordance with~~ per paragraph (3) of this subsection, are:

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- (A) at least one Temporary Assistance for Needy Families (TANF) eligible child;
 - (B) the natural or adoptive parent(s); and
 - (C) all blood-related minor siblings living in the home with the TANF eligible child(ren), including half-brothers and half-sisters unless eligibility for the half-brothers and half-sisters does not exist. This does not apply to the siblings of a minor parent when the minor parent is the adult in the assistance unit.
- (2) Persons whose needs **may** be included are:
- (A) the caretaker relative-payee other than the natural or adoptive parent(s) with whom the child(ren) resides, if this person meets the definition of needy and is of the specified degree of relationship. A caretaker other than stepparent may be included in the assistance unit only when the natural or adoptive parent(s) is absent from the home. A stepparent may be included in the assistance unit when the natural or adoptive parent(s) is incapacitated or absent;
 - (B) the caretaker relative or the natural or adoptive parent when the only dependent child(ren) residing in the home:
 - (i) receives Supplemental Security Income (SSI); or
 - (ii) ~~has been~~was removed from the home by a child protection action and the plan for the child(ren) is impending reunification;
 - (C) the caretaker relative when the only child(ren) in the home receives federal or state foster care maintenance payments;
 - (D) the adoptive parent(s) when the only dependent child(ren) receives a Title IV-E or state adoption subsidy;
 - (E) a family that includes any head of household or a spouse of the head of household who ~~has~~ received TANF benefits for a total of 60 cumulative months nationwide, whether ~~or not~~ consecutive, and a hardship extension is approved. All other conditions of TANF eligibility must be met. The hardship extensions are:
 - (i) under-employment. The participant is regularly working 30 hours or more per week and earning at least minimum wage or its equivalent, but the net income of the assistance unit is insufficient to close the TANF cash assistance;
 - (ii) chronically under-employed. The participant is under-employed over an extended period of time as a result of documented barriers;
 - (iii) pending SSI or Social Security Administration (SSA) disability application. This extension is granted only if the Oklahoma Department of Human Services (OKDHS) determines the disability application has merit and the participant pursues all appeals through a decision by the SSA Appeals Council. If an unfavorable decision is received from the SSA Appeals Council during the time period the participant is approved for a hardship extension, ~~Family Support Services Division (FSSD)~~Adult and Family Services (AFS), TANF Section, is notified and the TANF benefit is closed the next effective date;
 - (iv) care of a disabled child(ren) or spouse. The participant is responsible for the care of a disabled child(ren) or spouse. This extension is granted only when verification ~~has been~~was provided to show the participant is needed in the home to care for this disabled person and ~~there is no~~ alternative care ~~available~~is unavailable;
 - (v) a clinical diagnosis of mental illness. The participant must be diagnosed with and receiving treatment for a mental disorder listed at Part 404, Subpart P, Appendix 1 of Title 20 of the Code of Federal Regulations. This illness must interfere with the participant maintaining or obtaining gainful employment. If appropriate, the participant must participate in other work activities in conjunction with receiving treatment;
 - (vi) a substance abuse treatment plan. The participant has a treatment plan level of care ~~which requires~~requiring intensive aftercare treatment of nine hours or more per week in conjunction with other appropriate work activities, ~~or~~ outpatient treatment of nine hours or more per week in conjunction with other appropriate work activities, or is in full-time inpatient treatment; ~~or~~
 - (vii) a continuing training or educational activity. The participant, during the 60th month, is regularly attending an approved training or educational activity ~~which that~~ will be completed in less than 12 months; ~~or~~
 - (F) a child of a minor in foster care if the minor's child is not included in a foster care payment; ~~or~~
 - (G) a child(ren) living with a parent who is ineligible due to a positive screen for the illegal use of a controlled substance or substances per OAC 340:10-4-1.
- (3) Persons whose needs **may not** be included are:
- (A) a person who has received a State Supplemental Payment (SSP) for the same month;
 - (B) a person who has received or is included in an SSI payment for the same month;
 - (C) the spouse of the payee if the payee is not the natural or adoptive parent;
 - (D) a child(ren) included in a foster care payment;
 - (E) an adopted child(ren) receiving an adoption subsidy;
 - (F) an alien who is not legally admitted to the United States (US) for permanent residence or does not meet alienage requirements;
 - (G) a caretaker other than a stepparent when the natural or adoptive parent is in the home;
 - (H) a person whose period of ineligibility due to receipt of a lump sum payment has not expired;
 - (I) a stepparent when the natural or adoptive parent is in the home and not incapacitated;
 - (J) a person in a household that is eligible to receive benefits under a tribal TANF program;
 - (K) a fugitive felon;

(L) a probation and/or parole violator;
(M) a person convicted of having fraudulently misrepresented residence in order to obtain assistance in more than one state. The person is ineligible for a ten-year period that begins on the conviction date of conviction;

(N) child(ren) in a family that includes any head of household or a spouse of the head of household who ~~has~~ received TANF benefits for a total of 60 cumulative months, whether or not consecutive, and a hardship extension is not approved; ~~or~~

(O) a minor unmarried payee who has a dependent child(ren) in the minor's care and does not reside with a parent(s), legal guardian, or other adult relative 18 years of age 18 or older. For the minor payee to be eligible for TANF benefits, the minor must live with the minor's natural or adoptive parent(s) or a stepparent, legal guardian, or other adult relative 18 years of age 18 or older, or live in a foster home, maternity home, or other supportive living arrangement supervised by an adult. A supportive living arrangement is ~~where a private~~ privately maintained family setting ~~is maintained~~ and an adult assumes the responsibility for the care and control of the minor and the minor's dependent child(ren) or provides supportive services such as counseling and guidance. The minor payee can reside elsewhere and be eligible for TANF if good cause is established because the:

- (i) minor has no living parent or legal guardian whose whereabouts are known;
- (ii) parent(s), legal guardian, or other adult relative does not allow the minor to live in the home;
- (iii) physical or emotional health or safety of the minor or the minor's dependent child(ren) is jeopardized if the minor or the minor's dependent child(ren) lives in the home with the parent(s), legal guardian, or other adult relative age 18 or older;
- (iv) minor parent has lived apart from the minor's parent(s), legal guardian, or other adult relative 18 years of age or older, for at least one year before the birth of any dependent child(ren); or before the minor applied for benefits;
- (v) minor parent is legally emancipated pursuant to Chapter 4, Title 10 of the Oklahoma Statutes. A minor is legally emancipated when the district court ~~must have~~ granted the minor ~~the~~ authority to act on the minor's own behalf; or

(P) an adult parent or needy caretaker who is ineligible as a result of a positive screen for the illegal use of a controlled substance or substances per OAC 340:10-4-1.

(b) In general, when a person whose needs are included in a TANF assistance unit is temporarily absent from the home for the purpose of receiving training or education for employment, or certain medical services, he or she is considered part of the family and the budgetary requirements are not changed unless needs change by reason of circumstances unrelated to the

temporary absence. Persons temporarily absent from the home but included in the assistance unit are a:

- (1) a person receiving training or education for employment during the ~~period of time~~ the training or educational activities ~~are taking~~ take place;
- (2) a child(ren) attending boarding school during the school term;
- (3) a child(ren) absent from the home on visitation to the absent parent up to a maximum of three months. This consideration applies only to visitation and does not apply if the absent parent has physical and legal custody of the child(ren) during these three months;
- (4) a child(ren) absent in order to attend school, other than boarding school. Factors considered in making this determination include the maintenance of normal ties between home and the child(ren) during the period of absence; whether the child(ren) continues under the control and guidance of the payee during the absence; and assumption of responsibility by the relative-payee for meeting the child(ren)'s expenses during the school term. A child(ren) who attends the School for the Blind or the School for the Deaf is considered temporarily absent from the home in determining TANF eligibility;
- (5) a person absent from the home because of entrance into a private facility for ~~counseling~~ treatment, rehabilitation, behavioral problems, or special training. If an assessment indicates care is projected for a period exceeding four months, the absence is not considered temporary. At any time an absence is determined as not temporary or no longer temporary, the needs of the person cannot be included in the assistance unit;
- (6) a person absent from the home for medical services, other than institutionalization for treatment of mental illness, mental retardation, or tuberculosis, for up to six months. Six-month extensions may be allowed when verification indicates the person may return to the home within the next six months;
- (7) a person absent from the home to receive substance abuse treatment for up to four months. A four-month extension may be allowed when verification indicates the person will return to the home within the next four months; or
- (8) a person absent from the home to receive nursing care approved by the Oklahoma Health Care Authority, Level of Care Evaluation Unit. If it appears ~~that~~ the person is disabled, an application for State Supplemental Payment is taken, and a referral made to the SSA district office for an SSI application.

(c) A change in benefit is not made during a temporary absence from Oklahoma for three months or less, unless a change is necessary by reason of some change in circumstances not relating to such absence from Oklahoma.

SUBCHAPTER 10. CONDITIONS OF ELIGIBILITY - DEPRIVATION

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340:10-10-3. Unemployed parent

(a) **Applicability.** Deprivation for the child(ren) may be established when both the natural or adoptive parents are residing with the child(ren) and the parent determined to be the principal wage earner (PWE) meets the conditions to qualify as unemployed. If one of the parents is an ineligible alien, unemployment as the reason for deprivation is not ruled out.

(b) **PWE.** The PWE is defined as the parent who earned the greater amount of gross income during the 24-month period ending with the month prior to the Temporary Assistance for Needy Families (TANF) application. This determination is made regardless of when the parent's relationship began or when the parent(s) began residing with the child(ren). The employment or receipt of unemployment insurance benefits of the parent not determined to be the PWE is not a factor in determining deprivation. The amount, dates, and sources of earnings used in determining which parent is the PWE must be documented. It is the assistance unit's responsibility to provide the documentation to the best of the assistance unit's ability. Acceptable documentation includes Oklahoma Department of Human Services (OKDHS) case records, employer(s) contact, wage stubs for the 24-month period, Income Eligibility Verification System (IEVS), Oklahoma Wage Link (OWL), Oklahoma Wage (OWG) and, if self-employed, gross and net earnings from tax returns or business records. The assistance unit must be involved in determining which parent is the PWE.

(1) If both parents earned an identical amount of income in the 24-month period, the PWE is the parent who earned the greater amount of income in the last six months of the 24-month period.

(2) If the income in the six-month period is identical, either parent may be designated the PWE. The designation must be the one most advantageous to the assistance unit.

(3) The designation of the PWE is permanent and remains effective as long as the deprivation remains unemployment and the assistance unit remains eligible for and continues to receive TANF benefits. If the TANF case is closed and a new application is filed at a later date, the PWE must be redetermined.

(c) **Conditions the PWE must meet prior to certification.** The PWE must meet the conditions described in (1) - (3) of this subsection for deprivation to be established.

(1) **Mandatory drug screening.** Mandatory drug screening is required for both parents per OAC 340:10-4-1.

(A) When one parent screens positive for the use of a controlled substance or substances and is ineligible to be included in the TANF benefit, the other parent must participate 35 hours per week in TANF Work activities per OAC 340:10-2-1(2)(A)(iii).

(B) When both parents screen positive for the use of a controlled substance or substances and are ineligible to be included in the TANF benefit, they may choose to receive child only benefits if all other factors of eligibility are met.

(42) **TANF Work requirements.** The PWE's activities and responsibilities must allow the PWE to be available for TANF Work activities and the PWE must comply with

these requirements. Refer to OAC 340:10-2-1(2)(A)(iii) for the minimum TANF Work requirements for two-parent families. If the PWE is determined to be unavailable or if the PWE does not comply with TANF Work requirements, the application is denied.

(23) **Qualifications as unemployed.** For the PWE to be considered unemployed, the PWE must not be employed, or if the PWE is employed, the countable net earnings plus any other countable income must be less than the payment standard for the family size. The PWE must meet the definition of unemployed during the application process and prior to the date of certification.

(A) **Specific period of unemployment.** To qualify as not employed, the PWE must be unemployed for 30 days prior to the receipt of TANF benefits. The assistance unit is eligible for assistance beginning the 31st day if all other eligibility requirements are met.

(B) **Refusal of employment.** The PWE cannot have refused a bona fide offer of employment or terminated employment, without good cause, within the 30 days prior to the receipt of TANF benefits. Before it is determined that the PWE has refused a bona fide offer without good cause, a determination is made that such an offer was actually made. For the offers made through public employment agencies, the determination is made by that agency. The PWE is given the opportunity to explain why the offer was not accepted. A bona fide offer is an offer of employment made directly by an employer to the PWE. An offer of employment by the employer must be substantiated in a written or oral statement to OKDHS that on a specified time and date, the PWE was offered a job of a specified nature and at a specified wage. Acceptable reasons for good cause are:

(i) wages were less than minimum wage requirement or less than customary for the community;

(ii) employment was available because of a strike, lockout, or other labor dispute;

(iii) the PWE was unqualified or physically unable to perform such work;

(iv) the work involved risk to health or safety; or

(v) lack of worker's compensation protection.

(34) **Work history requirement.** The PWE must have a verified work history. Undocumented employment cannot be used to establish quarters of work. The work history exists when the PWE meets one of the conditions in (A) through (C) of this paragraph.

(A) The PWE was employed for six or more calendar-quarters within a 13 consecutive calendar-quarter period. The 13 consecutive calendar-quarter period must end within 12 months prior to the TANF application date. Calendar-quarter means a period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31. To be considered employed, the PWE must have received gross earnings of at least \$50 in a calendar-quarter or earned

the minimum amount required for a covered quarter as defined by the Social Security Administration (SSA). The SSA states an individual qualifies for a quarter of coverage for any quarter that the individual earns a designated amount for that calendar year. An individual can have earnings in one quarter to qualify for a full year's coverage.

(B) The PWE is receiving or has received Unemployment Insurance Benefits (UIB) within the 12 calendar months prior to the TANF application date. If the PWE has a pending UIB application, the work history determination is delayed until the UIB determination is made.

(C) The PWE would have qualified for UIB for one week or more during the 12 calendar month period prior to the TANF application date had the PWE made application for UIB based on earned wages, both covered and uncovered. Covered employment generally includes employment in construction, plants, stores, restaurants, offices, or other places of business which employ one or more persons. Uncovered employment generally includes employment from farm labor, odd jobs, and non-profit organizations.

(i) A PWE who had sufficient earnings to meet the UIB earnings requirement is deemed eligible for UIB even though all or a portion of the PWE's earnings were from uncovered employment. To be eligible or deemed eligible for UIB, the PWE must have earned at least the qualifying wages during the base period. The base period consists of the first four of the last five completed quarters immediately preceding the quarter of the UIB application.

(ii) The earnings must be in more than one quarter. The quarter with the highest earnings is the high quarter. The total gross earnings of the remaining three quarters must equal at least one-half of the high quarter earnings. If the earnings do not meet this test, the PWE is ineligible for UIB.

(iii) If the PWE earned an amount equal to the total taxable wage base in one quarter of the base period, the PWE is deemed eligible for UIB based on that quarter alone.

(d) **UIB eligibility.** The PWE is required to apply for and accept UIB which the PWE is eligible or potentially eligible to receive. Thirty days are allowed for verification of a UIB application to be furnished. Ineligible aliens are not required to apply for UIB.

(e) **Ineligible alien status.** If the PWE is an ineligible alien, the PWE's needs are not included in the assistance unit. The PWE is not required to participate in TANF Work activities but the PWE's spouse or other parent included in the assistance unit is required to participate in TANF Work activities unless otherwise exempt. If both parents are ineligible aliens, the family does not qualify as a two-parent family as the work requirement cannot be met.

(f) **Striker status.** The assistance unit is not eligible for TANF for any month in which the natural or adoptive parent is participating in a strike on the last day of the month.

(g) **Changes after certification.** After initial eligibility the two-parent family must meet the conditions listed in (1) and (2) of this subsection.

(1) Both parents must participate in TANF Work related activities. Failure of either parent to participate without good cause for the required number of hours will result in closure of the case. If the PWE becomes unavailable for TANF Work due to illness or injury, good cause may be granted if the condition is expected to last less than 30 calendar days. If the condition is expected to last more than 30 calendar days, incapacity must be established.

(2) If the household's countable earned income plus any other income exceeds the payment standard for the family size, the case is closed. Continued medical benefits are authorized for the assistance unit if all other factors of eligibility are met.

[OAR Docket #13-596; filed 4-15-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES**

[OAR Docket #13-607]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Scope and Applicability
340:25-1-2.1 [AMENDED]
- 340:25-1-3.1 [AMENDED]
- Subchapter 3. Commissioned Peace Officers
340:25-3-3 [AMENDED]
- Subchapter 5. Operational Policies
- Part 9. Disclosure of Information
340:25-5-67 through 340:25-5-67.1 [AMENDED]
- Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-114 [AMENDED]
- 340:25-5-123 [AMENDED]
- 340:25-5-133 [AMENDED]
- Part 17. Past Support.
340:25-5-140 through 340:25-5-140.1 [AMENDED]
- Part 21. Establishment.
340:25-5-176.1 [AMENDED]
- Part 23. Enforcement.
340:25-5-213 [AMENDED]
- Part 37. Recovery
340:25-5-305 [AMENDED]
- Part 39. Accounting and Distribution
340:25-5-345.2 [AMENDED]
- 340:25-5-350.1 [AMENDED]
- 340:25-5-350.3 [AMENDED]
- 340:25-5-351 through 340:25-5-352 [AMENDED]

(Reference WF 12-12)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Social Security Act (SSA), codified at Chapter 7 of Title 42 of the United States Code (42 U.S.C. §§ 301- 1397mm); Child Support Performance and Incentive Act of 1998, Public Law (Pub. L.)105-200; 42 U.S.C. § 657; 42 U.S.C. § 653-654; 42 U.S.C. § 608; 42 U.S.C. § 654b; 42 U.S.C. §663; Section 264.30 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 264.30); 45 C.F.R. § 303.5; 45 C.F.R. § 303.21; 45 C.F.R. §

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307.11; 45 C.F.R. § 303.11; 45 C.F.R. § 302.51-302.52; 45 C.F.R. § 303.100 45 C.F.R. §§ 302.32- 302.33; 45 C.F.R. § 303.5; 42 C.F.R. § 433.146; 43 O.S. §§ 601-601-614; 43 O.S. § 109.5 56 O.S. § 237; 12 O.S. § 2004; 43 O.S. § 137; 43 O.S. § 114; 43 O.S. § 410; 43 O.S. § 413; 56 O.S. § 237A; 56 O.S. § 171; 56 O.S. § 185; 56 O.S. §§ 231-244; 10 O.S. §§ 7700-301-307; 43 O.S. §§ 118-119; 56 O.S. § 238.1; 56 O.S. § 183; 43 O.S. § 112A; 43 O.S. § 112; 10 O.S. § 7700-637; Rule 31 of the Rules for District Courts of Oklahoma.

DATES:

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None requested

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February 14, 2013

Submitted to House:

February 14, 2013

Submitted to Senate:

February 14, 2013

Gubernatorial approval:

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Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:

April 12, 2013

Effective:

July 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed amendments to Chapter 25 Subchapters 1, 3, and 5 amend the rules to: (1) implement policy changes recommended during the annual Oklahoma Child Support Services (OCSS) policy review process; and (2) make non-substantive housekeeping changes to improve the clarity of rules.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013.

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-2.1. Location for information

(a) **Mailing address.** The ~~mailing address of the state office of~~ Oklahoma Child Support Services (OCSS) state office mailing address is: Oklahoma Child Support Services, Capitol Station Box 248822, Oklahoma City, Oklahoma 73124-8822.

(b) **OCSS telephone information.** ~~Addresses of district~~ District child support ~~offices~~ office addresses throughout Oklahoma and other information may be requested by telephoning 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922. The Relay Oklahoma Teletypewriter (TTY) number for the hearing impaired is 711, or 1-800-722-0353 toll-free.

(c) **Interpreter services.** The Oklahoma Department of Human Services (OKDHS) provides at no cost, oral or sign language or foreign language interpretation services.

(d) **Oklahoma Employer Services Center.** The Oklahoma Employer Services Center (OKESC) processes incoming employer questionnaires regarding employment verification and insurance availability, and answers employer questions regarding new hire reporting, income withholding, and medical support. Employer and insurance plan administrator inquiries regarding child support cases may be made by telephoning 405-~~522-5550~~325-9190 in the Oklahoma City calling area, or toll-free at 1-866-553-2368. The OKESC fax number is 405-~~522-5555~~325-8210 and the mailing address is: Oklahoma Employer Services Center, ~~P.O.~~PO Box 248805, Oklahoma City, Oklahoma 73124-8805.

(e) **Internet access.** Information about OCSS is available from the OCSS Internet page at <http://www.okdhs.org>.

(1) A customer who has an active child support case(s) and OKDHS customer identification number may use the Internet to access information about the customer's case(s).

(2) A customer may contact OCSS as described in this Section to request a child support customer personal identification number (PIN) and instructions for accessing case information on the Internet.

340:25-1-3.1. Designation of an authorized representative

(a) A custodial person, noncustodial parent, or biological parent may designate a person ~~who is not the attorney of record~~ as an authorized representative to:

(1) obtain child support case information and documents from ~~the Oklahoma Child Support Enforcement Division Services (CSED)~~ OCSS on his or her behalf; or

(2) both obtain case information and documents and, when permitted by law, to negotiate, compromise, or settle the child support case by signing releases, agreements, and documents.

(b) OCSS does not honor requests to designate as an authorized representative a person who has a conflict of interest that would result in the release of information he or she is otherwise not entitled to receive.

(c) The information and documents an authorized representative may obtain are limited to ~~that which those items~~ the person represented may obtain ~~under~~ per OAC 340:25-5-67.

(~~ed~~) ~~Nothing in this~~ This Section allows ~~does not allow~~ an authorized representative to appear before the Oklahoma Department of Human Services Office of Administrative Hearings: Child Support or the district court on behalf of the person represented unless specifically allowed by law. Further, nothing in this Section prevents ~~CSED~~ OCSS from requesting the court to enter a default order based on the person's failure to appear, even when the person's authorized representative is present.

(~~de~~) The authorized representative does not have to be an attorney.

(ef) A person must complete and submit to ~~CSED~~ Form 03EN010E, Special Power of Attorney Designation of Authorized Representative, to OCSS, before the representative may act or receive information orally or in writing on behalf of the person represented. A person may have only one authorized representative at any time.

(fg) Once OCSS receives Form 03EN010E is received by ~~CSED~~, ~~CSEDOCSS~~ considers the designation in effect until ~~CSEDOCSS~~ receives:

- (1) a new Form 03EN010E designating another person as the authorized representative;
- (2) written notice that the ~~special power of attorney~~ designation of an authorized representative is revoked; or
- (3) written notice that the designator ~~has died~~ is deceased.

(h) OCSS reserves the right to refuse to honor a designation of authorized representative.

SUBCHAPTER 3. COMMISSIONED PEACE OFFICERS

340:25-3-3. Service of process

(a) **Authority.** Oklahoma Child Support Services (OCSS) follows the provisions of Section 2004 of Title 12 of the Oklahoma Statutes (12 O.S. § 2004) for service of process. OCSS uses the most cost effective and efficient method of service of process depending on what is most appropriate under the facts of the case.

(b) **Personal service.** ~~OCSS uses personal service when:~~

- (1) ~~a person has not accepted service by certified mail;~~
- (2) ~~service to the address of record is not appropriate;~~
- (3) ~~case history indicates a low probability of acceptance of service; or~~
- (4) ~~it is more expedient to serve the person personally.~~

Service by acknowledgment. When feasible, OCSS delivers the documents directly to a party and requests the party accept and acknowledge service. The Acknowledgment of Service is filed in the court case.

(c) **Service by regular mail to address of record.** Service to the address of record is not appropriate when the:

- (1) ~~the remedy sought is punitive in nature, including but not limited to, indirect contempt of court action~~ may result in the obligor's incarceration; or
- (2) ~~when the court may require a higher level of notice to the affected party, including, but not limited to, actions to determine paternity.~~

(d) **Personal service.** OCSS uses personal service when:

- (1) a person has not accepted service by certified mail;
- (2) service to the address of record is not appropriate;
- (3) case history indicates a low probability of acceptance of service by certified mail; or
- (4) the court requires personal service.

(e) **Diligent efforts.** Diligent efforts means repeated attempts to serve the person, at least three times, and at different times of day or on different days of the week, before declaring inability to serve. OCSS:

(1) attempts to serve process in the manner and at the time and place most reasonably calculated to ~~result in completion of complete~~ service of process in the most efficient and cost effective manner;

(2) makes diligent efforts to serve process utilizing all information:

- (A) provided by OCSS staff;
 - (B) documented in the case record; or
 - (C) gathered from other locate resources;
- (3) provides address and employer information to the process server;
- (4) attempts to serve the person at:
- (A) work;
 - (B) home; or
 - (C) other locations based on information gathered on the person's ~~hobbies or~~ lifestyle; and

(5) documents all facts about attempts to serve process in the case record ~~all facts about attempts to serve process.~~

(ef) **Minor noncustodial parent.** OCSS serves a minor noncustodial parent (NCP) who is:

- (1) 15 years of age or older ~~according to Section 2004 of Title 12 of the Oklahoma Statutes per 12 O.S. § 2004;~~ or
- (2) ~~under~~ younger than 15 years of age, through a parent, guardian, or other appropriate adult as the next friend of the minor ~~noncustodial parent~~ NCP.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-67. Information disclosure

(a) **Confidentiality.** *All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential per Section 183 of Title 56 of the Oklahoma Statutes (56 O.S. § 183).* ~~{56 O.S. § 183}~~

(1) All files and records concerning the assistance or services provided under the child support program or concerning an alleged father of a child born out of wedlock are confidential per 56 O.S. § 237, except as otherwise authorized by law. ~~{56 O.S. § 237}~~

(2) Any information Oklahoma Child Support Services (OCSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. OCSS complies with the limitations imposed by federal regulations per Section 653 of Title 42 of the United States Code (42 U.S.C. § 653).

(3) Nothing in this Section authorizes disclosure of the location or information that may lead to discovery of the location of a case participant with a family violence indicator per OAC 340:25-5-67.1.

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- (4) OCSS redacts personal information, including Social Security and driver's license numbers, from court documents prior to filing them, pursuant to Rule 31 of the Rules for District Courts of Oklahoma.
- (b) **Authorized disclosure.** Information, when requested per OAC 340:25-5-68, may be shared with:
- (1) persons duly authorized by the United States in connection with the performance of their official duties per 56 O.S. § 183, [56 O.S. § 183] including, but not limited to:
- (A) exchange of information to the extent necessary to carry out the state agency Title IV-D program responsibilities directly and through statewide automated data processing and information retrieval networks within the Oklahoma Department of Human Services (OKDHS), with authorized representatives of OKDHS divisions—programs and other state agencies, other states and countries, and federal and tribal agencies;
- (B) exchange of information directly and through statewide automated data processing and information retrieval networks with OKDHS representatives ~~of OKDHS~~ and other state agencies administering programs under Titles IV-A through IV-E, XIX, and XXI of Chapter 7 of Title 42 of the United States Code, and the Supplemental Nutrition Assistance Program (SNAP) to the extent necessary to carry out the responsibilities of those agencies;
- (C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person ~~under Section 663 of Title 42 of the United States Code~~ per 42 U.S.C. § 663 representing:
- (i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the United States Code to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and
- (ii) the United States or ~~the State of Oklahoma~~ Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and
- (D) release of Social Security numbers for child support purposes, such as:
- (i) locating the parents;
- (ii) submitting cases for federal administrative and income tax refund offset;
- (iii) state income tax refund offset;
- (iv) financial institution data match;
- (v) enrolling children as beneficiaries of health insurance coverage; and
- (vi) processing interstate child support services;
- (2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:
- (A) pay records and payment calculations;
- (B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;
- (C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;
- (D) information required by Titles 43 or 56 of the Oklahoma Statutes disclosed for the purpose of reviewing, establishing, or modifying a support order;
- (E) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;
- (F) information necessary to access court-ordered health care coverage and obtain health care for the children; and
- (G) address of record for service of process ~~under Section 112A of Title 43 of the Oklahoma Statutes~~ per 43 O.S. § 112A. The address of record must only be released per OAC 340:25-5-340.1;
- (3) employers and plan administrators, who may only access information necessary to enroll children as beneficiaries of court-ordered health insurance coverage; and
- (4) persons as directed by court order or by a subpoena approved by ~~an~~ an OCSS state's attorney.

340:25-5-67.1. Family violence

(a) Oklahoma Child Support Services (OCSS) establishes and maintains records regarding family violence per Sections 303.21 and 307.11 of Title 45 of the Code of Federal Regulations and Sections 653 and 654 of Title 42 of the United States Code (42 U.S.C. §§ 653 and 654).

(b) OCSS is committed to promoting the safety and well-being of its customers and staff.

(~~ac~~) A family violence indicator is a designation placed on a participant in a Title IV-D or non-IV-D case by ~~the Oklahoma Child Support Services program (OCSS) of the Oklahoma Department of Human Services (OKDHS)~~ indicating the ~~participant is associated with~~ risk of child abuse or domestic violence. The family violence indicator is used to restrict disclosure of the location of a participant who is reported to OCSS as being at risk of family violence.

(~~bd~~) OCSS considers as reasonable evidence of family violence, and enters a family violence indicator on appropriate persons, when:

(1) a parent or custodian states that he or she or the child(ren) is at risk of emotional or physical harm from another person in the same child support case; or

(2) OKDHS has knowledge of a court-ordered protective order or other information that family violence exists.

(~~ce~~) OCSS makes available to custodial persons and noncustodial parents Form 03EN008E, Family Violence - Address of Record Statement, to collect address of record information and explain how the information is used. The custodial person or noncustodial parent may use Form 03EN008E to:

- (1) request that his or her home address, or location information, not be released to another parent or party in a child support case because release could result in family violence to the requesting person or his or her children; or
- (2) designate an address of record per OAC 340:25-5-340. OCSS may release the address of record per OAC 340:25-5-340.1.
- (~~ef~~) The presence or absence of a family violence indicator on a case does not guarantee anyone's safety. OCSS is not liable for harm arising from the use or non-use of a family violence indicator.
- (~~eg~~) OCSS may remove a family violence indicator from a case participant when OCSS receives:
 - (1) a written request from the participant;
 - (2) information that the family violence indicator was entered in error; or
 - (3) a court order to remove the family violence indicator.
- (~~fh~~) Upon order of a court having the authority to make or enforce child custody or visitation determinations per ~~Section 663 of Title 42 of the United States Code~~ 42 U.S.C. § 663, OCSS may:
 - (1) request the federal Office of Child Support Enforcement to override a family violence indicator in a single instance; and
 - (2) authorize release of the person's home address or location to the court.
- (~~gi~~) Interstate cases follow OAC 340:25-5-270.

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-114. Procedures for determining and processing noncooperation on TANF and non-TANF SoonerCare (Medicaid) cases

- (a) **Cooperation of custodial persons.** The custodial person (CP) must cooperate with the Oklahoma Child Support Services (OCSS) program in establishing paternity or in establishing, modifying, or enforcing a support order per Section 654 of Title 42 of the United States Code (42 U.S.C. § 654) and Section 264.30 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 264.30). A ~~custodial person~~ CP receiving:
 - (1) Temporary Assistance for Needy Families (TANF) must assign rights to support to the Oklahoma Department of Human Services (OKDHS) per ~~Section 608 of Title 42 of the United States Code~~ 42 U.S.C. § 608; and
 - (2) non-TANF SoonerCare (Medicaid) benefits for minor child(ren) must assign medical support rights to the Oklahoma Health Care Authority (OHCA) per ~~Section 433.146 of Title 42 of the Code of Federal Regulations~~ (42 C.F.R. § 433.146).
- (b) **Noncooperation of custodial persons receiving TANF.** When a ~~custodial person~~ CP fails to cooperate, OCSS reviews the case to determine noncooperation. If OCSS determines noncooperation, OCSS notifies OKDHS ~~Family Support Services (FSS) Adult and Family Services (AFS) staff in the appropriate human services center (HSC) county office.~~

~~OKDHS FSS/AFS staff in the contacted HSC update~~ updates the computer document for noncooperation with OCSS and a computer-generated notice per OAC 340:65-5-1 is sent advising the recipient of any decrease in benefits due to noncooperation.

- (1) For OCSS to make a noncooperation determination on a TANF case, the cooperation must be essential for the next step in providing child support services, per OAC 340:10-10-5 and 340:10-10-7.
- (2) Noncooperation is indicated when the ~~custodial person~~ CP:
 - (A) fails to appear at a district office to provide information or evidence relevant to the case;
 - (B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) (NCPs) when requested to do so by the district office;
 - (C) fails to comply with an order to submit oneself and the child(ren) to genetic testing to determine paternity;
 - (D) fails to appear as a witness at an administrative or district court hearing or other proceeding;
 - (E) fails to provide information, or attest to lack of information, under penalty of perjury;
 - (F) fails to forward to OCSS all child support payments received from the ~~noncustodial parent(s)~~ NCPs or those received from entities other than the Centralized Support Registry; or
 - (G) ~~refuses to make a repayment agreement or to comply with a repayment plan when child support receipts are retained; or~~
 - (~~H~~) pursues private legal action affecting paternity, child support, medical support, or child care, or authorizes payments made other than through the Centralized Support Registry without giving OCSS notice and fails to keep OCSS informed of the case status of the case.

(3) OKDHS ~~FSS/AFS staff in the local HSC county office~~ determines whether good cause for noncooperation with OCSS exists per OAC 340:10-10-6.

- (c) **Noncooperation of custodial persons on non-TANF SoonerCare (Medicaid) cases.** When the OCSS district office receives an OHCA referral on a non-TANF or existing case update with a pending good cause indicator (PGC), OCSS district office ~~makes the determination~~ determines whether good cause exists for noncooperation per OAC 317:35-5-7.

340:25-5-123. Case closure system

- (a) ~~Except as provided in subsections (b) and (c) of this Section,~~ Oklahoma Child Support Services (OCSS) closes cases eligible for closure per Section 303.11 of Title 45 of the Code of Federal Regulations (45 C.F.R. § 303.11).
- (b) A child support case may not be closed when there is a pending paternity, establishment, or modification action filed with the court by OCSS and the non-applicant has been served, unless the pending action is withdrawn or dismissed at the discretion of the OCSS state's attorney.

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(c) A child support case may be closed when any of the criteria in paragraphs (1) through (4) of this subsection applies.

(1) Less than \$500 in court-ordered support is owed to the state, unless there has been a:

- (A) a collection during the past six months; or
- (B) a federal or state income tax refund intercept in the past 18 months.

(2) The custodial person (CP) is participating in the Oklahoma Department of Human Services (OKDHS) Child Care Subsidy Program, is not receiving Temporary Assistance for Needy Families (TANF) or non-TANF SoonerCare (Medicaid), requests closure, and ~~subpara-~~
~~graphs (A) and (B) of this paragraph apply.~~

- (A) There is a child support order.
- (B) The ~~custodial person~~CP is receiving the full amount of the current monthly child support obligation and has reported to ~~the person's Family Support Services Division~~ his or her Adult and Family Services worker receipt of this child support income.

(3) The ~~custodial person~~CP is participating in the OKDHS Child Care Subsidy Program, is receiving non-TANF SoonerCare (Medicaid) benefits for a child(ren) only, requests closure, and all the criteria in ~~paragraph~~ (2) of this subsection apply.

(4) The noncustodial parent is receiving Supplemental Security Income, has no income or assets to pay arrears, and the child support order is set at or modified to \$0 per month due to the parent's disability and lack of income.

(d) A child support case may be closed when the ~~custodial person~~CP receives non-TANF SoonerCare (Medicaid) child-only benefits when:

(1) the case is received from Oklahoma Health Care Authority as a referral, but OCSS learns the ~~custodial person~~CP desires to decline child support services and no service of process is initiated on a legal action filed by OCSS to establish or enforce the child support order, including the medical support portion; or

- (2) the ~~custodial person~~CP:
- (A) cannot be located per ~~Section 303.11(b)(10) of Title 45 of CFR45 C.F.R. § 303.11(b)(10);~~ or
 - (B) fails to cooperate and an action by the ~~custodial person~~CP is essential for the next step in providing child support services per ~~Section 303.11(b)(11) of Title 45 of CFR45 C.F.R. § 303.11(b)(11).~~

(e) The case applicant requests that a child support case be closed by submitting OCSS Form 03GN542E, Application for Case Closure. When an Application for Case Closure is received, OCSS staff determines whether the case meets federal case closure criteria per 45 C.F.R. § 303.11.

(ef) When OCSS staff closes a case, OCSS:

- (1) terminates the Order or Notice to Withhold Income for Child Support with the employer per OAC 340:25-5-201.1;
- (2) removes case balances; and
- (3) documents the date and amounts removed on the automated Oklahoma Support Information System Case Log (CSLOG) screen.

~~(fg) Per Section 302.33 of Title 45 of the CFR45 C.F.R. § 302.33 when Title IV-A TANF, Title IV-E foster care, and non-TANF SoonerCare (Medicaid) services are discontinued, OCSS notifies the recipient that OCSS maintains a full-service child support case, unless the ~~custodial person~~CP declines services in writing. If the ~~custodial person~~CP declines services in writing, OCSS closes the case. If the ~~custodial person~~CP fails to respond, OCSS maintains a full-service child support case.~~

340:25-5-133. Current child support follows the child when physical custody changes

(a) When the legal ~~custodial~~custodial person (CP) relinquishes physical custody of a child(ren) to another ~~custodial person~~CP, Oklahoma Department of Human Services (OKDHS), Oklahoma Child Support Services (OCSS) of the Oklahoma Department of Human Services (OKDHS) redirects current child support payments to the new ~~custodial~~CP under per Sections 109.5 of Title 43 and 237 of Title 56 of the Oklahoma Statutes.

(1) A ~~custodial person~~CP who relinquishes physical custody of a child(ren) to another ~~custodial~~CP must notify OCSS of the change. The new ~~custodial person~~CP must submit an application for child support services if an application is required per OAC 340:25-5-117.

(2) ~~OCSS remits current child support payments to the new custodial person. Transfer of child support payments occurs with the first payment received in the month after a change in physical custody takes place. The person with physical custody on the first day of the month is entitled to the support obligation for that month.~~

(b) When the legal ~~custodial~~CP of a child(ren) dies and another ~~custodial person~~CP, who is not the obligor, assumes custody of the child(ren), OCSS establishes a new support order with the new ~~custodial~~CP as the obligee.

(1) The new ~~custodial person~~CP must submit an application for child support services ~~if when~~ an application is required per OAC 340:25-5-117.

(2) OCSS redirects current child support payments to the new ~~custodial person~~CP pending receipt of an application if required and establishment of the new support order. OCSS distributes any past support payments already collected prior to the ~~custodial person's~~CP's death per OAC 340:25-5-140.

(c) When a new ~~custodial person~~CP assumes custody of a child(ren), OCSS directs past-due support payments ~~as described~~ per OAC 340:25-5-140.

PART 17. PAST SUPPORT

340:25-5-140. Past support

(a) **Authority.** Oklahoma Child Support Services (OCSS) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order and on the first day

of each month thereafter except when another state's law governs the due date.

(2) OCSS bases its determination of past-due support and support for a prior period on information in available records from courts, Title IV-D and other public and private agencies, custodial persons (CPs), noncustodial parents (NCPs), and others.

(3) OCSS may require sworn written statements and supporting documents from ~~custodial persons~~ CPs, ~~non-custodial parents~~ NCPs, and others pertaining to support payments. The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

- (A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;
- (B) Section 1738B of Title 28 of the United States Code;
- (C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and
- (D) Sections 83 and 7700-636 of Title 10, Chapters 3 and 21 of Title 12, Title 43, and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) Judgment payment. Per Section 137 of Title 43 of the Oklahoma Statutes (43 O.S. § 137), the monthly payment schedule on past support may not exceed three years unless specific findings of fact supporting the action are made. OCSS considers a three-year payment schedule to be unjust, unreasonable, inequitable, or inappropriate when OCSS has evidence that the NCP cannot comply with the payment plan. OCSS requests a monthly payment schedule that may exceed three years in accordance with the best evidence available, including the NCP's earning records, past job history, earning ability based on education and training, and mental or physical incapacities. OCSS also considers a NCP's other child support obligations and total arrears.

(bc) Enforcement.

(1) OCSS takes action to enforce past-due support and support for a prior period ~~under~~ per OAC 340:25-5, Part 23.

(2) OCSS collects amounts from the date of the original child support order, including any judgments for support for a prior period, and does not limit collection of past-due child support to amounts accruing from the time a case is opened or reopened.

(3) When a case new to OCSS or a case that was previously closed reopens and has an existing order, OCSS does not calculate a past-due support balance or take action to enforce past-due support until 30 days from the date of mailing of the notice of case letter and affidavit of payments document to the ~~noncustodial parent~~ NCP. This does not preclude the initiation of an income assignment to collect current support.

(34) Past-due child support remains due to the ~~custodial person~~ CP with whom a child resided during the month the past support was due.

(45) When OCSS takes action to enforce past-due support and support for a prior period for a child of a ~~noncustodial parent~~ NCP or a ~~custodial person~~ CP who

is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(ed) Settlement of past support.

(1) Settlements of past support may include:

- (A) a ~~noncustodial parent~~ NCP's lump sum partial payment or a series of payments made toward the total amount of past support;
- (B) an agreement for the ~~noncustodial parent~~ NCP to pay a specified number of current child support payments in the future; and
- (C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.

(2) Settlements of past support must be memorialized in a court order and the ~~custodial person~~ CP must sign the court order when the past support is owed to the ~~custodial person~~ CP.

(3) ~~In accordance with Section 112 of Title 43 of the Oklahoma Statutes~~ Per 43 O.S. § 112, OCSS:

- (A) acknowledges the rights of the ~~custodial person~~ CP and ~~noncustodial parent~~ NCP to mutually agree to waive with approval of the court, all or a portion of the past child support due to the ~~custodial person~~ CP; or
- (B) may negotiate the right to collect all or part of past support owed to ~~the State of Oklahoma~~.

(de) Annual notice. OCSS uses the annual notice to the ~~noncustodial parent~~ NCP parent per ~~Section 237A of Title 56 of the Oklahoma Statutes~~ 56 O.S. § 237A to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions ~~as provided in~~ per OAC 340:25-5, Part 23.

(ef) Death of custodial person.

(1) When the ~~custodial person~~ CP dies, OCSS issues child support payments for past due support to:

- (A) the decedent's estate, when notified in writing by the administrator of the estate; or
- (B) any state owed past due support per OAC 340:25-5-351.

(2) Except as provided in ~~paragraph~~ (1) of this subsection, OCSS refunds payments to the:

- (A) payor, when the payor's address is known;
- (B) ~~noncustodial parent~~ NCP parent when the payor's address is unknown, or payments are returned due to the inability to distribute.

(3) OCSS does not file a forced probate court action to determine heirs and distribute past support to heirs.

(fg) Jurisdiction. When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the ~~noncustodial parent~~ NCP, OCSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce the child support orders.

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340:25-5-140.1. Interest

- (a) **General.** Oklahoma Child Support Services (OCSS) collects and enforces interest on ~~delinquent—past-due~~ Oklahoma court-ordered child support payments per Section 114 of Title 43 of the Oklahoma Statutes (43 O.S. § 114).
- (b) **Support for a prior period.** OCSS collects interest on support for a prior period ~~per~~under OAC 340:25-5-179.1 ~~from the date of the order and is calculated at a rate per 43 O.S. § 114.~~
- (c) **Accrual date.**
- (1) Interest accrues on any unpaid portion of the monthly current child support obligation on the first day of the month following the:
 - (~~1A~~) the due date specified in the court order; or
 - (~~2B~~) the entry date of the child support order when a support order does not specify a due date.
 - (2) Interest accrues on a lump sum judgment for support for a prior period from the first day of the month after the judgment is entered per 43 O.S. § 114.
- (d) **Grace period and accrual.** OCSS has a grace period when interest is not charged. Interest begins to accrue from the first day of the month following the date the arrears are in excess of one month's current support.
- (e) **Interest on cash medical support.** OCSS does not calculate or collect interest on unpaid cash medical support.
- (f) **Servicemember relief.**
- (1) Upon a servicemember's written request, an interest rate cap of ~~six~~6 percent applies to child support arrearages of members of the military service incurred prior to the start of military service per Section 527 of Title 50A of the United States Code.
 - (2) The servicemember must provide a written request for reduced interest and a copy of the military orders calling the servicemember to service and any orders further extending military service to OCSS no later than 180 days after the date of the servicemember's termination or release from military service.
 - (3) Upon receipt of these documents, OCSS applies the ~~six~~6 percent interest rate to child support arrearages existing as of the date when the servicemember is called to military service and throughout the active military service.
 - (4) OCSS may initiate a court action to challenge the claim that the servicemember's military duty has materially affected his ability to pay an interest rate over ~~six~~6 percent.
- (g) **Interest rate.**
- (1) OCSS calculates simple interest per ~~Section 114 of Title 43 of the Oklahoma Statutes~~43 O.S. § 114.
 - (2) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due until a determination of controlling order is made.
 - (3) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.
 - (4) When there are multiple child support orders and Oklahoma is determining the controlling order, OCSS determines the rate of interest charged per ~~Section 601-604 of Title 43 of the Oklahoma Statutes~~43 O.S. § 601-604.

- (h) **Order silent as to interest.** When an order that settles or determines a past-due child support amount is silent as to interest, the party with the right to collect has not waived the interest.
- (i) **Enforcement.** Accrued interest is considered child support. Interest is included in enforcement remedies.
- (j) **Incoming interstate cases.** In the absence of an Oklahoma order, OCSS collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that OCSS collect it.
- (k) **Outgoing interstate cases.** Before requesting a responding state to enforce a child support order(s) entered in a state other than the responding state, OCSS calculates the arrears including the accrued interest claimed.
- (l) **Application of payments to interest.** OCSS applies payments to interest per OAC 340:25-5-351.
- (m) **Waiver of interest.** OCSS acknowledges the rights of the custodial person (CP) and noncustodial parent (NCP) to mutually ~~agree to~~ waive, with approval of the court, all or a portion of the interest due to the ~~custodial person~~CP. OCSS may negotiate the right to collect all or part of the interest owed to ~~the State of~~ Oklahoma. Settlements of interest must be memorialized in a court order and may include:
- (1) a ~~noncustodial parent's~~NCP's lump sum partial payment or a series of payments; or
 - (2) an agreement for the ~~noncustodial parent~~NCP to pay:
 - (A) a specified number of current child support payments in the future; or
 - (B) non-cash support.
- (n) **Reopening closed cases.** OCSS does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

PART 21. ESTABLISHMENT

340:25-5-176.1. Challenges to paternity establishment

- (a) Oklahoma Child Support Services (OCSS) objects to a paternity challenge proceeding when:
- (1) there has been an acknowledgment of paternity executed in Oklahoma or another state and not rescinded within the allowable time, ~~which is 60 days; per Section 303.5 of Title 45 of the Code of Federal Regulations and Sections 7700-301 through 7700-307 of Title 10 of the Oklahoma Statutes (45 CFR § 303.5 and 10 O.S. §§ 7700-301 through 7700-307).~~
 - (2) the child has a presumed father and a party initiates a challenge more than two years after the child's birth;
 - (3) paternity has been established by a district or administrative court order, ~~per 10 O.S. § 7700-636.~~
- (b) OCSS does not object to a paternity challenge proceeding when the:
- (1) time requirement to rescind an acknowledgment of paternity has not passed;
 - (~~2~~) ~~the parties neither cohabited nor engaged in sexual intercourse and the husband never held out the child as his own; or~~

(23) ~~the~~ mother, legal father, and biological father agree to adjudicate paternity-per[10 O.S. § 7700-607].

(c) When a paternity challenge proceeding is brought by a child ~~under~~per 10 O.S. § 7700-637, the state's attorney reviews the facts of the case and determines whether ~~or not~~ an objection is appropriate under the circumstances.

PART 23. ENFORCEMENT

340:25-5-213. Annual notice

(a) ~~The Oklahoma Child Support Enforcement Division Services (CSED) (OCSS)~~ sends a notice, referred to as the Notice and Order of Child Support Lien or annual notice, required by Section 237A of Title 56 of the Oklahoma Statutes (56 O.S. § 237A) to noncustodial parents (NCPs) and custodial persons (CPs) in Title IV-D cases at least once every 12 months, *unless the amount of past due support has been determined in a court proceeding within the past twelve months.* ~~[56 O.S. § 237A] CSED OCSS refers to this notice as a Notice and Order of Child Support Lien or annual notice. The annual notice:~~

- (1) confirms the amount of past support and establishes a payment plan to collect past support; ~~It may establish an address of record for noncustodial parents and custodial persons, and it~~
- (2) includes notice of the procedure to submit address changes to the Central Case Registry; ~~The annual notice:~~
- (3) ~~informs the noncustodial parent NCP that child support services under the state plan are being provided;~~
- (4) ~~instructs the noncustodial parent NCP to redirect the support payments to the Centralized Support Registry; and~~
- (5) ~~advises the noncustodial parent NCP of the amount of past support and collection actions that may be taken to collect the support debt;~~
- (6) includes directions for the NCP to make specified monthly payments to satisfy past due support; and
- (7) may establish an address of record for NCP and CPs.

(b) The annual notice includes directions for the ~~noncustodial parent NCP~~ to make specified monthly payments to satisfy past-due support. ~~Under Section 137 of Title 43 of the Oklahoma Statutes, the past due support repayment schedule may not exceed three years unless specific findings of fact supporting the action are made. CSED compares the monthly payment amount based on this three year repayment schedule with 50 percent of the current monthly support obligation and sets the amount of the monthly payment included in the annual notice at the greater of these two amounts. To promote healthy families, OCSS sets a payment schedule per OAC 340:25-5-140.~~

(c) The initial notice is served upon the ~~noncustodial parent NCP~~ as provided in ~~Section 2005 of Title 12 of the Oklahoma Statutes~~ 12 O.S. § 2005. If there is an address of record on file with the Central Case Registry under ~~Section 112A of Title 43 of the Oklahoma Statutes~~ 43 O.S. § 112A, the notice may be served by regular mail at the address on

record. Subsequent notices may be served by regular mail with a certificate of mailing to the last address of record. The initial notice and subsequent annual notices are sent to the ~~custodial person CP~~ by regular mail with a certificate of mailing.

(d) The annual notice sent to the ~~noncustodial parent NCP~~ must not include the ~~custodial person's CP's~~ address or employer's name and address. The annual notice sent to the ~~custodial person CP~~ must not include the ~~noncustodial parent NCP's~~ address or employer's name and address.

(e) The ~~noncustodial parent NCP~~ or ~~custodial person CP~~ may timely request in writing an administrative review of the annual notice under ~~Section 237A of Title 56 of the Oklahoma Statutes~~ 56 O.S. § 237A. If all disputed issues are not settled at the administrative review, OCSS sets the matter for hearing.

PART 37. RECOVERY

340:25-5-305. General overpayment and recovery policies

- (a) **Purpose.** ~~The purposes of the rules in this Part are to:~~
 - (1) establish Oklahoma Department of Human Services Oklahoma Child Support Services (OCSS) policies and procedures used by ~~the Oklahoma Department of Human Services (OKDHS) Oklahoma Child Support Services (OCSS)~~ to recover OCSS overpayments made by OCSS to custodial persons (CPs), noncustodial parents (NCPs), and other entities; and
 - (2) resolve payment disputes arising from overpayments.
- (b) **Overpayment categories.**
 - (1) Retained support occurs when the ~~custodial person CP~~ kept support payment(s) in violation of the assignment of support rights.
 - (2) Erroneous payment occurs when OCSS ~~has~~ incorrectly paid money to a ~~custodial person CP, noncustodial parent NCP,~~ or other entity, or failed to retain money assigned to the ~~State of Oklahoma~~ because of an administrative error.
 - (3) Bad debt occurs when:
 - (A) the funding for a payment made by OCSS to a ~~custodial person CP or noncustodial parent NCP~~ is subsequently withdrawn when a tax intercept or other collection is revoked;
 - (B) a check or other payment instrument received by OCSS from a ~~noncustodial parent NCP~~ or other payor on behalf of the ~~noncustodial parent NCP~~ is dishonored after a payment ~~has been~~was made to the ~~custodial person CP~~; or
 - (C) OCSS issues a payment to a ~~custodial person CP~~ based on an incorrect arrearage balance or an incorrect allocation of a payment.
- (c) **Authority.** When recovering overpayments under this Part, OCSS is governed by Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section 109.5 of Title 43 of the Oklahoma Statutes; and Sections 171, 185, and 231 through 244 of Title 56 of the Oklahoma Statutes.

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(d) **Recovery.** OCSS may use any legal remedy to recover overpayments, including, but not limited to, state tax offsets under OAC 340:25-5, Part 27.

(1) OCSS is not responsible for creating or recovering overpayments for:

(A) non-Title IV-D time periods when non- Title IV-D cases convert to Title IV-D cases;

(B) time periods when OCSS collected under a court order that was later vacated; or

(C) time periods when OCSS collected under a court order that was later modified and the parties failed to provide OCSS a copy of the new order.

(2) OCSS does not charge, collect, or pay interest on overpayments.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-345.2. Definitions

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

"Allocation" is the process used to divide receipts among the eligible obligations of an obligor. Eligible refers to active and enforceable obligations that meet the criteria to be paid by the collection being allocated.

"Case type" means a payee, including, but not limited to:

(A) custodial person (CP);

(B) support owed to another state; or

(C) reimbursement for:

(i) Temporary Assistance for Needy Families program;

(ii) Foster Care program; or

(iii) Office of Juvenile Affairs program.

"Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same banker Section 3-104 of Title 12A of the Oklahoma Statutes (12A O.S. § 3-104). ~~{12A O.S. § 3-104}~~

"Certified check" means a check accepted by the bank on which it is drawn per 12A O.S. § 3-409. ~~{12A O.S. § 3-409}~~

"Check" means a draft payable on demand and drawn on a bank. A negotiable instrument may be a check even though it is described on its face by another term such as "money order:" per ~~{12A O.S. § 3-104}~~.

"Disbursement" means when funds have been issued to the ~~custodial person~~CP, another entity, or refunded to a noncustodial parent.

"Distributed payments" means funds have been logged to the case and the resulting issuance, if any, has occurred.

"Distribution" is the federally mandated process for applying receipts after they are allocated.

"Forgery" means a fraudulently endorsed and subsequently cashed warrant.

"Monthly payment plan" means the plan approved by the court or a voluntary income assignment or acknowledgment executed by the obligor to ensure compliance with a support order, including current child support, cash medical, spousal support, and monthly payment on past-due support.

"Negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it meets the criteria outlined in ~~Section 3-104 of Title 12A of the Oklahoma Statutes~~12A O.S. § 3-104.

"Obligation" means the monthly amount due for current support, past-due support, or both, along with total arrears for an obligor.

"Payee" means the person or entity to whom the check is written.

"Pended payments" means funds which that are distributed to case balances but the payee has not yet received the money. Pended payments include, but are not limited to, cancelled by statute and stop pay issuances.

(A) **"Cancelled by statute"** means a warrant was issued but was not cashed by the payee within 90 calendar days.

(B) **"Stop pay"** means an Oklahoma Child Support Services (OCSS) warrant was issued but the payee has requested the check not be approved for payment. The payee must complete Form 10AD044E, Affidavit of Lost or Destroyed Warrant, in order to initiate the stop payment process. Upon receipt of Form 10AD044E, OCSS notifies the Oklahoma State Treasurer and issues a replacement warrant.

"Unauthorized signature" means a signature made without actual, implied or apparent authority. The term includes a forgery. ~~{per 12A O.S. § 1-201}~~.

"Undistributed payments" means funds received but not yet distributed to a case balance.

"Warrant" means an unconditional written order by which one person or entity authorizes another person or entity to pay a sum certain of money to a third person or entity. A warrant is also known as a check or bank draft.

340:25-5-350.1. Return of overcollected support amounts

(a) When Oklahoma Child Support Services (OCSS) receives a payment:

(1) a payment in excess of the noncustodial parent's (NCP's) total arrears balance, OCSS returns the excess amount to the payor within 45 calendar days, after discovering the overcollection.

(2) a payment and the custodial person's (CP's) address is unknown, OCSS applies support collections to any unreimbursed public assistance debt associated with the ~~noncustodial parent~~NCP.

(3) a payment made due to an error on the part of the payor that has not been disbursed, OCSS returns it to the payor within 45 calendar days, after discovering the overcollection. OCSS is not required to correct, redirect, or recover the payment unless it has been retained by the Oklahoma Department of Human Services (OKDHS).

(4) a payment that cannot be disbursed to a ~~custodial person~~CP, or returned to the payor or ~~noncustodial parent~~NCP, and there is no debt to the State of Oklahoma, OCSS remits the payment to the OKDHS General Revenue Fund Treasury.

(b) When a ~~noncustodial person~~NCP makes an overpayment, ~~the minimum amount for a refund payment is \$3. Amounts~~amounts less than \$3 are not refunded, ~~but unless issued on an Electronic Benefits debit card. Amounts less than \$3 and not issued on a debit card~~ are remitted to the OKDHS General Revenue Fund Treasury.

(c) OCSS does not return overcollected support amounts when the parties failed to provide OCSS with a copy of the order that was modified or vacated.

340:25-5-350.3. Payment of support through Centralized Support Registry

(a) **Centralized Support Registry.** Oklahoma Child Support Services (OCSS) operates a Centralized Support Registry (Registry), also known as the State Disbursement Unit, for the receipt, recording, allocation, distribution, and disbursement of support payments. OCSS operates the Registry under Sections 410 and 413 of Title 43 of the Oklahoma Statutes (43 O.S. §§ 410 and 413), Sections 302.51 and 303.100 of Title 45 of the Code of Federal Regulations; (45 C.F.R. §§ 302.51 and 303.100), and Sections 654b and 657 of Title 42 of the United States Code (42 U.S.C. §§ 654b and 657).

(1) This Section applies to both Title IV-D and non-Title IV-D cases, unless the context clearly indicates otherwise.

(2) When a non- Title IV-D child support case has an income assignment in place, the Registry processes child support payments received from unemployment compensation benefits as income assignments per federal and state law.

(b) **Support payments.**

(1) Support payments must be paid as instructed in writing by OCSS to the Registry.

(2) OCSS offices may accept support payments when a payment is made:

(A) ~~a noncustodial parent offers a payment~~ in connection with a court action; or

(B) ~~a payment is made~~ as part of a settlement agreement on a lien or levy ~~on real or personal property.~~

(c) **Method of payment.** OCSS may require payors and persons to provide information needed to identify and properly allocate and distribute payments and to submit payments to the Registry per ~~Section 413 of Title 43 of the Oklahoma Statutes~~43 O.S. § 413.

(1) Support payment amounts are converted from a foreign country's order amount to a United States (U.S.) dollar amount at the time the order is registered and that exchange rate remains in place until the child support order is modified or the arrears are confirmed.

(2) OCSS:

(A) allocates and distributes support payments ~~under~~per OAC 340:25-5-351;

(B) modifies or enforces international orders ~~under~~per OAC 340:25-5-285;

(C) safeguards case information and records received from payors and persons. Information and records concerning Title IV-D and non-Title IV-D

recipients of services through the Registry are confidential under ~~Section 183 of Title 56 of the Oklahoma Statutes~~56 O.S. § 183 except as provided in OAC 340:25-5-67;

(D) sends custodial persons (CPs) a quarterly written notice of the amount of current support, arrears, and interest collected, and the amount of collections paid to the ~~custodian~~CP. ~~Custodial persons~~CPs may also obtain this information over the Internet or by telephoning OCSS ~~as described in~~per OAC 340:25-1-2.1;

(E) reserves the right to refuse to accept a personal or business check or direct debit after receiving a dishonored personal or business check, direct debit, electronic funds transfer (EFT), or other negotiable instrument from the same payor or on the same case; and

(F) considers the date of collection to be the date ~~that~~ payments are received by the Registry and applies payments to existing case balances as of that date. If a payment collected represents the current support amount for future months, the amount should be applied to such future months as long as there are no past due balances on any of the noncustodial parent's (NCP's) cases per 45 C.F.R. § 302.51.

(3) When OCSS refuses to accept a personal or business check, direct debit, EFT, or other negotiable instrument from a payor under (2)(E) of this subsection, the payor:

(A) must submit the payment by cashier's check, certified check, money order, or online using a debit or credit card;

(B) is added to the OCSS Returned Payments List;

(C) remains on the Returned Payments List until OCSS receives the equivalent of 12 months of payments unless:

(i) the payment is returned due to missing endorsement;

(ii) payor provides prior notification that payment will be returned and remits a replacement payment within ~~ten~~10 days of notification in the manner required by OCSS;

(iii) returned payment is insufficient funds caused by an OCSS Financial Institution Data Match levy; or

(iv) OCSS deems the reason for returned payment is ~~deemed by OCSS to be~~ out of payor's control;

(D) must request removal from the Returned Payments List by contacting OCSS ~~as described in~~per OAC 340:25-1-2.1.

(4) OCSS notifies the payor by mail:

(A) of the reason for the returned payment;

(B) that the payor ~~has been~~was placed on the Returned Payments List;

(C) that the payor must submit payments as outlined in (3)(A) of this subsection; and

(D) how the payor can be removed from the Returned Payments List.

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- (5) When OCSS removes the payor from the Returned Payments List and subsequently has another payment returned, the payor is added back to the Returned Payments List and remains there indefinitely.
- (d) **EFT support payments.** ~~Nonecustodial parents~~NCPs, employers, and other payors may register to make electronic payments through the OCSS online child support payment system (WebPay) at <https://www.okdhs-paycs.com/Login.aspx>.
- (1) To transfer child support payments electronically, ~~nonecustodial parents~~NCPs, employers, and other payors must:
- (A) call OCSS at the telephone numbers provided in OAC 340:25-1-2.1 to set up the EFT process;
 - (B) have a valid email account;
 - (C) have Internet access ~~to the Internet~~;
 - (D) be a legal owner of a:
 - (i) ~~a~~ bank account held at a financial institution within the U.S.; or
 - (ii) ~~a~~ VISA or MasterCard credit or debit card held at a financial institution within the U.S.; and
 - (E) register to use WebPay.
- (2) WebPay payments do not replace federally mandated income withholding and will not stop or cancel income-withholding orders for ~~nonecustodial parents~~NCPs.
- (3) OCSS may adjust and release payroll deductions that ~~have been~~were electronically transferred from a ~~nonecustodial parent's~~NCP's wages. When an adjustment cannot be processed in time to effect the change on the next scheduled electronic funds transfer, employers do not refund money to the employee, make adjustments to subsequent EFT payments, or take ~~any~~ other action to correct the amount deducted.
- (4) OCSS reserves the right to:
- (A) close a WebPay account and impose fees and charges ~~if~~when a scheduled payment transaction is returned for any reason;
 - (B) add payor to Returned Payments List ~~under~~per (c)(3) of this Section; and
 - (C) specify what payment formats are used to conduct the electronic funds transfer ~~of funds~~ between businesses to state child support entities.
 - (i) ~~Formats for electronically transferring funds and their identifying information have been developed by the Bankers Electronic Data Interchange (EDI) Council of the National Automated Clearing House Association (NACHA). These formats specify how employers and payroll companies electronically send the information and the capabilities that states must have to receive the information.~~
 - (ii) ~~Cash Concentration and Disbursement (CCD) and Corporate Trade Exchange (CTX) payment formats are used within the NACHA network to transfer funds between businesses to state child support entities.~~
- (iii) ~~Addenda Records are used to transmit personally identifying information about nonecustodial parents~~NCPs such as Social Security numbers along with their payments. Addenda Records identify the employer sending the payment and the payor to receive credit for the payment. ~~A CCD entry accompanied by an Addenda Record is referred to as a CCD+.~~
- (iv) ~~OCSS accepts CCD+ and CTX formats from employers sending child support payments.~~
- (v) ~~OCSS does not accept Prearranged Payment and Deposit (PPD) formats because PPD formats lack the EDI Addendum Record.~~
- (e) **Payment issuance.** ~~Under Section 654 of Title 42 of the United States Code and Section 302.38 of Title 45 of the Code of Federal Regulations~~Per 42 U.S.C. § 654 and 45 C.F.R. § 302.38, OCSS issues payments to the ~~eustodial person~~CP only by transferring funds electronically, also known as direct deposit, or through debit cards. In interstate cases, OCSS issues payments to the initiating state Title IV-D agency by electronic funds transfer and only issues payments by paper warrant to initiating states that do not have an electronic funds transfer system.
- (1) Payments issued by debit card.
- (A) When an Oklahoma Department of Human Services (OKDHS) customer ~~already~~has a debit card, at the point of OCSS initial child support payment issuance for a ~~eustodial person~~CP, a letter is mailed explaining that child support funds are added to the existing debit card account.
 - (B) When an OKDHS customer ~~has~~was not ~~been~~ issued an Oklahoma debit card at the point of OCSS initial child support payment issuance, a letter is mailed explaining the debit card activation process and that the debit card should be expected within ten business days. The ~~eustodial person~~CP must activate the debit card within 90 calendar days of issuance.
 - (i) When a card is not activated, OCSS mails a second letter to the ~~eustodial person~~CP after 45 calendar days and a third letter after 90 calendar days. The letters explain the importance of activating the debit card and that when the card is not activated within 90 calendar days, the payment is no longer available on the debit card.
 - (ii) Payments issued to a ~~eustodial person~~CP who has not activated the debit card are returned to OCSS after 90 calendar days. When payments are returned to OCSS, payments are applied ~~under~~per OAC 340:25-5-350.4. When the payments ~~have been~~were distributed to other case balances or returned to the ~~nonecustodial parent~~NCP, the payments are not redistributed to the ~~eustodial person~~CP.
- (2) Payments issued by direct deposit. After receiving a debit card, the ~~eustodial person~~CP may enroll in direct deposit by calling the toll-free customer service telephone number located on the back of the debit card. There are no charges or fees for receiving child support payments by

direct deposit. A ~~eustodial person~~CP must have a bank account held at a financial institution within the United States to receive direct deposit child support payments and normal banking charges may apply.

- (f) **Forged endorsement on warrants.**
 - (1) When a ~~eustodial person~~CP reports that a warrant has been fraudulently cashed, OCSS compares the payee's signature against the endorsement on the warrant and verifies that the signatures do not match.
 - (2) OCSS sends the following completed and signed documentation ~~that has been completed and signed by the payee to the OST~~Oklahoma State Treasurer's Office (OST):
 - (A) Form 10AD044E, Affidavit of Lost or Destroyed Warrant;
 - (B) Form 10AD045E, Affidavit of Forged Endorsement; and
 - (C) Form 10AD046E, Investigation Questionnaire.
 - (3) OCSS issues a replacement warrant to the payee after OCSS receives the return of funds from ~~the Oklahoma State Treasurer's Office (OST)~~ and the OST mandatory 60 calendar-day holding period ~~imposed by the OST has lapsed~~closes.
- (g) **Overcollected support amounts.** OCSS returns overcollected support amounts as ~~described in~~per OAC 340:25-5-350.1.
- (h) **Payment errors.** When payments have been disbursed, OCSS manages payment errors as described in this subsection.
 - (1) If a payor makes a payment error, OCSS is not required to correct, redirect, or recover the distributed payment, unless it has been retained by OKDHS.
 - (2) When OCSS errs, OCSS recovers overpayments to parties or ~~eustodial persons~~CPs in Title IV-D and non-Title IV-D cases per OAC 340:25-5, Part 37.
- (i) **Suspicious payment activity.** OCSS restricts use of payment methods by imposing limits, hold times, or other measures ~~if~~when OCSS believes that suspicious activity has occurred or may occur on a payor's account.

340:25-5-351. Allocation and distribution of collections

(a) ~~Basis for allocation and distribution of collections~~**Authority.** The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized Support Registry for IV-D and non-IV-D cases. ~~The collections are allocated and distributed according to Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high level distribution policies. Actual distribution of money occurs under~~Oklahoma Child Support Services (OCSS) allocates and distributes support collections per Section 657 of Title 42 of the United States Code (42 U.S.C. § 657) after collections are allocated according to this Section and Sections 302.32, 302.51, and 302.52 of Title 45 of the Code of Federal Regulations (45 C.F.R. §§ 302.32, 302.51, and 302.52). Oklahoma Child Support Services (OCSS) is also governed

~~by~~collects the annual fee ~~per~~Section 654 of Title 42 of the United States Code 42 U.S.C. § 654, Section 302.33 of Title 45 of the Code of Federal Regulations 45 C.F.R. § 302.33, and Section 237 of Title 56 of the Oklahoma Statutes (56 O.S. § 237) in the collection of the annual fee.

(b) **Annual fee.** OCSS collects the annual fee ~~per~~Section 654 of Title 42 of the United States Code Section 302.33 of Title 45 of the 42 U.S.C. § 654, 45 C.F.R. § 302.33, and 56 O.S. § 237. OCSS automatically collects an annual \$25 fee once \$500 in support ~~has been~~is collected and issued to the custodial person (CP). A case is exempt from this annual fee when the family is currently receiving or formerly received assistance under state or tribal Temporary Assistance for Needy Families (TANF) or the Aid to Families with Dependent Children program. When there is more than one Title IV-D child support program involved, OCSS collects the annual fee on cases when Oklahoma is the initiating state.

(c) ~~Overall priority of allocation and distribution~~**Allocation.** This subsection has priority over (d) through (i) of this Section.

(1) ~~Oklahoma Child Support (OCSS) allocates payments from a collection action to satisfy amounts due under obligations included in the action. Income assignment orders, liens, administrative offsets, contempt actions, and license revocations are examples of collection actions. If OCSS receives a voluntary payment, OCSS honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, OCSS allocates voluntary payments to cases with court ordered obligations before cases without court ordered obligations.~~

(2) ~~In a non-IV-D case, OCSS allocates and distributes payments through the Centralized Support Registry directly to the obligee, without otherwise allocating or distributing payments under this Section, unless money was previously assigned to the State of Oklahoma.~~

(3) ~~Except as provided for in (f) of this Section, OCSS applies arrearage collections owed to the custodial parent before paying conditionally or permanently assigned arrears owed to a state.~~

(4) OCSS applies payments to interest owed to a particular custodial person after current child support and the principal arrears balance is paid in full.**In general.** Allocation refers to how a payment will be divided among obligations. Some obligors have more than one child support case and the rules of allocation determine which case receives all or a portion of the collection received. A collection is allocated based on the source of the collection and the type of legal action resulting in a collection.

(2) **Allocation models.** OCSS divides collections among the obligor's eligible obligations based on the following models:

(A) **Standard Model.** All payments not made by income withholding order or federal income tax refund offset are allocated to eligible obligations in the following sequence:

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- (i) prorated to the current child support, cash medical support, and spousal support;
- (ii) prorated to the monthly payment plan on past support; and
- (iii) amounts remaining from the initial collection or additional collections received during the same month will allocate based on a prorated share of total arrears owed on all eligible obligations. The allocated amounts cannot exceed the total arrears due on the cases.
- (B) **Income Withholding (IWO) Model.** Periodic payments from an income withholding order are allocated to eligible obligations in the following sequence:
- (i) prorated to the current child support, cash medical support, and spousal support;
- (ii) prorated to the monthly payment plan on past support and other judgment(s), such as judgments for attorney fees or genetic testing costs; and
- (iii) the steps in (1) and (2) of this subsection are repeated for amounts remaining from the initial collection or additional collections received during the same month, until the entire collection is allocated.
- (C) **Internal Revenue Service (IRS) Model.** Collections received from the offset of federal income tax refunds are allocated according to the existing federal hierarchy per 42 U.S.C. § 657 and 45 C.F.R. § 302.32. OCSS allocates only to balances certified to the IRS. OCSS applies these collections to each eligible obligation, first to any balances certified to the IRS as public assistance, then to any CP's certified balances.
- (3) **Specific enforcement actions.** Collections received from case-specific enforcement actions are not allocated across all cases, but are allocated to the case(s) in which the action is taken.
- (4) **Non-Title IV-D cases.** In non-Title IV-D cases, OCSS allocates payments as follows:
- (A) payments received from an income withholding order are allocated using the IWO Model above. Collections are allocated to non-Title IV-D cases based on the amounts listed in the non-Title IV-D IWO;
- (B) all other payments are allocated using the Standard Model above. When OCSS receives information on processing a specific payment, OCSS may allocate the payment based on that information.
- (5) **Intergovernmental cases.**
- (A) **Incoming.** In cases where OCSS is collecting support for a CP who is receiving services from another jurisdiction's child support agency, past-due payments are allocated based on information provided by the initiating state.
- (B) **Outgoing.** Collections received from other jurisdictions resulting from an outgoing referral are allocated to that case.
- (d) **Initial allocation to monthly current support obligations Distribution.** Except as provided in (f) of this Section, OCSS initially allocates collections to current support obligations due each month.
- (1) If collections are less than the amount of all current support due, OCSS allocates collections between the current child support and the cash medical support specified in the order in proportionate shares. OCSS distributes collections based on the federal distribution hierarchy per 42 U.S.C. § 657 and 45 C.F.R. §§ 302.32 and 302.51.
- (2) After the current child support and cash medical support obligation is met, OCSS allocates collections to current spousal support due. OCSS initially distributes collections to current support, current cash medical obligations due each month. If collections are less than the amount of all current support and current cash medical support due, OCSS distributes collections between the current child support and the current cash medical support obligations in proportionate shares.
- (3) After the current child support and current cash medical support obligation is met, OCSS distributes collections to current spousal support due.
- (4) After current child support, current cash medical support, and current spousal support obligations are satisfied, any remaining collections for the month are distributed to past-due balances.
- (5) OCSS distributes payments to interest owed after the current child support and principal arrears balances are paid in full to each obligation.
- (6) When a payment collected represents current support for future months, the amount is applied to such future months. When past support balances exist on any of the noncustodial parent's cases, payments should not be applied to the next month's current support per 45 C.F.R. § 302.51.
- (e) **Allocation to monthly past due support obligations under payment plans.** Except as provided in (f) of this Section, after all current support obligations are met, OCSS allocates collections under payment plans to fixed monthly past due support obligations. Payment plans are defined in Section 237.7 of Title 56 of the Oklahoma Statutes.
- (1) If collections are less than the amount due under the payment plan, OCSS first allocates collections to past due current child support.
- (2) After the past due monthly child support obligation is met, OCSS allocates collections to monthly past due spousal support.
- (3) OCSS allocates collections to the total amount in arrears after fixed monthly past due support obligations in the payment plan are met.
- (f) **Allocation and distribution to total amount in arrears.**
- (1) OCSS allocates federal income tax refund offset collections to the total amount in arrears and first applies these collections to any assigned arrearages, up to the total amount of unreimbursed assistance. Any remainder is then paid to the custodial person(s).

(2) Except for collections under a payment plan, OCSS allocates collections above the current support obligation to total arrears.

(3) After all child support arrearages are satisfied, OCSS allocates remaining collections to spousal support arrearages.

~~(g) **Allocation and distribution of arrears to assigned cash medical support.** After the past due current child support, cash medical support, and spousal support are met, OCSS allocates collections to assigned cash medical support.~~

~~(h) **Multiple family support orders.** This subsection explains the allocation of collections when a nonecustodial parent has multiple family obligations. For purposes of this Section, a family is a mother and a father and the child(ren) of that relationship, and any custodial person(s) of the child(ren) who is not the mother or the father.~~

~~(1) **Current support.** OCSS prorates and applies support collections to each family based on the current child support obligation due each family. The collections are allocated within each family obligation under subsection (d) of this Section.~~

~~(2) **Past due support under a payment plan.** OCSS prorates and allocates collections to payment plans for multiple families based on each family's fixed monthly payment plan obligations due.~~

~~(3) **Total arrears, including principal and interest balances.** OCSS prorates and allocates collections to arrears, including principal and interest balances, for multiple families based on each family's total arrears due.~~

~~(i) **Past due support in interstate cases.** In cases where OCSS is collecting support for a custodial person who is receiving services from another state's child support agency, OCSS allocates arrearage payments based on information provided by the initiating state. After all current support obligations are met, OCSS allocates collections to past due support for payment plans, total arrears, and interest as follows:~~

~~(1) **Non-public assistance balance.** If any portion of the past due balance is owed to the custodial person or is passed through to the custodial person under federal distribution regulations, OCSS allocates collections to that portion of the past due balance and pays that amount to the other state's State Disbursement Unit.~~

~~(2) **Public assistance balances.** If no portion of the past due balance is owed to the custodial person, OCSS allocates collections first to balances owed to Oklahoma and then prorates between balances owed to the other state(s).~~

~~(j) **Interest.** OCSS distributes interest last in single family, multiple family, and interstate cases.~~

340:25-5-352. Distributed payment adjustments

When a payment has been logged to an incorrect case, or an incorrect case type, Oklahoma Child Support Services (OCSS) determines a payment adjustment is required. Oklahoma Child Support Services OCSS makes the

necessary corrections to the statewide automated data processing and information retrieval system and after the corrections have been made, the payment adjustments are completed.

[OAR Docket #13-607; filed 4-16-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**

[OAR Docket #13-597]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-3.1 [AMENDED]
340:40-7-7 through 340:40-7-8 [AMENDED]
340:40-7-12 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 [AMENDED]
340:40-9-3 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-2 through 340:40-13-3 [AMENDED]
Subchapter 16. Improper Authorization Initiative Payments Error Rate Review Process
340:40-16-1 [AMENDED]
(Reference APA WF 12-13 and 12-21)

AUTHORITY:
Director of Human Services; Sections 162 and 230.52 of Title 56 of the Oklahoma Statutes; House Bill (HB) 2388 effective November 1, 2012; and Title 45 of the Code of Federal Regulations (CFR) Parts 98 and 99.

DATES:
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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:
April 12, 2013

Effective:
June 1, 2013

SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:

Subchapter 7. Eligibility
340:40-7-8 [AMENDED]
(Reference WF 12-21)

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December 5, 2012

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30 Ok Reg 346

Docket number:
13-151

INCORPORATIONS BY REFERENCE:
n/a

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ANALYSIS:

The proposed permanent rule amendments to Subchapter 3 of Chapter 40 amend the rules to: (1) clarify and remove outdated and unnecessary language regarding the application process; (2) update division name and terminology due to reorganization and OKDHSLive; and (3) change a form name and number.

The proposed permanent rule amendments to Subchapter 7 of Chapter 40 amend the rules to: (1) clarify the special needs approval process for children with disabilities; (2) update division name; (3) add the definition of an adult non-relative opposite sex individual (ANROSI) to the rule; (4) clarify that foster parents must meet Child Welfare Services (CWS) rules regarding the need factor and child care eligibility; (5) update terminology; (6) add new types of excluded income to match Supplemental Nutrition Assistance Program (SNAP) rules; and (7) include substance abuse treatment as a Temporary Assistance for Needy Families (TANF) related need factor when the child receives TANF and the parent is ineligible due to illegal use of a controlled substance or substances. The proposed permanent rule amendments to Subchapter 9 of Chapter 40 amend the rules to: (1) update terminology; and (2) change a form name and number.

The proposed permanent rule amendments to Subchapter 13 of Chapter 40 amend the rules to: (1) update procedures and forms used in the approval process for in-home child care; (2) update the division name; (3) reference the appendix containing descriptions of child care provider rates; (4) update age requirement terminology to match age requirement rules per OAC 340:40-7-3; and (5) remove unnecessary blended rate information.

The proposed permanent rule amendments to Subchapter 16 of Chapter 40 amend the rules to: (1) change the name of the subchapter; and (2) update and clarify terminology.

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, 2013:

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for an ~~application form~~ ~~benefits~~ and ends with ~~determining the household's eligibility and entering that determination into the computer system~~ ~~an eligibility determination~~. Subsidized child care benefits must be synchronized with the client's food benefits or SoonerCare (Medicaid) benefits per OAC 340:40-9-1(c). The Child Welfare ~~Services~~ or ~~Adult and Family Support Services~~ worker (AFS) ~~staff processes~~ ~~process~~ the application.

(1) **When an application is required.** A ~~new~~ ~~An~~ application is required when:

- (A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;
- (B) the client's subsidized child care benefits have been closed for more than 30 calendar days;
- (C) the payee for the subsidized child care benefits changes; or
- (D) family income was not considered because ~~policy~~ at OAC 340:40-7-12(6) ~~policy~~ applied and one or more of the affected adopted children turns ~~six~~ 6 years of age unless there is already a separate open

income eligible case and the child can be added to that case per OAC 340:40-9-2(c).

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. ~~If~~ When an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving this person permission to act on behalf of the applicant or the applicant must have designated this person as his or her authorized representative on the signed application.

(A) If the natural or adoptive parent or stepparent of the child is in the home, he or she is considered the applicant and eligibility is based on that parent's situation regardless of whether he or she has custody of the child.

(B) If both the natural and adoptive parent of the child are living in the same household and the adoption has been finalized, the adoptive parent is considered the applicant and eligibility is based on that parent's situation.

(C) If the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) If the parent is a minor, either the minor parent or the responsible adult the minor is living with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) If the natural or adoptive parent is living in the home but is too incapacitated to apply, another person living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.

(3) **Application form.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. When child care is needed for a child with disabilities, the worker, and applicant also complete Form 08AD006E, Certification for Special Needs Child Care Rate.

(4) **Date of request.** The date of request is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Date of application.** The date of application is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the ~~human services center~~ county office, including the name of the child care provider the client ~~wishes~~ chooses to use.

(A) The provider must ~~already~~ have a valid Oklahoma Department of Human Services (OKDHS) child care provider contract.

(B) Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.

(C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews are typically completed face-to-face with the applicant or

authorized representative. A face-to-face interview is required for protective or preventive child care requests and strongly recommended for special needs requests.

(7) **Explanation of eligibility factors.** At the time of the initial interview, the worker advises the applicant or authorized representative of:

- (A) his or her rights and responsibilities;
- (B) all factors of eligibility including which child care providers are eligible to receive subsidy payment;
- (C) the plan of service and reason child care may be approved based on the applicant's statements at interview;
- (D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video;
- (E) the earliest date child care can be approved;
- (F) the requirement to cooperate with the OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and
- (G) the requirement to report any changes in his or her circumstances within ~~ten~~ 10 calendar days.

(8) **Timeliness.** ~~Near real time (NRT) benefit processing time frames are used for all child care applications.~~ To be considered timely, the worker must determine eligibility within two working days of receiving all necessary verification to certify or deny the application. If the applicant does not provide requested verification, the worker denies the request within 30 calendar days of the date of request. The worker sends Form ~~08MP037E~~08MP038E, ~~Notice Regarding Social Services~~ Client Notice of Action Taken, explaining the reason for delay to any applicant whose application is over 30 calendar days old.

(9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.

(b) **Expedited eligibility processing.** The worker must process an application immediately when required verification is beyond the applicant's control to provide, the applicant does not have the money to pay toward the cost of child care, and without child care the applicant:

- (1) is in danger of losing a job; or
- (2) cannot start a new job.

(c) **Eligibility determination.** The worker uses OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine whether the household meets income guidelines. Refer to OAC 340:40-5-1(8) for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant provides all necessary verification to determine eligibility. The applicant is responsible for child care used before the certification date that is not part of the approved child care plan of service.

- (A) The client swipes attendance with his or her EBT card through a point-of-service (POS) machine at the child care facility.

(B) OKDHS does not pay for care for any day the child attends child care if the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client or provider.

(C) If the client fails to swipe attendance, he or she is responsible for any care provided that day and may be responsible for any absent day payment OKDHS pays, if all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The request or application is denied if the applicant is ineligible, does not provide needed verification, or requests cancellation of the application. A new application is not needed when the applicant completes the application process and provides necessary verification within 60 calendar days of the original request date.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-3.1. Child with disabilities

(a) **Child with disabilities.** A child with disabilities is defined as a child who receives Supplemental Security Income (SSI), SoonerStart early intervention services provided in accordance with an Individualized Family Service Plan (IFSP), or special education services provided in accordance with an Individualized Education Program (IEP) by the local school district. This definition also includes a child whose SSI payment stops because of financial reasons but who still meets the medical definition of disability as determined by the Social Security Administration (SSA). When a child with disabilities is 13 through 18 years of age ~~or older~~, the client must provide a statement from a licensed health care professional verifying the child is physically or mentally incapable of ~~self-care~~ self-care as age appropriate before care is approved and annually ~~re-view~~ re-view thereafter. ~~If~~ When the licensed health care professional states ~~that~~ the child is capable of ~~self-care~~ self-care as age appropriate, subsidized child care benefits are not approved.

(b) **Special needs rate approval process.** The special needs rate, if approved, is paid in addition to the ~~daily~~ rate paid for a typical child. ~~If~~ When a child does not meet the definition of a child with disabilities, the child is not eligible for a special needs rate. A child with disabilities may be approved for a moderate or severe special needs rate unit type after the special needs rate approval process is completed. If the worker determines ~~that~~ the parent or caretaker is eligible for subsidized child care benefits before the special needs rate approval process is completed, the worker approves the child for a typical child unit type. ~~The process includes:~~ The special needs process includes steps described in (1) through (5) of this subsection.

(1) ~~the~~ The parent or caretaker must provide proof ~~that~~ the child meets the definition of a child with disabilities and information about the child's care needs. Proof is required prior to approval of the special needs rate and annually thereafter.

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- (A) For a child under ~~three~~³ years of age, the parent or caretaker submits the child's current IFSP that verifies the child receives SoonerStart services and documents the care needs of the child.
- (B) For a child over three years of age, the parent or caretaker submits the child's current IEP that documents the child receives special education services and documents the care needs of the child.
- (C) If the child receives SSI, the parent or caretaker submits the child's award letter or other proof from SSA that verifies receipt of this income. If the child is not receiving SoonerStart or special education services, the parent or caretaker submits a statement from a health professional describing the child's care needs.
- (2) The Adult and Family Services (AFS) worker, parent or guardian, ~~the~~ child care provider, Oklahoma Child Care Services (OCCS) licensing staff, and the ~~Family Support Services Division (FSSD)~~AFS Child Care Subsidy staff or Child Welfare Services (CWCWS) worker staff completes the appropriate sections of Form 08AD006E, Special Needs Child Care Rate Certification. Determination of whether certification requirements are met by the:
- (A) child are made by the ~~FSSD~~AFS Child Care Subsidy staff or ~~CW worker~~ child welfare (CW) specialist; and
- (B) provider are made by the OCCS licensing specialist.
- (3) The ~~FSSD~~AFS Child Care Subsidy staff or child welfare specialist follows the instructions on Form 08AD007E, Special Needs Rate Determination Scoring Sheet, to score the 08AD006E. The child's care needs must be within the scoring range shown on Form 08AD007E for moderate or high need to qualify for a special needs rate.
- (4) When the child and the provider meet certification requirements for the special needs rate, the rate is effective the first of the month following the month OCCS licensing staff signs Form 08AD006E. If the child does not start child care until after the special needs rate is approved, the rate is effective the first date care is approved.
- (5) Once Form 08AD006E has been completed and the ~~FSSD~~AFS Child Care Subsidy staff or ~~CW worker~~child welfare specialist determines the child is eligible for one of the special need rates, a new Form 08AD006E is only completed when:
- (A) the child's needs of the child change;
- (B) the child moves to a different child care facility;
- (C) the child stops attending the facility that was approved for the special needs rate unit type for more than six months;
- (D) the provider fails to obtain an on-site consultation within the parameters of the corrective action agreed upon with licensing staff; or
- (E) ~~it is determined by~~ OCCS licensing staff that determines the provider no longer meets the child's need.

- (c) **Supplemental Security Income-Disabled Children's Program (SSI-DCP).** A child between birth to 18 years of age who receives SSI may be eligible for additional services described at OAC 340:70-8-1 and enrichment child care described at OAC 340:40-7-8(f).

340:40-7-7. Establishing the need factor for child care

(a) **Establishing the need factor.** In order for children to be cared for in a safe environment while the parent or caretaker participates in an approved activity or for protective or preventive reasons, the Oklahoma Department of Human Services (OKDHS) provides subsidized child care benefits. The worker arranges to obtain from the client or collateral sources, documentation of the need factor. The worker and client negotiate the amount of travel time allowed for an activity based on what is a reasonable length of time.

(b) **Need factor for single parent or caretaker families.** The need for subsidized child care is met when the:

- (1) parent or caretaker is employed ~~in accordance with~~per OAC 340:40-7-8(a);
- (2) parent or caretaker needs sleep time during the day after working night hours when a feasible alternative is used at no cost to OKDHS during the night working hours ~~in accordance with~~per OAC 340:40-7-8(a)(5);
- (3) parent or caretaker is actively searching for a job ~~in accordance with~~per OAC 340:40-7-8(a)(6);
- (4) parent or caretaker is engaged in a training or formal education program designed to lead to employment ~~in accordance with~~per OAC 340:40-7-8(b) and (c);
- (5) parent or caretaker attends high school, General Educational Development (GED), literacy, adult basic education (ABE), or English as a Second Language (ESL) classes ~~in accordance with~~per OAC 340:40-7-8(c);
- (6) parent or caretaker is actively participating in an approved Temporary Assistance for Needy Families (TANF) Work activity ~~in accordance with~~per OAC 340:10-2-1;
- (7) child is in need of care or supervision for part of the day as a protective or preventive service ~~in accordance with~~per OAC 340:40-7-8(e); or
- (8) child receives Supplemental Security Income (SSI) and care is needed for enrichment purposes ~~in accordance with~~per OAC 340:40-7-8(f).

(c) **Need factor for two-parent or two-caretaker families.** Two-parent or two-caretaker families can be two natural or adoptive parents, the natural parent and a stepparent, two grandparents, other relative married couples, or other non-relative married couples. If a couple who is not married applies and only one person is the natural or adoptive parent of the child, only the natural or adoptive parent must meet a need factor as described at OAC 340:40-7-7(b). The need for subsidized child care is met when:

- (1) both parents or caretakers are employed during the same hours for which child care is requested ~~in accordance with~~per OAC 340:40-7-8(a);
- (2) one or both parents or caretakers need sleep time during the day after working night hours when a feasible alternative is used at no cost to OKDHS during the night working hours ~~in accordance with~~per OAC

340:40-7-8(a)(5). If both parents do not work night hours, the other parent must be employed during the other parent's sleep time hours;

(3) one or both parents are actively searching for a job ~~in accordance with~~ per OAC 340:40-7-8(a)(6). If only one parent or caretaker is searching for a job, the other parent or caretaker is employed, in training, or in a formal education program during the same hours;

(4) one parent or caretaker is attending a formal education or training program during the same hours the other parent or caretaker is employed ~~in accordance with~~ per OAC 340:40-7-8(a) through (c);

(5) both parents or caretakers are in high school ~~in accordance with~~ per OAC 340:40-7-8(c);

(6) one parent or caretaker is in high school during the same hours the other parent or caretaker is working, attending a formal education, or post high school training program ~~in accordance with~~ per OAC 340:40-7-8(a) through (c);

(7) one parent or caretaker is attending GED, literacy, ABE, or ESL classes during the same hours as the other parent or caretaker is employed ~~in accordance with~~ per OAC 340:40-7-8(a) through (c);

(8) one or both parents or caretakers are actively participating in approved TANF Work activities ~~in accordance with~~ per OAC 340:10-2-1. If one parent or caretaker is not participating in TANF Work activities, that parent meets a need factor defined at OAC 340:40-7-8 during the same hours;

(9) the child is in need of care or supervision for part of the day as a protective or preventive service ~~in accordance with~~ per OAC 340:40-7-8(e);

(10) the child receives SSI and care is needed for enrichment purposes ~~in accordance with~~ per OAC 340:40-7-8(f); or

(11) one parent or caretaker is incarcerated and the other parent remains in the home. In this instance, use subsection (b) of this Section to determine if the parent remaining in the home meets a need factor.

(d) **Need factor in joint custody cases.** When parents are separated or divorced and share custody of their child, either voluntarily or through a court order, each parent's need for child care is considered separately as well as his or her income.

(e) **Activities which do not meet the need factor for child care.** The need factor for child care is not met and child care cannot be approved for:

- (1) job search for persons not involved in:
 - (A) TANF Work activities described at OAC 340:10-2-1; or
 - (B) the activities described at OAC 340:40-7-8(a)(6);

(2) on-line Internet based or televised education or training courses when an instructor is not conducting a live broadcast and attendance is not required while the program is being broadcast ~~in accordance with~~ per OAC 340:40-7-8(b) and (c);

(3) undergraduate classes or other training that are not expected to lead to a degree or certificate of completion ~~in accordance with~~ per OAC 340:40-7-8(b) and (c);

(4) post graduate education such as master's and doctoral programs;

(5) two-parent or two-caretaker families when both are attending a formal education or training program during the same days and hours;

(6) transportation only;

(7) court-ordered community service hours, volunteer hours, or jury duty; ~~and~~

(8) hours a school age child could be in a public or private school but the parent or caretaker chooses not to allow the child to attend because he or she wishes to home school the child at night; ~~and~~

(9) children in Child Welfare Services (CWS) foster care, when one or both foster parents do not meet child care eligibility rules per OAC 340:75-7-65.

340:40-7-8. Defining the need factor for child care benefits

(a) **Employment.** Employment means the parent or caretaker earns wages for work performed.

(1) The client must provide proof of his or her work hours. When the client has the flexibility to set his or her own work hours, the client and worker jointly determine if they can reduce the number of hours the child needs care by rearranging the client's work schedule. This is especially important in two-parent or two-caretaker families.

(2) The worker limits approval of child care to the number of days and hours the client is working plus reasonable travel time. In two-parent or two-caretaker working families, the worker limits approval to the days and hours they are both working at the same time plus reasonable travel time. When the child attends school or Head Start during part of the work hours, the worker reduces the number of hours he or she approves child care accordingly.

(3) Unless the client is an adoptive parent who meets criteria per OAC 340:40-7-12(6) or a caretaker not legally and financially responsible for the child per OAC 340:40-7-6(a)(6), the client must make at least minimum wage for the number of hours he or she is working, referred to as the minimum wage rule, in order to meet the employment need factor, with the exception of circumstances in (D) of this paragraph.

(A) Minimum wage is determined by the federal government.

(B) To determine whether the client makes minimum wage when the client:

(i) works for an employer, is not considered self-employed, and the pay information does not show the client's hourly rate of pay, the worker divides the number of hours the client works from the gross pay for the pay periods used to calculate income; or

(ii) is considered self-employed per OAC 340:40-7-11(b)(2), the worker divides the number of hours the client works by the net pay after

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applicable business expenses, when declared, for the pay periods used to calculate income. When the client and spouse are self-employed in the same business, the worker adds their work hours together and then divides the work hours from the net pay for the pay periods used to calculate income.

(C) When the client works for an employer, whether considered self-employed or not per OAC 340:40-7-11(b)(2), is paid a set wage less than minimum wage, and the employer refuses to begin paying at least minimum wage, the worker denies or closes child care benefits.

(D) When the client works for himself or herself or works for an employer who pays wages based on commission or other performance measures rather than a set wage, is not making at least minimum wage, and the client has been performing this work:

(i) less than one year, the worker counsels with the client to develop a plan for increasing his or her income within three to six months. When the client does not cooperate in developing a plan or does not agree to implement the plan that was developed, the worker closes or denies the child care benefit.

(I) When the client's income increases to at least minimum wage during this time ~~frame~~period, no further monitoring is needed until the next review.

(II) When after three to six months the client's income increases, but is still less than minimum wage, the worker may approve an additional three to six months of care, if after evaluating the client's circumstances, such as how well the client followed the plan, the rate at which income has increased, and whether modifications can be made to increase income, it is reasonable to presume the client will make at least minimum wage during this time frame.

(III) When it is not reasonable to presume the client's income will increase to at least minimum wage within three to six months, the worker closes the child care benefit; or

(ii) at least one year without any substantial change, the worker denies or closes the child care subsidy benefit.

(4) A person employed and working from his or her own home may be approved for subsidized child care benefits in an out-of-home child care home or center.

(5) Subsidized child care benefits can be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used at no cost to the Oklahoma Department of Human Services (OKDHS) during the night working hours. Night working hours are defined as the hours between 11:00 p.m. and 7:00 a.m.

(A) The maximum amount of time the worker approves child care allows the client eight hours of sleep plus travel time to and from the child care provider.

(B) In two-parent or two-caretaker families care may only be approved for this reason when both parents have night time jobs or when one parent has a night time job and the other parent or caretaker works during the day while the other parent is sleeping.

(6) Job search meets the definition of employment and child care may be approved for a single or two parent or caretaker household only when a client who has received subsidized child care benefits for at least 30 calendar days loses employment or successfully completes a formal education or training program and requests child care to look for a job.

(A) Child care may be approved for a maximum of 30 calendar days from the date the client loses employment or successfully completes a formal education or training program as long as the child continues to attend the same child care facility.

(i) Job search may be approved no more than twice per calendar year.

(ii) The client must have been employed or going to school for at least 90 calendar days between approval periods.

(B) When the client reports a new job within the job search period and provides all required verification to prove continued eligibility, a new application is not needed. When the client does not report a new job or required verification within the job search period, he or she must complete a new application before being approved for further child care.

(b) **Training.** A training program is defined as a course of study that when completed qualifies a person to meet requirements for a job the client could not have obtained without the certificate of completion, accreditation, or licensure. Child care can be approved for one parent or caretaker to attend a training program. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. Care is only approved for an on-line Internet based course or televised course when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. When the program is self-paced and the client is able to choose his or her own school hours, care is not approved.

(4) The client must provide proof of progress when requested. When the client is not making satisfactory progress, further child care for this reason is not approved.

(5) Once the client completes a training program, further child care is not approved for training or education.

The client is expected to look for jobs that require his or her training credentials. The client may be eligible for subsidized child care benefits to job search when he or she meets requirements at (a)(6) of this Section.

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must have been employed in a job requiring the training credentials he or she has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional verifying the reason. The professional must also state that the client is capable of performing the job tasks of the training program where the client wants to enroll;

(B) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a Workforce Investment Act (WIA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training will increase the person's earning potential. The client must provide proof the starting salary for a person with the training credentials the client wants to obtain is higher than he or she is currently earning.

(c) **Education program.** An education program may include:

(1) **High school.** Child care may be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval the client must provide proof that he or she is enrolled, the days and hours the client is attending, and when he or she is expected to graduate.

(2) **General Educational Development (GED), literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one parent or caretaker to attend GED, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care approval. When the class has open enrollment and no established end date, the client must provide proof of progress and how it is measured.

(B) Within the first month of classes, the client must provide proof of initial testing showing the client's education and/or literacy level.

(C) The worker reviews the client's progress when the class is expected to end prior to approval for

further child care for this reason. When the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. At review, the client must provide a statement from the school that includes:

- (i) whether the client is attending regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time it will take to complete the program; and
- (iv) what days and hours the client is currently attending classes.

(D) When the client has not been attending regularly or making satisfactory progress, further child care for this reason is not approved.

(3) **English as a Second Language (ESL) classes.**

The program must require classroom attendance with an instructor present. Child care may be approved for a single parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. When the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. When the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. The client must provide a statement from the school that includes:

- (i) whether the client is attending regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time it will take to complete the program; and
- (iv) what days and hours the client is currently attending.

(C) When the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

(4) **Formal education program.** A formal education program is defined as a course of study that leads to the attainment of an associate or bachelor's degree. Child care can be approved for one parent or caretaker to attend a formal education program and to participate in activities required to maintain a scholarship. Only required scholarship activities for scholarships disbursed through the school's financial aid office qualify for child care. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

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(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client is attending school or participating in activities required to maintain a scholarship, and when he or she is expected to complete the degree.

(C) The degree program must require classroom attendance on the school campus with an instructor present. Care is only approved for an on-line Internet based course or a televised course when it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. When the program is self-paced and can be completed whenever the client chooses, care is not approved.

(D) The client must provide proof of progress when requested. When the client is not making satisfactory progress, further care for this reason is not approved.

(E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree. The client may be eligible for subsidized child care benefits to job search when he or she meets requirements at (a)(6) of this Section.

(F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:

(i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the degree program in which the client wants to enroll;

(ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a WIA contracted entity, OESC, or DRS; or

(iii) the client can establish receipt of the second degree may increase the person's earning potential. The client must provide proof the starting salary for a person with the degree the client wants to obtain is higher than he or she is currently earning.

(d) **Temporary Assistance for Needy Families (TANF) Work activity related child care.** ~~When a client receives a TANF benefit, related~~ subsidized child care benefits may be provided for:

(1) ~~for any TANF Work activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, per OAC 340:10-2-1,~~this includes when:

~~(A) Need for child care is also met when~~ the person is waiting to enter an approved TANF Work activity. Approval is limited to a time period not to exceed:

~~(iA)~~ two weeks; or

~~(iiB)~~ one month on an exception basis where child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period;:

~~(B) prior to approval for TANF, applicants are referred for immediate employment may be approved for subsidized child care benefits to job search.~~ TANF applicants are advised:

~~(iA)~~ child care to job search is limited to 20 days that must be used within 30 calendar days from the date of request;

~~(iiB)~~ in-home child care arrangements are not available for TANF applicants;

~~(iiiC)~~ child care may only be used during the times the applicant is actually looking for a job; and

~~(ivD)~~ he or she must notify the worker immediately upon securing employment;: and

~~(C) the person is sanctioned per OAC 340:10-2-2 and participating in TANF Work activities; or~~

~~(2) substance abuse treatment when the parent of a child receiving TANF is ineligible for TANF due to the illegal use of a controlled substance or substances. Prior to approval, the parent must provide proof of the substance abuse treatment plan from the treatment provider.~~

(e) **Protective or preventive child care.** Subsidized protective or preventive child care benefits may be used as an early intervention strategy in certain critical situations to help prevent neglect, abuse, or exploitation of a child. The worker may approve child care in these situations to help stabilize the family situation or enhance family functioning. In most instances, Child Welfare (CW) staff completes protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. When CW staff contracts with an outside agency to provide protective or preventive services and child care is recommended, ~~Family Support Services (FSS)~~ Adult and Family Services (AFS) staff completes the child care requests with help from contracted agency staff.

(1) Subsidized protective or preventive child care benefits are temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.

(2) The worker must complete a face-to-face interview with the client prior to approving subsidized protective or preventive child care benefits in order to better assess all of the service needs of the family.

(3) The client must provide a statement from a professional working with the family stating:

(A) the reason child care is recommended;

(B) how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and

(C) the length of time this care is expected to be needed.

(4) The family may or may not be expected to help in paying the cost of these subsidized child care benefits depending on the unique circumstances of the family.

(5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning. The client must also provide a plan for reducing his or her debt.

(6) The worker may approve subsidized protective or preventive child care benefits for a maximum of 30 calendar days. ~~When determining ongoing eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information during this 30 calendar day period.~~

(7) When the family requests subsidized protective or preventive child care benefits beyond this initial 30 calendar day period, the worker ~~sends a memo and scans~~ supporting documentation into imaging and sends an email to the ~~Family Support Services Division (FSSD)~~ AFS Child Care Subsidy Section staff to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.

(f) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental Security Income (SSI) to develop socialization skills and to transition into a group setting, such as a classroom. When a child is not receiving SSI benefits, the child is not eligible for subsidized enrichment child care benefits.

(1) The need for subsidized enrichment child care benefits is based solely on the needs of the child's condition of delay or disability rather than on the activities of the parent or caretaker.

(2) Child care for enrichment is limited to a maximum of two days per week not to exceed ten full-time or part-time days per month.

(3) The parent or caretaker must provide a written recommendation from a professional who is working directly with the child in some capacity that states how child care would be beneficial to the child. The professional could be the child's doctor, occupational therapist, physical therapist, or special education teacher.

(4) Enrichment child care is only approved for a child who has not started school or Head Start unless, due to the child's disabilities, the child receives instruction from a teacher in his or her home.

(5) When subsidized enrichment child care benefits are approved, care must be provided outside of the child's home and at least one other child must attend during the same hours.

(6) The worker obtains approval from staff in the ~~FSSD~~ AFS Child Care Subsidy Section prior to authorizing care for this need factor.

340:40-7-12. Sources of excluded income

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) **Lump sum payments.** One-time lump sum payments are excluded as income. Recurring lump sum payments are excluded as income unless specifically mentioned ~~in~~ per OAC 340:40-7-11 as a countable source of income.

(2) **In-kind income.** In-kind income is defined as any gain or benefit ~~which~~ that is not in the form of money payable directly to the household, including non-monetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden, and is excluded.

(3) **Money received from the sale of property.** Money received from the sale of property such as stocks, bonds, a house, or a car is excluded. This exclusion does not apply if the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even ~~if~~ when used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment are excluded.

(6) **Household income for certain children adopted through Oklahoma Department of Human Services (OKDHS).** The income of all household members is exempt for a child only when conditions in (A) through (E) are met. The:

(A) child has been adopted through OKDHS or a federally recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent who is applying for benefits;

(B) adoptive parent applying for benefits must have a fully executed Form 04AN002E, Adoption Assistance Agreement, that lists child care as an adoption assistance benefit for the child and also includes Form 04AN033E, Post Adoption Child Care Referral;

(C) adoptive parent and child are residents of Oklahoma;

(D) child is ~~five~~ 5 years of age or younger; and

(E) need for child care is for employment only and proof is provided. Subsidized child care may be approved only for the days and hours the parent works. In a two-parent family, care may also be approved for sleep time when one parent works days and the other parent works during normal night time sleep hours. Refer to OAC 340:40-7-8.

(7) **Earnings of children.** Earnings of a person 17 years of age and younger who is considered a child in the case is excluded as long as the child is attending school regularly. This exclusion continues to apply during temporary interruptions in school attendance due to semester

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or vacation breaks, provided the child's enrollment resumes following the break. Earned income of a child who is head of his or her own household, such as is the case for a minor parent, is treated as adult income.

(8) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of \$30 per calendar quarter.

(9) **Reimbursements.** Reimbursements for past or future expenses to the extent they do not exceed actual expenses are excluded.

(10) **Tax refunds.** Federal or state income tax refunds, including the state and federal Earned Income Tax Credit (EITC), and advance payments of federal EITC are excluded.

(11) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(12) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(13) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs are excluded.

(14) **Educational assistance.** Educational assistance including grants, work-study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money received is not intended to be a reimbursement and is a gain to the client, it is considered income.

(15) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act is excluded.

(16) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in SCORE and ACE is excluded.

(17) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies which that is received in-kind or in cash for rent, mortgage payments, or utilities is excluded.

(18) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(19) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are excluded as income.

(20) **Victims of Crime Act of 1984.** Payments made from the crime victims' compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 are excluded. [42 USC 10602]

(21) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by the Developmental Disabilities Services Division of the Oklahoma Department of Human Services (OKDHS) are excluded as income.

(22) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household are excluded. Payments specified by a court order or other legally binding agreement to be paid directly to the client but that are instead diverted to pay a third party for a household expense are counted as income.

(23) **Money received by another household for a household member.**

(A) When a child spends part of the month in two separate households and receives countable income, the worker determines which household actually receives the income. Only the portion of the income that is actually received by the household applying for or receiving a child care benefit is considered as income for that household.

(B) When a minor parent is the payee and lives with one of his or her parents or a caretaker who receives child support for the minor parent, that child support is considered income for the parent or caretaker and not considered for the child care benefit.

(24) **Income excluded by federal law.** Income excluded by federal law is defined as:

(A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [Public Law (P.L.) 92-203, § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; ~~or~~

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420]; or

(vi) by an individual as a lump sum or a periodic payment via the Cobell Settlement per the Claims Resolution Act of 2010 [P.L. 111-291];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only if the monthly amount, when converted to an hourly rate, is less than the Oklahoma minimum wage;

(D) income derived from submarginal land of the United States ~~which is held in trust for certain Indian tribes [P.L. 94-114, Sec. 6];~~

(E) Indian payments, ~~which include~~ including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior of the Bureau of Indian Affairs or distributed by the tribe subject to approval by the Secretary of the Interior. 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 ~~businesses~~ business investments, and the like, as long as the payments are paid per capita. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(F) income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands, is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce Investment Act (WIA) or other federally funded workforce training program to persons of all ages and student status. ~~There are numerous programs for which payments are excluded. These programs include Summer Youth, Job Corp, paid classroom training, and others. The~~ with the exception to the income exclusion is of income paid to persons 19 years of age and older for on-the-job training paid to participants 19 years and older. This income is treated as any other earned income. See Refer to OAC 340:40-7-11(b)(4);

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Trust Act of 1993. Title I includes three Acts: Serve-America, The Community Service, Schools and Service-Learning Act of 1990, the American Conservation and Youth Service Corps Act of 1990, and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes AmeriCorps income;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and also utility payments and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds paid to persons under the Community Service Employment Program under Title V. [P.L. 100-175] This program is authorized by the Older Americans Act. Each State and various organizations receive some Title V funds. These organizations include:

- (i) Green Thumb;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons;
- (v) U.S. Forest Service;
- (vi) National Association for Spanish Speaking;
- (vii) National Urban League;
- (viii) National Council on Black Aging; and
- (ix) National Council on Indian Aging;

(L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

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

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

(O) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;

(P) payments made to persons because of their status as victims of Nazi persecution;

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

(R) monetary allowances provided to certain children of Vietnam War veterans as described in Chapter 18 of Title 38 of the United States Code (USC);

(S) 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. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) the value of the food benefit allotment under the Food and Nutrition Act of 2008; and

(U) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act of 1970, both as amended by the Omnibus Budget Reconciliation Act of 1981.

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SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-1. **Review/Renewal of child care eligibility**

(a) **Child care review/renewal.** All conditions of eligibility are periodically reviewed per OAC 340:40-7. The client is sent notification when the review/renewal is due and the methods the client may use to complete it. The client must complete the review/renewal in order to continue receiving benefits.

(b) **Review/Renewal time frame.** When circumstances change between review/renewal months, the worker evaluates whether to complete a review/renewal early, a new application, or make changes to the client's family share co-payment and/or plan of service. A review/renewal for subsidized child care benefits must be completed no later than:

(1) six months from the date of approval or the last review/renewal when the child does not receive public assistance; or

(2) 12 months from the date of approval or last review/renewal when the child receives Temporary Assistance for Needy Families (TANF) or a State Supplemental Payment (SSP).

(c) **Signature requirement.** The client or the client's authorized representative must sign the review/renewal.

(d) **Interview requirement.** An interview is not required at review/renewal for the Child Care Subsidy Program unless the client receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8. When an interview is required, it must be a face-to-face interview.

(e) **Eligibility determination.** An eligibility determination is made once the review/renewal is signed, all required information has been provided, an interview, if required, is conducted, and all information evaluated.

(1) The eligibility determination results in:

(A) completing the review/renewal without changes;

(B) completing the review/renewal with changes; or

(C) closing the child care benefits.

(2) Benefits closed may be reopened when the client provides required information by the last day of the month of closure.

(f) **Synchronization of benefits.** When the client is receiving other benefits from the Oklahoma Department of Human Services in addition to the subsidized child care benefits, certification and review/renewal dates must be coordinated with the other programs.

340:40-9-3. **Notices regarding child care eligibility**

(a) **Computer-generated notice required.** A computer-generated notice is sent to inform the client of any:

(1) initial eligibility decision;

(2) decision regarding continued eligibility if a change occurs that increases or decreases the level of subsidized child care benefits;

(3) decision to terminate subsidized child care benefits; and

(4) decision to reopen subsidized child care benefits.

(b) **Form 08MP037E08MP038E, Client Notice Regarding Social Services of Action Taken, required.** The worker must send Form 08MP037E08MP038E when the system does not provide a notice. The worker also sends Form 08MP037E08MP038E to notify the client and provider when any additional co-payment is being paid by someone other than the client directly to the provider or is being discounted by the child care provider for an employee.

(c) **Notice not required.** A written notice is not required for information and referral services.

(d) **Returned notices.** When a notice of a proposed case action is returned, the worker makes at least one attempt to locate the client.

(e) **Advanced notice required.** Advanced notice is required on case actions that decrease or terminate the level of child care services/benefits when such services are still needed by the client.

(f) **Advance notice not required.** Advance notice is not required on case actions that increase the level of child care services/benefits or when child care services/benefits are no longer being used.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-2. **Guidelines for use in approving in-home child care**

(a) **Purpose.** In-home child care is defined as care given to a child by a person coming into the child's own home for the express purpose of caring for the child. A parent can choose an in-home provider even when an out-of-home provider is available. The purpose of standards for in-home care is to help ensure the safety of children cared for in their own home when the usual responsible adult is temporarily absent due to employment, training, illness, or other valid reason.

(b) **Qualifications of caregiver.** The worker helps the family select a caregiver capable of providing adequate care and supervision of the child. The caregiver:

(1) must be at least 18 years of age;

(2) demonstrates the vitality and flexibility needed to care for children as well as the ability to exercise good judgment and appropriate authority;

(3) must provide personal references prior to approval if, in the worker's judgment, they are considered necessary;

(4) cannot be a member of the child's household, whether relative or non-relative;

(5) can only care for the child of one family at a time. The provider can give care to more than one family as long as the hours do not overlap and the child of each family is cared for in his or her own home; and

(6) must not be under the effects of alcohol, illegal drugs, or medication that impairs functioning when caring for children.

(c) **Requirements prior to approval of the caregiver for subsidy payment.** Upon selection of a caregiver, requirements

in paragraphs (1) through (3) of this subsection must be met before the caregiver may be approved as an in-home provider.

(1) The client and caregiver must complete and sign forms described in (A) through (C) of this paragraph.

(A) Form 08CC003E, In-home Mutual Agreement and Notification to Provide Child Care Services. This form notifies the caregiver of the eligibility and child care plan for the child requiring care and the intent of the parent or caretaker to receive care from the caregiver. Once approved, it also serves as the in-home provider's authorization to bill the Oklahoma Department of Human Services (OKDHS) for services provided on or after approval.

(B) Form 08CC004E, Mutual Agreement Regarding the Plan of Care. This form serves as a basis for discussion between the parent or caretaker and the in-home provider of the plan of care for the child, duties of the in-home provider, how to handle emergencies, and the family rules.

(C) Form 08CC005E, In-Home Provider Health and Safety Checklist. This form serves as a basis for discussion between the parent or caretaker and the in-home provider of adequate safety precautions and possible safety hazards in the child's home. The parent or caretaker is also responsible for advising the provider of known risks of a contagious condition of one or more persons in the household. The disclosure allows for training in the universal precautions against exposure.

(2) The caregiver must provide photo identification and a copy of his or her Social Security card.

(3) The caregiver must ~~complete~~ provide proof of the results of an Oklahoma State Bureau of Investigation (OSBI) criminal history investigation as described in paragraph (A) of this paragraph and not be guilty of crimes or enter a plea of guilty or nolo contendere, no contest, to crimes described in paragraph (B) of this paragraph.

(A) Criminal history investigations:

(i) are required and must be provided by each caregiver and substitute caregiver, prior to caring for children;

(ii) are not required for persons who have documentation of a criminal history investigation within the last 12 months;

(iii) must be obtained from:

(I) the Oklahoma State Bureau of Investigation (OSBI); and

(II) the authorized agency in the previous state of residence if the individual has resided in Oklahoma less than one year;

(iv) must include a search of the Oklahoma Department of Corrections files maintained by the OSBI pursuant to the Sex Offenders Registration Act; and

(v) must include the worker completing a computer check using the Social Security number of the potential caregiver prior to approval as an

in-home provider. When a Child Welfare Services (CWCWS) case number appears, the worker consults with CWCWS staff to ~~see~~determine if concerns exist about this person's ability to care for children.

(B) A caregiver whose criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or repeated convictions that indicate a pattern of criminal activity is not approved as an in-home provider. Persons who are convicted of or enter a plea of guilty or nolo contendere, no contest, to certain crimes are not approved to care for children or be a substitute caregiver. These crimes include:

(i) violence against a person;

(ii) child abuse or neglect;

(iii) possession, sale, or distribution of illegal drugs;

(iv) sexual misconduct; or

(v) gross irresponsibility or disregard for the safety of others.

(4) Once requirements described in paragraphs (1) through (3) of this subsection are met, the worker ~~files a memo and scans the supporting documentation into imaging and sends an email to the Adult and Family Support Services Division (FSSD)~~(AFS) Child Care Subsidy Section to request approval.

(A) If the chosen caregiver is approved as an in-home provider, the approval is valid for a maximum of one year from the date ~~FSSD~~AFS Child Care Subsidy Section staff signs Form 08CC003E. This form must be renewed annually. Once approved, ~~FSSD~~AFS Child Care Subsidy Section staff mails the in-home provider the ~~"In-home Child Care Provider Handbook for Subsidy Payments"~~ to advise him or her how to claim for OKDHS payment and a copy of Form 08CC003E advising the in-home provider of the assigned contract number.

(B) If the chosen caregiver is not approved as an in-home provider, ~~FSSD~~AFS Child Care Subsidy Section staff sends a letter to the caregiver advising of the denial. The worker sends Form ~~08MP037E~~08MP038E, Client Notice Regarding Social Services of Action Taken, to the client advising him or her of the denial of benefits and to choose another caregiver.

(d) **Duties of the caregiver.** The caregiver:

(1) provides adequate care and supervision of children at all times, including frequent observations of children in cribs or playpens. The caregiver must arrange to have a competent adult provide consistent supervision during his or her absence from the home;

(2) is responsible only for each child specified in Form 08CC003E;

(3) must be aware of adequate safety precautions and take action to correct hazards to children's safety, both indoors and outdoors;

(4) provides opportunities for learning, indoor and outdoor play, rest periods, and meals. The caregiver ensures

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~~that~~ the use of television is age-appropriate and suitable for children;

(5) must be able to give understanding, consistent, and loving guidance. Discipline is constructive and educational in nature and appropriate to the child's age and circumstances. Loud, profane, and abusive language, corporal punishment, or any technique that is either humiliating or frightening to children is not used. Discipline is not associated with rest, toilet training, or loss of food;

(6) seeks emergency medical attention in case of sudden illness or accident. The parent or guardian stipulates who is called in case of an emergency by entering this information on Form 07LC038E, Child Information, ~~provided by OKDHS~~. The caregiver has emergency telephone numbers readily available at all times. Emergency telephone numbers include dialing 911, the fire department, police department, ambulance service, and physician or clinic;

(7) is responsible for preparation and serving of food. The child's family provides the food used to prepare snacks and meals. The caregiver consults with the child's parent(s) or guardian to ensure a balanced diet suitable to the age and physical development of the child; and

(8) ensures the child's school attendance in accordance with the requirements of the State Department of Education.

(e) **In-home provider training requirements after approval.** The in-home provider must read "The Good Health Handbook - A Guide For Those Caring For Children" within 90 calendar days of the approval date of the in-home provider shown on Form 08CC003E. The in-home provider must then sign and complete Form 08CC008E, In-Home Child care Provider Training Declaration of Completion, and return it to the ~~FSSDAFS~~ Child Care Subsidy Section staff. The signature and completion of Form 08CC008E meets the in-home provider training requirement for the first year of approval.

(1) After the first year of approval, the in-home provider must receive and declare six clock hours of training yearly. The provider can meet the training requirement by attending workshops, formal training programs, viewing videos, or through individual job related readings. The declaration is valid for one year from the date the provider signs the document.

(2) Training hours earned by the in-home provider are transferable from one family to another during the year the declaration is in force.

(f) **Requirements to renew the in-home provider agreement.** Form 08CC003E must be completed annually.

(fg) **Requirements prior to approval for a special needs child care rate for a child with disabilities.** When an in-home child care provider cares for a child with disabilities, the provider may be approved for the special needs rate in addition to the applicable daily rate. Prior to receiving this additional rate:

(1) the client, provider, and worker must complete Form ~~08AD006E~~08CC006E, In-home Child Care Certification for Special Needs Child Care Rate Certification, as ~~described in per~~ OAC 340:40-7-3.1;

(2) the provider must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR). Only training that is OKDHS approved, such as Red Cross, American Heart Association, or First Care, is accepted;

(3) the provider must receive on-site consultation regarding the nature of the child's disability and the development of the child care plan ~~which that~~ may include how to operate equipment needed by the child and any specialized training needs. The consultant also provides any available resource materials that might aid the provider in caring for the child. This consultation may be provided by a:

(A) health professional;

(B) child guidance specialist;

(C) SoonerStart provider ~~if when~~ the child is under ~~three~~3 years of age;

(D) public school teacher familiar with ~~that the~~ child; or

(E) consultant through the Center for Early Childhood Professional Development; and

(4) the provider must agree to obtain six additional hours of training in areas that address the care of children with disabilities within six months of approval. This training is documented on Form 08CC008E.

(A) First aid, CPR, or informal training may not be counted to meet the special training requirement.

(B) Recommended training includes:

(i) Special Care's Unique Environments;

(ii) Child Care Careers' Helping Children with Special Needs;

(iii) SoonerStart training;

(iv) Training Inclusive Child Care Equal Ter-rific Opportunities for Children (TIC-TOC) training;

(v) formal training from an OKDHS approved sponsor on the training list; or

(vi) specialized workshops or conferences addressing the care of children with disabilities.

340:40-13-3. Child care payments and rates

(a) The Oklahoma Department of Human Services (OKDHS) contracts to purchase out-of-home child care services for children only with licensed providers who:

(1) post rates and fees;

(2) sign and comply with all the terms of Form 08CC001E, Child Care Provider Contract;

(3) have participated in mandatory contract training; and

(4) have access to an account at a financial institution for electronic benefit transfer (EBT) purposes.

(b) ~~In accordance with~~ Per Section 85.44B of Title 74 of the Oklahoma Statutes, OKDHS cannot make advance payments to child care providers.

(c) The rates paid by OKDHS are described on Appendix C-4-B, Child Care Provider Rate Schedule, and determined by:

(1) the child's age;

- (2) settings in which the care is provided:
 - (A) the child's own home;
 - (B) a child care center; or
 - (C) a child care home;
 - (3) whether the child has disabilities and the provider is approved for the special needs rate unit type. The special needs rate is added to the applicable rate a child care provider receives for a typical child of the same age after the Form 08AD006E, Certification for Special Needs Child Care Rate, approval process is followed;
 - (4) whether the care is provided full-time, over four hours per day or part-time, four hours or fewer per day;
 - (5) whether the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, blended, or a weekly unit;
 - (6) the county in which the provider is located; and
 - (7) whether the facility qualifies for a differential quality rate.
- (d) The in-home child care rate is paid for children cared for in their own homes. The in-home rate is shown on OKDHS Appendix C-4-B, ~~Child Care Provider Rate Schedule~~, for the child's age. If a child is eligible for the severe or moderate special needs rate, this additional amount is added to the applicable in-home rate for that child.
- (e) When the child is cared for in an out-of-home child care center or home, the allowable rate is the amount as shown on OKDHS Appendix C-4-B.
- (f) Care may only be authorized at one facility per day per child. If the client uses care at two different providers for the same day for the same child, OKDHS staff approves care at only one of the facilities. The parent or caretaker ~~can~~may use care at two different providers for the same child when care is needed on different days of the week.
- (g) Charges are authorized and payment is made only when the care provided is in accordance with the jointly developed plan of service between the client and OKDHS.
- (h) Age-driven rate changes are effective the first of the month following the child's birth date except as shown in (i) of this Section.
- (i) Eligibility for a child stops the day before a:
 - (1) a typical child reaches age 13 years of age; or
 - (2) a child with disabilities or a child ~~in OKDHS custody~~under court supervision reaches age 19 years of age.
- (j) A change to add the higher special needs rate to the applicable daily rate is effective the first of the month following the month eligibility for this rate is determined.
- (k) A child care provider may be approved for a differential quality rate if he or she meets the criteria for this rate. This rate is given approved effective the first of the month following the month Oklahoma Child Care Services (OCCS) licensing staff approves the provider for the rate. The rate is designated on OKDHS Appendix C-4-B by its star status.
- ~~(l) The traditional school year blended rate may be approved for children age four and older from August 16th through May 15th each year for children attending public school, a pre-kindergarten program, or Head Start during the traditional school year. The extended school year blended~~

~~rate may be approved for the full calendar year when children attend school the entire year.~~

**SUBCHAPTER 16. IMPROPER
AUTHORIZATION INITIATIVE PAYMENTS
ERROR RATE REVIEW PROCESS**

**340:40-16-1. Improper authorization
initiative payments error rate
review process**

There is a federally mandated review of a scientific sample of ~~applications~~ and case actions relating to the Child Care Subsidy Program by the Office of Inspector General (OIG) Administrative Review Unit (ARU) in the same manner as for food benefits, public assistance, and medical benefit actions. The sample is selected by the Office of Planning, Research, and Statistics. The records for all cases in the sample are requested by ARU when the cases are scheduled and verification of conditions of eligibility is ~~determined~~reviewed.

[OAR Docket #13-597; filed 4-15-13]

**TITLE 340. DEPARTMENT OF HUMAN
SERVICES
CHAPTER 50. SUPPLEMENTAL
NUTRITION ASSISTANCE PROGRAM**

[OAR Docket #13-598]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Application Process
340:50-3-1 through 340:50-3-3 [AMENDED]
 - Subchapter 5 Non-Financial Eligibility Criteria
Part 1. Household Definition
340:50-5-7 [AMENDED]
 - Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-22 [AMENDED]
 - Subchapter 9. Eligibility And Benefit Determination Procedures
340:50-9-4 through 340:50-9-6 [AMENDED]
 - Subchapter 11. Special Procedures
Part 1. Households Entitled To Expedited Service
340:50-11-3 through 340:50-11-6 [AMENDED]
 - Part 3. Simplified Supplemental Nutrition Assistance Program (SSNAP) for Temporary Assistance For Needy Families (TANF) and Companion State Supplemental Payment (SSP) Recipient(s)
340:50-11-22 [AMENDED]
340:50-11-27 [AMENDED]
 - Part 7. Replacement When Food Purchased With Food Benefits Is Destroyed
340:50-11-64 [AMENDED]
 - Subchapter 15. Overpayments And Fraud
Part 1. Overpayments
340:50-15-7 [AMENDED]
340:50-15-9 [AMENDED]
- (Reference APA WF12-19)**

AUTHORITY:

Director of Human Services; Sections 162 and 230.52 of Title 56 of the Oklahoma Statutes; Section 4211 of Title 4 of the 2008 Farm Bill; Public Law 111-291 §101(f)(2); and Sections 273.2, 273.10, 273.13, 273.14, 273.18(e)(8), 273.25, and 273.30 if Title 7 of the Code of Federal Regulations.

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DATES:

Comment period:

January 2, 2013 through February 1, 2013

Public hearing:

None requested

Adoption:

February 8, 2013

Submitted to Governor:

February 14, 2013

Submitted to House:

February 14, 2013

Submitted to Senate:

February 14, 2013

Gubernatorial approval:

March 25, 2013

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:

April 12, 2013

Effective:

June 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed revisions to Subchapter 3 of Chapter 50 amend the rules to: (1) update division name and terminology due to agency reorganization; (2) add clarifying language regarding the authorized representative's role regarding use of food benefits; and (3) add new form names and numbers used to schedule interviews when the type of verification needed is unknown and when an eligibility determination is delayed.

The proposed revisions to Subchapter 5 of Chapter 50 amend the rules to: update procedures used by the food distribution programs (FDP) and the Oklahoma Department of Human Services (OKDHS) to prevent dual participation or participation by disqualified individuals in Supplemental Nutrition Assistance Program (SNAP) food benefits.

The proposed revisions to Subchapter 7 of Chapter 50 amend the rules to: (1) add Cobell settlement income as a new type of excluded income; and (2) reword excluded federally funded grants and workforce training program income to clarify how to determine whether to exclude the income instead of narrowing the language to specific sources.

The proposed revisions to Subchapter 9 of Chapter 50 amend the rules to: (1) remove obsolete terminology; (2) update form name and number used when an eligibility determination is delayed; (3) update division name and terminology; (4) add clarifying language regarding procedures for reopening benefits; (5) update information regarding when an advance notice of an adverse action is not needed; and (6) update certification renewal notification and procedures.

The proposed revisions to Subchapter 11 of Chapter 50 amend the rules to: (1) remove distinction between expedited processing for migrant and seasonal farm laborers and other households; (2) remove duplicative language included in another rule section; (3) rearrange information for clarity; (4) add language regarding the need to explore how the household is meeting its needs with little or no income for expedited service determination; (5) clarify the certification periods when issuing benefits to expedited eligible households; (6) update language regarding SNAP application processing when the household simultaneously applies for Temporary Assistance for Needy Families (TANF) and is denied; (7) add language regarding changes in TANF, how it affects the SNAP benefits, and reasons for a conversion of food benefits from a Simplified SNAP (SSNAP) case to a non-public assistance (non-PA) case; (8) clarify how reported changes affect food benefits during a transitional food benefit (TFB) certification period, (9) clarify notifications given to TANF applicants with SNAP benefits; and (10) clarify when loss of electricity qualifies for a destroyed food replacement to address field questions.

The proposed revisions to Subchapter 15 of Chapter 50 amend the rules to: (1) update division name and terminology due to agency reorganization; (2) clarify household responsibility for overpayments; and (3) add language regarding when it is appropriate to terminate and write off SNAP overpayments claims per Section 273.18(e)(8) of Title 7 of the Code of Federal Regulations

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013:

SUBCHAPTER 3. APPLICATION PROCESS

340:50-3-1. The application process

(a) **General.** The application process for the Supplemental Nutrition Assistance Program (SNAP) begins with a request for benefits and ends with determining the household's eligibility and entering that determination into the computer system.

(1) The application must be processed no later than 30 calendar days after the signed application is submitted to the Oklahoma Department of Human Services (OKDHS).

(2) Expedited services must be available to those households who are in immediate need as defined in per OAC 340:50-11-1 through 340:50-11-6.

(3) Persons having lawful alien status must have status verified through Systematic Alien Verification for Entitlements (SAVE) per OAC 340:65-3-4.

(4) Benefits must be provided retroactively to the date of application for households who have timely completed the application process and who have been are determined eligible.

(b) **Filing applications.** Each household wishing to participate in SNAP must file a separate application. Refer to OAC 340:50-5-1 for household definition. The designated head of household is not required to make the food benefit application. Applications may be made by a responsible household member or authorized representative. A responsible household member or authorized representative completes an authorization for release of information at the time of application, if when necessary. Applications may be filed in person, electronically, or by mail.

(1) **Right to same day filing.** ~~Since~~ Because the time limit for providing benefits is calculated from the date the application is actually received in the ~~human services center (HSC) county office~~ or submitted online, households are advised of their right to complete and file an application on the same day they contact OKDHS. They are also advised they do not have to be interviewed before filing the application and they may file an incomplete application as long as the application contains the applicant's name, address, and signature of either an adult member of the household or the household's authorized representative. Food ~~benefits~~ benefit households are encouraged to file the application on the same day they or their authorized representative contact OKDHS.

(A) Form 08MP001E, Request for Benefits, is made readily accessible to potentially eligible households, groups, and organizations that assist persons in completing applications for food benefits.

(B) If the household contacts OKDHS by telephone but is unable to file an application online at

www.okdhslive.org or at the HSCcounty office on the same day, or the household has requested food benefits in writing, HSCcounty office staff mails Form 08MP001E, Request for Benefits, to the household on the same day the written request or telephone call is received.

(C) To facilitate participation in SNAP, households in which all members are applying for a State Supplemental Payment (SSP) or Temporary Assistance for Needy Families (TANF) must be allowed to apply for food benefits at the same time they apply for financial assistance. However, the household's eligibility and benefit level are based on food benefit eligibility criteria and the household is certified per SNAP policy. Policy for taking and processing food benefit applications for SSP and TANF households are provided in OAC 340:50-11-20 through 340:50-11-27.

(D) Immediately upon receipt in an OKDHS office, all applications are screened to determine whether the household is entitled to expedited services. All initial applicant households that qualify under the provisions in OAC 340:50-11-1 through 340:50-11-6 must receive expedited processing if certified for food benefits whether requested by the household or not. When the household appears eligible for expedited services and meets the criteria at OAC 340:50-3-2(c), the worker postpones the interview requirement and approves the household for initial benefits.

(2) **Head of household.** A household may select, as head of household, an adult parent of children of any age living in the food benefit household, or an adult who has parental control over children 17 years of age and younger living in the food benefit household provided all adult household members agree to the selection.

(A) Households select their head of household at each certification action or when there is a change in household composition.

(B) If all adult members do not agree to the selection or decline to select an adult head of household, the household may select another head of household or the worker may designate a head of household.

(C) In no event does the failure to select an adult who has parental control of children delay the certification or result in the denial of benefits for an otherwise eligible household.

(3) **Authorized representative.** An authorized representative is a person who is knowledgeable of the household circumstances and who is designated in writing by the head of the household, spouse, or other responsible household member to act on behalf of the household in applying for and obtaining food benefits for use by those included in the SNAP benefit household. In the event the only adult member of the household is classified as a non-household member, that person may be designated as the authorized representative for minor household members.

(A) When an authorized representative has been designated in writing to make application on behalf

of a household, the household is informed they will be held liable for any overissuance ~~which~~^{that} results from erroneous information given by the authorized representative. When possible, the head of the household or spouse prepares or reviews the application, even though the authorized representative actually files the application and is interviewed.

(B) ~~Employees of OKDHS~~ employees and their relatives who are authorized to accept food benefits may not act as authorized representatives without the specific written approval of the local county director after a determination has been made that no one else is available to serve as the authorized representative.

(C) A disqualified person may not act as an authorized representative during the period of disqualification unless the person disqualified is the only adult member of the household able to act on its behalf and the worker determines there is no one else available to serve as an authorized representative.

(4) **Documentation and control of authorized representatives.** The worker ensures an authorized representative is properly designated and has not been disqualified. Limits are not placed on the number of households an authorized representative may represent. Care is taken by the worker to ensure the household:

(A) has freely requested the assistance of the authorized representative;

(B) circumstances are correctly reported; and

(C) is receiving the correct amount of benefits.

(5) **Disqualification of authorized representative.** An authorized representative is disqualified from serving as an authorized representative in SNAP for up to one year when evidence demonstrates the person has misrepresented a household's circumstances, has knowingly provided false information pertaining to the household, or has made improper use of benefits. Information indicating that a person should be disqualified as an authorized representative is forwarded to the Adult and Family Support Services Division (AFSSD) ~~(FSSD)~~ (AFS) SNAP Section, for a decision. The HSCcounty office is notified in writing of the decision. If the person is disqualified, appropriate notification is mailed to the household by ~~FSSD~~ AFS SNAP Section staff. This provision does not apply to persons serving as authorized representatives for group homes or drug addiction and alcoholic treatment programs.

(c) **Processing initial applications.** The application date for online submissions is the date the household submits the application via the ~~OKDHSLive!~~ okdhslive website as shown on the ~~OKDHSLive!~~ report form. When the HSCcounty office receives an application that contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative, the household's application date is the date it is received and stamped into the HSCcounty office except as stipulated per OAC 340:50-9-1(c) and 340:50-9-6(e). When the application ~~form has been~~ is signed by the responsible person or authorized representative for a household who is also applying for SSP or TANF, the application is processed per OAC 340:50-11.

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(1) **Normal processing standard for initial applications.** The worker must provide eligible households who complete the initial application process with food benefits within 30 calendar days following the date the initial application was filed.

(2) **Withdrawing of application.** A household may voluntarily withdraw its application at any time prior to the determination of eligibility.

(d) **Second 30 days.** A new application is not needed when a household fails to complete the application process within 30 calendar days if they provide the required verification within 60 calendar days. This includes verification waived for expedited services. When there is a break in the certification, the worker changes the application and certification dates to the date the verification is provided.

340:50-3-2. Interview process

(a) **Face-to-face interview.** All households initially applying for food benefits, including those submitting applications electronically or by mail, must have a face-to-face interview with a worker except when the household:

(1) requests the face-to-face interview be waived because the household is unable to appoint an authorized representative and does not have a household member able to come ~~into~~ to the human services center (HSC) county office because of hardship conditions. Hardship conditions include, but are not limited to:

- (A) education, training, or work hours that make it difficult to come ~~into~~ to the HSC county office during ~~office~~ business hours;
- (B) illness or the need to care for a family or household member;
- (C) bad weather conditions;
- (D) transportation problems of any kind;
- (E) residence in a rural area; or
- (F) advanced age or disability; or

(2) is being recertified for food benefits. At certification renewal, the interview may be conducted face-to-face or ~~over the telephone~~ by phone. Certification renewal interviews may be waived for households when all adult members are elderly or disabled and have no earned income.

(b) **Waiver of face-to-face interview.** When the face-to-face interview is waived, the worker conducts the interview as soon as possible either by phone or at a location convenient to the household, such as a home visit.

(1) The seven day expedited service or 30-calendar day processing standards apply.

(2) The home visit or telephone interview is scheduled in advance with the household.

(3) The household must provide the required verification. If the household is unable to furnish the required verification, the worker provides assistance.

(c) **Postponed interviews.** Households applying for food benefits that complete and sign an online application or ~~drop offhand deliver~~, mail, or fax a complete and signed Form 08MP001E, Request for Benefits, to the HSC county office and who appear eligible for expedited services per OAC

340:50-11-1 may have the interview postponed in certain circumstances.

(1) The interview may be postponed when the:

(A) applicant's identity is verified; and

(B) worker is unable to contact the household or determines that an interview cannot be scheduled within seven calendar days.

(2) When the interview is postponed, the worker sends the household Form 08AD092E, Client Contact and Information Request, setting an interview date and listing verification that must be provided before further benefits are approved. Per OAC 340:50-3-1 and 340:50-11-5, the interview must be completed and postponed verification provided within 30 calendar days of the application date in order to avoid a break in benefits. If the household completes the interview and provides postponed verification within 60 calendar days of the date of application, a new application is not needed. Benefits are prorated from the date the interview is completed and verification provided.

(d) **Who must be interviewed.** The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. The household may bring any person of their choice to the face-to-face interview.

(e) **Worker responsibilities during the interview.** During the face-to-face interview, the worker:

(1) reviews with the household the information on the application and resolves unclear and incomplete information;

(2) inquires whether changes have occurred in the household's income, deductions, or other circumstances since the application was filed;

(3) advises the household of its rights and responsibilities, including reporting requirements;

(4) conducts the face-to-face interview as an official and confidential discussion of household circumstances limited to facts related to food benefit eligibility factors;

(5) gives Form 08MP006E, Information for Benefit Renewal, to the household and explains benefit renewal procedures; and

(6) ensures the household's right to privacy is protected.

(f) **Scheduling interviews.** The worker schedules the face-to-face interview or alternate interview method as promptly as possible after the filing of the application to ensure the household, if eligible, may participate within 30 calendar days following the date of application. When the type of verification needed is unknown, the worker uses Form 08AD091E, Interview Notice, or Form 08AD093E, Telephone Interview Notice, to schedule the interview. When the person to be interviewed is employed, the worker schedules an appointment to minimize the person's absence from work even if it must be scheduled outside normal business hours. When the person is unable to attend a scheduled face-to-face interview for any of the reasons stated in (a) of this Section, the worker offers to waive the face-to-face interview and ~~schedules~~ schedules a telephone interview or home visit.

(1) **Timely certification renewals.** When the household submits a timely certification renewal, the worker schedules the interview as early as possible, but not later than the last day of the month.

(A) If the household fails to appear for the first interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(2) **Untimely certification renewals and initial applications.** When the household submits an untimely certification renewal or an initial application, the worker schedules an interview as early as possible, but not later than 20 calendar days from the application date.

(A) If the household fails to appear for the scheduled interview, the worker does not reschedule the interview unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(g) **Household cooperation.** To determine eligibility, the application must be completed and signed, the household or its authorized representative must be interviewed, and required information on the application verified to determine eligibility.

(1) If the household refuses to cooperate with the worker in completing this process, the application is denied at that time.

(A) For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take the necessary actions required to complete the application process.

(B) The household is also ineligible if it refuses to cooperate in any subsequent benefit renewal, review generated by reporting changes, certification renewals, or an Office of Inspector General Quality Control (QC) review.

(2) If an application is denied or food benefits are closed for refusal to cooperate, the household may reapply, but may not be determined eligible until it cooperates.

(3) If food benefits have been closed for refusing to cooperate with the QC reviewer and the household reapplies after 125 calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors only for the new application. For example, if a household had a QC review during the October 2010 through September 2011 annual QC review period and food benefits were closed for refusal to cooperate with the QC review, the household is required to only provide verification for the new application if it is filed after February 2, 2012.

340:50-3-3. Verification

(a) **General standards for verification.** Verification is the use of third party information or documentation to confirm the accuracy of statements made on the application. For specific

policy regarding required verification of non-financial eligibility criteria refer to OAC 340:50-5, and of financial eligibility criteria refer to OAC 340:50-7. When the household must provide documentation to verify eligibility before receiving or continuing to receive benefits, the worker provides Form 08AD092E, Client Contact and Information Request, to the household ~~giving~~ allowing at least ~~ten~~ 10 calendar days to provide needed verification.

(b) **Sources of verification.** Sources of verification that provide the worker with evidence that may be used to establish eligibility include, but are not limited to (1) through (4) in this subsection.

(1) **Documentary evidence.** The worker uses documents, whenever possible, as the primary source of verification. Examples of documentary evidence include wage stubs, rent receipts, and utility bills.

(A) Although documentary evidence is the primary source of verification, verification cannot be limited to a single document or source.

(B) When information from another source contradicts statements made by the household, the household is immediately afforded the opportunity to resolve the discrepancy.

(C) When documentary evidence cannot be obtained, the worker uses alternate sources of verification, such as collateral contacts and home visits.

(D) In all cases, the worker records the method of verification in the case record.

(2) **Collateral contacts.** The worker has the responsibility to verify all factors of eligibility for food benefits ~~which~~ that may require one or more collateral contacts. The client's signature on the application for food benefits grants the necessary authorization for securing required information or verification.

(A) A collateral contact is a verbal confirmation of a household's circumstances by a person outside the household. The collateral contact may be made either in person or over the phone.

(B) The acceptability of a collateral contact is not restricted to a particular person, but may be anyone that can be expected to provide an accurate third party verification of the household's statement. Examples of acceptable collateral contacts are:

- (i) employers;
- (ii) community action groups;
- (iii) migrant service agencies;
- (iv) neighbors of the household; or
- (v) other persons outside the household.

(C) ~~If~~ When the collateral source is one ~~which~~ that requires written authorization before supplying information to the Oklahoma Department of Human Services (OKDHS), the worker obtains the household member's signature on Form 08AD060E, Request for Release of Information. If information is needed regarding another adult household member, ~~that~~ the person may need to sign Form 08AD060E before the collateral source agrees to release information.

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(3) **Home visits.** A home visit can be used as verification if documentary evidence cannot be obtained from other sources and the visit is scheduled in advance with the household.

(4) **Field investigation.** The worker conducts an intensive field investigation when a household is suspected of withholding information or of intentional program violations. A field investigation is made after the worker has exhausted all other methods of verification and still does not have enough evidence to certify, deny, or close food benefits.

(A) The intensive field investigation includes all questionable factors of eligibility. The worker makes every effort to obtain the most reliable second-party verification available. Contacts may include, but are not limited to, the applicant or recipient, other adult household members, employers, banks, government agencies, landlords, neighbors, and utility companies. The household does not have to provide specific written authorization unless it is required by the collateral source before they can or will furnish the requested information.

(B) Persons who are contacted for information related to a household's eligibility must be advised of the reason the information is needed and how it ~~will be~~ used. ~~If~~ When the person providing the information is unwilling to have his or her identity revealed to the household, the information is not used to make an eligibility decision nor is it recorded in the case record. The worker must attempt to verify the information using an alternate source.

(C) The worker contacts the household when the information gathered during the investigation differs from that given by the household. The household is given the opportunity to clear up conflicting information when possible. When the household cannot be contacted, the worker documents, in the case record, what attempts were made.

(D) The worker documents in the case record all verified evidence gathered during the course of the investigation. This documentation must include:

- (i) what information was received, dates related to the information, source of the verification, and the date the information was received;
- (ii) a complete explanation of conflicting information and what attempts were made to resolve the differences with the household; and
- (iii) when the household refuses to cooperate in determining eligibility, information to clearly show that the household was given the opportunity to cooperate and was able to do so.

(E) When the eligibility determination is delayed due to a field investigation, the worker manually issues Form ~~08MP039E~~ 08MP038E, Client Notice to Client of Action Taken, informing the household of the pending status of the application.

(c) **Responsibility for providing verification.**

(1) **Household responsibility.** The household has primary responsibility for providing documentary evidence to support its income statements and to resolve ~~any~~ questionable information. Households may supply documentary evidence in person, ~~through the~~ by mail, or through an authorized representative.

(2) **Worker responsibility.** The worker assists the household in obtaining this verification provided the household is cooperating with the worker.

(A) The worker accepts ~~any~~ reasonable documentary evidence provided by the household and is primarily concerned with how adequately the verification confirms statements on the application.

(B) ~~If it would be~~ When it is too difficult or impossible for the household to obtain documentary evidence in a timely manner, the worker offers assistance to the household in obtaining the documentary evidence.

(C) The household is not required to provide multiple sources of verification when the household has ~~already~~ provided information ~~which~~ that adequately supports the statements on the application. However, the worker may require ~~households~~ the household to provide additional verification when the existing verification is incomplete.

(D) An application is never denied solely because a person outside of the food benefit household fails to cooperate in providing information, verification, or other help needed to process an application. Disqualified or ineligible persons are considered members of the food benefit household for this provision.

(d) **Documenting case files.**

(1) **Case files.** Case files must be documented in detail to support eligibility, ineligibility, and benefit level determinations.

(2) **Documentation.** Documentation must include:

(A) sources of verification, dates of the sources of verification, and amounts verified;

(B) computations used to arrive at monthly income deductions;

(C) why verification is required to resolve questionable information;

(D) what documentation was used to resolve the questionable information; and

(E) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.

(e) **Questionable information.** Prior to certification, the worker must verify questionable factors of eligibility, including all factors affecting household composition, ~~only if these would when they~~ when they affect a household's entitlement. A household's report of expenses ~~which exceed~~ that exceeds its income prior to deductions may be grounds for a determination that further verification is required.

(1) **Questionable information.** To be considered questionable, the information on the application must be inconsistent with:

(A) statements made by the applicant;

(B) other information in the case record; or

- (C) other information received by OKDHS.
- (2) **Documentation.** There must be documentation as to:
 - (A) the reason the information was considered questionable;
 - (B) what documentation was used to resolve the questionable information; and
 - (C) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.
- (3) **Determination.** When determining if information is questionable, the worker bases the decision on each household's individual circumstances.

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 1. HOUSEHOLD DEFINITION

340:50-5-7. Excluded households and/or household members

(a) **Food distribution programs (FDP) operated by Indian tribal organizations (ITO).** Several ITO operate FDP in the State of Oklahoma. Households or any member of a household participating in a FDP are not eligible to participate in the Oklahoma Department of Human Services (OKDHS) Supplemental Nutrition Assistance Program (SNAP) the same month. Households with at least one adult member of any Indian tribe, living within the boundaries of an ITO location either in a rural area or in a town with a population of less than 10,000, may elect to participate in the FDP. A household may switch between the FDP and SNAP as long as there is no dual participation for any member for the same month. To ensure that dual participation does not occur, ~~monthly lists of recipients are exchanged~~ exchange of client benefit information between ITO and OKDHS is needed.

- (1) The worker is responsible for ~~checking~~ contacting the ITO ~~listing if when~~ there are indications that an applicant could meet the criteria for FDP eligibility. ~~If the household is not on the listing, the~~ The worker makes a telephone inquiry to the appropriate ITO on OKDHS Appendix D-4-C, Indian Food Distribution Programs, to verify the household has not been certified since the date of the last compiled list. Closure of an FDP case must also be verified by a telephone call to or written notice from the FDP office before a household can be certified for food benefits.
- (2) The FDP office ~~uses the OKDHS listing for the same verification procedure followed by a telephone call to the local human services center (HSC)~~ contacts the county office to check on subsequent food benefit receipt ~~determine if the household receives food benefits before approving the household for a FDP.~~ The worker provides any information pertinent to participation in or eligibility for either program.

- (3) Dual receipt will result in a food benefit overpayment if the household was already receiving FDP benefits at the time of SNAP certification.
- (4) If a client is disqualified from FDP or SNAP, he or she is prohibited from receiving benefits from the other program per Section 4211 of the 2008 Farm Bill.
- (b) **Ineligible households.**
 - (1) **Boarders.** Residents of a commercial boarding house and boarders as defined in OAC 340:50-5-5 are not eligible to participate in SNAP.
 - (A) A commercial boarding house is defined as an establishment ~~which that~~ offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house cannot be used to determine if a boarding house is a commercial enterprise.
 - (B) Households containing a boarder or the proprietor of a commercial boarding house may participate in the program separate and apart from the boarders or residents of the boarding house ~~if that when~~ the household meets all the eligibility requirements for participation.
 - (2) **Residents of institutions.** Persons are considered residents of an institution when the institution provides them with over ~~50%~~ 50 percent of three meals daily as part of the institution's normal services. Residents of institutions are not eligible for participation in the program unless they are:
 - (A) residents of federally subsidized houses for the elderly built either under Section 202 of the Housing Act of 1959 or Section 236 of the National Housing Act;
 - (B) persons addicted to drugs or alcohol, who for the purpose of participation in a drug addiction or alcoholic treatment and rehabilitation program, reside at a treatment center;
 - (C) residents of group homes who are considered blind or disabled ~~in accordance with~~ per OAC 340:50-5-4. Group home means a private or public non-profit residential setting ~~that serves~~ servicing no more than 16 residents ~~that is~~ certified by the Oklahoma State Department of Health under regulations issued under per Section 1616(e) of the Social Security Act;
 - (D) persons who do not receive ~~their~~ meals from the institution but prepare their own meals or are participating in a delivered meals program or a communal dining program are eligible for food benefits if they meet other eligibility requirements;
 - (E) women or women with their children who are temporarily residing in a shelter for battered women and children. Shelter for battered women and children means a public or private non-profit residential facility ~~that serves~~ servicing battered women and their children. ~~If such a~~ When the facility also serves other persons, a portion of the facility must be set aside on a long term basis to serve only battered women and children;

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- (F) students who attend school away from home as long as they return home for at least part of each month; or
- (G) residents of public or private non-profit shelters for homeless persons.

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 3. INCOME

340:50-7-22. Income exclusions

Only the payments listed in this Section are excluded from the household's income, from income of disqualified members whose income is counted, or from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

(1) **In-kind income.** In-kind income is any gain or benefit ~~which~~that is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household.

(3) **Educational assistance.** Educational assistance including grants, work-study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement, as described in paragraph (7) of this Section, and is a gain to the client, it is considered income.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services Division (DDSD) are excluded.

(5) **Income excluded by law.** Income excluded by law is:

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [Public Law (P.L.) 91-646, § 216] Such payments are:

- (i) payments to persons displaced due to the acquisition of real property;
- (ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling if the owner purchased and occupied the dwelling within one year following displacement; and

(iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [P.L. 92-203 § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; ~~or~~

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420]; or

(vi) by an individual as a lump sum or a periodic payment via the Cobell settlement per the Claims Resolution Act of 2010 [P.L. 111-291 § 101(f)(2)];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program (RSVP), foster grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended;

(D) income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, § 6];

(E) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Also excluded is 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 per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded, as long as they meet the distribution requirements as stated in this paragraph. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family;

(F) income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce Investment Act (WIA) or other federally funded workforce training program to persons of all ages and student status. ~~There are numerous programs for which payments are excluded. These programs include Summer Youth, Job Corps, paid classroom training, and others. The~~ with the exception to the income exclusion is of income paid to persons 19 years of age and older for on-the-job

training paid to participants 19 years of age and older. This income is treated as any other earned income;

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Act, such as University Year for Action (UYA), Senior Companion Program, AmeriCorps Volunteers in Service to America (VISTA) and other AmeriCorps Programs, are not included as income for purposes of determining food benefit eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds that are paid to persons under the Community Service Employment Program under Title V, P.L. 100-175. This program is authorized by the Older Americans Act. Each state and various organizations receive some Title V funds. These organizations include:

- (i) Experience Works;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons (AARP);
- (v) U. S. Forest Service;
- (vi) National Association for Spanish Speaking Elderly;
- (vii) National Urban League;
- (viii) National Council on Black Aging; and
- (ix) National Council on Indian Aging;

(L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck [P.L. 100-435];

(M) refunds of the state EITC as a result of filing a state income tax return;

(N) 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.);

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

(P) 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;

(Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(R) payments made to persons because of their status as victims of Nazi persecution;

(S) funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain persons who are children of Vietnam War veterans;

(U) Disaster Unemployment Assistance paid to persons unemployed as a result of a major disaster; and

(V) benefits paid to certain veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II by the Filipino Veterans Equity Compensation Fund.

(6) Payments which are not considered income.

(A) The payments in (i) through (iii) are not considered as income.

(i) Monies withheld from any income source to repay a prior overpayment from that same source.

(ii) Monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source.

(iii) Child support payments received by Temporary Assistance for Needy Families (TANF) recipients that are sent to the Oklahoma Child Support Services (OCSS) to maintain TANF eligibility.

(B) Monies withheld or returned to repay overpayments in federal, state, or local means-tested assistance programs are counted when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

(i) In the Supplemental Nutrition Assistance Program (SNAP), willful misrepresentation is considered as intentional program violation.

(ii) The State Supplemental Payment to the Aged, Blind, and Disabled and TANF programs define intentional program violation using the terms restitution, fraud, and willful misrepresentation.

(iii) The Social Security Administration (SSA) and Veterans Benefits Administration programs define intentional program violation as fraud. Supplemental Security Income (SSI) is a means-tested program within SSA.

(7) Reimbursements.

(A) Reimbursements for past or future expenses to the extent they do not exceed actual expenses and do

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not represent a gain or benefit to the household are not considered. Examples are reimbursements for:

- (i) job or training related expenses such as travel, per diem, uniforms, and transportation to and from job or training site. However, if these expenses are not reimbursements, they are considered income;
- (ii) out-of-pocket expenses incurred by volunteers in the course of their work;
- (iii) medical or dependent care; and
- (iv) services provided by Title XX of the Social Security Act.

(B) When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount of the reimbursement that exceeds the actual incurred expenses is counted as income. A reimbursement is not considered to exceed actual expenses unless the provider or household indicates the amount is excessive.

(8) **Money received for third parties.** Money received and used for the care and maintenance of a third party beneficiary who is not a household member is not considered.

(A) If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member is excluded.

(B) If the non-household member's portion cannot be readily identified, as in TANF cash assistance payments, the payment is evenly prorated among intended beneficiaries. The exclusion is applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

(9) **Earnings of a child.** Earned income of a child who is head of his or her own household is counted. The earned income of an elementary or high school student 17 years of age or younger who is under parental control of an adult household member is excluded. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings cannot be differentiated from those of other household members, the total earnings are prorated equally among the working members, and the child's prorated share is excluded.

(10) **Other types of excluded income.**

(A) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(B) **Irregular Income.** Exclude any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated that is \$30 or less per quarter.

(C) **Non-recurring lump sum payments.** Exclude money received in the form of non-recurring lump sum payments, including but not limited to: income tax refunds, rebates, credits, retroactive lump sums from SSA, SSI, public assistance, Railroad Retirement pensions, or other payments, or retroactive lump sum insurance settlements.

(D) **Cost of self-employment.** Exclude the cost of producing self-employment income.

(E) **Income of non-household members.** The income of non-household members who have not been disqualified or are not ineligible aliens is not considered available to the household.

(F) **Charitable contributions.** Exclude cash contributions to a household from one or more private non-profit charitable organizations, not to exceed \$300 in a federal fiscal year quarter. For the purposes of this provision a quarter includes these specific months:

- (i) October, November, December;
- (ii) January, February, March;
- (iii) April, May, June; and
- (iv) July, August, September.

(G) **Department of Housing and Urban Development's (HUD) Family Self-sufficiency Program (FSS) escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded as income.

(H) **Individual Development Account (IDA).** Any funds deposited in an IDA operated under the Assets for Independence Act and the interest that accrues.

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-4. Delayed applications

(a) **Delayed applications.** When applications are not approved or denied by the 30th calendar day, they are considered delayed applications. On the 30th calendar day following the application date, every delayed application is assessed to determine whether the Oklahoma Department of Human Services (OKDHS) or the household caused the delay. The purpose of this assessment is to determine:

- (1) whether to immediately deny the application or leave it pending in application status; and
- (2) what date to certify benefits if the household is determined eligible at a later date.

(b) **Delay caused by OKDHS.** When the processing delay is caused by OKDHS, the application remains in pending status. At the end of the first 30 calendar days, the worker sends the household Form ~~08MP039E~~ 08MP038E, Client Notice to Client of Action Taken, explaining why the application is still pending. If the household is later determined eligible, food benefits are approved back to the date of application. OKDHS

caused delays include, but are not limited to, the circumstances given in (1) through (6) of this subsection.

(1) The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview, but subsequently failed to provide the required verification. During the interview the worker did not provide to the household Form 08AD092E, Client Contact and Information Request, and explain:

- (A) what factors must be verified;
- (B) what is considered acceptable verification; and
- (C) the date verification must be supplied.

(2) The worker never scheduled an interview for the household.

(3) The worker did not offer to provide assistance to the household in obtaining the verification or offered assistance, but failed to follow through on collateral contacts or release of information.

(4) The worker discovered that additional information was required after the interview, but the household did not have ~~ten~~10 calendar days between the request for the verification and the 30th calendar day of the application to provide the verification.

(5) The household missed their first interview on or before the 30th calendar day and requested the interview be rescheduled. The worker was unable to schedule the second interview date until after the 30th calendar day.

(6) The household provided all the required verification on or before the 30th day and the application was not approved or denied timely.

(c) **Delay caused by the household.** When the processing delay is caused by the household, the application must be denied by the 30th calendar day. The household receives a computer-generated denial notice. When the household provides the required verification in the second 30 calendar days, a new application is not required. If the household is determined eligible, the food benefit allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (1) through (3) of this subsection.

(1) The household's first interview was scheduled on or before the 20th calendar day following the date of application. The household appeared at the interview, but subsequently failed to provide the required verification. The worker provided the household with Form 08AD092E showing required verification, offered to assist the household in obtaining the verification, and allowed the household sufficient time to provide the verification.

(2) The household missed their first interview and requested the interview be rescheduled on or before the 30th calendar day. The worker rescheduled the interview on or before the 30th calendar day; however, the household did not provide all the required verification by the 30th day.

(3) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The household stated they could not come in or complete an interview over the telephone until after the 30th calendar day.

340:50-9-5. Changes after application and during the certification period

(a) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within ~~ten~~10 calendar days of the date of the notice.

(b) **Certified households.** Those households assigned a certification period other than 12 or 24 months are required to report within ~~ten~~10 calendar days changes in:

- (1) sources of income;
- (2) unearned income of \$50 per month or more;
- (3) earned income of more than \$100 per month;
- (4) household composition, such as an addition or loss of a household member;
- (5) residence and resulting changes in shelter costs; and
- (6) the legal obligation to pay child support.

(c) **Change affecting food benefit.** If a reported change affects the household's eligibility or food benefit amount, the household is notified of the adjustment to be made and the effective date. The worker has ~~ten~~10 calendar days from the date the change is reported to take the necessary action.

(1) If the household fails to report a change within the ~~ten~~10-day period and, as a result, receives benefits to which it is not entitled, an overpayment claim is referred to the Adult and Family Support Services Division (AFSSD) ~~AFS~~ Benefit Integrity and Recovery Section.

(2) If the worker fails to take action on a reported change within the prescribed time limits and benefits are lost, they are restored to the household.

(d) **Changes that increase benefits.** Changes resulting in a benefit increase must be verified. The household is allowed ~~ten~~10 calendar days to verify the information.

(e) **Changes that decrease or close benefits.** Food benefits are closed, **never** suspended, if a change in household circumstances causes a household to be ineligible for food benefits. When a household's benefit decreases or closes, an advance notice is required unless exempt from such a notice for a reason listed in (1) and (2) of this subsection. When an advance notice is required, the decrease or termination of the benefit is effective no later than the month following the month in which the advance notice period expired. When the change is reported less than ~~ten~~10 calendar days before the advance notice deadline, the action must be taken before advance notice deadline the following month. Advance notice is not required when the:

- (1) Oklahoma Department of Human Services (OKDHS) receives a clear written statement signed by a responsible household member stating he or she no longer wishes food benefits or gives information ~~which that~~ requires closure or reduction of food benefits and stating that he or she understands the food benefit will be reduced or closed. The household retains its right to a fair hearing and continuation of benefits if a fair hearing is requested within ~~ten~~10 calendar days of the change notice; and
- (2) reduction or closure of food benefits is based on situations listed in (k) of this Section.

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(f) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information when:

- (1) ~~OKDHS did not administer policy and procedures were not administered correctly.~~ The food benefit is reopened back to the first day of the month of closure; ~~or~~
- (2) ~~the household fails to complete the mid-certification renewal timely, but provides all required verification by the last first day of the month of closure for failure to complete the benefit renewal. The food benefit is reopened back to the first day of the month of closure; or~~
- (3) ~~the household fails to complete the mid-certification renewal by the last day of the month of closure, but provides all required verification by the last day of the month of closure.~~ The food benefit is reopened and prorated from the date the benefit/mid-certification renewal is completed.

(g) **Annual reporting households.** Food benefit households with all adult members elderly or disabled with no earned income are known as annual reporters. A 24-month certification period is automatically assigned. These households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size unless it is the ~~benefit/mid-certification~~ benefit/mid-certification renewal or certification renewal month. The worker must act on any changes reported by households that increase or decrease their benefits. The system determines if the change results in an increase or decrease in benefits. Between benefit/mid-certification renewal or certification renewal months, a decrease in benefits does not occur unless the:

- (1) household ~~has requested benefit closure of the case;~~ or
- (2) worker has information about the household's circumstances considered verified upon receipt.

(h) **Benefit/Mid-certification renewal for annual reporting households.** Annual reporting households are sent notification in the 11th month of certification that the benefit/mid-certification renewal is due. An interview is not required. In order to continue to receive benefits, the household must complete the benefit renewal. This includes providing all required verification by the last day of the 12th month of certification. The worker reviews information to determine whether changes are needed.

- (1) The worker must act on changes reported at ~~benefit/mid-certification~~ benefit/mid-certification renewal.
- (2) ~~If/When~~ the reported changes result in a decrease or closure of benefits, an advance notice must be sent to the household.
- (3) If the household fails to provide sufficient information regarding a deductible expense requiring verification, the worker processes the benefit/mid-certification renewal without regard to the deduction.

(i) **Semi-annual reporting households.** All food benefit households, except those considered annual reporters or certain households containing one or more able-bodied adults without dependents (ABAWD), are assigned a 12-month certification period.

(1) Between the ~~month of benefit/mid-certification~~ renewal or certification renewal months, households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size unless their household contains an ABAWD meeting the work rule per OAC 340:50-5-64(a). Households with an ABAWD meeting the work rule at certification must report if the hours decrease below an average of 20 per week or 80 per month.

(2) The worker must act on any changes reported by households that increase or decrease their benefits. The system determines if the change results in increase or decrease in benefits.

(3) Between the ~~month of benefit/mid-certification~~ renewal or certification renewal months, a decrease in benefits does not occur unless the:

- (A) household ~~has requested benefit closure of the case;~~ or
- (B) worker has information about the household's circumstances considered verified upon receipt.

(j) **Benefit/Mid-certification renewal for semi-annual reporting households.** Semi-annual reporting households are sent notification in the fifth month of certification that the benefit/mid-certification renewal is due. An interview is not required. In order to continue receiving benefits, the household must complete the benefit/mid-certification renewal that includes providing all required verification, by the last day of the sixth month of certification. The worker reviews information provided to determine whether changes are needed.

- (1) The worker must act on changes reported at ~~benefit/mid-certification~~ benefit/mid-certification renewal.
- (2) If the reported changes result in a decrease or closure of benefits, an advance notice must be sent to the household.
- (3) If the household fails to provide sufficient information regarding a deductible expense, the worker processes the benefit/mid-certification renewal without regard to the deduction.

(k) **Notice/Advance notice of adverse action not required.** Advance notice of adverse action is not required when:

- (1) ~~Mass changes. The individual notification requirement is waived when mass changes affecting the entire caseload or significant portions of the caseload are initiated because of changes or requirements in federal or state law. In these situations, FSSD the individual notification requirement is waived and AFS mails generic notices to the households informing them of the changes that are about to be made;~~
- (2) ~~Notice of death. If the worker determines, based on reliable information, that all members of the household are deceased, notice of adverse action is not required;~~
- (3) ~~Moved out of state. Notice of adverse action is not required when the worker determines, based on reliable information, the household has moved out of state;~~
- (4) ~~Completion of restoration of lost benefits. Notice of adverse action is not required if the household is previously notified in writing when restoration of lost~~

benefits is completed and the household's food benefit is reduced due to completion of restoration of lost benefits.;

(5) ~~Variable food benefit.~~ The the household benefit amount varies from month to month within the certification period to take into account changes that were anticipated at the time of certification and the household was so notified at the time of certification.;

(6) ~~Willful misrepresentation.~~ Notice of adverse action is not required if a person in the household is disqualified for willful misrepresentation. If there is more than one person in the household, the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member.;

(7) ~~Food benefit recoupment.~~ A notice of adverse action is not required if the household fails to make agreed upon cash or food benefit repayment of an overpayment.;

(8) ~~Drug or alcohol treatment center or group home loses approved status.~~ If a household's eligibility is being terminated because the drug or alcohol treatment center or group home facility where they reside is no longer approved, an individual notice of adverse action is not required.;

(9) circumstances occur per OAC 340:50-11-27;

(10) the client provides a written statement:

(A) stating the household no longer wishes to receive food benefits; or

(B) requesting closure or reduction in food benefits to avoid or repay an overpayment; or

(11) food benefits are closed in one case in order to transfer the food benefits to another case without a decrease or disruption in benefits.

(l) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within ~~ten~~10 calendar days of the date shown on the adverse action notice, the household may continue to receive food benefits.

340:50-9-6. Procedures relating to food benefit certification renewals

(a) **Worker action.** The worker completes the application process, approves or denies applications for certification renewal, and provides eligible households with an opportunity to participate in a timely manner. The worker cannot continue benefits to the household beyond the certification period until the worker certifies the household again.

(b) **Notice of expiration.**

(1) ~~After deadline~~A computer-generated expiration notice titled Continue My SNAP Benefits is sent after deadline the month prior to the last month of the certification period, ~~a computer generated Expiration of Food Benefits Notice is sent to all non public assistance (non PA) households receiving food benefits who have been certified for three months or more.~~ The notice informs households:

(A) they have the right to apply must provide information to complete their certification renewal within a time frame or food benefits stop by a certain date;

(B) ~~the date food benefits expire~~of methods the household may use to supply certification renewal information including:

(i) online at okdhslive.org;

(ii) calling the Oklahoma Department of Human Services (OKDHS) at the telephone number listed on the notice to complete the renewal;

(iii) mailing a completed and signed paper form to the address listed on the notice; or

(iv) faxing or bringing a completed and signed paper form to the local OKDHS office;

(C) ~~they may complete, sign, and return the notice by the 5th day of the last month of eligibility to avoid a delay in receipt of further food benefits~~how to obtain a paper renewal form;

(D) ~~the local Oklahoma Department of Human Services (OKDHS) office schedules staff contacts the household when an interview appointments after receipt of the signed notice is required; and~~

(E) ~~further food benefits will not be issued until the household reapplies and is interviewed~~proof of household income must be provided; and

(F) proof of certain expenses is required before an expense deduction is given.

(2) ~~Households certified for two months or less are notified by computer generated notice of the effective date and expiration date of the certification. The notice is generated and mailed at the time the household is certified eligible.~~

(c) **Timely certification renewal.**

(1) Certification renewals are processed within the time frames described in (A) through (B) of this paragraph.

(A) **Prior certification of fewer than three months.** A household with a prior certification period of fewer than three months who applies by the ~~1st~~first day of the last month of the certification period is provided with the opportunity to participate, if eligible, no later than 30 calendar days after the date the household last had an opportunity to obtain its food benefits.

(B) **Prior certification of three months or more.** Certification renewals filed on or before the ~~1st~~first day of the last month of the certification period are considered timely. If the household meets all of the requirements and completes all the processing steps, the worker certifies or denies the application prior to the end of the certification period.

(i) Any eligible household who renews benefits timely is provided an opportunity to participate by its normal issuance date in the month following the end of the current certification period.

(ii) To retain this right to uninterrupted benefits, the household must have attended any interview and/or provided all required verification due on or after the deadline for filing timely certification renewals.

(iii) Although a household loses its right to uninterrupted benefits, it retains its right to complete

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the process and receive benefits, ~~if~~when eligible, within 30 calendar days of the application date.

(2) Households who have timely renewed but, due to worker error, are not timely determined eligible are certified immediately upon being determined eligible. If the delay in certification renewal extends into the following month, the certification is made retroactive to the first day of the month following expiration of the certification period.

(3) A household applying for certification renewal in the last month of its certification period is not entitled to expedited services. When the certification renewal is teleprocessed on or before the last day of the month of the old certification period, the subsequent month's benefit is issued on the second working day of the month.

(d) **Untimely certification renewal.** A household who submits an untimely certification renewal, without good cause, loses its right to uninterrupted benefits and the worker has 30 calendar days to certify or deny the application. When a certification renewal is not received until after the certification period expired, the application is considered an initial application and benefits for that month are prorated. The household is entitled to expedited service if the household qualifies per OAC 340:50-11-1.

(e) **Good cause for failure to timely renew food benefits.** When the household had good cause for its failure to submit a timely certification renewal or to otherwise complete the certification process and the household did not receive food benefits in the month following expiration of benefits, it is entitled to restoration of lost benefits per OAC 340:50-11-4. The worker determines good cause on a case-by-case basis. Good cause reasons may include failure to receive timely notice of expiration or personal illness.

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 1. HOUSEHOLDS ENTITLED TO EXPEDITED SERVICE

340:50-11-3. Expedited service for migrant or seasonal farm laborers

Migrant or seasonal farm laborer households qualify for expedited service if their liquid resources do not exceed \$100 at the time of interview, and their gross monthly income is less than \$150 or they are destitute.

(1) **Definition of destitute migrant or seasonal farm laborers.** This definition may only be applied to migrant or seasonal farm laborer households:

(A) Destitute household means the:

(i) household's only income for the month of application was received prior to application date and was from a terminated source.

(I) Income received on a monthly or more frequent basis is considered as coming from a terminated source if it will not be received again

from the same source during the balance of the month of application or the following month.

(II) Income received less often than monthly is considered as coming from a terminated source if it will not be received in the month the next payment would normally be received; or

(ii) household's only income for the month of application is from a new source and income of more than \$25 from the new source will not be received by the 10th calendar day and after the date of application.

(I) Income normally received on a monthly or more frequent basis is considered to be from a new source if income of more than \$25 has not been received from the source within 30 calendar days prior to the date of application.

(II) Income normally received less often than monthly is considered to be from a new source if income of more than \$25 was not received within the last normal interval between payments.

(B) Households may receive both income from a terminated source and income from a new source and still be considered destitute if they received no other income in the month of application.

(C) Households whose income must be averaged on an annual basis or averaged over the period income is intended to cover must have the income averaged and assigned to the appropriate months of the certification period before determining whether a household is destitute. If the averaged income does not come from a new or terminated source and is assigned to the month of application, the household is not considered destitute.

(2) **Calculating income from destitute migrant or seasonal farm laborers.** Destitute households must have their eligibility and level of benefits calculated for the month of application by considering only income received between the first of the month and the date of application. Any income from a new source that is anticipated after the date of application is disregarded.

(3) **Proration of benefits.** Migrant and seasonal farm workers ~~will be~~are issued a full allotment for the month of application when the household has participated in the Supplemental Nutrition Assistance Program (SNAP) within 30 calendar days prior to the date of application. If the household has not participated within the prior 30 calendar days, the allotment is prorated as any other household.

(4) **Procedures for expedited service for migrant or seasonal farm laborers.** Procedures for expediting services ~~in~~per OAC 340:50-11-5 are used. ~~The exception is that a migrant farm laborer household applying after the 15th of the month who has verifications postponed must have the second month's issuance authorized when verification is received from all in-state sources. Before~~

the household ~~can be~~ certified for a third month, verification for both in-state and out-of-state sources must be provided. These households are entitled to postpone out-of-state verification only once each season.

340:50-11-4. Time limits for providing expedited service

(a) Expedited service time limits. The time limit for providing expedited service begins when the completed and signed application is received. Refer to OAC 340:50-3-1(b)(1) for right to same day filing processes. Providing expedited service entails determining food benefit eligibility and authorizing issuance if the household is eligible so that the food benefit is available no later than seven calendar days from the date of application. ~~If~~When the seventh calendar day falls on a non-working day, the last working day prior to the seventh calendar day is the last day for actions described to occur. Households entitled to expedited service but who are ineligible for food benefits because they do not meet non-financial eligibility criteria are denied no later than 30 calendar days after the application date.

(b) ~~Late entitlement determination.~~ If the prescreening fails to identify a household as being entitled to expedited service and the worker subsequently discovers that the household is entitled to expedited service, the worker provides such service. The processing standards described in this Section apply, except that the seven days begins on the date the household is discovered to be entitled to expedited services.

~~(2) Receipt of filing page only. When the filing page of the application form indicates the household is entitled to expedited service, the worker first attempts to contact the household by telephone to determine if they are entitled to a waiver of the office interview.~~

~~(A) If the household is entitled to a waiver, the worker schedules a home visit, completes the application process, and issues benefits to be received within seven calendar days.~~

~~(B) If the household is not entitled to a waiver, the household is requested to complete and submit the remainder of the application so it can be processed.~~

~~(C) The time limit for providing expedited service begins when the completed and signed application form is received.~~

340:50-11-5. Procedures for expediting services

To expedite the certification process, the worker must verify the applicant's identity. All reasonable efforts to verify the household's residency, income declaration, ~~including a statement that~~how the household ~~has~~ meeting their needs when their expenses exceed income or when there is no income, and other factors of eligibility are made. Verification is done by seeing documentary evidence or through a collateral contact when documentary evidence is not readily available. Verification of factors other than identity that could not be made during the expedited service processing time limits may be postponed. In most instances, it is expected that the applicant verify at least residence and income, within the time limit. Benefits cannot

be delayed beyond the time limit solely because factors other than identity were not verified.

(1) Except for the applicant, work registration of household members may be postponed when it cannot be accomplished within the expedited service processing time limit.

(2) Households entitled to expedited service are asked to furnish a Social Security number for each person applying for benefits before the second full month of participation with the exception of newborns.

(3) The worker certifies households who have furnished all necessary verification for determining continued eligibility for a normal certification period. If the interview or verification is postponed, the worker provides the household with Form 08AD092E, Client Contact and Information Request, setting an interview date and listing needed verification that must be provided before further benefits are approved. The interview must be completed and verification provided within 30 calendar days of the application date in order to avoid a break in benefits. ~~If~~When the interview is completed and postponed verification provided within 60 calendar days of the date of application, a new application is not needed. Benefits are prorated from the date the interview is completed and verification provided.

(4) When verification is received, the worker approves the household, ~~if~~when eligible, for a normal certification period. This approval must be certified within seven calendar days of the receipt of the verification and completion of the interview.

(5) If the household does not complete the interview or provide postponed verification within 60 calendar days of the application date, the household must complete a new application in order to receive further food benefits.

(6) There is no limit to the number of times a household can be certified under expedited procedures as long as prior to each expedited certification the household completes the interview requirement, if postponed, and provides the postponed verification from the last expedited certification or was certified under normal processing standards since the last expedited certification.

340:50-11-6. Issuance for households entitled to expedited services

~~After~~When the household is determined eligible for expedited services, ~~the social services specialist processes the certification and benefits are made available in the household's account and the required interview or needed verification was postponed, the household is certified for a one or two month certification period.~~

(1) When the issuance is for the initial month, the benefit is prorated household applies between the:

(A) first and 15th of the month, the worker certifies the household for one month; or

(B) 16th and 31st of the month, the worker certifies the household for two months.

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(2) The worker prorates the initial month's benefits when the household applies later than the first day of the month.

(3) When proration causes the household to be ineligible for the month of application, the case application is denied for that month of application and approved for expedited issuance for the following month. Households who receive an expedited prorated benefit, then later provide all necessary verification, must receive their second month's benefit no earlier than the first day of the second month's benefit or within seven working days of providing the verification, whichever is later.

(4) The initial month's food benefits issue immediately when the household is eligible for expedited services. When the initial month's benefits are prorated and the household is assigned a two-month certification period, the second month's benefits issue on the first day of the second month.

PART 3. SIMPLIFIED SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SSNAP) FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND COMPANION STATE SUPPLEMENTAL PAYMENT (SSP) RECIPIENT(S)

340:50-11-22. Application processing

At the time of application for Temporary Assistance for Needy Families (TANF), the worker determines if the applicant wants to receive or is currently receiving food benefits and if the household is eligible for the Simplified Supplemental Nutrition Assistance Program (SSNAP). If the household is receiving non-public assistance (non-PA) food benefits at the time of the TANF application, the food benefits remain as non-PA until TANF is certified.

(1) **Households within SSNAP scope.** If the household has applied for TANF, non-PA Supplemental Nutrition Assistance Program (SNAP) rules are used to determine eligibility when the:

(A) household qualifies for expedited service and the TANF application will not be certified within seven calendar days;

(B) TANF application will take longer than 30 calendar days to determine eligibility; or

(C) TANF application will not be completed and certified for the month of application and food benefits must be issued for the initial month.

(2) **Denial of TANF.** When the TANF application is denied and the food benefit application is pending, the worker must determine if the household is eligible for household's food benefits using benefit eligibility using non-PA SNAP rules. As a result of this determination the worker:

(A) denies eligibility for food benefits; or

(B) approves eligibility for food benefits.

340:50-11-27. Changes after application and during the certification period

Households are required to report changes in accordance with per OAC 340:65-5. At each application or redetermination renewal, the worker advises households are advised of their reporting responsibilities. Households are given a supply of gives them Form 08FB038E, Changes in Household Circumstances, and advised advises them to contact their worker to request additional forms as needed.

(1) **Reported change in household members' eligibility for Temporary Assistance for Needy Families (TANF) cash assistance.** The computer converts the food benefits to non-public assistance (non-PA) Supplemental Nutrition Assistance Program (SNAP) food benefits when the household reports one or more household members is not receiving TANF cash assistance. This may occur when:

(A) one or more persons not eligible to receive TANF or State Supplemental Payment (SSP) income moves into the home;

(B) a child included in the TANF cash assistance turns 18 or 19 years of age and is no longer eligible for inclusion in the TANF cash assistance; or

(C) the adult parent or needy caretaker included in the TANF cash assistance tests positive for the illegal use of a controlled substance or substances per OAC 340:10-4-1 and is removed from the TANF cash assistance.

(+2) **Reported change results in closure of TANF.** When the Temporary Assistance for Needy Families (TANF) worker closes the TANF cash assistance is closed and the household is receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) SSNAP food benefits, one of the actions described in (A) through (C) are taken.

(A) The worker closes the food benefits the same effective date as the TANF cash assistance closure when the TANF is closed as a result of the:

(i) payee's death of the payee;

(ii) failure or refusal to participate in TANF Work;

(iii) the household moves/moving out-of-state; or

(iv) the household requests/requesting closure of the TANF cash assistance and food benefits.

(B) The computer converts the SSNAP food benefits to five months of transitional food benefits (TFB) when the TANF cash assistance is closed for reasons other than those listed in (A) or (C) of this paragraph and:

(i) there is no companion State Supplemental Payment (SSP) case; or

(ii) the TANF case is the primary food benefit case, and the companion SSP case remains open.

(C) The computer converts the food benefits to non-PA Supplemental Nutrition Assistance Program (SNAP) food benefits when the TANF cash assistance is closed;

- (i) for reasons other than those listed in (A) of this paragraph and the companion SSP case, which is the primary food benefit case, remains open; or
- (ii) because the adult parent or needy caretaker refuses to comply or fails to follow through with screening for the illegal use of a controlled substance or substances requirements per OAC 340:10-4-1.

(23) **Reported changes during the TFB certification period.** The household is not required to report changes ~~timely~~ while receiving TFB. When changes are reported, the TFB benefit remains the same unless:

- (A) ~~If there is an application the household applies for TANF while in TFB status, at certification of the TANF cash assistance, food~~ Food benefits are converted to SSNAP at TANF certification as long as all household members are receiving cash assistance; or
- (B) a household member leaves the home and applies for food benefits in another household.

(34) **Notifications.** ~~The~~ When requested, the worker gives the TANF applicant is given a copy of the signed and dated application form which that informs the applicant food benefit eligibility is determined using information contained in the application. Notification of eligibility is required. A computer-generated notice is sent to the household at certification and any time the food benefit amount changes. ~~The notice is computer generated.~~

PART 7. REPLACEMENT WHEN FOOD PURCHASED WITH FOOD BENEFITS IS DESTROYED

340:50-11-64. Destroyed food purchased with benefits

(a) In households where food purchased with benefits is destroyed in a household misfortune such as a fire, tornado, or flood, a replacement of the actual value of loss, not to exceed the household's monthly allotment, may be made if the loss is reported within ~~ten~~ 10 calendar days of the loss and the loss is verified. Food loss through loss of electricity or malfunction of appliances unless caused by a ~~storm~~ household misfortune, does not qualify as a ~~household misfortune and the food loss may not be replaced~~ for a Supplemental Nutrition Assistance Program (SNAP) replacement.

(b) Prior to issuing the replacement, a household member must complete Form 08FB0012E, Request for Replacement of Destroyed Food, attesting to the loss within ten days of the report of the loss. When the Oklahoma Department of Human Services is not open for business on the 10th calendar day, the form must be received by the next business day. The worker must issue the replacement within ~~ten~~ 10 calendar days of the reported loss or within two business days of receiving the completed form, whichever is later.

SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

PART 1. OVERPAYMENTS

340:50-15-7. Suspension of collection efforts

(a) ~~The Adult and Family Support Services Division (FSSD)(AFS) Benefit Integrity and Recovery Section (BIRS)~~ suspends collection action on cases no longer receiving food benefits when the:

- (1) ~~head of primary~~ responsible household member is deceased and there are no remaining adult household members responsible for the overpayment;
- (2) household cannot be located; or
- (3) cost of further collection action is likely to exceed the amount that can be recovered.

(b) ~~FSSD Benefit Integrity and Recovery Section~~ AFS BIRS may:

- (1) reopen debts held in suspension based on changes in household circumstances; or
- (2) initiate reduction in the food benefit if the client reapplies and becomes eligible in the future.

340:50-15-9. ~~Termination of collection of food benefit debt~~ Terminating and writing-off Supplemental Nutrition Assistance Program (SNAP) overpayment claims

(a) Per Section 273.18(e)(8) of Title 7 of the Code of Federal Regulations (CFR), a:

- (1) terminated overpayment claim is a claim in which all collection action has ceased; and
- (2) written-off claim is a claim no longer considered a receivable subject to continued federal and state collection and reporting requirements.

(b) ~~In the case of repayment~~ When an overpayment claim is paid in full, the household and the human services center are notified that the debt has been satisfied.

(c) Adult and Family Services (AFS) Benefit Integrity and Recovery Section (BIRS) staff terminate and write off Supplemental Nutrition Assistance Program (SNAP) overpayment claim(s) when:

- (1) all adult household members die;
- (2) the claim balance is \$25 or less and the claim has been delinquent for 90 calendar days or more UNLESS other claims exist against this household resulting in an aggregate claim total of greater than \$25;
- (3) the claim is delinquent for three years or more; or
- (4) the household cannot be located for three years or more.

[OAR Docket #13-598; filed 4-15-13]

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TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 65. PUBLIC ASSISTANCE PROCEDURES

[OAR Docket #13-599]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Eligibility for Benefits

340:65-3-1 [AMENDED]

340:65-3-2.1 [AMENDED]

340:65-3-5 [AMENDED]

340:65-3-7 through 340:65-3-9 [AMENDED]

Subchapter 5. Procedures Relating to Case Changes

Part 1. General Provisions

340:65-5-1 [AMENDED]

Subchapter 11. Voter Registration [NEW]

340:65-11-1 through 340:65-11-4 [NEW]

(Reference APA WF 12-14)

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Director of Human Services; Sections 161, 162, 164, 168, and 230.52(14) of Title 56 of the Oklahoma Statutes; and Section 1973gg of Title 42 of the United States Code.

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n/a

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n/a

ANALYSIS:

The proposed revisions to Subchapter 3 of Chapter 65 amend the rules to: (1) add information regarding case assignment of online applications; (2) remove the Qualified Medicare Beneficiary (QMB) program from interview requirements; (3) make rules less restrictive regarding setting interview dates; (4) add information regarding expedited eligibility; (5) rearrange information for greater clarity; (6) remove information regarding obsolete SoonerCare (Medicaid) and Diversion Assistance application time frames; (7) add eligibility determination information following denial of an application; (8) add information regarding benefit renewal notification; (9) include mandatory drug screening of adult parent or needy caretaker Temporary Assistance for Needy Families (TANF) applicants as a variable condition of eligibility; (10) update terminology; and (11) add clarifying language.

The proposed revisions to Subchapter 5 of Chapter 65 amend the rules to: (1) update reasons when advance notice is not required; and (2) clarify worker action when a change occurs while a fair hearing is pending.

Subchapter 11 of Chapter 65 is issued as Voter Registration Act rules previously included in Subchapter 1 of Chapter 115 are revoked.

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, 2013:

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-1. Determination of eligibility

(a) **Eligibility determination.** ~~The determination of~~The process of determining eligibility is ~~a continuous process that begins with~~includes the applicant filing an application. ~~It includes, the final disposition of the application~~worker certifying or denying benefits, and all subsequent activities ~~related to determining continued eligibility~~required to receive continuous benefits. The applicant has the right and ~~the~~ responsibility to participate in the eligibility determination and is relied on as the first source of information.

(1) ~~In instances when it is difficult for the applicant to complete the application, someone~~Someone acting on the applicant's behalf such as an authorized representative or a person with power-of-attorney may complete the application for all programs except Temporary Assistance for Needy Families (TANF). The applicant must personally complete the application for TANF.

(2) When someone other than the applicant applies on behalf of the applicant, he or she must bring a signed statement from the applicant giving this person permission to act on ~~behalf of the applicant~~the applicant's behalf or the applicant must have designated this person as his or her authorized representative on the signed application. The SoonerCare (Medicaid) programs allow others to apply for the applicant without a written designation.

(b) **Filing an application.** Each household wishing to apply for the Child Care Subsidy Program, Low Income Home Energy Assistance Program (LIHEAP), SoonerCare (Medicaid) ~~Program-program~~, Supplemental Nutrition Assistance Program (SNAP), State Supplemental Payment (SSP), Supplemental Security Income Disabled Children's Program (SSI-DCP), or TANF must complete an application. The applicant may request one or more benefits on the same application with the exception of LIHEAP, which is not an ongoing benefit.

(1) The applicant may apply for benefits in the ~~human services center (HSC)~~local county office of his or her choice. ~~This also applies when~~When someone ~~living in a different county~~applies on behalf of the applicant at the HSC in his or her own and lives in a different county, instead of the person may apply in his or her county of residence or in which the applicant livesthe applicant's county of residence.

(2) When the applicant applies for TANF ~~benefits~~cash assistance in a county in which he or she does not live, the applicant's TANF Work activities are assigned in the county ~~which~~where the applicant states creates the least barrier to participation.

- (3) The system auto-assigns the application to a specific Oklahoma Department of Human Services (OKDHS) office when the applicant applies online via okdhslive.org.
- (c) **Signature requirements.** The applicant, guardian, or someone acting on the applicant's behalf such as an authorized representative or a person with power-of-attorney must sign the application. TANF applications must be signed by the applicant. If the applicant is living with his or her spouse, both must sign the application. The applicant may voluntarily withdraw the request for benefits or services either before or after signing the application. An applicant who is:
- (1) eligible for Medicare signs the application using the name on his or her Medicare Health Insurance Benefits (HIB) card; or
 - (2) not eligible for Medicare signs the application using the name shown on his or her Social Security card.
- (d) **Interview requirements.** Whether an interview is required varies depending on the program.
- (1) Prior to approval for benefits, the applicant must complete a face-to-face interview for:
 - (A) SNAP. Exceptions are found at OAC 340:50-3-2; or
 - (B) the TANF ~~Program~~program.
 - (2) A telephone or face-to-face interview is required for the:
 - (A) Child Care Subsidy ~~Program~~program;
 - (B) SSP ~~Program~~program;
 - (C) SoonerCare (Medicaid) long-term care programs such as Advantage Waiver, nursing home care, or personal care; or
 - (D) SoonerCare (Medicaid) programs that categorically relate to the aged, blind, and disabled population such as Qualified Medicare Beneficiary ~~(QMB) Plus (QMBP)~~, Specified Low-Income Medicare Beneficiary (SLMB), or Qualified Disabled and Working Individuals (QDWI), ~~or Qualified Medicare Beneficiary Plus (QMBP)~~.
 - (3) An interview is not required prior to approval for the SoonerCare (Medicaid) population in ~~Online Enrollment~~online enrollment with the Oklahoma Health Care Authority (OHCA) or LIHEAP benefits.
- (e) **Worker responsibilities.** The worker is responsible for:
- (1) advising the applicant during the application process of the:
 - (A) ~~Oklahoma Department of Human Services (OKDHS)~~ responsibility for reaching a decision and notifying the applicant of eligibility or ineligibility within the appropriate time limits;
 - (B) applicant's right to request a fair hearing per OAC 340:2-5, either orally or in writing, and be represented at the hearing by any person the applicant chooses. A hearing may be requested when there is a:
 - (i) delay beyond the established time limits for determining eligibility per OAC 340:65-3-5; or
 - (ii) disagreement with any action taken on the case;
 - (C) applicant's legal responsibility for reporting all facts pertinent to eligibility;
 - (2) types of changes the applicant must report within ten calendar days;
 - (3) penalty for failure to report changes;
 - (4) information needed to establish eligibility. When requesting information or verification from the applicant, the worker uses Form 08AD092E, Client Contact and Information Request, and gives the applicant at least ten calendar days to respond to the request per OAC 340:65-3-2.1;
 - (5) assistance provided by OKDHS in establishing eligibility;
 - (6) permission the applicant gives OKDHS to obtain information from sources other than the applicant by signing the application; and
 - (7) requirement that the applicant must cooperate with state and federal officials if the applicant's case is selected for a Quality Control review;
- (2) collecting information necessary for determining the applicant's initial and continuing eligibility. Information considered verified upon receipt if that information is not questionable or inconsistent with known facts, and the provider of the information is the primary source of the information, is the:
- (A) applicant's statement concerning:
 - (i) residency;
 - (ii) relationship;
 - (iii) age;
 - (iv) living in the home of a relative payee;
 - (v) minor parent living in the home of a relative;
 - (vi) Social Security number (SSN);
 - (vii) non-liquid resources;
 - (viii) household members;
 - (ix) school attendance; and
 - (x) third party insurance;
 - (B) unearned income information obtained through:
 - (i) Beneficiary and Earnings Data Exchange System (BENDEX), from the Social Security Administration (SSA);
 - (ii) Supplemental Security Income (SSI)/State Data Exchange System (SDX), from SSA;
 - (iii) Unemployment Insurance Benefits (UIB), from the Oklahoma Employment Security Commission (OESC); and
 - (iv) workers' compensation documents from Workers' Compensation Court; and
 - (C) alien status information obtained through Systematic Alien Verification for Entitlements (SAVE), from the United States Citizenship and Immigration Services (USCIS);
- (3) contacting other persons who may be able to help in establishing eligibility if the applicant is unable to participate in the eligibility determination because of physical or mental disability, inability to speak English, or other difficulties;

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- (4) determining whether the applicant is currently receiving benefits from another state when he or she has lived in Oklahoma less than 12 months;
- (5) recognizing expressed or implied needs which includes:
- (A) determining whether there is a need for crisis intervention;
 - (B) addressing the applicant's social services needs; and
 - (C) making appropriate referrals; and
- (6) denying the application if sufficient facts are available to substantiate ineligibility.
- (f) **Requirement for SSN.** A verifiable SSN or application for a SSN is required for every person whose needs are included for food benefits, SSP, SSI-DCP, LIHEAP, or TANF benefits. The requirement for a verifiable SSN also applies to all persons whose needs are included for SoonerCare (Medicaid) benefits, except newborn children deemed eligible and aliens who are residing in the United States (U.S.) unlawfully.
- (1) The worker accepts the applicant's statement to document the SSN unless the information is inconsistent or there are other facts or observations which cause the worker to question the statement.
- (A) Persons for whom a SSN is required but not available must be referred to the appropriate SSA office for SSN enumeration.
 - (i) The worker uses Form 08AD101E, SSN Enumeration Referral, to refer persons to the SSA office for a SSN application.
 - (ii) The return of Form 08AD101E to OKDHS validates the application(s) or indicates which persons have not provided SSA appropriate original evidence of age, identity, and citizenship.
 - (B) Parents of newborns who participate in Enumeration at Birth (EAB) receive from hospital personnel Form SSA-2853-OP3, Message From Social Security. This receipt form is verification the newborn was enumerated at birth.
- (2) The worker denies the application or does not include the person for benefits if the person fails or refuses to furnish or to apply for a SSN.
- (A) For TANF purposes, the person's needs are included; however, a 25% payment standard reduction penalty is imposed until an application for or a SSN is provided.
 - (B) For food benefit and SoonerCare (Medicaid) purposes, only the needs of the person for whom a SSN is not provided or applied for are not included.
- (g) **Citizenship requirement.** All persons applying for state or federal public benefits such as child care subsidy, food benefits, LIHEAP, SoonerCare (Medicaid), SSP, or TANF must declare the citizenship or alien status for each household member applying for such benefits on the application or ~~review/benefit renewal~~. When the payee requests benefits for additional household members between application and ~~review/benefit renewal~~, the payee completes and signs Form 08MP022E, Declaration of Citizenship Status, to declare the citizenship or alien status of the additional household members. Citizenship and alien status for persons applying for SoonerCare (Medicaid) benefits is determined using specific program requirements found at OAC 317:35-5-25.
- (1) When the applicant declares that some or all of the household members applying for benefits are aliens, the worker must follow the SAVE procedures described at OAC 340:65-3-4 to determine if the documents provided to verify legal alien status are valid.
 - (2) The worker also must follow specific program policy regarding citizenship and alien status requirements to determine benefit eligibility found at:
 - (A) OAC 340:40-7-5 for child care subsidy benefits;
 - (B) OAC 340:50-5-67 for food benefits;
 - (C) OAC 340:20-1-8, 340:20-1-10, and 340:50-5-67 for LIHEAP;
 - (D) OAC 317:35-5-25 for SSP; and
 - (E) OAC 340:10-15-1 for TANF.
 - (3) The citizenship requirements at (g)(3)(A) through (C) and (g)(4) of this Section are pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes.
 - (A) Lawful status in the U.S. is considered verified if each person applying for benefits has furnished a SSN or Form 08AD101E from SSA indicating ~~that~~ the person has completed the application to apply for a SSN. OKDHS, through an automated data exchange transaction, attempts to match SSN data exchange information with SSA.
 - (B) Prior to receiving benefits, when OKDHS is unable to match the SSN with SSA for a person 14 years of age or older who is applying for benefits, that person must:
 - (i) sign and have notarized Form 08MP005E, Citizenship Affidavit, attesting to his or her U.S. citizenship or alien status; or
 - (ii) provide a U.S. birth certificate, U.S. passport, or a Certificate of Naturalization. Documents acceptable as verification of citizenship for SoonerCare (Medicaid) described at OAC 317:35-5-25 are also acceptable as verification of lawful status.
 - (C) When the person fails or refuses to sign and have notarized Form 08MP005E or provide one of the documents described at (g)(3)B(ii) of this Section, benefits are denied or closed for that person.
 - (4) The application, ~~review/benefit renewal~~, and Form 08MP022E contain a statement advising the applicant that fraudulent claims of citizenship or lawful alien status are reported to the U.S. Attorney and may be subject to criminal prosecution.
 - (5) When the worker finds that a person who signed Form 08MP005E attesting to U.S. citizenship or legal alien status made a false claim:
 - (A) the worker sends to Adult and Family Support Services Division (AFSSD) ~~(AFS)~~ any applicable evidence and a memo that includes:

- (i) the benefits the person fraudulently applied for or obtained;
 - (ii) the time frame benefits were received; and
 - (iii) how the worker knows the claim was false;
- (B) ~~FSSDAFS~~ staff in consultation with Office of General Counsel staff review the memo and any evidence provided by the worker; and
- (C) when ~~FSSDAFS~~ and Office of General Counsel staff determine the person made a false claim, a complaint is filed with the U.S. Attorney for the applicable district based upon the venue in which the affidavit was executed.

340:65-3-2.1. Counting days for providing verification proof, interview dates, and application time limits

When counting days for providing ~~verification proof~~, interview dates, and application time limits, the worker does not count the first day in the time period but does count the last day unless the Oklahoma Department of Human Services (OKDHS) is not open for business on that date. When the office is not open on the last day of the time period, the client is given until the next business day to comply with eligibility requirements.

(1) **Providing ~~verification proof~~.** When the client must provide information to verify his or her situation before receiving or continuing to receive benefits, the worker gives the client at least ten calendar days to provide needed ~~verification proof~~.

(2) **Interview date.** When the client must be interviewed, the worker sets the earliest possible interview date ~~at least ten calendar days in the future unless an earlier date is agreed upon by the worker and the client allowing for sufficient mail delivery time when the client cannot be reached by telephone.~~

(A) ~~When~~ For the Supplemental Nutrition Assistance Program (SNAP) when the client appears eligible for expedited services, the interview must be completed as soon as possible not to exceed within seven calendar days. The interview date for households ineligible for expedited services must be scheduled no later than the 20th calendar day from the date of application.

(B) Every effort is made to interview a person applying for Child Care Subsidy benefits on the request date per OAC 340:40-3-1 since the earliest date benefits are approved is the date the interview is completed and all necessary proof is provided.

(3) **Application time limits.** Refer to OAC 340:65-3-5 for application processing time limits. To be considered timely, the worker must certify or deny an application no later than the last business day of the time limit. When the time limit ends on a day OKDHS is not open for business, the client has until the next business day to comply with eligibility requirements.

340:65-3-5. Application process

~~Each application is processed by a certification of eligibility or ineligibility unless denied at the applicant's request. The worker certifies or denies an application received online or in the local county office within time limits specified in paragraph (1) of this Section.~~

(1) **Application processing time limits.** An application must be processed within ~~certain~~ program specific time limits. Refer to OAC 340:65-3-2.1, when the last day of the time limit falls on a day the Oklahoma Department of Human Services (OKDHS) is not open for business.

~~(A) When it is not possible to process the application timely, the applicant is notified in writing of the specific reasons for the delay. The applicant is also informed of his or her right to request a fair hearing and the procedures for requesting the hearing. An application is completed timely if the first month's benefits or notice of eligibility or ineligibility is processed within specified time limits. The time limits are:~~

~~(A)~~ Temporary Assistance for Needy Families (TANF) - 30 calendar days;

~~(B)~~ Title IV-E Foster Care - 30 calendar days;

~~(C)~~ Energy Crisis Assistance Program (ECAP) - 48 hours;

~~(D)~~ Supplemental Nutrition Assistance Program (SNAP) - 30 calendar days unless the household is eligible for expedited service. When the household is eligible for expedited service, the application must be completed within seven calendar days per OAC 340:50-11-4;

~~(E)~~ SoonerCare (Medicaid) benefits for:

~~(i) presumptive eligibility for pregnant women - 5 working days;~~

~~(ii) persons categorically related to Aid to the Aged - 30 calendar days;~~

~~(iii) persons categorically related to Aid to the Blind or Disabled - 60 calendar days;~~

~~(iv) Optional Tuberculosis (TB) Coverage group - 45 calendar days; and~~

~~(v) persons requesting long-term care services - 45 calendar days;~~

~~(vi) Diversion Assistance - 7 working days;~~

~~(vii) TANF Emergency Assistance - 5 five working days;~~

~~(viii) Low Income Home Energy Assistance Program (LIHEAP) - 10 calendar days of:~~

~~(i) the date of application when all verification required proof is provided at the time of application; or~~

~~(ii) giving hand-delivering or mailing Form 08AD092E, Client Contact and Information Request, to the applicant requesting needed verification required proof;~~

~~(ix) Refugee Medical Assistance - 30 calendar days; and~~

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(~~1x~~) Child Care subsidy benefits - ~~2~~ working two business days from the date the interview is completed and required verification proof is provided or, if not provided, within 30 calendar days.

(2) **Delayed applications.** When it is not possible to process the application timely, the worker sends the applicant Form 08MP038E, Client Notice of Action Taken, advising the reason for the delay and the applicant's hearing rights.

(~~B~~) An application is not denied when it cannot be processed timely due to:

(~~Ai~~) circumstances beyond the control of the applicant ~~which~~ that result in failure or delay on the part of the applicant to provide needed information;

(~~Bi~~) failure or delay on the part of an examining physician to supply needed information;

(~~Cii~~) failure or delay on the part of the Social Security Administration in making a disability decision ~~on disability~~; or

(~~Div~~) administrative or other emergency that could not reasonably be controlled by the ~~local human services center (HSC) worker.~~

(23) **Certification of ~~eligibility~~ for cash assistance.** When all conditions of TANF eligibility are established for the month of application, certification is effective the date of application and benefits are prorated from the date of application. When all conditions of SSP eligibility are established for the month of application, certification is effective from the first day of the month and the SSP is not prorated.

(A) Certification cannot be effective prior to the application date.

(B) When an application is taken for TANF and all other conditions of eligibility are determined prior to a child's entry to the home, the certification date cannot be prior to the actual date of entry.

(C) A retroactive payment may be authorized for any month eligibility is established. An application denied in error must have payment authorized for the period eligibility is established. The applicant is not penalized if the certification is delayed beyond the time limit for disposition due solely to OKDHS failure to take timely action.

(D) A certification is valid even if a month of ineligibility is determined between application and authorization. An applicant, who is ineligible for the month of application but is eligible for a subsequent month, is certified effective the first day of the subsequent month.

(34) **Certification Notice of ineligibility.** When an applicant is ineligible, a computer-generated notice is sent to the applicant ~~giving~~ providing the effective date and explaining the reason for ineligibility. If the applicant is dissatisfied with the action taken, the applicant may request a fair hearing within the period of time specified in the notice.

(45) **Proration of TANF benefits.** The proration of TANF benefits applies when the applicant is determined

eligible during the month of application unless the applicant received a TANF benefit for the previous month and is eligible to be reopened per OAC 340:65-5-6. Certification is effective from the date of application. Proration also applies when a person is added to an existing case. The family is eligible for the full TANF benefit effective the following month if applicable.

(A) For the month of application only, the TANF benefits are prorated from the date of application. The TANF benefits ~~that~~ the recipient would be eligible to receive if proration did not apply must be determined prior to the computation.

(B) The formula used to determine the prorated amount is: $31 - \text{application date} \times \text{TANF money benefit} \div 30 = \text{the prorated payment}$. The prorated payment is rounded down to the lower dollar amount.

(i) If the prorated benefit is below \$10, the family is not eligible for a money payment but is eligible for SoonerCare (Medicaid) benefits for the entire month.

(ii) When food benefits are requested in the TANF case for the month the TANF payment is prorated, the food benefit unearned income is automatically updated to show the TANF benefit before proration.

(iii) The notification to the client is computer-generated and shows the amount for the initial month and following month.

340:65-3-7. Denial of application

(a) If the applicant is unwilling to cooperate in establishing eligibility, or if eligibility cannot be established, the worker denies the application. A computer-generated notice of denial is sent to the applicant or his or her representative. In case of an applicant's death, the worker sends a letter to the applicant's authorized representative or nearest relative.

(1) Refer to OAC 340:65-3-2 for the definition of what constitutes an application for each program.

(2) Before denying an application with incomplete verification documentation, the worker must provide the applicant Form 08AD092E, Client Contact and Information Request, giving at least ~~ten~~ 10 calendar days to provide the missing verification proof. When the applicant requests assistance in obtaining verification proof, the worker must assist the applicant.

(3) When an applicant verbally asks to withdraw his or her application before eligibility is determined, the worker asks the applicant to put the withdrawal request ~~for withdrawal~~ in writing. The worker denies the application based on the reason given by the applicant.

(4) When the worker is unable to locate the applicant to complete the application, he or she denies the application.

(5) The applicant may request a fair hearing within the specified time of the notice when he or she disagrees with the action taken. Refer to OAC 340:2-5 for fair hearing procedures.

(b) A new application is not required when the household completes the application process and is determined eligible

within 60 calendar days of the initial application date. When eligibility is not determined by the 30th day, if specified by the program, benefits are prorated from the date eligibility is determined.

340:65-3-8. Determination of continuing eligibility

(a) **Determination of continuing eligibility.** Determining continuing eligibility is a process which that must be carried out at appropriate intervals. The appropriate interval for reviewing eligibility depends on the type of benefit received. The worker is responsible for:

- (1) advising the recipient at each contact of his or her responsibility to report changes within ~~ten~~10 calendar days of the date the change becomes known;
- (2) making ~~contacts at unspecified intervals~~contact with the recipient when possible changes are indicated to ensure continuing eligibility;
- (3) synchronizing the ~~review~~renewal dates for all benefits received by the household when possible; and
- (4) determining continuing eligibility.

(b) ~~Review or Supplemental Nutrition Assistance Program (SNAP) certification renewal~~ **Benefit renewal time frames.** The periodic ~~review or SNAP certification~~ renewal time frame varies depending on the program.

- (1) A ~~review~~benefit renewal must be completed at ~~six months~~six-month intervals with a:
 - (A) Temporary Assistance for Needy Families (TANF) recipient due to:
 - (i) pending required immunizations per OAC 340:10-14-1;
 - (ii) payment standard reductions because of program violations per OAC 340:10-3-57(g);
 - (iii) hardship extension approvals per OAC 340:10-3-56(a)(2)(E);
 - (iv) earned income per OAC 340:10-3-31 through 340:10-3-40; or
 - (v) a work-eligible person exempt from TANF Work activities because of his or her incapacity or to care for a disabled family member living in the household per OAC 340:10-2-1;
 - (B) child care recipient per OAC 340:40-9-1; or
 - (C) food benefit recipient subject to a ~~semi-annual review~~mid-certification renewal per OAC 340:50-9-5(i) and (j).
- (2) A ~~review or SNAP certification~~benefit renewal must be completed at 12-month intervals, unless an earlier ~~review~~renewal date is warranted, with a:
 - (A) TANF recipient;
 - (B) State Supplemental Payment (SSP) recipient;
 - (C) child care recipient who is receiving TANF or SSP benefits;
 - (D) food benefit household subject to an annual ~~review~~mid-certification renewal per OAC 340:50-9-5(g) and (h);
 - (E) food benefit household whose Supplemental Nutrition Assistance Program (SNAP) certification renewal must be completed at ~~12 months~~12 months per OAC 340:50-9-6; or

(F) SoonerCare (Medicaid) recipient per OAC 317:35.

(3) The worker completes a SNAP certification renewal at ~~24 month~~24-month intervals for households subject to an annual ~~review~~mid-certification renewal per OAC ~~340:50-9-6~~340:50-9-5(g) and (h).

(c) ~~Eligibility review or SNAP certification renewal~~**Benefit renewal notification.** The recipient is sent notification when the ~~review or SNAP certification~~benefit renewal, ~~subsidized child care benefits, TANF, SSP, or SoonerCare (Medicaid) benefits.~~ Theis due, advising the recipient he or she must complete the review or SNAP certificationbenefit renewal within a certain time frame in order to continue receiving benefits.

(1) The worker sends Form 08AD092E, Client Contact and Information Request, to:

- (A) SoonerCare (Medicaid) long-term care and other recipient groups, not in online enrollment;
- (B) SSP recipients; and
- (C) TANF recipients.

(2) The computer-generated notice titled "Renew My Benefits" is sent to:

- (A) child care recipients;
- (B) SoonerCare (Medicaid) recipients in the online enrollment population; and
- (C) food benefit recipients due for mid-certification renewal.

(3) The computer-generated notice titled "Continue My SNAP Benefits" is sent to food benefit recipients due for certification renewal.

(d) **Signature requirements.** The recipient, guardian, or a person acting on the recipient's behalf, such as an authorized representative or a person with power-of-attorney, must sign the ~~review~~benefit renewal for all programs except TANF. TANF ~~reviews~~renewals must be signed by the recipient. If the recipient is living with his or her spouse, both must sign the ~~review~~renewal.

(e) **Interview requirements.** Whether an interview is required for a ~~review or SNAP certification~~benefit renewal varies depending on the program.

- (1) A face-to-face interview is required for the:
 - (A) TANF ~~Program~~program; or
 - (B) Supplemental Security Income-Disabled Children's Program SSI-DCP service plan ~~review~~renewal per OAC 340:70-8-1.
- (2) A telephone or face-to-face interview is required at SNAP certification renewal except for (e)(3)(C) of this Section.
- (3) An interview is not required for:
 - (A) any of the SoonerCare (Medicaid) programs as long as the ~~review~~renewal is complete, including the signature, all required ~~verification~~proof provided, and none of the information is questionable. When information is not complete or is questionable, the worker contacts the recipient to obtain ~~needed information~~required proof;
 - (B) the Child Care Subsidy ~~Program~~re-viewsprogram renewals unless the child care recipient

receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8; or

- (C) food benefit households completing a:
- (i) ~~review, not a SNAP certification~~ mid-certification renewal, at ~~six~~ six- or 12-month intervals; or
 - (ii) SNAP certification renewal when all household members are elderly or disabled and there is no earned income in the household.

(f) **Eligibility determination.** ~~An eligibility determination is made once the worker determines eligibility after the review or SNAP certification benefit renewal is signed, all required information has been~~ proof is provided, an interview, if required, is conducted, and all information evaluated.

- (1) The eligibility determination may be to:
 - (A) complete the ~~review~~ benefit renewal without changes;
 - (B) complete the ~~review~~ benefit renewal with changes; or
 - (C) close the benefit or benefits.
- (2) Benefits closed may be reopened when the recipient provides required ~~information~~ proof by the last day of the month of closure.

340:65-3-9. Variable conditions of eligibility

The conditions of eligibility subject to change and review are:

- (1) income and resources;
- (2) state residence;
- (3) residence in a public institution;
- (4) blindness and disability in State Supplemental Payment (SSP) and incapacity in Temporary Assistance for Needy Families (TANF) are based on continuous receipt of a disability payment from the Social Security Administration or decision of the Oklahoma Health Care Authority, Level of Care Evaluation Unit;
- (5) concurrent receipt of assistance;
- (6) age;
- (7) living in the home of a relative for TANF per OAC 340:10-9-1;
- (8) school attendance for each minor child in TANF per OAC 340:10-13-1;
- (9) immunizations for each minor child receiving TANF per OAC 340:10-14-1;
- (10) deprivation of parental support for TANF per OAC 340:10-10-1 through 340:10-10-7;
- (11) participation in a TANF Work activity for TANF per OAC 340:10-2-1 through 340:10-2-8;
- (12) need for child care per OAC 340:40-7-7 and 340:40-7-8;
- (13) lawful status for non-citizens;
- (14) household composition; ~~and~~
- (15) pursuit of child support; ~~and~~
- (16) mandatory screening of adult parents or needy caretakers who apply for or receive TANF cash assistance for the illegal use of a controlled substance or substances per OAC 340:10-4-1.

SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES

PART 1. GENERAL PROVISIONS

340:65-5-1. Case changes

(a) The client must report within ~~ten~~ ten calendar days any changes in his or her circumstances that would result in an increase or decrease in benefits. For the Supplemental Nutrition Assistance Program (SNAP), ~~see~~ refer to OAC 340:50-9-5 for reporting exceptions. The worker gives the client ~~ten~~ ten calendar days to provide any required proof. The worker promptly acts on changes that increase or decrease benefits or result in benefit closure. To be considered prompt, the change must be made within ~~ten~~ ten calendar days of the date the change was reported and required proof was received. Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

- (1) household income;
- (2) household resources;
- (3) household composition;
- (4) the client's address or telephone number;
- (5) legal alien status of non-citizens;
- (6) insurance coverage;
- (7) in addition, ~~for the~~ for the Temporary Assistance for Needy Families (TANF) ~~Program~~ program:
 - (A) deprivation of parental support;
 - (B) when the TANF Work activity stops or starts; and
 - (C) when a child in the assistance unit stops attending school; and
- (8) in addition for the Child Care Subsidy ~~Program~~ program the:
 - (A) names of household members in child care;
 - (B) reason child care is needed ~~for the Child Care Subsidy Program~~;
 - (C) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed; and
 - (D) name of the child care facility the child is attending.

(b) After certification, all reported changes, except those reported prior to certification, must be processed by deadline dates shown on Oklahoma Department of Human Services (OKDHS) Appendix B-2, Deadlines for Case Actions, to be effective the first day of the month following the deadline.

- (1) A computer-generated notice is sent to advise the client of any increase or decrease in benefits. A computer-generated notice is not sent when the action taken does not affect the benefit level.
- (2) Advance notice is required when the action taken reduces, closes, or suspends benefits for a reason other than those listed under (b)(3) of this Section. When advance notice is required, deadline dates shown in OKDHS Appendix B-2, Schedule I apply.

(3) When advance notice is not required, deadline dates shown in OKDHS Appendix B-2, Schedule II apply. Advance notice of action is not required when the action taken does not suspend, close, or reduce benefits, or is because of:

(A) ~~the death of a client or Temporary Assistance for Needy Families (TANF) all members included in the benefit;~~

(B) the death of the TANF payee when there is not a relative available to serve as a new payee;

~~(BC) transfer of benefits from one category of assistance to another without a resulting decrease or interruption in benefits such as changing from disability to aged benefits;~~

~~(C) benefit reduction when the spouse included in the TANF benefit is being removed and certified for a State Supplemental Payment (SSP) for the aged, blind, or disabled without a resulting decrease in assistance to the family or interruption in assistance;~~

(D) approval of care in a skilled nursing facility or an intermediate nursing care facility resulting in closure of the person's State Supplemental Payment (SSP) benefit or the SoonerCare (Medicaid) Qualifying Individuals - group 1 (QI-1s) benefit;

~~(E) certification of assistance in another state with no interruption in benefits~~the household moves out of state;

(F) an automatic increase in benefits brought about by income because of federal legislation, such as a cost-of-living increase to all beneficiaries of Social Security, Supplemental Security Income, Railroad Retirement, or Veterans' benefits;

(G) admission of the client to a public institution where his or her needs are fully supplied;

(H) receipt of a clear written statement signed by the client that states:

(i) stating he or she no longer wishes to receive assistance or that gives information which requires termination or reduction of assistance and the client has indicated in writing that he or she understands this will cause a reduction or termination of his or her benefits; or

(ii) requesting closure or reduction of benefits to avoid or repay an overpayment;

(I) the client's whereabouts being unknown and OKDHS mail directed to him or her has been returned by the post office indicating no known forwarding address for all Adult and Family Services (AFS) programs except the Supplemental Nutrition Assistance Program (SNAP);

(J) a TANF child being removed from the home as a result of a judicial determination or voluntarily placed in foster care by the legal guardian for a period in excess of 30 calendar days;

~~(K) a change in state or federal law that affects all households; or~~

~~(L) a reduction in SSP benefits that is necessary to comply with federal law pertaining to maintenance of effort or a state mandate; or~~

(M) a verbal request, child care services no longer being used, a child reaching the maximum allowable age, or a change in child care provider for the Child Care Subsidy program per OAC 340:40-9-2 and 340:40-9-3.

(c) Following the issuance of a notice, the client may present ~~information~~proof to show the action is incorrect and request benefits be reinstated at the previous benefit level until the last calendar day of the month of closure.

(1) When information shows the client remains eligible at the previous benefit level, the worker restores benefits to the previous benefit level.

(2) When information shows the client remains eligible at an increased benefit level, benefits are increased based on specific program rules.

(3) When benefits were closed or suspended and ~~information~~proof provided shows the client remains eligible, but at a reduced benefit level, benefits are reopened using current eligibility information.

(4) When benefits were reduced and ~~information~~proof provided shows the client is eligible, but at a reduced level than the last action taken, the worker reduces benefits further using deadline dates shown in OKDHS Appendix B-2, Schedule I.

(d) When the client requests a fair hearing at the same time he or she requests benefits be reinstated, or requests a hearing at a later date, the worker follows fair hearing procedures ~~described at~~per OAC 340:2-5 and explains if benefits are continued and the appeal is not decided in the client's favor, he or she is expected to repay the benefits.

(1) When the client requests a fair hearing within ~~ten~~10 calendar days following the issuance date of the notice and requests benefits be reinstated at the same benefit level pending the outcome of the hearing, the worker reopens benefits at the same benefit level. Benefits remain open unless another change occurs that requires benefits be reduced or closed.

(2) When the client requests a fair hearing regarding the action more than ~~ten~~10 calendar days following the issuance date of the notice, the worker does not restore benefits unless information provided shows the client remains eligible at the previous benefit level or if the hearing is decided in the client's favor.

(3) Per OAC 340:2-5, the OKDHS Appeals Unit makes a decision regarding the fair hearing and sends a letter of decision to the client.

(A) The worker is responsible for taking the action needed to carry out the decision of the OKDHS Appeals Unit.

(B) If the OKDHS Appeals Unit denies the appeal, benefits are continued through the end of the month in which the final decision on the fair hearing is reached.

SUBCHAPTER 11. VOTER REGISTRATION

Permanent Final Adoptions

340:65-11-1. Purpose

The purpose of this Subchapter is to provide rules for voter registration as the Oklahoma Department of Human Services is a designated voter registration agency.

340:65-11-2. Legal authority

The National Voter Registration Act of 1993 [Public Law 103-31] requires state agencies providing public assistance such as SoonerCare (Medicaid), Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, or state-funded programs primarily engaged in providing services to persons with disabilities to offer voter registration services.

340:65-11-3. Forms used in providing voter registration services

(a) With every application, benefit renewal, or any time a change of address is reported, local county office or support center staff provides the applicant or recipient with the Oklahoma Voter Registration Statement and the Oklahoma Voter Registration Application. All voter registration materials are kept confidential.

(1) **Oklahoma Voter Registration Statement.** When an applicant or recipient:

(A) chooses to register to vote, the person must sign and return the Oklahoma Voter Registration Statement to the local county office; or

(B) does not complete the Oklahoma Voter Registration Statement, it is presumed the person does not wish to register.

(2) **Oklahoma Voter Registration Application.**

(A) When an applicant or recipient submits an Oklahoma Voter Registration Statement indicating that he or she wants to register to vote, the person is provided an Oklahoma Voter Registration Application.

(B) Oklahoma Department of Human Services (OKDHS) staff in the county office or support center offers the same degree of assistance in completing the Oklahoma Voter Registration Application as they offer in completing OKDHS application forms, unless the person refuses such assistance.

(b) The State Election Board provides OKDHS with pre-addressed, postage-paid envelopes to transmit Oklahoma Voter Registration Application forms.

340:65-11-4. Criminal penalties

(a) The Oklahoma Department of Human Services (OKDHS) offers persons applying for and receiving benefits or services provided by OKDHS the opportunity to register to vote in compliance with the:

(1) National Voter Registration Act of 1993; and

(2) Procedure for Voter Registration issued by the Oklahoma State Election Board.

(b) Criminal penalties for improper voter registration are included in:

(1) Section 1973gg-10 of Title 42 of the United States Code (U.S.C.); and

(2) the cautions portion of the State Election Board's Procedure for Voter Registration.

[OAR Docket #13-599; filed 4-15-13]

TITLE 340. DEPARTMENT OF HUMAN SERVICES CHAPTER 70. SOCIAL SERVICES

[OAR Docket #13-600]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 10. Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) [NEW]

340:70-10-1 through 70-10-3 [NEW]

(Reference WF 12-17)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; Section 2604 of Public Law 101-381; and House Bill (HB) 3134.

DATES:

Comment period:

January 2, 2013 through February 1, 2013

Public hearing:

None requested

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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 12, 2013.

Final adoption:

April 12, 2013

Effective:

June 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed permanent rule amendments add Subchapter 10 to Chapter 70 are made to issue rules regarding Acquired Immune Deficiency Syndrome (AIDS) coordination and information services as these rules are revoked in Chapter 340:115 due to the elimination of the Field Operations Division (FOD) in the agency reorganization.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013:

SUBCHAPTER 10. ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) COORDINATION AND INFORMATION SERVICES (ACIS)

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES DIVISION**

[OAR Docket #13-608]

340:70-10-1. Legal basis

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act [Section 2604 of Public Law 101-381] provides the legal basis and funding for the Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS). Program.

340:70-10-2. Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS)

Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) are case management services with an emphasis to:

- (1) coordinate, plan, and supervise development of services for persons with Human Immunodeficiency Virus (HIV) disease to ensure appropriate services are available; and
- (2) ensure those services are provided through either direct service provision or brokering of services through information and referral services.

340:70-10-3. Acquired Immune Deficiency Syndrome (AIDS) information services

(a) Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) provide a central contact point for persons with Human Immunodeficiency Virus (HIV) disease and their families, other state agencies, community organizations, support groups, and Oklahoma Department of Human Services staff to gain information related to AIDS or HIV infection or disease. The information disseminated may cover AIDS or HIV legal, social service, or health care issues; whether these services are available to persons with HIV disease and, if so, where they may be obtained.

(b) There are no income or resource eligibility criteria for HIV/AIDS case management services. Referrals are accepted from all sources within the community.

(c) Form 08AI004E, Permission to Share Confidential Information, must be signed by the client specifying with whom confidential information may be shared prior to the release of any such information by the case manager.

[OAR Docket #13-600; filed 4-15-13]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Administration
Part 3. Administration
340:100-3-29 [AMENDED]
340:100-3-38.10 [AMENDED]
(Reference WF 12-08)

AUTHORITY:

Director for Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 10 O.S. § 1415; 10 O.S. § 1430.1 et seq.; 51 O.S. § 151 et seq.; 63 O.S. § 1-1901 et seq.; and The Domestic Volunteer Service Act (DVSA) of 1973, Public Law (P.L.) 93-113.

DATES:

Comment period:

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Public hearing:

None requested

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The proposed amendments to Chapter 100 Subchapter 3 amend the rules to: (1) designate Developmental Disabilities Services Division (DDSD) State Office staff that have authority to approve and deny volunteer guardianship exceptions and limit volunteer guardians to serving no more than two service recipients without an exception; (2) clarify requirements for background checks; (3) designate DDSD State Office staff that have authority to approve or revoke medication administration training (MAT); (4) remove the requirement that agencies submit the MAT training records to DDSD; and (5) no longer require staff Social Security numbers on training records.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013:

SUBCHAPTER 3. ADMINISTRATION

PART 3. ADMINISTRATION

340:100-3-29. Foster Grandparent Program

All foster grandparent volunteer activities and requests for volunteers 55 years of age or older are recorded and monitored through the Oklahoma Department of Human Services (OKDHS) Foster Grandparent Program Office, in accordance with the Domestic Volunteer Service Act (DVSA) of 1973, Public Law (P.L.) 93-113, as stated in the current Foster Grandparent Program Operations Handbook.

(1) Foster Grandparent Program volunteers provide services to persons younger than ~~age 22 years of age.~~

(2) Volunteers receive an hourly stipend if ~~his or her~~ total household income is within the National Senior Service Corps (NSSC) guideline.

(3) Volunteers provide services no more than 2,088 hours per year.

(4) Volunteers receive all benefits as stipulated in the Corporation for National and Community Service, CNCS Foster Grandparent Program Operations Handbook.

(5) ~~A background check is completed prior to a potential foster grandparent serving as a volunteer and every three years thereafter. The background check includes: Required criminal background and ongoing registry checks for potential foster grandparents. Prior to serving as volunteers and:~~

(A) ~~the Sex Offender Registry; annually thereafter, the volunteer must consent to his or her name being checked on the:~~

(i) ~~Sex Offender Registry; and~~

(ii) ~~Mary Rippy Violent Crime Offenders Registry;~~

(B) ~~the Developmental Disabilities Services Division (DDSD) Community Services Worker Registry; every three years thereafter, the volunteer must complete:~~

(i) the Developmental Disabilities Services Division (DDSD) Community Services Worker Registry;

(ii) an Oklahoma State Bureau of Investigation name and criminal records history search; and

(iii) a Department of Public Safety history.

(C) an Oklahoma State Bureau of Investigation name and criminal records history search;

(D) the Mary Rippy Violent Crime Offenders Registry; and

(E) a Department of Public Safety history.

(6) Prior to volunteering and annually thereafter, the foster grandparent must have an OKDHS vendor contract in force for ~~the reimbursement of travel, meals, or stipends if stipend reimbursement, when applicable.~~

(7) DDSD staff submits monthly expenditure reports to the OKDHS Finance Division federal programs accountant.

340:100-3-38.10. Medication administration training

(a) **General requirements.** Staff must be certified in a medication administration-training course approved by the Developmental Disabilities Services Division (DDSD) ~~human resource development~~ director of ~~human resource development~~ before administering medication(s) to a person receiving services or assisting with a person's medication support plan.

(1) The DDSD ~~human resource development~~ director of ~~human resource development~~ may approve medication administration certification from another state ~~if~~ when supplied with a copy of an acceptable course curriculum.

(2) A licensed nurse who maintains a current, unrestricted license is exempt from the training requirements of this paragraph.

(A) Licensed practical nurses (LPNs) and registered nurses (RNs) may administer medications in accordance with their training.

(B) The employer must maintain a copy of the nurse's license in the nurse's personnel file or make the license available for review.

(3) Certification or re-certification to administer medications is valid for one year from the date of issuance.

(A) If a person allows his or her medication administration certification to expire, he or she cannot administer medication(s) or assist with a medication support plan. If the person's certification has been expired for less than 60 days, the person's certification is renewed by taking the one-day update training.

(B) If the person's medication administration certification has been expired for 60 days or more, the person does not administer medication(s) or assist with a medication support plan and must complete an approved initial medication administration class.

(4) All provider agencies must:

(A) establish written policies that assure compliance with the rules in this Section and with applicable federal and state laws;

(B) provide documentation that staff have been given an in-service in agency-specific practices, including, but not limited to medication storage requirements, documentation forms, and procedures for a medication event, ~~as defined in~~ per OAC 340:100-3-34; and

(C) maintain a copy of each employee's current certification in ~~that employee's~~ his or her personnel file.

(b) **Medication administration training provided by provider agencies.** DDSD provider agencies may conduct medication administration training under the conditions listed in this subsection.

(1) Any provider agency wishing to conduct medication administration training or re-certification classes must submit the prospective trainer's credentials of the prospective trainer(s) to the DDSD human resource development director of ~~human resource development~~ for approval. The provider agency is responsible for ensuring that the instructor adheres to the rules ~~given~~ in this Section.

(A) The prospective instructor must be an RN or LPN working under the supervision of an RN.

- (i) The nurse's license must be current and active through the Oklahoma State Board of Nursing.
 - (ii) Any exception to the requirement that the instructor be an RN or LPN must be approved in writing by the DDS human resource development director ~~of human resource development~~ and the DDS director of nursing.
- (B) Potential instructors with other types of medical experience or licensure may seek approval to teach medication administration training classes by submitting credentials to the DDS human resource development director ~~of human resource development~~.
- (C) Each instructor must request and receive approval every two years to teach medication administration training.
- (2) The DDS ~~director of nursing program manager for health and professional services and~~ human resource development director ~~of human resource development~~ must approve or deny the agency's request in writing. A letter designating approval of an instructor to conduct medication administration training must be maintained in the instructor's personnel file at the agency.
- (3) Approved instructors use only course materials approved by the DDS human resource development director ~~of human resource development~~.
- (4) Each participant in an initial medication training course receives an approved training manual ~~to keep for future use~~.
- (5) Each agency approved to provide medication administration training must implement an internal monitoring system, subject to DDS random review, to review and document the consistency of the training and use of the approved curriculum.
- (6) All medication administration training must be conducted according to the specific requirements of the course, the rules in this Section, and DDS training rules ~~per~~ OAC 340:100-3-38.
- (7) Instructors provide Certificate Number C-0226, Certificate of Medication Administration Training, based on the competency criteria ~~given~~ provided in this paragraph.
- (A) Each person must satisfactorily complete the course with a minimum passing score of 85 percent for each test or subtest. If a person does not achieve a score of at least 85 percent after taking the exam two times, he or she must repeat the class ~~must be repeated~~.
 - (B) The instructor is responsible for administering a written test to each participant and directly observing test completion ~~of the test~~.
- (8) The agency providing the training ~~sends~~ maintains documentation of completed medication administration training ~~to the area DDS Human Resource Development Unit within one week of the completed training~~. Documentation must include the:
- (A) name of the agency providing the training;
 - (B) name(s) of the instructor(s);

- (C) name of the training, whether initial medication administration training or update;
 - (D) training date(s) ~~of the training~~;
 - (E) participant names ~~and Social Security numbers of the participants~~;
 - (F) ~~name of the agency~~ name employing each participant; and
 - (G) each participant's pass or fail status ~~of each participant~~.
- (9) The DDS human resource development director ~~of nursing and director of human resource development~~ may revoke ~~the an instructor's approval of an instructor to provide medication training for violation of the~~ violating rules in this Section.

[OAR Docket #13-608; filed 4-16-13]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 115. FIELD OPERATIONS
DIVISION [REVOKED]**

[OAR Docket #13-601]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. General Provisions [REVOKED]
 - Part 1. General Provisions [REVOKED]
 - 340:115-1-1 [REVOKED]
 - 340:115-1-3 [REVOKED]
 - Part 3. Voter Registration [REVOKED]
 - 340:115-1-21 through 340:115-1-22 [REVOKED]
 - 340:115-1-24 [REVOKED]
 - 340:115-1-27 [REVOKED]
 - Subchapter 5. Acquired Immune Deficiency Syndrome (AIDS) and Coordination and Information Services (ACIS) [REVOKED]
 - 340:115-5-1 [REVOKED]
 - 340:115-5-3 [REVOKED]
- (Reference WF 12-18)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; and House Bill (HB) 3134.

DATES:

Comment period:

January 2, 2013 through February 1, 2013

Public hearing:

None requested

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SUPERSEDED EMERGENCY ACTIONS:

n/a

Permanent Final Adoptions

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Proposed permanent rule amendments revoke Chapter 115 due to agency reorganization and the elimination of the Field Operations Division (FOD).

CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

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, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

PART 1. GENERAL PROVISIONS [REVOKED]

340:115-1-1. Purpose [REVOKED]

The purpose of the Field Operations Division (FOD) is to provide the overall administration and resource management for service delivery to individuals and families throughout the state.

340:115-1-3. Structure of the Field Operations Division [REVOKED]

(a) **Structure.** The Field Operations Division (FOD) is comprised of:

- (1) FOD State Office staff;
- (2) six area offices; and
- (3) all human services centers (HSCs).

(b) **Function.** The primary function of FOD is to ensure local service delivery for the programs for which it is administratively responsible.

(1) **Service delivery.** For purposes of service administration, the Oklahoma Department of Human Services (OKDHS) has divided the state into geographic areas. There is an area director assigned to each area. There is at least one HSC in each county. Metropolitan areas may have more than one HSC. A county director is responsible for each HSC and has line authority for FOD staff in that HSC. The county director reports to the area director who reports to the FOD director. Each area office has field liaisons who provide technical support to the area director and county directors. FOD staff in local HSCs administers:

- (A) Family Support Services;
- (B) Children and Family Services;
- (C) Adult Protective Services;
- (D) Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services;
- (E) Voter Registration; and
- (F) School based Services.

(2) Administration responsibilities.

(A) **State Office.** FOD State Office staff is responsible for ensuring all components of local HSCs function smoothly as they facilitate the delivery of OKDHS programs and services.

(B) **FOD director.** The FOD director:

- (i) directs the implementation of OKDHS programs through the area directors;
- (ii) acquires, administers, and allocates resources to support HSC activities; and
- (iii) provides the OKDHS Director with analyses of budget, personnel, and other resources needed to support operations of OKDHS HSCs.

(C) **Area directors.** Area directors:

- (i) provide supervision, support, and leadership to county directors and area staff;
- (ii) advocate for the field;
- (iii) ensure resources are distributed equitably among local HSCs; and
- (iv) are responsible for program direction to ensure programs are operated in accordance with rules and client outcomes are achieved.

(D) **County directors.** County directors are:

- (i) responsible and have authority for the function and operation of the county HSC. Responsibilities include:
 - (I) advocating for staff and clients;
 - (II) coordinating all personnel activities;
 - (III) supervising, directing, and training of all programs;
 - (IV) developing and maintaining positive and productive relationships with all levels of OKDHS personnel and the community; and
 - (V) developing and maintaining resources and procedures to ensure a smooth flow of activities in a safe environment; and
- (ii) administratively accountable for other program staff including coordination of management activities and problem resolution.

PART 3. VOTER REGISTRATION [REVOKED]

340:115-1-21. Purpose [REVOKED]

The purpose of this Part is to provide rules for voter registration as the Oklahoma Department of Human Services is a designated voter registration agency.

340:115-1-22. Legal authority [REVOKED]

The National Voter Registration Act of 1993 [Public Law 103-31] requires state agencies that provide public assistance such as SoonerCare (Medicaid), Temporary Assistance for Needy Families, Food Stamp Program, or state funded programs primarily engaged in providing services to persons with disabilities to offer voter registration services.

340:115-1-24. Forms used in providing voter registration services [REVOKED]

(a) ~~With every application, reapplication, recertification for benefits, or any time a change of address is reported, local human services center (HSC) staff provides the applicant or recipient with the Oklahoma Voter Registration Statement and the Oklahoma Voter Registration Application. All voter registration materials are kept confidential.~~

~~(1) **Oklahoma Voter Registration Statement.** When an applicant or recipient:~~

~~(A) chooses to register to vote, the person must sign and return the Oklahoma Voter Registration Statement to the local HSC; or~~

~~(B) does not complete the Oklahoma Voter Registration Statement, it is presumed the person does not wish to register.~~

~~(2) **Oklahoma Voter Registration Application.**~~

~~(A) When an applicant or recipient submits an Oklahoma Voter Registration Statement indicating that he or she wishes to register to vote, the person is provided an Oklahoma Voter Registration Application.~~

~~(B) The HSC staff offers the same degree of assistance in completing the Oklahoma Voter Registration Application as it offers in completing OKDHS application forms, unless the person refuses such assistance.~~

~~(b) The State Election Board provides pre addressed, postage paid envelopes to Oklahoma Department of Human Services (OKDHS) for the transmittal of Oklahoma Voter Registration Application forms.~~

340:115-1-27. Criminal penalties [REVOKED]

~~(a) The Oklahoma Department of Human Services (OKDHS) offers persons applying for and receiving benefits or services provided by OKDHS the opportunity to register to vote in compliance with the:~~

~~(1) National Voter Registration Act of 1993; and~~

~~(2) Procedure for Voter Registration issued by the Oklahoma Secretary of the State Election Board.~~

~~(b) Criminal penalties for improper voter registration are included in:~~

~~(1) Section 1973gg-10 of Title 42 of the United States Code (U.S.C.); and~~

~~(2) the cautions portion of the State Election Board's Procedure for Voter Registration.~~

SUBCHAPTER 5. ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) COORDINATION AND INFORMATION SERVICES (ACIS) [REVOKED]

340:115-5-1. Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) [REVOKED]

~~Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) are case management services with an emphasis to:~~

~~(1) coordinate, plan, and supervise development of services for persons with Human Immunodeficiency Virus (HIV) disease to ensure appropriate services are available; and~~

~~(2) ensure those services are provided through either direct service provision or brokering of services through information and referral services.~~

340:115-5-3. Acquired Immune Deficiency Syndrome (AIDS) information services [REVOKED]

~~(a) Acquired Immune Deficiency Syndrome (AIDS) Coordination and Information Services (ACIS) provide a central contact point for persons with Human Immunodeficiency Virus (HIV) disease and their families, other state agencies, community organizations, support groups, and Oklahoma Department of Human Services staff to gain information related to AIDS or HIV infection or disease. The information disseminated may cover AIDS or HIV legal, social service, or health care issues; whether these services are available to persons with HIV disease and, if so, where they may be obtained.~~

~~(b) There are no income or resource eligibility criteria for HIV/AIDS case management services. Referrals are accepted from all sources within the community.~~

~~(c) Form 09AI0043, Permission to Share Confidential Information, must be signed by the client specifying with whom confidential information may be shared prior to the release of any such information by the case manager.~~

[OAR Docket #13-601; filed 4-15-13]

**TITLE 377. OFFICE OF JUVENILE AFFAIRS
CHAPTER 1. FUNCTION AND STRUCTURE
OF THE OFFICE OF JUVENILE AFFAIRS**

[OAR Docket #13-643]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Function and Structure of the Office of Juvenile Affairs

377:1-1-9. Conduct of Committee Meetings [AMENDED]

377:1-1-10. Public hearing regarding a fixed rate [AMENDED]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. § 2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

DATES:

Comment period:

December 17, 2012 through January 16, 2013

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January 17, 2013

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February 20, 2013

Permanent Final Adoptions

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions are the result of non-substantive changes within the Oklahoma State Statutes, as per House Bill 3079 (2012), effective August 24, 2012, which pertain to the designation name changes of certain state agencies.

CONTACT PERSON:

JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866

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 JUNE 1, 2013:

SUBCHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

377:1-1-9. Conduct of Committee meetings

(a) Committee meetings are called by either the Chairman, Executive Director, or Board of Juvenile Affairs. A majority of the Committee constitutes a quorum. Recommendations of the Committee are approved by a majority of the members present and voting.

(b) During a meeting in which the Committee intends to vote on a rate setting recommendation for the Board of Juvenile Affairs, the public, vendors, or OJA staff shall provide evidence to support rate recommendations.

(c) A party requesting a rate shall supply the following information and data to justify the proposed rate recommendation:

- (1) a description of the program or service, including the target population and an annual estimate of the number of juveniles to whom the service will be provided;
- (2) any historical rate information regarding previous rates established for the program, or rates for similar programs or services if no rate exists;
- (3) an explanation and cite of Federal, State, and other regulations and standards which apply;
- (4) the rate being proposed, a summary of the program and cost variables included in the rate, and a program and fiscal impact statement on the juvenile justice system;
- (5) the operational budget and narrative justification for each budget category, including the methodology and cost computations used to arrive at the proposed rate; and
- (6) an estimated total cost of the service.

(d) If the Committee determines additional information is needed, the Chair may recess the meeting until a later date to allow interested parties or staff additional time to secure the information.

(e) In making its recommendations, the Committee shall consider any relevant data which is consistent with applicable state plans, OJA rules, OJA policies and procedures, and statutory provisions.

(f) Once the Committee establishes a recommendation, the Chair shall place the item on the agenda of a Board of Juvenile Affairs meeting for a public hearing to set the rate. The ~~Department of Central Services~~Office of Management and Enterprise Services must be given 30 days advance notice of the public hearing. In addition to the Hearing agenda, the Committee shall submit to the ~~Department of Central Services~~Office of Management and Enterprise Services documentation and other materials which support the proposed rate. The public hearing may be held during any Board meeting.

377:1-1-10. Public hearing regarding a fixed rate

(a) Any comments from the Director of the ~~Department of Central Services~~Office of Management and Enterprise Services, whether made in person or in writing, are included in the minutes of the Board meeting.

(b) During the Board meeting, the Chair of the Rates and Standards Committee shall present the proposed rate and provide the Committee's recommendation to the Board.

(c) After the Chair's presentation, interested parties may present further testimony. Each rate must be openly and separately discussed before the Board's vote. The Board may vote to approve, deny, or modify the recommendation of the Rates and Standards Committee.

[OAR Docket #13-643; filed 4-22-13]

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

[OAR Docket #13-644]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 7. Finance Department
- 377:3-7-3. Regulatory authority [AMENDED]
- 377:3-7-4. OJA financial system [AMENDED]
- Subchapter 11. Risk Management
- Part 1. Drug Policy
- 377:3-11-2. Definitions [AMENDED]
- 377:3-11-5. Substance screening [AMENDED]
- 377:3-11-10. Consequences of positive test results [AMENDED]
- 377:3-11-11. Job applicant and employee opportunities [AMENDED]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

DATES:**Comment period:**

December 17, 2012 through January 16, 2013

Public hearing:

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 11. Risk Management
Part 1. Drug Policy
377:3-11-2. Definitions [AMENDED]
377:3-11-5. Substance screening [AMENDED]
377:3-11-10. Consequences of positive test results [AMENDED]
377:3-11-11. Job applicant and employee opportunities [AMENDED]

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N/A

ANALYSIS:
Rule revisions are to provide compliance with Executive Order 2012-01 pertaining to the use of tobacco products as interpreted in order to comply for the preservation of public health, safety or welfare.

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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 JUNE 1, 2013:

SUBCHAPTER 7. FINANCE DEPARTMENT

377:3-7-3. Regulatory authority
The Office of Juvenile Affairs shall follow:
(1) Oklahoma state statutes;
(2) procedures of the ~~Office of State Finance~~Office of Management and Enterprise Services;
(3) procedures of the ~~Office of Central Services~~;
(4) ~~procedures of the Office of Office of State Treasurer~~;
(5) procedures from federal grantor agencies; and
(6) generally accepted accounting principles.

377:3-7-4. OJA financial system
The financial system established and maintained by the Office of Juvenile Affairs shall comply with state statutes and guidelines or requirements established by the ~~Office of State Finance~~Office of Management and Enterprise Services, State

Treasurer, State Auditor and Inspector, and federal grantor agencies. Changes to OJA procedures related to financial matters shall be provided to the Finance Subcommittee of the Board of Juvenile Affairs for review, and then subsequently to the full Board of Juveniles Affairs.

SUBCHAPTER 11. RISK MANAGMENT

PART 1. DRUG POLICY

377:3-11-2. Definitions
The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:
"Alcohol" means ethyl alcohol or ethanol;
"Employee" means any person who works full-time, part-time, or on a temporary basis for OJA, including management staff;
"Job Applicant" means any person who has applied to be an employee of OJA;
"Illegal Drugs" means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes.
"OJA" means the Office of Juvenile Affairs;
"OSDH" means the Oklahoma State Department of Health;
"Transferred or reassigned employee" means an employee who transfers to a different position or job, or who is reassigned to a different position or job.

377:3-11-5. Substance screening
Drug and alcohol testing may be required for employees and job applicants under the following circumstances:
(1) **Job applicant or transferred or reassigned employee testing.** Every job applicant or transferred or reassigned employee who is conditionally offered employment in the following job families shall be tested:
(A) Juvenile Justice Specialist;
(B) Youth Guidance Specialist;
(C) Police Officer;
(D) Recreational Therapist;
(E) Institutional Safety & Security Coordinator;
(F) Registered Nurse;
(G) Licensed Practical Nurse;
(H) Nursing Manager;
(I) Food Service Personnel; and
(J) Psychological Clinician.
(2) **For-cause testing.** Any employee, at the request of the Executive Director or, if he is unavailable, the Chief of Staff, may be requested or required to undergo drug or alcohol testing at any time it is reasonably believed that an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:
(A) Observable phenomena such as:

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- (i) The physical symptoms or manifestations of being under the influence of a drug or alcohol while at work or on duty; or
 - (ii) The direct observation of drug or alcohol use while at work or on duty;
- (B) A report of drug or alcohol use while at work or on duty ~~provided by reasonable and credible sources and which has been independently corroborated;~~
- (C) Information that an employee has tampered with drug or alcohol testing at any time;
- (D) Evidence that an employee is involved in the use, possession, sale, solicitation, or transfer of drugs while on duty or while on any OJA premises or premises with which OJA has contracted services, or operating any OJA vehicle, machinery, or equipment;
- (E) Drugs or alcohol on or about the employee's person or in the employee's vicinity;
- (F) Negative performance patterns; or
- (G) Excessive or unexplained absenteeism or tardiness.
- (3) **Post-accident testing.** Any employee may be tested when ~~the Director of Safety and Risk Management has a reasonable suspicion that the employee or another person has sustained an injury while at work or that Office of Juvenile Affairs property has been damaged as a direct result of the employee's use of drugs or alcohol while at work, including damage to equipment. No employee who tests positive for the presence of substances, as set forth in and in violation of 63 O.S., § 465.20, or who consumes or intakes such substances in a manner prohibited by such section~~ alcohol, illegal drugs or illegally used chemicals, or who refuses to take a drug or alcohol test required by OJA, shall be eligible for Workers' Compensation Benefits.
- (4) **Post-rehabilitation.** Any employee who has had a positive test or has participated in a drug or alcohol dependency treatment program may be tested for a period of up to two (2) years, commencing with the employee's return to work.
- (5) **Random Testing.** The Executive Director may order random drug testing for OJA permanent, temporary or probationary employees who hold a position within the applicable job families as listed in paragraph one of this rule. The affected employees shall be notified of the effective date and process for testing.
- (6) **Return from leave, fitness-of-duty, and other periodic testing.**
- (A) The Executive Director may request or require an employee to undergo drug or alcohol testing as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or in connection with an employee's return to duty from leave of absence.
 - (B) The Executive Director may schedule periodic drug or alcohol testing for employees occupying a position in 377:3-11-5(1).

377:3-11-10. Consequences of positive test results

- (a) Any employee who has a positive test result will be subject to discipline up to and including discharge from employment. Such an employee will also be referred to the Administrator of Employee Assistance Program. After evaluation, the employee may be required to complete drug and alcohol education and/or treatment. Unsuccessful completion or refusal to participate will result in termination of employment.
- (b) Any job applicant who has received a conditional offer of employment and who has a positive test result will not be hired by OJA.
- (c) An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a positive drug or alcohol test shall be considered to have been discharged for misconduct for purposes of unemployment compensation benefits as provided for in Section 2-406A and 406.1 of Title 40. ~~In order to prove misconduct, the employer need only provide proof of a testing policy and either a refusal to take a drug or alcohol test or a positive test result.~~

377:3-11-11. Job applicant and employee opportunities

(a) Explanation of test results.

- (1) Any job applicant who has received a conditional offer of employment and/or a transferred or reassigned employee who has a positive test result shall have an opportunity to confidentially explain the result orally and in writing to the Director of Safety and Risk Management.
 - (2) Any employee who has a positive test result shall have an opportunity to confidentially explain the result orally and in writing to the Director of Safety and Risk Management.
 - (3) An employee may challenge a positive test result within 24 hours of notice of a positive test result. The cost of such confirmation test shall be the responsibility of the employee unless the confirmation test reverses the findings of the challenged positive test.
- (b) **Information.** Records of all drug and alcohol test results and related information shall be the property of OJA and, upon the request of the job applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. OJA will not release such records to any person other than the job applicant, employee, or the employee's review officer, ~~unless the job applicant or employee, in writing and following receipt of the test results, has expressly granted permission for OJA to release such records in order to comply with a valid judicial or administrative order~~ except for any of the following purposes:

- (1) As admissible evidence by an employer or the individual tested in a case or proceeding before a court of record or administrative agency if either the employer or the individual tested are named parties in the case or proceeding;
- (2) In order to comply with a valid judicial or administrative order; or

(3) To an employer's employees, agents and representatives who need access to such records in the administration of the Standards For Workplace Drug and Alcohol Testing Act.

(4) If OJA contracts with another employer, OJA may share drug or alcohol testing results of any tested person who works pursuant to such contractual agreement.

(c) **Appeal.** Any employee disciplined pursuant to this policy shall have grievance and appeal rights as provided by the OJA Rules and by the Oklahoma Merit Protection Commission in accordance with the Oklahoma Personnel Act, Title 74, Section 840.1 et seq.

[OAR Docket #13-644; filed 4-22-13]

**TITLE 377. OFFICE OF JUVENILE AFFAIRS
CHAPTER 5. RELEASE FROM
INSTITUTIONAL PLACEMENT**

[OAR Docket #13-645]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 3. Pre-Release Planning
- 377:5-3-4. Review of the targeted review date [AMENDED]
- Subchapter 5. Hearings
- 377:5-5-2. Parole Hearing [AMENDED]
- 377:5-5-3. Parole revocation hearing [AMENDED]
- 377:5-5-4. Administrative Transfer Hearing [AMENDED]
- 377:5-5-5. Conduct of Parole Revocation and Administrative Transfer Hearings [AMENDED]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. § 2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

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ANALYSIS:

Rule revisions are provided for clarification on providing notification pertaining to the waiver and Hearing processes.

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 JUNE 1, 2013:

SUBCHAPTER 3. PRE-RELEASE PLANNING

377:5-3-4. Review of the targeted review date

(a) **General Provisions.** The purpose of the review is to assess the juvenile's progress toward the successful completion of his or her individual treatment plan. The review shall provide the juvenile with the opportunity to verbally express any treatment concerns that he or she might have.

(b) **Persons Present.** The juvenile, the Advocate Defender, the JJS, and the JSU worker shall participate in the review.

(c) **Notice.** The juvenile shall receive notice of the review at least 48 hours in advance.

(d) **Recommendations.**

(1) At the conclusion of the review, the institutional staff and JSU worker may recommend to the Parole Board that the juvenile be paroled. If parole is recommended, the recommendation shall be submitted to the Parole Board for release consideration. If the Parole Board rejects the recommendation, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2 (a).

(2) The institutional staff and/or the JSU worker may or may not recommend parole. If parole is not recommended by either or both, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2 (b).

(3) The juvenile shall be advised of the recommendation and the reasons for the recommendation at the conclusion of the review.

(e) **Waiver.** A juvenile may waive his/her Parole Hearing. The Advocate Defender and JJS shall be present and sign the waiver. The waiver shall be sent to the Parole Board by the JJS and copies placed in the juvenile's file.

(f) **Step-down or reentry program.** A juvenile may be recommended for placement in a step-down or reentry program when the juvenile has reached the appropriate phase level and has otherwise sufficiently achieved treatment plan objectives. If the release to such program has not occurred prior to the targeted review date or is not recommended at the conclusion of the targeted review, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2(b), unless waived by the juvenile pursuant to paragraph (e) of this rule.

SUBCHAPTER 5. HEARINGS

377:5-5-2. Parole Hearing

(a) If the Parole Board has rejected a staff recommendation for parole, a 3-member panel of the Parole Board shall preside over the parole hearing, as the Hearing Examiner.

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(b) If parole has not been recommended by the JSU and/or institutional staff, a Hearing Officer shall preside over the parole hearing, as the Hearing Examiner.

(c) **Notice.** The juvenile, parent, guardian, or legal custodian and Advocate Defender shall have at least 14 calendar days notice of the hearing.

(d) **Conduct of Parole Hearings.** The parole hearing shall be conducted in an orderly manner and with a concern for privacy with ample opportunity for the juvenile to express his/her views. The Hearing Examiner shall explain the purpose of the parole hearing and the issues to be addressed to the juvenile.

(1) OJA staff shall provide written documentation and other information, which supports their recommendation at least seven (7) days (excluding weekends and holidays) prior to a Parole Hearing. The information shall include, but is not limited to:

- (A) the number and severity of committing offense(s) and any previous offense(s);
- (B) the institutional adjustment of the juvenile including any serious negative behavior; i.e., major rule violations;
- (C) the existence of a workable parole placement and an adequate program in the community;
- (D) the juvenile's adjustment on any weekend passes or other community release;
- (E) the review of the juvenile's progress;
- (F) the existence of any pending charges and the possibility of any recommitment on these charges;
- (G) the juvenile's willingness to cooperate with parole supervision; and
- (H) relevant conditions in the community.

(2) The juvenile may have access to information, which is submitted to the Hearing Examiner unless the Examiner considers the information harmful to the juvenile.

(3) The juvenile shall be given an opportunity to verbalize and present documentation why he/she should be granted parole and be allowed to question the Hearing Examiner and staff present about any of the documents used in the hearing.

(4) The Hearing Examiner shall consider any documentation submitted and may ask the juvenile, OJA staff, and other parties involved in the care of the juvenile questions relevant to granting or denying parole. If, in the opinion of the Hearing Examiner, a case requires an examination and opinion by a Psychiatrist or Psychologist, Certified members of the appropriate profession are available for such examination and opinions. The Hearing Examiner may access the juvenile's master file as a reference source during the hearing.

(5) When the Hearing Examiner has considered all written and oral evidence, the Hearing Examiner shall prepare a written statement of the specific factors and reasons, which support the granting or denying of parole. The Hearing Examiner shall address the parole release criteria as well as any specific concerns.

(6) A Hearing Officer or Panel may defer its decision on any case for just cause for a period not to exceed 30 days (excluding weekends and holidays). In these cases,

the juvenile shall receive written notice of the reasons for the deferral with the date and time when the Parole Hearing shall resume. The hearing shall resume prior to the expiration of 30 days (excluding weekends and holidays).

(7) **Presiding official is Hearing Officer.**

(A) At the close of the hearing, if a Hearing Officer has presided over the Parole Hearing as provided in Rule 377:5-5-2(b), he/she shall advise the juvenile of his or her recommendation to be submitted to the Parole Board and the reasons supporting the recommendation.

(B) The Hearing Officer shall issue a written recommendation to grant or deny parole to the Parole Board within three (3) days (excluding weekends and holidays).

(C) The Parole Board shall review all records and make a decision to grant or deny parole within ten (10) days (excluding weekends and holidays) of receiving the recommendation.

(D) The decision and the reasons for the decision of the Parole Board shall be made available in writing to the appropriate staff and to the juvenile within 14 calendar days (excluding weekends and holidays) of the Hearing.

(8) **Presiding official is a Panel**

(A) At the close of the hearing, if a Panel has presided over the Parole Hearing as provided in Rule 377:5-5-2(a), the panel shall advise the juvenile of the outcome of its decision to grant or deny parole and the reasons therefor.

(B) The Panel shall prepare a written decision granting or denying parole within ten (10) days (excluding weekends and holidays) of the hearing.

(C) The Panel's decision shall be made available in writing to the appropriate staff and to the juvenile within three (3) calendar days (excluding weekends and holidays) of the issuance of the decision.

(9) **The parole hearing shall be recorded.** A summary of the proceedings and the Hearing Examiner's recommendation or decision shall be kept in the juvenile's case record.

(10) The Parole Board or the Panel shall inform a juvenile of his or her rights to appeal decisions granting or denying parole.

(e) **Persons present.** Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing.

(1) A representative of the Office of Advocate General or designee shall be present at all parole hearings.

(2) The parent, guardian or legal custodian shall be provided prior notice of all Parole hearings.

(3) The JSU and Institutional workers shall be present when requested by the Hearing Examiner.

(4) The Hearing Examiner shall decide whether additional persons may be present at the parole hearing.

(f) **Appeals of parole decisions.** A juvenile, his or her parent, guardian, legal custodian, attorney or a representative of the Advocate General's Office, or a designee may appeal a

decision of the Parole Board or that of a Panel as provided in 377:5-5-2(a) in the following manner:

(1) A written notice of appeal, stating the reasons therefor shall be submitted to the Office of Juvenile Affairs, Office of the Executive Director, within seven (7) days (excluding weekends and holidays) of the receipt of the decision granting or denying parole.

(2) The Executive Director shall consider all appeals and render a decision to sustain or deny an appeal within seven (7) days (excluding weekends and holidays). The Executive Director shall notify the juvenile, Advocate General's Office and any individual who filed on behalf of the juvenile, of his/her decision to sustain or deny the appeal.

(g) **Effective date of parole.** The decision of the Parole Board or the Panel's decision, if not appealed, is final within seven (7) days (excluding weekends and holidays) of the hearing.

(h) **Subsequent hearings.** If parole is denied, a parole hearing must be conducted every twelve (12) months in accordance with rules set forth in this section.

377:5-5-3. Parole revocation hearing

(a) **Parole violations.** When alleged violations of parole occur, the JSU worker and supervisor shall consider specific factors when deciding whether to request a revocation of a juvenile's parole. Factors include the:

- (1) seriousness of the juvenile's offense;
- (2) overall adjustment of the juvenile; and
- (3) demonstrated lack of amenability to treatment.

(b) **Pre-revocation conference.** The first step toward revocation is the pre-revocation conference. The District Supervisor or designee shall meet with the juvenile, the parent, guardian, legal custodian, placement provider (if applicable), and the JSU worker to:

- (1) advise the juvenile and the parent(s), guardian(s) or legal custodian(s) of their constitutional and legal rights as documented;
- (2) discussed the alleged parole violations;
- (3) document the violations on the Application to Revoke Parole forms; and
- (4) distribute copies to the juvenile, the parent(s), guardian(s), legal custodian(s) or placement provider.

(c) **Result of pre-revocation hearing.** The juvenile may choose to have a hearing before a Hearing Officer or waive the hearing by signing a Waiver of Parole Revocation form.

(d) **Revocation hearing.** If the decision is to have a hearing, the JSU worker shall file the Application to Revoke Parole with the Parole Administrator and request that the hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10A O.S., § 2-7-601(B)2].

(e) **Due process.** Parole revocation hearings are held in accordance with 10A O.S., § 2-7-601(B), and OJA rules set forth in this section.

(f) **Waiver of a revocation hearing.** The juvenile may waive a revocation hearing anytime prior to the presentation of evidence by completing and presenting a waiver to the Hearing Officer or other representative of OJA.

(g) **Conducting Interstate Compact Revocation.** For juveniles on parole placed in the State of Oklahoma through the Interstate Compact on Juveniles (ICJ), a Hearing Officer shall perform a fact-finding hearing and determine if the juvenile has violated the terms of his/her parole conditions while residing in the State of Oklahoma.

(h) **General provisions.**

(1) The Parole Administrator shall designate a Hearing Officer to preside over the parole revocation hearing.

(2) As provided in 10A O.S., § 2-7-601(B)(3), if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.

(3) Upon the JSU worker's filing an application, the Parole Administrator, in cooperation with the Hearing Officer shall schedule a revocation hearing within a reasonable period of time.

(4) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the Application to Revoke Parole shall be mailed by the Hearing Officer/Parole Administrator to the juvenile, the parent, guardian or legal custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.

(5) Hearings shall be conducted in accordance with 377:5-5-5.

377:5-5-4. Administrative Transfer Hearing

(a) An Administrative Transfer Hearing is an administrative process by which the Parole Board may terminate the Supervised Community Placement (SCP) status of a juvenile. The juvenile may be placed in an institutional setting. The Parole Board shall base a decision to revoke SCP on the seriousness of the offense and the overall adjustment of the juvenile.

(b) **General provisions.** (Pre-administrative Conference)

(1) **Supervised Community Placement.** When alleged SCP violations occur, the JSU worker and supervisor shall consider specific factors when deciding whether to request an Administrative Transfer Hearing. Factors include the:

- (A) seriousness of the juvenile's offense;
- (B) overall adjustment of the juvenile; and
- (C) demonstrated lack of amenability to treatment.

(2) **Pre-Administrative Transfer Hearing conference.** The first step toward a transfer hearing is the pre-administrative transfer hearing conference. The District Supervisor or designee shall meet with the juvenile, the parent, guardian, legal custodian, placement provider (if applicable), and the JSU worker to:

- (A) advise the juvenile and the parent, guardian or legal custodian of their constitutional and legal rights as documented;
- (B) discuss the alleged violations of the SCP rules;
- (C) document the alleged SCP violations on the Application for Administrative Transfer; and
- (D) distribute copies to the juvenile, the parent, guardian, legal custodian and/or placement provider.

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(c) **Result of Pre-Administrative Transfer Hearing Conference.** The juvenile may choose to have a hearing before a Hearing Officer or waive the hearing by signing a Waiver of Administrative Transfer Hearing. If the juvenile decides to waive an Administrative Transfer Hearing, the JSU worker shall file the waiver with the Parole Administrator.

(d) **Administrative Transfer Hearing.** If the decision is to have a hearing, the JSU worker shall file the application for Administrative Transfer Hearing with the Parole Administrator and request that a hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10A O.S., § 2-7-601(B)2].

(e) **Due process.** Administrative Transfer hearings are held in accordance with 10A O.S., § 2-7-601(B), and OJA rules set forth in this section.

(f) **Waiver of an Administrative Transfer Hearing.** The juvenile may waive an Administrative Transfer hearing any-time prior to the presentation of evidence by completing and presenting a waiver to the Hearing Officer or other representative of OJA.

(g) **Conduct of the hearing.**

(1) After receiving an application for an administrative transfer hearing, the Parole Administrator shall designate a Hearing Officer to preside over an administrative transfer hearing.

(2) As provided in 10A O.S., § 2-7-601(B)(3), if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.

(3) Upon the JSU worker's filing an application, the Parole Administrator, in cooperation with the Hearing Officer shall schedule an Administrative Transfer Hearing within a reasonable period of time.

(4) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the Application for Administrative Transfer Hearing shall be mailed by the Parole Administrator to the juvenile, the parent, guardian or legal custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.

(5) The hearing shall be conducted in accordance with 377:5-5-5.

377:5-5-5. Conduct of Parole Revocation and Administrative Transfer Hearings

(a) Conduct of the hearings. The Hearing Officer shall conduct the hearing to obtain accurate information upon which an informed decision can be reached.

(1) At the beginning of the hearing, the Hearing Officer shall ascertain that:

(A) notice of the hearing, including the time, date and location of the hearing, and a copy of the Application to Revoke Parole or for Administrative Transfer Hearing (ATH), were given to the juvenile, the parent, guardian or legal custodian, and legal counsel at least 24 hours before the hearing; and

(B) legal counsel is present to represent the juvenile and has been given an opportunity to prepare a defense.

(2) Only an attorney who is licensed to practice law in the State of Oklahoma shall be permitted to represent a juvenile.

(3) Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing. Hearings are conducted with a concern for privacy.

(4) Requests for continuances from any of the parties may be granted only at the discretion of the Hearing Officer. Due consideration shall be given to:

(A) the timeliness of the request;

(B) the justification;

(C) convenience to the interested parties;

(D) problems with continued detention; and

(E) the Hearing Officer's schedule.

(5) The Hearing Officer may exclude any participant from the hearing for good cause. The Hearing Officer shall state the reasons for exclusion on the record at the time it is made. However, the attorney for the juvenile and the representative of the agency shall be present continuously while the hearing is in progress.

(6) The Hearing Officer may recess the hearing at the request of either party or at his/her own initiative for a brief period of time as necessary to facilitate the hearing process. The Hearing Officer shall state for the record:

(A) the reasons for the recess;

(B) the time the recess began; and

(C) the time the recess ended.

(7) The first presenter shall be a representative of OJA. The presenter shall carry the burden of proof that the juvenile violated conditions of parole or supervised community placement.

(8) The juvenile and legal counsel shall be present while evidence is being presented. The juvenile's parent, guardian or legal custodian may be present at all times the juvenile is present, unless they are the adverse parties by the nature of the violations alleged.

(9) Either party or the Hearing Officer may invoke the "Rule of Sequestration". When the "Rule" is invoked, the Hearing Officer shall instruct all witnesses that they are to be sequestered from the hearing room, called in the order in which they are expected to testify, and are not to discuss their testimony with other witnesses.

(10) Harassment or intimidation of witnesses is not permitted.

(11) The application may be dismissed at the request of the OJA representative prior to the Hearing Officer's recommendation to sustain or deny the application.

(12) Prior to commencement of the hearing, no one shall be permitted to discuss with the Hearing Officer any facts related to issues of the hearing.

(b) **Evidence.** The Hearing Officer shall screen all evidence for its material value to the issues of the hearing.

(1) Hearsay evidence is considered only in light of its reliability, relevancy, necessity, and probative value.

Generally, the more the information is removed from its source, the less weight it should be given. The Hearing Officer may not base a decision substantially upon hearsay evidence.

(2) Relevant evidence is admissible. Evidence is relevant if it has a tendency to prove or disprove any disputed fact issue before the Hearing Officer.

(3) The Hearing Officer shall take official notice of any fact that the courts may judicially notice and of those matters within the Hearing Officer's particular field of expertise, including policies and procedures of the agency.

(4) Written material may be introduced during the course of the hearing by either the juvenile's legal counsel or the representative of the OJA.

(c) **Fact-finding standards and hearing sequence.**

(1) A Hearing Officer must find by a preponderance of the evidence that:

- (A) the allegations are true; and
- (B) revocation or transfer is warranted under the circumstances.

(2) A preponderance of the evidence means that the evidence indicates that the facts to be proved are:

- (A) credible; and
- (B) more probable than not.

(3) Upon the conclusion of the hearing, the Hearing Officer may recommend that the Application to Revoke Parole or for Administrative Transfer be sustained based upon a preponderance of the evidence. The Hearing Officer shall advise the juvenile and legal counsel of the recommendation and the appeal process.

(4) The Hearing Officer shall prepare a written recommendation within three (3) working days (excluding weekends and holidays) of the hearing as to whether the juvenile's parole should be revoked or placement should be administratively transferred. The report must include the allegation(s), the finding(s) of fact, and mitigating circumstances, if any. The Hearing Officer shall submit the report to the ~~juvenile, the juvenile's legal counsel, parent, guardian or legal custodian, and Parole Board~~ Administrator to submit to the Parole Board.

(d) **Parole Board review.** The Parole Board shall review the recommendation of the Hearing Officer and the entire record of the hearing and either grant or deny the application to revoke parole or administrative transfer in writing.

(e) **Distribution.** The Parole ~~Board~~ Administrator shall send written copies of the final decision and a copy of the written recommendation of the Hearing Officer to the juvenile, the juvenile's parent, guardian or legal custodian, legal counsel, the JSU, and the court in the county wherein the violations occurred within ten (10) working days (excluding weekends and holidays) following the hearing.

(f) **Appeal.** A juvenile may appeal the decision of the Parole Board to the Executive Director who has final review authority. The appeal must be filed by the juvenile within ten (10) days (excluding weekends and holidays) after receipt of the Parole Board's decision. The Executive Director shall inform all involved parties of the appeal decision within ten (10) days (excluding weekends and holidays).

(g) **Recordings.** Recordings of revocation hearings shall be preserved for six (6) months from the date of the hearing or as otherwise required by law.

(h) **Expungement.** If the Application for Revocation of Parole or Administrative Transfer is denied by the Parole Board or the Executive Director, OJA shall expunge all materials related to the alleged offense from the juvenile's case record.

[OAR Docket #13-645; filed 4-22-13]

**TITLE 377. OFFICE OF JUVENILE AFFAIRS
CHAPTER 10. OFFICE OF JUVENILE
AFFAIRS**

[OAR Docket #13-647]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
377:10-1-11. Documents and records [AMENDED]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions are the result of non-substantive changes within the Oklahoma State Statutes, as per House Bill 3079 (2012), effective August 24, 2012, which pertain to the designation name changes of certain state agencies.

CONTACT PERSON:

JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866

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 JUNE 1, 2013:

SUBCHAPTER 1. GENERAL PROVISIONS

377:10-1-11. Documents and records

(a) Documents filed with or presented to OJA shall be retained in the OJA files for the length of time required by state and federal laws. Documents shall be disposed of, sealed, and expunged in a manner consistent with the Records Management Act, 67 O.S., §§ 201 through 216; 67 O.S., §§ 305 through 317, which pertain to archives and records; and 10A O.S., § 2-6-109, which pertains to the sealing of records. The records disposition schedule for OJA is available for public inspection.

(b) OJA records are available for public inspection in accordance with the Oklahoma Open Records Act, 51 O.S., § 24A.1 through 24A.24 as amended and OJA rules and procedures. All requests for agency and/or juvenile records must be submitted to the OJA Public Records Officer, P.O. Box 268812, Oklahoma City, OK 73126. No staff, other than the Public Records Officer or designee, shall fill records requests.

(c) In order to avoid giving unfair advantage to competitors or bidders, OJA shall keep confidential records relating to:

- (1) specifications for competitive bidding prior to publication by the public body; and
- (2) prior to the opening of bids by OJA or its representative, the contents of sealed bids solicited through requests for proposals or requests for information under ~~Department of Central Services~~Office of Management Enterprises, Division of Capital Assets Management (DCAM) purchasing rules or those established by OJA.

(d) Provisions for copying and search fees are contained in the Open Records Act, with these exceptions being noted:

- (1) OJA shall not charge a copy fee to other public entities, clients or their representatives, or employees;
- (2) no search fee is charged to those seeking information in the public interest, including news media, schools, authors, or "taxpayers seeking to determine whether those entrusted with the affairs of its government are honestly, faithfully, and competently performing their duties as public servants."; and
- (3) former employees seeking information from their personnel files shall not pay for the first ten (10) pages, but shall pay the prescribed fees for anything over ten (10) pages.

(e) The fees listed in (1)-(4) of this subsection may be charged separately or in combination. For example, a person may be charged a search fee in addition to a fee for photocopying.

(1) **Fees for photocopying.** OJA has established the following fee schedule, which must be posted for public view, for photocopying documents having the dimensions of 8½ x 14 inches or smaller:

- (A) 25 cents per page;
- (B) a maximum of one dollar (\$1.00) per copied page for a certified page.

(2) **Fees for search.** Requests that are for a commercial purpose or clearly would cause excessive disruption of office function shall be charged a search fee of \$25.00 per hour for staff time spent in the search.

(3) **Fees for other types of reproduction.** Requests for computer runs, microfilming, or reproduction other than photocopying shall be charged the cost to OJA of duplicating the information involved. Such requests shall be forwarded to the State Office where the fee is developed with the appropriate division.

(4) **Payments of fees.** All fees shall be paid prior to delivering the copies. If the request is for search only, the fee shall be paid before the person is allowed to review the material. All fees shall be paid by check or money order; cash is not accepted. The fee payment shall be transmitted to the State Office, Attention Finance Division. In addition, a receipt shall be given upon payment.

[OAR Docket #13-647; filed 4-22-13]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 10. OFFICE OF JUVENILE AFFAIRS

[OAR Docket #13-646]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
377:10-1-4.1. Use of chemical agents [AMENDED]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

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INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions are to provide for clarification on the use of physical force and/or chemical agents in a secure facility.

CONTACT PERSON:

JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866

**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 JUNE 1, 2013:

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SUBCHAPTER 1. GENERAL PROVISIONS

377:10-1-4.1. Use of chemical agents

- (a) Use of Oleoresin Capsicum (OC) spray in a secure facility is prohibited except in the following circumstances that allow for the lawful and justifiable use of force:
(1) when there is a threat for great bodily harm to staff or juveniles for self-protection; or
(2) extreme threat to safety and security of the facility to separate juveniles who are fighting; or
(3) to quell an uprising of multiple juveniles to restrain juveniles in danger of inflicting harm to themselves or others; or
(4) to restrain juveniles who have escaped or who are in the process of escaping.
(b) The deployment of Oleoresin Capsicum (OC) spray is considered a use of physical force. When the use of physical force is authorized, staff members who are assigned to work with juveniles shall employ the least force necessary under the circumstances.
(c) Under no circumstances shall OJA staff or contractors use Oleoresin Capsicum (OC) spray as punishment.
(d) Following the use of any OC spray, medical staff shall immediately evaluate all staff and juveniles in the area of use. When OC spray is used, a critical incident investigation shall be completed, be notified promptly and shall evaluate all parties affected.

[OAR Docket #13-646; filed 4-22-13]

TITLE 377. OFFICE OF JUVENILE AFFAIRS
CHAPTER 15. COMMUNITY-BASED YOUTH SERVICES

[OAR Docket #13-648]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Certification of Children's Shelters Operated by the Oklahoma Department of Human Services [NEW]
377:15-11-1. Origin and authority [NEW]
377:15-11-2. Duties and responsibilities [NEW]
377:15-11-3. Certification process [NEW]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

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Superseded rules:

Subchapter 11. Certification of Children's Shelters Operated by the Oklahoma Department of Human Services [NEW]
377:15-11-1. Origin and authority [NEW]
377:15-11-2. Duties and responsibilities [NEW]
377:15-11-3. Certification process [NEW]

Gubernatorial approval:

December 5, 2012

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30 Ok Reg 277

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13-19A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions are the result of changes within the Oklahoma State Statutes, as per House Bill 2300 (2012), effective June 8, 2012, with a requirement effective November 1, 2012 for OJA to establish a system of certification and to promulgate rules for OJA to certify the two children's shelters operated and managed by the Oklahoma Department of Human Services.

CONTACT PERSON:

JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866

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 JUNE 1, 2013:

SUBCHAPTER 11. CERTIFICATION OF CHILDREN'S SHELTERS OPERATED BY THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES

377:15-11-1. Origin and authority

- (a) The legislature established the Office of Juvenile Affairs responsibilities for developing a certification program for the children's shelters managed and operated by the Oklahoma Department of Human Services in 10A O.S., § 2-7-202.
(b) The Office of Juvenile Affairs shall have the authority:
(1) To establish a system of certification in accordance with the Oklahoma Child Care Facilities Licensing Act;
(2) To issue certifications based upon compliance with minimum requirements;
(3) To revoke certification based upon failure to meet minimum requirements.

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377:15-11-2. Duties and responsibilities

The Office of Juvenile Affairs shall designate the Division of Community-based Youth Services staff to perform the following duties:

- (1) Provide continuing technical assistance and consultation to the shelters to obtain and maintain compliance with minimum requirements;
- (2) Take corrective action based upon non-compliance with minimum requirements;
- (3) Monitor shelter programs to maintain compliance with minimum requirements;
- (4) Issue certifications based upon compliance with minimum requirements;
- (5) Maintain official certification records.

377:15-11-3. Certification process

(a) Definitions.

- (1) **"Board"** means the Board of Juvenile Affairs.
- (2) **"Emergency"** means a situation that poses a direct and serious threat to the health, safety or welfare of any child cared for by the shelter.
- (3) **"Operator or facility operator"** means the representative of the Department of Human Services who has been given authority to act on behalf of the state-operated children's shelter.
- (4) **"State-operated children's shelter or facility"** means the Laura Dester Children's Shelter or the Pauline E. Mayer Children's Shelter or any other shelter that may be authorized by 10A O.S., § 1-9-111.

(b) Types of issuances.

- (1) **Temporary certification.** State-operated children's shelters may be granted up to a six-month temporary certification if documentation does not show compliance with all certification requirements.
- (2) **Certification.** State-operated children's shelters may be granted an operating certification that is valid for twelve months from the date of its issuance. OJA certification staff determines that the shelter is operating in compliance with current Oklahoma Department of Human Services Licensing Requirements for Residential Child Care Facilities and any additional Board requirements.

(c) Case Management.

(1) Periodic visits.

- (A) The OJA certification staff shall annually conduct at a minimum one unannounced visit to each state-operated children's shelter to document compliance with all certification requirements and at a minimum two announced visits to monitor compliance with certification requirements.
- (B) During each unannounced compliance visit, OJA certification staff shall:
 - (i) Observe the entire facility, including outdoor play space and vehicles used for transportation, if available, and
 - (ii) Check resident files and staff files, insurance verifications, and fire and health inspections

within the preceding twelve months for compliance with certification requirements.

(C) During each announced monitoring visit, OJA certification staff shall:

- (i) Provide technical assistance to facility personnel to meet and maintain certification requirements;
- (ii) Consult with facility personnel to meet and maintain certification requirements and improve the quality of care at the facility.

(2) **Forms.** The OJA certification staff shall use standardized certification forms available for public inspection and copying at <http://www.ok.gov/oja/>.

(3) **Reports.** The OJA certification staff annually shall issue at a minimum two monitoring reports and at a minimum one compliance report to the operator within 30 days of a monitoring or compliance visit.

(4) **Oklahoma Department of Human Services, Office of Client Advocacy Reports (OCA).** The OJA certification staff shall review all referrals to OCA that concern the state-operated children's shelters and all investigation reports issued by the OCA to ensure compliance by the state-operated children's shelters with certification requirements.

(d) **Complaint procedure.** All complaints received by OJA concerning the state-operated children's shelters shall be referred to the OCCY Office of Juvenile System Oversight and DHS where appropriate.

(e) Non-compliance with requirements.

(1) **Documentation of non-compliance.** The OJA certification staff shall document on the monitoring reports and the compliance report areas of non-compliance and any discussion with the operator.

(A) The OJA certification staff shall request that the operator sign the monitoring reports and the compliance report, explaining that the operator's signature indicates acknowledgment of information recorded.

(B) If the person in charge refuses to sign, the refusal shall be documented on the report.

(C) The operator shall be given a copy of the completed report.

(D) The operator shall prepare a plan of correction addressing each area of non-compliance no later than 30 days from receipt of the monitoring or compliance report, unless an extension is authorized by OJA certification staff. The plan of correction shall be reviewed and approved by OJA certification staff.

(E) Immediate correction shall be required when the non-compliance has a direct impact on the health, safety, or well-being of a child or children in care. Failure to take immediate corrective action may result in a response to non-compliance as authorized by 10A O.S., § 2-7-202(D)(5) or any other provision of law.

(2) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, OJA shall request an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.

(3) **Case management responses to non-compliant facilities.** When there is non-compliance with certification requirements, the OJA responses may include, but are not limited to:

(A) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining certification requirements.

(B) **Follow-up phone call.** Phone calls are documented on OJA standardized forms.

(C) **Non-compliance letter.** A non-compliance letter may be written to the operator. The OJA certification staff shall send a copy of the report and the non-compliance letter to the operator's supervising authority.

(D) **Return monitoring visit.** A return monitoring visit may be made for non-compliance with certification requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit may be made at that approximate time or any other time deemed appropriate by the OJA certification staff.

(E) **Additional persons.** The OJA certification staff may be accompanied by additional persons during monitoring visits if the facility has areas of non-compliance or if denial or revocation of the license is being considered.

(F) **Increased monitoring visits.** The OJA certification staff may increase the frequency of monitoring when there have been areas of non-compliance or when the need for additional technical assistance is indicated.

(G) **Notice to comply when plan of correction is not approved.** The OJA certification staff may issue a notice to comply specifically addressing those areas where the plan of correction is insufficient or otherwise fails to address the areas of non-compliance or is unacceptable and not approved. The notice to comply shall state the time frame within which compliance by the operator must be accomplished. If compliance is not obtained within the time frames set forth within the notice to comply, then OJA may initiate the denial or revocation process. The operator may be required to take immediate action if the area of non-compliance places the health, safety, or well-being of a child or children in care at risk.

(H) **Office conference.** The OJA certification staff may schedule an office conference with the operator of the facility. Areas of non-compliance and progress toward meeting the plan(s) of correction shall be reviewed and technical assistance shall be offered. The conference and any plan of correction shall be documented.

(I) **Consent agreement.** OJA and the facility operator may enter into a consent agreement whereby

the facility agrees to specific conditions in lieu of certification denial or revocation.

(J) **Certification Denial or Revocation.** The OJA certification staff may recommend that the certification be denied or revoked when non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(4) **Case management responses when children are at risk.** If the OJA certification staff documents a situation where children may be at imminent risk of harm, or if the Office of Juvenile System Oversight is investigating a complaint that children may be at imminent risk of harm, the OJA certification staff may consider the following options:

(A) The operator shall be asked to immediately correct the situation where children may be at risk of harm.

(B) The operator may agree to enter into a consent agreement whereby the facility shall agree to specific conditions.

(C) The OJA certification staff may recommend that the certification be denied or revoked when the operator fails to take necessary steps to eliminate the situation giving rise to the imminent risk of harm.

(f) **Revocation or denial of certification.** The Office of Juvenile Affairs may revoke or deny the certification of any state-operated children's shelter found to be in violation of any of the rules of the Oklahoma Department of Human Services Licensing Requirements for Residential Child Care Facilities, as set forth in 340:110-3-167, and any additional Board requirements.

(1) No certification shall be revoked or denied until such time as the facility operator or applicant shall have been given at least thirty (30) days notice in writing for the grounds of the proposed revocation or denial.

(2) Within one (1) business day of the facility's receipt of the notice of the proposed revocation or denial, the facility operator shall notify the parent, guardian, or legal custodian of any child residing in the facility. The notification to the parent, guardian, or legal custodian shall be given verbally, electronically, or in written form, as well as by the posting of an announcement in the facility.

(g) **Formal Protest.** When served with a notice of proposed revocation or denial, the facility operator may, within fifteen (15) days of receipt of notice, file a formal protest in writing addressed to the Executive Director of the Office of Juvenile Affairs. Upon the filing of the protest, the Executive Director shall set the matter for a hearing within thirty (30) days. Notice of the hearing shall be given to the facility operator by personal service or by delivery to the proper address by certified mail, return receipt requested, at least ten (10) days prior to the date of the hearing. If the facility operator does not file a protest, certification shall be revoked or denied effective upon the expiration of the thirty (30) day notice period set forth in (f)(1). The hearing will not be a full evidentiary proceeding and formal rules of evidence shall not apply. The purpose of the hearing is to provide the Executive Director with information from which a determination may be made as to whether or

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not reasonable grounds exist to support the revocation or denial. The hearing shall be recorded in its entirety, and a copy provided upon request to the facility operator.

(h) Emergency action.

(1) Whenever the Office of Juvenile Affairs finds, after an investigation, that an emergency exists requiring immediate action to protect the health, safety, or welfare of any child cared for by a facility, the Office of Juvenile Affairs may without notice or hearing issue an emergency order stating the existence of such an emergency and requiring that such action be taken by the facility operator as OJA deems necessary to meet the emergency, including when necessary, removing children from the shelter and prohibiting the facility from providing services to children.

(2) The emergency order shall remain in effect until the Executive Director determines that it is no longer necessary. The operator shall be provided with a written Notice of Emergency Action, which will include notice of a hearing before the Executive Director within fifteen (15) days of service of the notice. The Executive Director will make a determination at that time as to whether the emergency situation has been resolved, and may extend, modify, or rescind the order. The hearing will not be a full evidentiary proceeding and formal rules of evidence shall not apply. The hearing shall be recorded in its entirety, and a copy provided upon request to the facility operator.

(i) Review of decision by the Board of Juvenile Affairs.

Any operator aggrieved by a decision of the Executive Director may file a written request for review of the decision with the Board of Juvenile Affairs within fifteen (15) days of the Executive Director's decision. The Board shall have access to all documents submitted to the Executive Director, as well as an audio recording or transcript of the hearing, and the decision of the Director. The matter shall be placed on the next available Board meeting agenda after the filing date. Upon consideration, the Board shall enter a decision affirming, modifying, or reversing the decision of the Executive Director. The decision shall be in writing and copies of the decision shall be promptly mailed to all parties of record in the case. The decision of the Board shall be final and binding.

[OAR Docket #13-648; filed 4-22-13]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 25. JUVENILE SERVICES UNIT

[OAR Docket #13-649]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Per-Court

Part 5. Restitution

377:25-3-40. Juvenile Offender Victim Restitution Work Program

[AMENDED]

377:25-3-41. Restitution [NEW]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. § 2-7-101(H)(3) and 2-7-101(D)(1) and 75 O.S. § 302(A)(1).

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions provide detail and clarification regarding the Juvenile Offender Victim Restitution Work Program, as well as court-ordered restitution.

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 JUNE 1, 2013:

SUBCHAPTER 3. PRE-COURT

PART 5. RESTITUTION

377:25-3-40. Juvenile Offender Victim Restitution Work Program

(a) Title 10A O.S., § 2-7-801 authorizes the Office of Juvenile Affairs to develop and administer Juvenile Offender Victim Restitution Work Programs. ~~With the approval of the court or district attorney, restitution may be a required component of a juvenile's individualized treatment and service plan.~~ The programs developed by the Office of Juvenile Affairs shall provide restitution to a victim by requiring the juvenile to work or provide a service for the victim, or to make monetary restitution to the victim from money earned from the programs. Restitution shall be made through the employment of the juvenile in work programs coordinated by the Office of Juvenile Affairs.

(b) The work programs shall not deprive the juvenile of schooling and shall not prohibit the juvenile from fulfilling restitution obligations through jobs the juvenile has found, by

performing volunteer services for the community, or by doing work for the victim.

(c) A restitution agreement utilizing a Juvenile Offender Victim Restitution Work Program:

- (1) shall not include restitution in excess of actual damages caused by the juvenile.
- (2) shall be paid from the net earnings the juvenile receives through participation.
- (3) shall consist of payment to the juvenile of no less than the federal minimum wage.
- (4) shall take into account the age and physical and mental capacity of the juvenile.
- (5) shall be designed to relate to the juvenile a sense of responsibility for the injuries caused to the person or property of another, and
- (6) shall be approved by the district attorney or the court in accordance with 10A O.S., § 2-7-801(D).

(d) Where the Office of Juvenile Affairs has entered into contracts with private service providers for the implementation of the program, the Office of Juvenile Affairs may require that any service provider pay restitution directly to the victim or victims and pay any amounts due to the juvenile directly to the juvenile.

377:25-3-41. Restitution

Title 10A O.S., § 2-2-503 authorizes the Office of Juvenile Affairs to be designated by the court to receive from the child, the parent or parents of the child, or legal guardian restitution payments for distribution to the victim. The Office of Juvenile Affairs shall file a written report with the court as to restitution not paid as ordered, and upon the juvenile's attaining eighteen (18) years of age, advise the court on whether the restitution order has been satisfied.

[OAR Docket #13-649; filed 4-22-13]

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

[OAR Docket #13-650]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Juvenile Rights
377:35-9-8. Use of tobacco products [AMENDED]

AUTHORITY:

The Board of Juvenile Affairs, pursuant to 10A O.S. §2-7-101(H)(3) and 2-7-101(I)(1) and 75 O.S. § 302(A)(1).

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 9. Juvenile Rights
377:35-9-8. Use of tobacco products [AMENDED]

Gubernatorial approval:

November 8, 2012

Register publication:

30 Ok Reg 139

Docket number:

12-1030

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rule revisions are to provide compliance with Executive Order 2012-01 pertaining to the use of tobacco products as interpreted in order to comply for the preservation of public health, safety or welfare.

CONTACT PERSON:

JLynn Hartman, Director of Government Relations, Office of Juvenile Affairs, 3812 N. Santa Fe Ave., Ste. 400, Oklahoma City, OK 73118, (405) 530-2866

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 JUNE 1, 2013:

SUBCHAPTER 9. JUVENILE RIGHTS

377:35-9-8. Use of tobacco products

Juveniles shall be prohibited from possessing or using any tobacco products. Such products shall be considered contraband and are subject to rules set forth in 377:35-3-7. The Office of Juvenile Affairs' institutions are "tobacco-free environments." As such, use of tobacco products on institutional grounds (~~except in personal vehicles~~) is prohibited.

[OAR Docket #13-650; filed 4-22-13]

**TITLE 730. DEPARTMENT OF
TRANSPORTATION
CHAPTER 30. HIGHWAY DESIGN**

[OAR Docket #13-551]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. Permitting of Oversize, Overweight and Special Combination Vehicles
730:30-9-2. [AMENDED]
730:30-9-6. [AMENDED]
730:30-9-7. [AMENDED]

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730:30-9-9. [AMENDED]

730:30-9-16. [AMENDED]

Appendix A. Gross Weight Load Table for Overweight Permits Based on Bridge Inventory [REVOKED]

Appendix D. Split or "Trunnion" Axles [REVOKED]

Appendix D. Dual Lane Axles [NEW]

Appendix E. Oklahoma Department of Transportation Weight Supplement Sheet for Annual Envelop Permit Not to Exceed 120,000 [REVOKED]

Appendix E. Oklahoma Department of Transportation Weight Supplement Sheet for Annual Envelope Permit Not to Exceed 120,000 [NEW]

AUTHORITY:

Oklahoma Department of Transportation; 23 U.S.C. §§ 127 and 315; 49 U.S.C. §§ 101 through 113; 47 O.S. § 14-118; 69 O.S. §§ 101, 301, 303 and 4002

DATES:

Comment Period:

December 18, 2013 through January 22, 2013

Public Hearing:

January 25, 2013

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Submitted to Governor:

February 8, 2013

Submitted to House:

February 8, 2013

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Gubernatorial Approval:

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Failure of the Legislature to disapprove the rules resulted in approval on April 5, 2013

Final Adoption:

April 5, 2013

Effective:

May 27, 2013

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The proposed rulemaking action is to reflect Department policy regarding the implementation of the automated permit and routing system, to remove obsolete language and to clarify existing language.

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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 27, 2013:

SUBCHAPTER 9. PERMITTING OF OVERSIZED, OVERWEIGHT AND SPECIAL COMBINATION VEHICLES

730:30-9-2. Purpose

The purpose of this Subchapter is to provide rules which will serve as a basis for the development of a system by the Commissioner of Public Safety for the issuance of permits for the controlled movement of reasonably oversized and/or overweight vehicles upon appropriate transportation facilities which are adequately designed to accommodate such vehicle sizes and loads ~~without disrupting~~ with minimal disruption to

the normal flow of traffic, creating damage to public facilities or impairing the public safety. It is the intent of the Oklahoma Transportation Commission to ~~insure~~ensure, to the greatest extent possible, that the traveling public is protected from potential traffic hazards and the public interest and investment in state owned transportation facilities are protected through meaningful control of vehicle sizes and weights exceeding statutory limitations while providing adequate eligibility to permit, where in the public interest, the non-routine movements of oversized and/or overweight vehicles.

730:30-9-6. General conditions and restrictions on permits

Unless otherwise specifically required by law, the following provisions shall apply to the eligibility for permits issued by the Commissioner of Public Safety for the operation of oversized and/or overweight vehicles:

(1) Vehicles bearing an out-of-state license are ineligible for a permit of any type for a movement between an origin and destination, both of which are located within Oklahoma (intrastate movement), unless said vehicle is covered under an agreement between the licensing state and the State of Oklahoma which prorates the licensing and/or registration fees for such vehicles, or unless such vehicle has been temporarily licensed for operation in this state. Evidence of compliance with the provisions of this subparagraph must be provided with the application for any such permit.

(2) Only single trip permits may be requested by the vehicle owner or operator for non-divisible overweight vehicles and/or loads.

(A) A non-divisible load means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than eight (8) work hours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(B) Emergency response vehicles and casks designed and used for the transport of spent nuclear materials, and military vehicles transporting marked military equipment and material shall be considered for permits as non-divisible vehicles or loads.

(C) Non-divisible loads not operating on the interstate Highway System mean loads which, in the opinion of the Commissioner of Public Safety, cannot be reasonably and efficiently dismantled and which may safely operate on the permitted route.

(D) Permits may be issued only after proper consideration of:

(i) allowable weights on, and dimensions of, bridges;

- (ii) potential damage to roadways;
 - (iii) highways under construction;
 - (iv) construction or other detours;
 - (v) traffic volumes;
 - (vi) interference with the normal flow of traffic; and
 - (vii) existing or reasonably anticipated weather conditions such as excessive winds, rain, fog, snow or ice, or any other condition which, in the opinion of the issuing agency, or any law enforcement officer, may adversely affect the safe operation of permitted vehicles or the public safety.
- (3) Single trip permits for non-divisible overweight vehicles and/or loads may be requested only for vehicles which have been lawfully registered to carry the requested weight and only for the time reasonably necessary to accommodate the movement of said vehicle and/or load from its point of origin to its point of destination via the shortest practicable routing. Any return trip of said identical vehicle and/or load shall require an additional permit.
- (4) All permit applications and issued permits must clearly and specifically identify the name and address of the vehicle owner, the vehicle involved including make, model, license number and state of issuance, the number of trailers, their license numbers and state of issuance, a brief description of the load to be transported and, if overweight, the gross permitted vehicle weight, the number of axles, axle configurations, spacings and weights and, if oversize, all oversize dimensions, the lengths of any front or rear load overhang and, for the movement of unlicensed equipment or mobile homes, a serial or other identification number unique to said load.
- (5) No enforcement tolerances shall apply to any permitted vehicle and/or load.
- ~~(6) Except as otherwise provided by law no oversize or overweight permit shall be valid until signed by the Commissioner of Public Safety or the Commissioner's authorized representative within the Permit Section of the Department of Public Safety. A true and correct original, facsimile or copy of a permit with authorized signature shall, when in the driver's possession, be acceptable for enforcement purposes.~~
- (7) Permitted vehicles shall neither access nor move upon any part of the National System of Interstates and Defense Highways or four-lane divided Federal Aid Primary System Highways, state highway or bridge unless the properly signed original permit or true and correct facsimile or copy thereof, specifically authorizing such movement, is in the driver's possession.
- ~~(8) All vehicles and/or loads moving under provisions of a permit shall travel to the right of the center of the roadway and shall yield the right of way to other traffic. An exception occurs on bridges when the permit specifies traveling on the centerline of the roadway.~~
- (9) Permitted vehicles and/or loads, the movement of which requires an escort, shall not travel in convoy.
- ~~(10) Failure of the vehicle owner or driver to comply with any applicable law, rule, regulation, ordinance,~~

posted speed limit or any permit term, condition, limitation or requirement including, but not limited to routes of travel shall, in addition to all other legal remedies, immediately invalidate the permit.

~~(10) Vehicles carrying loads of other vehicles or equipment whose reasonably removable appendages require an oversize permit shall have such appendages removed prior to movement, thereby eliminating the need for an oversize permit.~~

~~(11) Vehicles and/or loads which are both overweight and oversize shall require the issuance of a permit covering both the overweight and oversize movement; however, the permit fees shall apply as though both permits had been issued separately.~~

730:30-9-7. Overweight permits - specific conditions and restrictions

(a) Unless otherwise specifically required by law, in addition to the applicable General Conditions and Restrictions on Permits as contained in 730:30-9-6, no overweight vehicle and/or load and no combination of vehicles and/or loads shall be eligible for a permit unless all the following conditions are met:

- (1) the permit application is for a single trip only; and
- (2) the vehicle and/or load to which the application applies cannot be divided; and
- (3) the applicant has justifiably certified that the movement proposed in the application is necessary due to the existence of a specific public emergency requiring the use of the State Highway System and the Commissioner of Public Safety has concurred in the existence of such emergency; and
- (4) the route requested constitutes the shortest practicable routing available; and
- (5) the overweight vehicle and/or load to which the application applies does not require a fixed single axle loading in excess of 20,000 pounds or 600 pounds per inch and fractional part thereof of nominal tire tread width, whichever is the lesser.

(b) Except as otherwise provided in this subchapter overweight permits shall be required for the movement of vehicles and/or loads exceeding 80,000 pounds or any of the provisions of federal Formula "B" or Table "B" when proposed for movement on the Dwight D. Eisenhower National System of Interstate and Defense Highways and for the movement of vehicles and/or loads exceeding 90,000 pounds or any of the provisions of the Oklahoma Weight and Axle Spacing Table shown in 47 O.S. 1991, Section 14-109(a)2, when proposed for movement on any other portion of the State Highway System.

(c) In accordance with the Federal Highway Administration interpretation of 23 U.S.C. § 127 longer combination vehicles, (LCV's) which are defined in § 127(d)(4) as any combination of a truck tractor and two or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds in accordance with Federal Weight Formula "B" shall be allowed to operate on the Interstate System in Oklahoma at a gross vehicle weight of not to exceed 90,000 pounds, if the LCV configuration was in regular or

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periodic operation as permitted by the Commissioner of Public Safety on or before June 1, 1991. LCV's shall be subject to all other requirements provided for by federal law, state law and this subchapter. The Federal Highway Administration requires that any LCV operating on the Interstate Highway in the State of Oklahoma at a gross vehicle weight in excess of 80,000 pounds, but not exceeding 90,000 pounds, first obtain from the Commissioner of Public Safety a special annual divisible load permit for such operation on the Interstate Highways.

(d) The gross permissible axle weight on any axle which is capable of being lowered for use in supporting a load or retracted from such use by controls located in or accessible from the vehicle cab, shall not exceed the lesser of 8,000 pounds or the axle manufacturer's gross axle weight rating and no tire on any such axle shall be permitted to carry weights in excess of 240 pounds per inch and fractional part thereof of nominal tread width. All tires on any such axle shall be compatible in size, width and air pressure with the tires on fixed load axles.

(e) No operator shall move any load without a permit which is over the weight limits provided by law.

(f) Maps for Load Posted Bridges on Oklahoma Highway System are available on the Department of Transportation web site and updated within two weeks of when changes occur. An Oklahoma Load Limit Map is prepared and published by the Department of Transportation and is revised and republished not less than once every two years. The map indicates, at the time of its publication updating, the locations of all load restricted bridges and highways on the state highway system, as well as the bridge rating for all load restricted bridges. The map does not, in any event, constitute a warranty, either express or implied. ~~The map is available to the Commissioner of Public Safety in such quantities as he may reasonably require. No overweight vehicle which exceeds the restrictions shown on said map for the requested route shall be eligible for a permit.~~

(g) ~~Vehicles and/or loads may be eligible for movement under provisions of an overweight permit in compliance with the provisions of this Subchapter without specific review by the Department of Transportation; provided, no vehicle and/or load shall be eligible for a permit which authorizes a movement of any load exceeding the gross weight or violating the minimum permissible axle spacing limits shown on the Gross Weight Load Table for Overweight Permits or the Minimum Axles, Axle Spacing and Inner Bridge Dimensions diagram shown in Appendices A and B respectively of this Chapter, until a specific load route review has been performed by the Department of Transportation. Said Appendices, which are attached hereto and constitute an integral part of this Chapter, are to be used to determine the eligibility for making a permit application for the vehicles shown and, if eligible, shall be used to issue overweight permits in conjunction with the Oklahoma Load Limit Map. Appendices A and B of this Chapter indicate the maximum permissible gross weight of a prospective overweight load for various combinations of axles, numbers of axles, minimum axle spacing and inner bridge dimensions corresponding to the Bridge Rating for a given restricted bridge shown on the Oklahoma Load Limit Map. Those axle spacing and inner bridge dimensions shown for various configurations of axles constitute the absolute minimum permissible spacings.~~

(~~hg~~) All applications shall be entered into the Department of Public Safety automated overload permitting system and received by the Commissioner of Public Safety for overweight permits which exceed those gross weights shown in the Gross Weight Load Table for Overweight Permits shall indicate all proposed axles, axle spacings and weights, the inner bridge dimensions, gross vehicle weight, vehicle width, height and length, origin, destination and the proposed routing, and shall be referred in writing to the Department of Transportation for a specific load route review. Based upon the findings of that review, the Department of Transportation shall notify the Commissioner of Public Safety whether such a permit may be issued or whether such movement will pose an unacceptable risk of damage to the highways and/or bridges of this state or create a hazard to the public safety. Permits for proposed movements which pose an unacceptable risk in the opinion of the Department of Transportation shall be denied.

(~~hh~~) Overweight load route reviews shall be made by the Department's Bridge and Maintenance Divisions. Bridge reviews shall be performed in strict compliance with provisions of the current AASHTO Manual For ~~Condition Evaluation of Bridges~~ Bridge Evaluation. The computed stresses for a bridge due to an overweight load proposed for permitting shall not, under any circumstances whatsoever, exceed those specified in said manual; provided, the Department of Transportation may reduce the AASHTO recommended allowable computed stress values where necessary to account for deterioration in any of the structural members of any bridge.

(~~ji~~) Based upon previously completed load route reviews, the Department has compiled and maintains ~~an Special Overweight Truck Permit Route~~ Map which is intended for use in permitting the movement of standard configurations of overweight trucks which have been previously studied and are shown on Standard Drawing OL-1. Said drawing indicates the maximum gross vehicle weight and axle group loading, minimum number of axles and inner bridge dimensions for all truck combinations shown. The ~~Special~~ Overweight Truck Permit Route Map and the Standard Drawing OL-1 are herein incorporated by reference and constitute an integral part of this Subchapter and will be updated by the Department not less than once every two years and furnished to the Commissioner of Public Safety in such quantities as he may reasonably require for the purpose of approving or rejecting applications for overweight permits for the movement of indicated vehicles and/or loads without requesting a load route review by the Department for the previously studied routes shown on the map. The Department reserves the right to add, delete or modify at any time, any routes or portions thereof shown on the map due to any change in the condition of highways relating to their ability to carry such loads, by oral or written notification to the Commissioner of Public Safety or his designated representative. Neither the ~~Special Overweight Truck Permit Route~~ Map or the Standard Drawing OL-1 constitutes a warranty, express or implied.

(~~kj~~) ~~All Requests~~ requests for overweight permits on routes not shown or shown in black on the Special Overweight Truck Permit Route Map shall require a load route review and said must go through the Department of Public Safety automated

overload permitting system. ~~requests~~ Requests must be received by the Department of Transportation a minimum of five working days prior to the date requested for actual movement of the load. Additional time may be required where several bridges are involved. Routes shown in red on said map are incapable of supporting permitted overweight vehicles shown on the Standard Drawing OL-1. Permits may be issued for vehicles shown on Standard Drawing OL-1 on routes shown in green on said map.

~~(4) No overweight vehicle shall be routed over State Highway System bridges having an inventory rating below H-15 unless a specific load route review is made and the movement is specifically authorized by the Department of Transportation.~~ ~~(mk)~~ Reducing bridge impact loading through use of multiple trailer systems or by restricting the speed of more conventional permit loads shall not be considered by the Department of Transportation where long hauls are to be made by permitted overweight vehicles. Restricted speed will be considered only for extremely short hauls where it can be shown that ~~an railroad spur or other~~ alternate means of transportation is not readily available.

~~(nl)~~ The Department of Transportation will review specific routes and bridges for various combinations of oversize and overweight trucks including superloads to determine the probability of specific structures and pavements to support such loads; however, due to unknown factors, such as recent changes in conditions or any other unknown factor, neither the Commissioner of Public Safety nor the Department of Transportation shall warrant, guarantee or certify that a particular overweight load or superload can be safely moved over any route without incurring a substantial risk of structural failure to the paving surface or bridge structure due to the higher level of stress permitted for these oversize or overweight loads and no such warranty, guarantee or certification is hereby expressed or implied. The Department of Transportation reserves the right to require an evaluation of potential damage to the pavement on a specific route. A superload is defined as any overweight permit load that exceeds the Standard Drawing OL-1 trucks described in paragraphs ~~(j)(i)~~ and ~~(k)(j)~~ of this subsection. If the route has not been studied previously for the proposed superload, a detailed structural analysis will be required to check each bridge to be crossed by the proposed superload to determine if adequate safety factors exist in the bridge to assure that damage will not occur unless it can be shown by a comparative analysis that it will not exceed stresses developed by OL-1. Bridge stress and safety factors shall be in strict conformance with paragraph ~~(j)(h)~~ of this subsection.

~~(om)~~ Superloads with ~~split or "trunnion" dual lanes~~ axles may be considered as separate side-by-side axles for analysis and permit purposes as shown by the Oklahoma Department of Transportation Standard Drawing OL-1. Superloads with ~~split or "trunnion" axles dual lanes~~ meeting the following requirements will be reviewed by the Oklahoma Department of Transportation for specific routes:

- (1) Each axle shall include a minimum of four (4) tires and not exceed 20,000 lbs. or 600 lbs. per inch and fractional part thereof of nominal tire tread width, whichever

is the lesser. No more than one axle per lane will be allowed for dual lane configurations.

(2) The lateral distance, "W", between consecutive dual wheels on each axle must be a minimum of 4'-0" ~~for Case No. 1 or 4'-6" for Case No. 2,~~ regardless of the type of equipment being used.

(3) The Gage, "G", or split inside distance separating axles between centers of inside dual wheels must be a minimum of 6'-0" measured between centers of inside dual wheels for ~~Case No. 1 or 4'-6" for Case No. 2,~~ regardless of the type of equipment being used.

(4) The permit application is for a single trip only.

(5) The vehicle and/or load cannot be reasonably modified or dismantled for operation in compliance with all legally defined maximum dimensions.

(6) The load does not exceed 16 feet in width when proposed for operation on the Dwight D. Eisenhower National System of Interstate and Defense Highways during any portion of the trip or 20'-0" on the state highway system.

(7) The height of the vehicle and/or load will clear, by a minimum of two (2) inches, the minimum posted height limitation for any overhead structure. ~~A Clearance of Structures-Vertical Clearance of Bridge Structures Map~~ is produced by and available from the Oklahoma Department of Transportation, but the map does not, in any event, constitute a warranty, either expressed or implied.

(8) The track of the vehicle and/or load does not require the use of highway shoulders and the turning radius of the vehicle and/or load does not require leaving the surface of roadway travel lanes, the travel lanes of interchange loops or ramps, to negotiate turns.

(9) The towing vehicle has sufficient power to move the oversize load safely at reasonable highway speeds.

(10) All applications received by the Commissioner of Public Safety for overweight permits shall indicate all proposed axle spacings including gage and wheel spacings, axle spacings and weights, the inner bridge dimensions, gross vehicle weight, vehicle width, height and length, origin, destination and proposed routing, and shall be referred to the Department of Transportation for a specific load route review. ~~If the trucking company elects to hire a professional engineer to do the study, the permit application shall include the engineer's computations. The engineer will place his professional engineer seal of endorsement on all documents and engineering data furnished to the Department. These spacing requirements of a typical split axle unit are provided as Appendix D to this chapter.~~ **As a general rule, increasing the Gage, "G", and the wheel spacing, "W", will, in most cases, improve the load distribution and allow larger gross vehicle weights to pass over the bridges.**

(11) As a general rule, the allowance of ~~split or Trunnion axles is dual lane axels~~ are intended for shorter hauls or, for instances when no other means is available, to move the load and the movement originates or terminates in the State of Oklahoma. In order to minimize disruption to

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traffic, preference should be given to the use of single lane equipment.

730:30-9-9. Oversize permits - specific conditions and restrictions

(a) Unless otherwise specifically required by law, in addition to the applicable General Conditions and Restrictions on Permits as contained in 730:30-9-6, no oversize vehicle shall be eligible for a permit unless all of the following conditions are met:

- (1) the permit application is for a single trip only; however, in cases where an industry located near the Oklahoma State line routinely ships oversize loads directly across the nearby state line, or in other unusual instances, the Commissioner of Public Safety may issue multi-trip oversize permits for specific movements as set forth in 730:30-9-9(j); and
- (2) the vehicle and/or load is nondivisible as defined in 730:30-9-6(2); and
- (3) the load does not exceed 16 feet in width when proposed for operation on the Dwight D. Eisenhower National System of Interstate and Defense Highways during any portion of the trip; and
- (4) the height of the vehicle and/or load will clear, by a minimum of 2 inches, the maximum height limitation for any overhead structure shown on the ~~Clearance of Structures~~ Vertical Clearance of Bridge Structures Map produced by and available from the Oklahoma Department of Transportation, which map does not, in any event, constitute a warranty, either express or implied; and
- (5) the track of the vehicle and/or load does not require the use of highway shoulders and the turning radius of the vehicle and/or load does not require leaving the surface of roadway travel lanes or the travel lanes of interchange loops or ramps, to negotiate turns; and
- (6) the towing vehicle has sufficient power to move the oversize load safely at reasonable highway speeds.

(b) Unless otherwise provided for in this subchapter the following trailer and semitrailer lengths may be permitted by the Commissioner of the Department of Public Safety:

- (1) Semitrailers exceeding 53 feet in length, but not exceeding 59 feet 6 inches in length, operating in a truck tractor-semitrailer combination may operate without a permit on the National Network of highways as designated by the United States Secretary of Transportation, plus the reasonable access provided for in this section as such combination is authorized by 49 U.S.C. App. § 2311 and 23 CFR Part 658.
- (2) Semitrailers and trailers operating in a truck tractor-semitrailer and trailer combination shall not exceed 53 feet in length. No permit may be issued for any such combination in which a semitrailer or trailer exceeds 53 feet in length. In no event shall the total length of the cargo carrying units exceed 110 feet. Such combination vehicles may only operate on the Interstate and four lane divided federal-aid primary systems.
- (3) Semitrailers and trailers operating in a truck tractor-semitrailer-trailer and trailer combination shall not

exceed 29 feet in length for any semitrailer or trailer which is a part of the vehicle combination, and no permit may be issued for such combination if any semitrailer or trailer exceeds 29 feet in length or the overall cargo carrying capacity exceeds 95 feet in length. Such combination vehicles may operate only on the Interstate System and four lane divided highways plus reasonable access.

(4) In no case shall any trailer or semitrailer be placed ahead of another trailer or semitrailer which carries a 5,000 pound or more heavier load. The heaviest trailer or semitrailer shall be placed in front and the lightest at the rear. An empty trailer or semitrailer must not precede a loaded trailer or semitrailer.

(5) Semitrailer or trailer lengths shall be measured from the front of the trailer to the rear of the trailer or any extension of the load beyond the rear of the trailer. Any appendages to the rear of the trailer shall be included in the trailer length measurement.

(c) An automobile transporter, defined as a truck and semitrailer or truck tractor and semitrailer which has the fifth wheel assemblage located on a drop from behind and below the rear most axle of the power unit and which exceeds 70 feet in length but does not exceed 75 feet in length, inclusive of both the front and rear bumpers, may, under the authority of 23 CFR Section 658.13(d), operate on the National Network as designated by the United States Secretary of Transportation, plus reasonable access, without a permit. Automobile transporters may carry an extension of the load, not to exceed 3 feet beyond the front nor more than 4 feet beyond the rear of such transporter.

(d) Truck or truck tractor and semitrailer or trailer combinations which exceed 102 inches but not exceeding 120 inches in width may operate under authority of a special annual overwidth permit. Such permit shall be valid for the movement of single trip overwidth loads exceeding $8\frac{1}{2}$ feet on roads and highways having a surface width of 20 feet or more and for travel to and subsequent travel from the initial permitted movement. Such vehicles may be utilized to transport legal dimensioned loads only when a single trip overwidth permitted movement precedes or follows the legal load movement. Proof of the overwidth permitted movement shall be made available upon demand. Such permits shall be specific to the truck tractor.

(e) Semitrailers exceeding 53 feet but not exceeding 59 feet 6 inches and which are transporting a legal load or no load may operate on roads and highways which are not part of the National Network of Highways under the authority of a special round trip overlength permit issued for the vehicle to proceed to and/or return from a single trip overlength (more than 53 foot long load or where the use of the longer trailer to move a non-divisible load would cause axle weights which would exceed the legal weight to conform to the legal limits) movement performed under permit. The permit shall state the specific route of the trip. Special round trip permits shall be trailer specific.

(f) Permits for vehicles or loads thereon which exceed $13\frac{1}{2}$ feet in height shall operate in accordance with Section 730:30-9-6 and 730:30-9-9 of this subchapter and no special annual permits shall be authorized for movement of any vehicle

or load thereon exceeding such height on the state highway system.

(g) Manufactured homes used in the course of construction, oil field, or seasonal farming activities may operate under authority of an annual special manufactured home permit, however, such manufactured home must comply with the provision of Oklahoma Statutes Title 47 Chapter 14 Section 103F.

(h) Reasonable access as used in this section shall mean a distance of 5 miles measured by the most direct route of travel and not by a radius from the terminal or point of service.

(i) Reasonable access as used in 730:30-9-9(b) may, in the discretion of the Commissioner and consistent with safety, include two lane segments of the National Network in instances where four lane divided federal-aid primary highways which are part of the National Network are separated by a two lane segment of such highway which is not greater than 15 miles in length as designated by the Department to the Commissioner of Public Safety. Use of such two lane segment shall only be for direct travel between the four lane divided segments of the National Network.

(j) Applications for special oversize nondivisible load multi-trip permits for loads to be transported on a vehicle of legal dimensions shall be filed with the Commissioner of Department of Public Safety and shall specify the size of the vehicle with load; its weight; its configuration; the route or routes proposed or area of proposed operation; and such other information as the Commissioner may require. No special multi-trip permit shall be issued for a vehicle with load which is more than 10 feet 6 inches wide, more than 14 feet in height or more than 80 feet in length. The Commissioner shall document with the application the circumstances requiring the issuance of the special multi-trip permit. For industries located near the state line as set forth in 730:30-9-9(a)(1), and regulated public utilities, an annual permit may be issued. All other multi-trip permits shall be for a period of not longer than thirty (30) days and for operation only within the area or routes designated in the application. In no event shall such special oversize multi-trip permit include an authorization for overweight operations, operations on a roadway where the width of the load exceeds the lane width, or operation not in conformance with the provisions of 730:30-9-9(a)(4) and (5). The face of the permit shall state these restrictions.

730:30-9-16. Annual ~~Envelope~~Envelope Vehicle Permit

(a) The Commissioner of the Department of Public Safety may issue an Annual ~~Envelope~~Envelope Vehicle Permit in accordance with 47 O.S. § 14-103G, to a specific vehicle, for the movement of non-divisible oversize or overweight vehicles or loads as defined in 47 O.S. § 14-107(3). Unless otherwise noted, permits issued under this rule are subject to the conditions described.

(1) Vehicle Permit Dimensions

(A) A vehicle transporting an oversize or overweight non-divisible load operating under an Annual ~~Envelope~~Envelope Vehicle Permit may not exceed any of the following:

- (i) 12 feet in width;
- (ii) 14 feet in height;

(iii) 110 feet in length;

(iv) 120,000 pounds gross weight.

(B) Except as provided in section (c) of this rule, the Annual ~~Envelope~~Envelope Vehicle Permit will be issued for these dimensions and weights.

(2) A vehicle transporting an oversize or overweight non-divisible load operating under an Annual ~~Envelope~~Envelope Vehicle Permit may not transport a load that has more than 25 feet of front overhang, or more than 30 feet of rear overhang.

(3) The fee for an Annual ~~Envelope~~Envelope Vehicle Permit is \$4,000, and is non-refundable.

(4) The Annual ~~Envelope~~Envelope Vehicle Permit shall be valid for a period of one year beginning on the date of issue stated on the permit.

(5) An Annual ~~Envelope~~Envelope Vehicle Permit authorizes operation of the permitted vehicle only on the state highway system.

(6) The permitted vehicle is not permitted travel on any part of the Interstate Highway System. Further, the permitted vehicle may only be operated on routes shown as "green" routes on the current Annual ~~Envelope~~Envelope Vehicle Permit Map. The Commissioner shall provide a copy of this rule and a copy of the Annual ~~Envelope~~Envelope Vehicle Permit Map to the permittee when the permit is issued. The permittee assumes the responsibility for assuring that the Annual ~~Envelope~~Envelope Vehicle Permit Map in its possession is current. The most current edition of the Annual ~~Envelope~~Envelope Vehicle Permit Map may be found on the Oklahoma Department of Transportation's website. The permittee also assumes responsibility for obtaining a ~~bridge height clearance map~~ the Vertical Clearance of Bridge Structures Map from the Department of Transportation and assuring the map is correct. The most current edition of the map may be found on the Oklahoma Department of Transportation website. The permittee is also responsible for determining the location of any construction restriction. Construction restrictions may be found on the Department of Public Safety Size and Weight Permit website.

(7) The vehicle or vehicle combination operating under the authority of an Annual ~~Envelope~~Envelope Vehicle Permit must be registered in accordance with 47 O.S. § 1151A(4), for not less than the maximum weight allowed by the Annual ~~Envelope~~Envelope Vehicle Permit.

(8) A permit issued under section 14-103G or this rule is non-transferable.

(9) A permit issued under section 14-103G or this rule may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(A) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered; or

(B) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable

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certificate of title or other qualifying documentation has been transferred from the permittee.

(b) The Commissioner may issue an Annual ~~Envelope~~Envelope Vehicle Permit to a specific motor carrier, for the movement of a vehicle transporting an oversize or overweight non-divisible load as defined in 47 O.S. § 14-107(3). Unless otherwise noted, permits issued under this section are subject to the conditions described in section (a) (1-8) of this rule. A permit issued under section 14-103G or this rule may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

- (1) that no more than one vehicle per permit is operated at a time; and
- (2) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(c) The Commissioner may issue an Annual ~~Envelope~~Envelope Vehicle Permit for vehicles transporting turbine blades used for the purpose of wind power generation. Unless otherwise noted, permits issued under this section are subject to the conditions described in section (a) (1-8). A vehicle operating under this permit may not exceed a cargo length of one hundred sixty (160) feet when transporting the turbine blades. The permit shall be valid only when the vehicle is transporting the blades.

(d) An Annual ~~Envelope~~Envelope Vehicle Permit issued under section (a), (b) or (c) of this rule will be sent to the permittee via registered mail, or at the permittee's request and expense, by overnight delivery service. This permit will be replaced only if:

- (1) the permittee did not receive the original permit within seven business days after its date of issuance;
- (2) a request for replacement is submitted to the department within 10 business days after the original permit's date of issuance; and
- (3) the request for replacement is accompanied by a notarized statement signed by a principle or officer of the permittee acknowledging that the permittee understands the permit may not be duplicated or altered, and that if the original permit is located, the permittee must return either the original or replacement permit to the Department of Public Safety Size and Weights Permit Office.

(e) A request for replacement of a permit issued under section (a), (b) or (c) of this rule will be denied if the Commissioner can verify that the permittee received the original.

(f) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not be replaced. A new permit will be required.

(g) No duplication or alteration of the Annual ~~Envelope~~Envelope Vehicle Permit is authorized. The permit shall be issued on title quality or better paper and shall have a raised gold or similar seal. Any duplication or alteration of the permit by any means voids the permit.

(h) Operation of a vehicle under the authority of an Annual ~~Envelope~~Envelope Vehicle Permit authorized by 47 O.S. § 14-103G or this rule on an Interstate Highway or a route not listed as a "green" route on the current Annual ~~Envelope~~Envelope Vehicle Permit Map, except as provided in section (n) of this rule, voids the permit.

(i) Operation of a vehicle under the authority of an Annual ~~Envelope~~Envelope Vehicle Permit during the hours of darkness in violation of 47 O.S. § 14-101(D) voids the permit.

(j) Operation of a vehicle under the authority of an Annual ~~Envelope~~Envelope Vehicle Permit in excess of any limit set forth in section (a) (1) or (2) of this rule voids the permit, except as provided herein. If the violation of section (a) (1) does not exceed one thousand (1,000) pounds on any axle, or group of axles or the gross weight of the vehicle, the Annual ~~Envelope~~Envelope Vehicle Permit shall not be valid for that move only and the permit remains valid for additional moves. The one thousand (1,000) pound allowance is cumulative among the axles and groups of axles so that the total allowance in no event shall exceed one thousand (1,000) pounds.

(k) Axle Weight Limitations

(1) No axle on a vehicle operating under the authority of an Annual ~~Envelope~~Envelope Vehicle Permit shall exceed any of the following:

- (A) Steer axle ~~65000~~6000 lbs. x the nominal inch per tire tread width x number of tires, not to exceed a maximum of 15,000 lbs.
- (B) Single axle 20,000 lbs. per axle.
- (C) Tandem (2) axle groups 40,000 lbs. / 20,000 per axle, not less than 4 tires per axle.
- (D) Triple (3) axle groups 60,000 lbs. / 20,000 per axle, not less than 4 tires per axle.

(2) Except as provided for in subsection (j), operation of a vehicle under the authority of an Annual ~~Envelope~~Envelope Vehicle Permit in excess of the weights set forth in this section and Appendix E voids the permit.

(l) Annual ~~Envelope~~Envelope Vehicle Permits are valid only on the State highway system. Operation of the equipment on city streets or county roads may require additional authorization from local officials.

(m) Operators of vehicles operating under an Annual ~~Envelope~~Envelope Vehicle Permit shall comply with the holiday restrictions of 47 O.S. § 14-101E.

(n) Operators of vehicle operating under the Annual ~~Envelope~~Envelope Vehicle Permit shall comply with the curfew restrictions in Oklahoma, Tulsa and Cleveland Counties which are set forth in Department of Public Safety rule OAC 595:30-3-4(1). Violation of these curfew restrictions voids the permit.

(o) Operators of vehicles operating under Annual ~~Envelope~~Envelope Vehicle Permit shall comply with the weather restrictions set forth in OAC 595:30-3-4(5).

(p) The Annual ~~Envelope~~Envelope Vehicle Permit is not valid for the operation of unitized equipment or special mobilized machinery. Use of the permit for the movement of unitized equipment or special mobilized machines voids the permit.

(q) Operators of vehicles operating under an Annual ~~Envelope~~Envelope Vehicle Permit shall comply with the escort requirements set forth in Department of Public Safety rule OAC 595:30-3-18(b).

(r) The operator of any vehicle shall, upon request, surrender a void permit to any commissioned law enforcement officer. Upon receipt of a surrendered permit, the officer shall

return the permit to the Department of Public Safety Size and Weights Permit Office.

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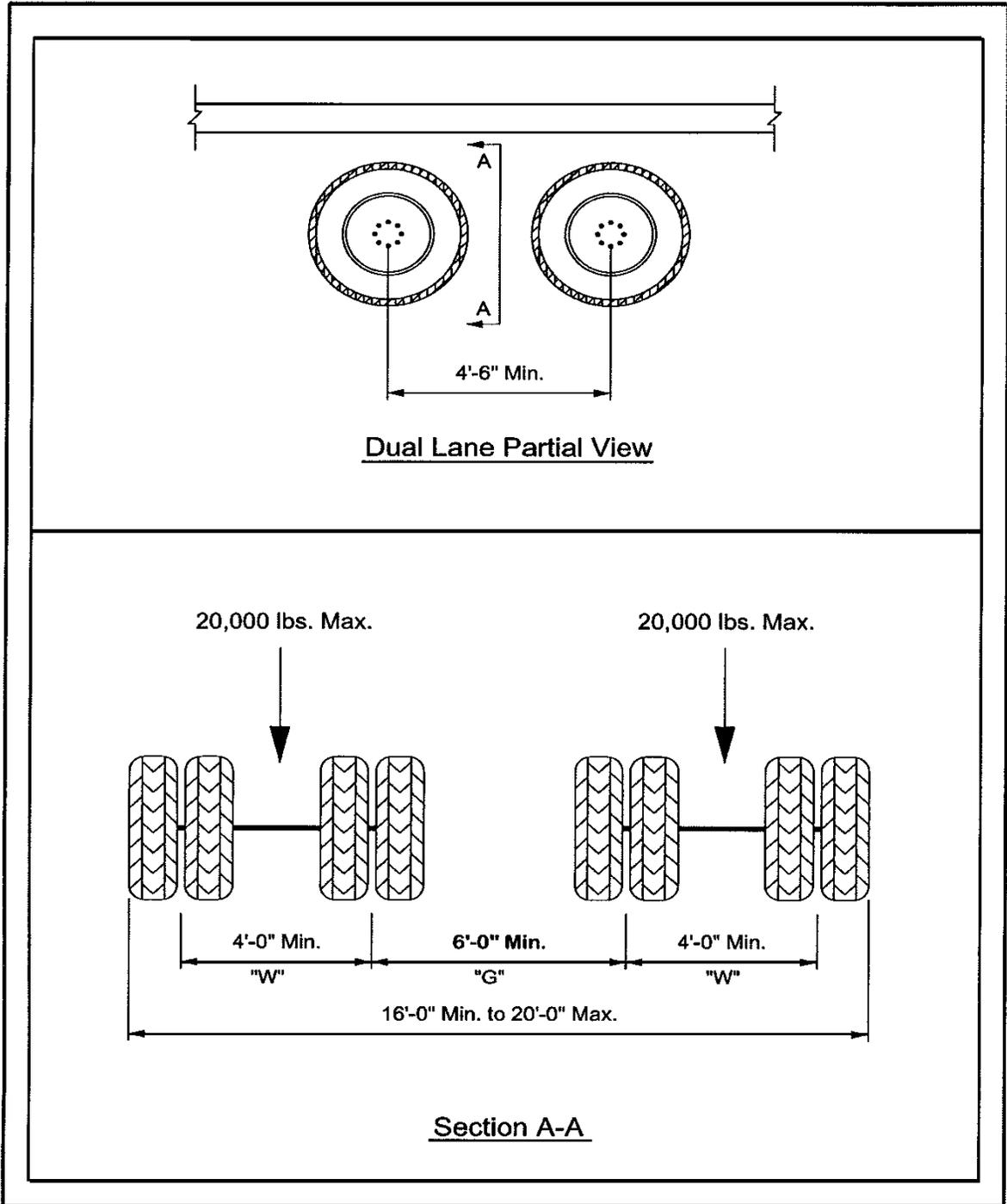
APPENDIX A. GROSS WEIGHT LOAD TABLE FOR OVERWEIGHT PERMITS BASED ON BRIDGE INVENTORY [REVOKED]

Truck Type	Bridge Inventory Rating						
	H-15	H-16	H-17	H-18	H-19	H-20	*HS-20
5 Axles	80,000	84,000	89,000	90,000	90,000	90,000	90,000
6 Axles	83,000	88,000	93,000	99,000	103,000	107,000	110,000
7 Axles (4 Axles Grouped)	82,000	86,000	91,000	95,000	100,000	105,000	125,000
7 Axles (< 4 Axles Grouped)	86,000	91,000	97,000	102,000	108,000	113,000	128,000
8 Axles (5 Axles Grouped)	80,000	84,000	89,000	94,000	98,000	103,000	129,000
8 Axles (< 5 Axles Grouped)	93,000	99,000	104,000	110,000	116,000	122,000	138,000
8 Axles (6 Axles Grouped)	81,000	85,000	89,000	94,000	99,000	104,000	133,000
9 Axles (5 Axles Grouped)	89,000	95,000	100,000	105,000	111,000	116,000	138,000
9 Axles (< 5 Axles Grouped)	100,000	107,000	114,000	120,000	126,000	131,000	139,000
10 Axles (6 Axles Grouped)	88,000	94,000	99,000	104,000	110,000	115,000	140,000
10 Axles (< 6 Axles Grouped)	99,000	105,000	111,000	117,000	123,000	129,000	145,000

*Gross Loads corresponding to Bridge Inventory Rating "HS-20" are the maximum permitted on any bridge or highway on the Oklahoma State Highway System without specific load route review. Bridges rated HS-20 are not shown on the "Oklahoma Load Limit Map" since all highways and bridges are restricted to the above maximum gross loads and minimum axles spacing without specific load route review.

APPENDIX D. SPLIT OF "TRUNNION" AXLES [REVOKED]

APPENDIX D. DUAL LANE AXLES [NEW]



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APPENDIX E. OKLAHOMA DEPARTMENT OF TRANSPORTATION WEIGHT SUPPLEMENT SHEET FOR ANNUAL ENVELOPE PERMIT NOT TO EXCEED 120,000 [REVOKED]

APPENDIX E. OKLAHOMA DEPARTMENT OF TRANSPORTATION WEIGHT SUPPLEMENT SHEET FOR ANNUAL ENVELOPE PERMIT NOT TO EXCEED 120,000 [NEW]

Maximum allowable group and axle weights:	
<u>Steer axle:</u>	600 x Per nominal inch of tire tread width (size of tire) x the number of tires - not to exceed 15,000 lbs. EXAMPLE: 600 x 10.00 inch size tires x 2 = 12,000 lbs. max.
<u>Single axle:</u>	20,000 lbs. maximum per axle
<u>Tandem (2) axle:</u>	40,000 lbs. maximum / 20,000 lbs. per axle maximum
<u>Triple (3) axle:</u>	60,000 lbs. maximum / 20,000 lbs. per axle maximum

Below are examples of truck/trailer combinations.

Maximum axle weights	
<p>5 axle combination</p> <p>Spacing: 15' Min. 4'-3" Min. 30' Min. 4'-3" Min.</p> <p>Weight (lbs.) 15,000 40,000 40,000 95,000 Max.</p>	<p>7 axle combination</p> <p>Spacing: 15' Min. 4'-3" Min. 30' Min. 4'-3" Min.</p> <p>Weight (lbs.) 15,000 60,000 Max. 60,000 Max. 120,000 Max.</p>
<p>6 axle combination</p> <p>Spacing: 15' Min. 4'-3" Min. 30' Min. 4'-3" Min.</p> <p>Weight (lbs.) 15,000 40,000 60,000 115,000 Max.</p>	<p>7 axle combination</p> <p>Spacing: 15' Min. 4'-3" Min. 30' Min. 4'-3" Min.</p> <p>Weight (lbs.) 15,000 40,000 65,000 120,000 Max.</p>
<p>Vehicles may have axle combinations other than those listed above, however, they may not exceed the maximum weight per axle grouping or 120,000 lbs. gross weight.</p>	

- The permitted vehicle may not travel over a load-restricted bridge with weights greater than the posted limits.
- Must use caution when crossing any railroad track or crossing.
- Routing is the sole responsibility of the permittee.

[OAR Docket #13-551; filed 4-11-13]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 10. SPORT FISHING RULES**

[OAR Docket #13-556]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

- Subchapter 1. Harvest and Possession Limits
- 800:10-1-4. Size limits on fish [AMENDED]
- 800:10-1-5. Bag limits on fish [AMENDED]
- 800:10-1-7. Possession limit [AMENDED]
- Subchapter 3. Methods of Taking
- 800:10-3-3. Additional definitions [AMENDED]
- 800:10-3-4. General: hook and line, rod and reel [AMENDED]
- 800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting [AMENDED]
- Subchapter 5. Area Restrictions and Special Fees
- 800:10-5-3. Designated trout areas [AMENDED]
- 800:10-5-6. Lakes, reservoirs, rivers and streams [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401 and 6-302 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 3, 2012 - January 11, 2013.

Public hearing:

January 8, 2013

Adoption:

February 4, 2013

Submitted to Governor:

February 6, 2013

Submitted to House:

February 6, 2013

Submitted to Senate:

February 6, 2013

Gubernatorial approval:

February 18, 2013

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 4, 2013.

Final adoption:

April 4, 2013

Effective:

June 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

These rules will change length limits on bass, create bag limits for fish listed as Species of Special concern, restrict bait collected for personal use, change the number of rods used when snagging from a boat, prohibit noodling on Lakes Ponca and Carl Blackwell, establish a designed trout area near Medicine Park and eliminate same in the Altus area, establish bag limits on bait fish taken from rivers and streams and prohibit cast nets on Oklahoma Scenic Rivers.

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, 2013:**

**SUBCHAPTER 1. HARVEST AND POSSESSION
LIMITS**

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from ~~these~~ public waters unless regulated by specific municipal ordinance or specified in regulations listed below:

~~(A) Lakes and Reservoirs — Adair Recreation Area, Altus Lugert, Arcadia, Birch, Broken Bow, Carl Albert, Carl Blackwell, Copan, Draper, Eufaula, Ft. Cobb, Ft. Gibson, Foss, Grand including all tributaries to state line, Greenleaf, Hall, Hefner, Heyburn, Hudson, Hugo, Kaw, Keystone, Lone Chimney, Oologah, Overholser (including tailwaters and downstream to NW 10th St. bridge), Pine Creek, Sardis, Skiatook, Sooner, Taft, Texoma, Thunderbird, Tom Steed, Vanderwork, Wayne Wallace, Waurika and Wister (Wister Lake boundaries are US Highway 271 bridge on Fourche Maline River, US Highway 59 bridge on Poteau River and the low water dam, one half mile above county road bridge number 156, on Holson Creek) and all impoundments on Black Kettle National Grasslands.~~

~~(B) McClellan-Kerr Arkansas River Navigation System — All lakes, cutoffs and oxbows from the Oklahoma Arkansas line to the Port of Catoosa, including R.S. Kerr, Webbers Falls, W.D. Mayo, Chouteau and Newt Graham Reservoir.~~

~~(C) Department of Wildlife Conservation fishing areas — Lakes Burttschi, Chambers, Elmer, Etling, Fugate, Jap Beaver, Ozzie Cobb, Schooler, Vincent, Watonga, Dahlgren, and all the ponds and streams within the following Department WMA's, Atoka, Beaver River, Bolen Hollow, Gruber/Cherokee, Cookson, Ellis Co., Ft. Gibson, James Collins, Lexington, Nanih Waiya, Okmulgee, (excluding the Deep Fork River), Pushmataha, Raymond Gary, Robbers Cave, Robert S. Kerr, Sandy Sanders, Spavinaw, Stringtown, and all ponds and lakes in the Ouachita National Forest.~~

~~(D) Lower Illinois River below Tenkiller Dam, including the old river channel. Lakes and Reservoirs with no length limit on largemouth and smallmouth bass - Lake Murray, all waters in the Wichita National Wildlife Refuge and American Horse Lake.~~

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (*Pomoxis* sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller,

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Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(4) All flathead catfish (*Pylodictis olivaris*) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.

(5) All walleye, sauger, and saugeye (sauger x wall-eye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Altus-Lugert, Ellsworth, Foss, Fort Cobb, Lawtonka and Murray lakes and the respective tailwaters, where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

(6) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(7) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(8) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(9) All smallmouth bass between nine (9) and twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek. Possession of smallmouth bass between nine (9) and twelve (12) inches in total length at these streams is prohibited.

(10) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.

(11) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(12) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

(13) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

800:10-1-5. Bag limits on fish.

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County) where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer at Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate, of which only one (1) smallmouth bass may be twelve (12) inches or longer, in Glover River from the confluence with Little River upstream to the "Forks of the Glover River" where the limit is six (6) largemouth, smallmouth, or spotted bass or six in aggregate of which only three (3) may be smallmouth bass, and at the Blue River Public Fishing Area where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (*Pomoxis* sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream

channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately 1/2 mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) Six (6) walleye, sauger and/or saugeye, or six (6) in aggregate.

(7) Five (5) striped bass and/or striped bass hybrids, except as designated in 800:10-1-5((8), (10) and (11)).

(8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir.

(9) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.

(10) Twenty (20) striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Kaw, Konawa, Tom Steed, Sooner and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.

(11) Five (5) striped bass and/or striped bass hybrids, in aggregate, of which only two (2) may be 20 inches or longer in Arcadia Lake and Skiatook Lake.

(12) Twenty-five (25) white bass in Lake Texoma.

(13) One (1) paddlefish (~~Polydon~~Polyodon spathula) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must

keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's paddlefish permit number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession.

(14) It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation or its authorized agent, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.

(15) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(16) One (1) alligator gar (*Atractosteus spatula*) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.

(17) One (1) of any fish species classified as those of Special Concern Category I or Category II (as identified in 800:25-19-6). Such harvest must be reported to ODWC.

(17-18) Other fish do not have bag or possession limits.

800:10-1-7. Possession limit

(a) No resident or nonresident shall have in their possession, in the field, more than one (1) daily bag limit listed in 800:10-1-5 and 800:10-1-6. Nonresidents shall not have more than two (2) daily bag limits in their possession at any time

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other than in the field, except for paddlefish which can be four (4) daily bag limits. "In the Field" means while fishing, or while in a boat, or on the bank or in the immediate vicinity of any river, creek, stream, lake or pond, or while transporting or carrying the fish from the waters described above to camp or from such waters to the final destination.

(b) No person may possess with intent to transport or transport via land based transportation more than 200 ~~non-game fish, including~~ shad, for personal use as bait. The sale, offer for sale, transport from Oklahoma with intent to sell or offer to sell shad taken from waters of this state is prohibited.

(c) No person shall transport shad from waters infested with Bighead or Silver Carp. These waters shall be designated in the Oklahoma Department of Wildlife Conservation Oklahoma Fishing Guide which is published annually. If shad are collected from these listed waters for use as bait, they may only be used in the water body from which they were collected.

SUBCHAPTER 3. METHODS OF TAKING

800:10-3-3. Additional definitions

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

"Bow and arrow" when used for bowfishing means any bow and arrow (including crossbows) having no more than one (1) point with no more than four (4) barbs. Devices that permit a bow to be held mechanically at full or partial draw are permitted.

"Foul hooked" means a fish hooked other than inside the mouth.

"Gaff hook" means a handheld hook or handheld pole with a hook attached and may only be used in the landing of a fish, other than paddlefish, already hooked by other legal hook and line methods.

"Gig" means a hand-held fish spearing device mounted at the end of a shaft containing not more than three (3) points and not more than two (2) barbs on each point.

"Grabhook" means a handheld hook or handheld pole, or rope, with a single hook attached used in the initial taking of a fish.

"Jugline" means a vertical line suspended from a non-metallic or nonglass floating device which is drifting free or anchored, having no more than five (5) hooks per line and limited to twenty (20) such juglines per person.

"Limblines" means a line attached to a limb, branch, other natural object, or non-metallic manmade pole having no more than two (2) hooks attached per line and limited to twenty (20) such limblines per person.

"Noodling" means the taking of fish by use of hands only.

"Snagging" means the dragging of one (1) single hook or one (1) treble hook through the water attached to a hand-held line or fishing rod and line for the purpose of impaling fish Only one (1) pole or rod per angler is permitted while snagging.

"Yo-Yo" means any mechanical fishing device which automatically recoils when a fish strikes and is limited to no more than twenty (20) such devices per person.

"Unattended" means not within visual observing distance.

800:10-3-4. General: hook and line, rod and reel

(a) All waters of the state are open to taking game and nongame fish by hook and line attached to a pole or rod and reel, trotline, throwline, or other hook and line methods, except where closed by other provisions in this Chapter.

(b) No person may use more than seven (7) poles or rods while fishing, unless provided otherwise by other provisions in this Chapter. Only one (1) pole or rod per angler is permitted while snagging.

(c) The use of "Gaff Hooks", or the use of any other technique or device that severely injures the fish, to assist in landing paddlefish, is prohibited, except while bowfishing.

800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting

(a) **Bow and arrow.** The use of bow and arrows in bowfishing shall be lawful for taking nongame fish only in all waters of the state throughout the year, except:

(1) Illinois River and its tributaries shall be closed at all times to such fishing except, those portions above the Horseshoe Bend boat ramp on Tenkiller Reservoir which is open from December 1 through March 31 annually. Tenkiller Reservoir below Horseshoe Bend boat ramp is open to bowfishing.

(2) Reservoir tailwaters, other than Eufaula, Keystone, Wister, Fort Gibson, Thunderbird and Hudson (Markham Ferry) shall be closed to fishing with bow and arrows throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(3) All waters defined as "Designated Trout Areas" during open season for taking trout are closed.

(4) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(5) Only that section of the Caney River from Hulah Dam downstream approximately 1,200 feet to the re-regulation dam is closed. Fishing with a bow and arrow is lawful in the Caney River below the re-regulation dam.

(6) The following portions of Grand River:

(A) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(B) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (approximately 1/2 mile) is closed throughout the year with the next 1/2 mile downstream from the highline crossing closed during periods when the spillway gates are open and

discharging water and for seven (7) days following closure of the spillway gates.

(7) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(8) "Close To Home" fishing waters and Lakes Pickens, Carl Albert and Taft and all ponds and lakes in the Ouachita National Forest are closed.

(9) The taking of paddlefish by bow and arrow is prohibited on the Red River from Denison Dam downstream to the stateline year round.

(10) Bowfishing may be used at Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper throughout the year during daylight hours only.

(11) The Salt Fork of the Arkansas River from the spillway of Great Salt Plains Reservoir downstream to the State Highway 38 Bridge is closed.

(b) **Grabhooks.** Taking fish by use of a grabhook is prohibited in all state waters.

(c) **Gigs, spears and spearguns.** The use of gigs, spears and spearguns containing not more than three (3) points with no more than two (2) barbs on each point shall be lawful for taking nongame fish only, except white bass may be taken by use of a gig. These methods are lawful in all:

(1) Rivers and streams from December 1 through March 31, except:

(A) The taking of paddlefish by use of gig, spear or speargun is prohibited from May 16 through March 14 of the following year, statewide.

(B) The Poteau and Fourche Maline Rivers and all their tributaries within LeFlore County are closed throughout the year.

(C) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(D) The Canadian River from Eufaula Dam downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of Grand River:

(i) The main river channel of the Grand River below the turbine outlets of Grand River Dam downstream to State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream for a distance of one (1) mile is closed throughout the year.

(G) Rivers and streams in Delaware and Mayes counties are open to the use of gigs throughout the year, unless specifically closed in other sections of this chapter.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Lakes and reservoirs throughout the year, except:

(A) Waters within the boundaries of the Wichita Mountains Wildlife Refuge other than that portion of Lake Elmer Thomas are closed.

(B) Tenkiller Reservoir, below the Horseshoe Bend boat ramp, is closed throughout the year except by speargunning when used with a self-contained underwater breathing apparatus which is closed from June 15 through July 15 annually to the taking of flathead catfish only.

(C) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Carl Albert, Sooner, Lone Chimney and Taft and all ponds and lakes in the Ouachita National Forest are closed. Konawa is closed to gigging.

(D) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) Reservoir tailwaters other than Hudson (Markham Ferry) shall be closed to fishing with gigs, spears and spearguns throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(d) **Snagging.** Snagging for nongame fish only shall be lawful in all waters of the State throughout the year, except:

(1) Reservoir tailwaters other than Fort Gibson which is open 24 hours a day, and ~~Wister and Hudson (Markham Ferry) which are~~ open from 10 p.m. to 6 a.m.; shall be closed to fishing by snagging throughout the year. This does not alter provisions of 29 O.S., Section 7-101, which designates a safety zone of the first 150 feet immediately below the dam on all reservoirs except Tenkiller, Canton, Salt Plains, and Fort Supply.

(2) The following rivers, lakes, and streams:

(A) The Illinois River and its tributaries above the Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(D) The Canadian River from Eufaula Dam tailwater Downstream for a distance of one (1) mile to be so designated by buoy or other appropriate marker is closed throughout the year.

(E) The Caney River from the Hulah Dam downstream to the confluence of the old and new river channels is closed.

(F) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) That portion of the Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing (a distance of

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approximately 1/2 mile) is closed throughout the year with the next 1/2 mile downstream from the highline crossing closed during periods when the spillway gates are closed.

(iii) That portion of the Grand River occurring from the Markham Ferry Dam (Lake Hudson Dam) downstream to the Highway 412 bridge from 10 p.m. to 6 a.m. year-round.

(G) The Arkansas River from the tailwaters below Keystone Dam downstream to the Interstate 44 (Skelly Drive) Bridge at Tulsa shall be closed at all times to such fishing.

(H) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(I) All Department Fishing Areas, all "Close To Home" fishing waters and Lakes Pickens, Carl Albert, Sooner and Konawa and all ponds and lakes in the Ouachita National Forest are closed.

(J) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(3) When snagging for paddlefish the hook must have the barbs removed or completely closed. Only one (1) rod and reel is permitted per angler when snagging.

(e) **Noodling.** Possession of hooks, gaffs, spears, poles with hooks attached and/or ropes with hooks attached while in the act of noodling, shall be proof of violation of the "hands only" noodling law. Noodling shall be lawful for nongame fish only throughout the year in all:

(1) Rivers and streams of the state, except:

(A) The Illinois River and its tributaries above Horseshoe Bend boat ramp on Tenkiller Reservoir and below the dam shall be closed at all times to such fishing.

(B) All waters designated as "Designated Trout Areas" during the open season for taking trout are closed.

(C) Kiamichi River from Hugo Dam downstream to the first railroad bridge is closed.

(D) The following portions of the Grand River:

(i) The main river channel of Grand River below the turbine outlets of Grand River Dam downstream to the State Park Bridge is closed throughout the year.

(ii) The Grand River occurring below the spillway outlets of Grand River Dam downstream to the highline crossing is closed throughout the year except the day of and two (2) days following closure of the spillway gates when noodling will be legal.

(E) The Little River tributary of Thunderbird Reservoir above Franklin Road in Cleveland County is closed.

(2) Corps of Engineers and Bureau of Reclamation Reservoirs, Grand and Hudson Lakes.

(3) All waters within the boundaries of the Wichita Mountains Wildlife Refuge are closed.

(4) All Department Fishing Areas, all "Close To Home" fishing waters (except noodling is allowed in the

North Canadian River from the NW 10th St. bridge downstream to the MacArthur St. bridge in Oklahoma City) and Lakes Pickens, Carl Albert, Taft, and Lone Chimney, Ponca and Carl Blackwell and all ponds and lakes in the Ouachita National Forest are closed.

(5) Lakes Hefner, Overholser (including tailwaters and downstream to NW 10th St. bridge) and Draper are closed.

(f) **Netting (noncommercial).** Netting (noncommercial) is closed statewide.

(g) **Collecting Bait for personal use.** Cast netting, trawl netting, dip netting, minnow traps and seining non-game fish commonly used for bait for personal use is lawful in all waters of this state unless specifically closed under 800:10-5-2, 800:10-5-3 and/or 800:10-5-6. Cast nets and dip nets shall have a mesh size no greater than three-eighths (3/8) inch square mesh. Seines shall not exceed twenty (20) feet in length, and the mesh shall be no larger than one-half (1/2) inch square unless seining for minnows then the mesh shall not exceed one-fourth (1/4) inch. Minnow traps shall have a mesh size no greater than one-half (1/2) inch, shall not be longer than three (3) feet, shall not exceed eighteen (18) inches in diameter on round traps or eighteen (18) inches on a side on square or rectangular traps. The trap entrance (throat) cannot exceed two (2) inches across the opening. No person shall fish with more than 3 minnow traps. All minnow traps must have the owner's name and address attached and the traps must be attended once every 24 hours. All game fish and non-game fish not commonly used for bait must be released immediately. Minnow traps cannot be made with glass.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam. Trout season is year-round.

(5) ~~The North Fork of the Red River from Altus Lugert Dam downstream to the low water dam at State Highway 44A, trout season is from November 1 through March 15 of the following year; season is annual.~~ Medicine Creek from Gondola Lake dam downstream to the State Highway

49 bridge, where trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter (1 1/4) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Lake Pawhuska trout season is from November 1 through March 31 of the following year; season is annual.

(b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage containers are prohibited at designated trout areas except in designated camping and parking areas.

(4) Fishing in the lower Mountain Fork River trout stream below Broken Bow dam from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, is restricted to artificial flies and lures only and barbless hooks only.

(5) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.

(6) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately 1/2 mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

(7) All trout retained in possession must be kept separate from other anglers' fish on a stringer or in a creel that is clearly marked with that anglers name and license number.

800:10-5-6. Lakes, reservoirs, rivers and streams

(a) **Lake Carl Albert.** The following special rules govern public use on Lake Carl Albert:

- (1) Outboard motors used shall not exceed ten (10) h.p.
- (2) Maximum speed limit for boats shall be six (6)m.p.h.

(3) Waterfowl hunting shall be permitted in season; all other hunting shall be prohibited on the area.

(4) Swimming shall be prohibited on the area.

(5) Waterskiing and trotlines, throwlines, netting, noodling, yo-yo's and jug fishing are prohibited.

(6) Camping shall be limited to three (3) days.

(b) **Pickens Lake.** The following special rules govern public use on Pickens Lake in Fountainhead State Park:

(1) Fishing shall be permitted throughout the year.

(2) All fishing shall be pole and line or rod and reel only (2 poles per person).

(3) Fishing shall be restricted to only Oklahoma residents in the following categories:

(A) All persons 65 years of age or older.

(B) All persons having disability of 60% or more.

(C) Legally blind persons.

(D) Any person who has not yet attained the age of 16 years.

(E) Any persons accompanying persons in categories above.

(c) **Sooner Reservoir.** The following special rules govern public fishing at Sooner River:

(1) Fishing by juglines, trotlines, limblines, throwlines, snagging, spearfishing, gigging, grabhooks and scuba diving is prohibited.

(2) Fishing by boats, wading or all flotation devices is prohibited within the buoy-marked area of the intake channel, discharge channel and spillway embankment.

(3) Fishing from the dam, the fenced area below the dam and the north bank of the intake channel is prohibited.

(4) The use of Tilapia as bait and/or the stocking of Tilapia is prohibited.

(d) **Lake Lone Chimney.** The following special rules govern public use at Lake Lone Chimney:

(1) No overnight camping is permitted until recreational facilities are developed.

(2) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed of six (6) miles per hour or less and may not be left on the water or the lake area longer than the limit on camping.

(3) Water skiing and swimming are prohibited.

(4) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic material.

(5) Commercial concessions and private development on Tri-County Authority property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited.

(6) Dogs must be kept on a leash at all times, except when used to hunt during legal waterfowl hunting season.

(7) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, three-wheelers, etc., except on maintained roads, designated parking areas and designated camping areas. It shall be unlawful to operate any vehicle in a reckless manner or operate any vehicle in a

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manner to create a public nuisance or to destroy or damage public property. Operators must be licensed drivers.

(8) Cutting or defacing of trees and vegetation shall be prohibited. Removal of vegetation, soil, rocks, water or minerals is prohibited except under written permission by the Tri-County Authority Board of Directors.

(9) Disorderly conduct, vandalism, theft and damage to Tri-County Authority property is prohibited.

(10) The lake shall be closed from 10:00 p.m. to 5:00 a.m., except for fishing and hunting activities.

(11) No person may fish with more than two (2) poles or rods.

(12) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns and the taking of fish by noodling and taking of bait minnows by any method are prohibited.

(13) All hunting or discharging of firearms, except for legal waterfowl hunting, is prohibited.

(e) **Taft Lake.** The following special rules govern public use at Taft Lake:

(1) Camping is permitted, but limited to three (3) days. Camping is permitted only in designated camping areas.

(2) Boats and motors are permitted. All boats and motors must comply with existing state boat regulations and boat operators must obey Oklahoma State Boat Laws. All boats must be operated at no-wake speed (six '6' miles per hour or less) and may not be left on the water or the lake area longer than the limit on camping.

(3) Water skiing and swimming are prohibited.

(4) Disposal of trash, refuse and debris is prohibited, except in designated trash containers. This includes organic and inorganic materials.

(5) Commercial concessions and private development on State property are prohibited. Soliciting, advertising or promoting any commercial or private activity is prohibited. The use of these areas for any commercial operation in any way is prohibited.

(6) Dogs must be kept on a leash at all times.

(7) Boat houses, ramps, docks and other facilities may not be constructed.

(8) It shall be unlawful to drive, occupy, or park any motor driven vehicle including automobiles, trucks, mini-bikes, motorcycles, etc., except on maintained roads (unless designated as "no parking zones"), designated parking areas, and designated camping areas. It shall be unlawful to operate any vehicle in a manner to create a public nuisance or to park in a "no parking zone". Operators must be licensed drivers.

(9) Cutting or defacing of trees and vegetation shall be prohibited. Removal of vegetation, soil, rocks, water or minerals is prohibited.

(10) Vandalism, theft, and damage to State Property is prohibited.

(11) No person shall use threatening, abusive, or indecent language, participate in a disorderly assemblage, nor publicly appear nude or intoxicated.

(12) After 10:00 p.m. and until 5:00 a.m., all areas will be restricted to fishing and fishing related activities only.

(13) Fishing is permitted under regular fishing rules and regulations of the Department and State Statutes.

(14) No person may fish with more than two (2) poles or rods.

(15) Trotlines, throwlines, limblines, juglines, nets, seines, yo-yo's, spearguns, and the taking of fish by noodling or bow fishing and taking of bait minnows by any method is prohibited.

(16) Firearms, bows and trapping shall not be allowed on the area.

(f) **Kid's Fish Out Pond (Fountainhead State Park).** Fishing shall be restricted to persons in the following categories:

(1) All persons 64 years of age or older.

(2) Any person who has not yet attained the age of 16 years.

(3) All persons having 60% or more disability, or legally blind, or physically impaired and one companion accompanying same.

(g) **Adair Recreation Area Lake.** Fishing is restricted to rod and reel fishing only and only one rod and reel per person.

(h) **Lakes Hefner, Overholser (including tailwaters downstream to NW 10th St. bridge) and Draper.** Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed.

(i) **"Close To Home"** fishing waters. Fishing is restricted to no more than three (3) rods or poles per person, with no more than three (3) hooks per line. No other fishing methods are allowed.

(j) **Lakes and reservoirs.** Use of and/or placement into lakes and reservoirs of the waters of this state any container, including but not limited to drums, cans, tubs, boxes or barrels which attract, entice, or lure fish into an open cavity within the container is prohibited.

(k) **Lake Texoma.** The special Lake Texoma annual fishing license shall be eleven dollars (\$11.00). License shall be issued in accordance with Sections 4-201 and 4-202, Title 29 of the Oklahoma Statutes.

(l) **Rivers and streams.** The take, possession or transport of more than twenty-five (25) nongame bait fish, excluding shad; is prohibited from all rivers and streams.

(m) **Scenic Rivers.** The use or possession of cast nets is prohibited on all Oklahoma Scenic Rivers including the Barren Fork River in its entirety to the Arkansas state line.

[OAR Docket #13-556; filed 4-12-13]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 15. COMMERCIAL HARVEST RULES; AQUATIC SPECIES

[OAR Docket #13-557]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 9. Commercial Turtle Harvest
 800:15-9-3. General; operating provisions [AMENDED]
 800:15-9-3.1. Closed Areas [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401 and 6-302 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

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n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

These rules will change the length limits on certain turtles species, relax requirements for turtle trap identification and change requirements for turtle harvest reporting.

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, 2013:

SUBCHAPTER 9. COMMERCIAL TURTLE HARVEST

800:15-9-3. General; operating provisions

Harvest, sale and purchase of aquatic turtles for commercial purpose shall be in accordance with 29 O.S., Sections 4-103A, 4-103B and 6-204 and the following:

- (1) The application for an aquatic turtle harvest license must be signed by a Game Warden, and must list the county or counties from which turtles will be harvested.
- (2) The harvest, collection, sale or purchase of the following turtle species is prohibited:
 - (A) Alligator Snapping Turtle (*Macrolemys temminckii*);
 - (B) Chicken Turtle (*Deirochelys reticularia*);
 - (C) Map Turtle (*Graptemys geographica* spp.);

(D) Painted Turtles (*Chrysemys ~~pieta belli~~ and ~~Chrysemys pieta dorsalis~~ spp.*)

(E) Razor-backed Musk Turtle (*Sternotherus carinatus*)

(F) All State and/or Federal threatened or endangered species;

(G) All soft shell turtles and common snapping turtles, except as provided in Title 29 O.S., Section 4-102, greater than ~~eighteen (18) inches~~ sixteen (16) inches in length when measuring the carapace only from the anterior (front) end to the posterior (rear) end shall not be kept in possession or sold or purchased and must be returned to the water immediately.

(3) The possession, buying and/or selling of any terrestrial turtles commonly known as "box turtles", is prohibited.

(4) All traps and nets used in the harvest of turtles for commercial purposes must have an identification tag with the owner's name and ~~license number~~ address attached and the name and ~~license number~~ address of all persons authorized to operate the traps and nets. All such traps and nets must be shown to the county Game Warden at the time the Game Warden signs the license application.

(5) Private ponds, municipal lakes and streams on or crossing private land that are open to commercial turtle harvest may be fished for turtles only upon permission of the landowner or municipality. Written permission for municipal lakes outside the city limits must be on the municipal letterhead stationary, signed by the municipal authority.

(6) All persons licensed as a commercial turtle buyer must keep accurate records of all turtles purchased within and exported from the State of Oklahoma. These records shall be available for inspection by any agent of the Department at any time. A copy of each turtle purchase transaction must be given to the seller by the buyer at the time of the sale on forms provided by the Department. A copy of all turtle purchase transactions and turtle exports shall be submitted to the Department as follows:

(A) Each turtle buyer shall complete and submit to the Department a true and accurate purchase record for each turtle purchase transaction. Each purchase record must contain:

- (i) the buyer's name and license number;
- (ii) seller's name and license number;
- (iii) counties from which turtles were harvested;
- ~~(iii)~~(iv) the total number of each species purchased;
- ~~(iv)~~(v) the total amount paid for each species;
- ~~(v)~~(vi) the total amount paid for the transaction.
- ~~(vi)~~(vii) the total pounds of red-eared, common snapping and soft shell turtles purchased;

(B) A copy of each transaction along with a monthly summary must be mailed to the Department by the 15th of each month by each turtle buyer.

(C) Each turtle buyer must supply to the Department shipping bills of lading of all turtles exported

from the state during the monthly reporting period. A copy of all shipping bills of lading must accompany all turtle shipments from the state.

- (D) The shipping bill of lading must contain:
- (i) total number of turtles in shipment;
 - (ii) number of each species of turtles in shipment;
 - (iii) date of shipment;
 - (iv) person firm or corporation's name transporting turtles out of Oklahoma;
 - (v) person firm or corporation's name(s) that sold or otherwise provided the turtles to be transported out of Oklahoma;
 - (vi) total pounds of turtles in the shipment;
 - (vii) total pounds of each species of turtles in the shipment;
 - (viii) turtle harvest season dates and turtle species legal for harvest;
 - (ix) state, if other than Oklahoma, where turtles were harvested;
 - (x) destination of shipment; and
 - (xi) total purchase price of turtles in shipment.

(E) Each turtle buyer must supply to the Department an annual summary report of all turtles, by species, purchased within and exported from the State of Oklahoma. This report shall contain:

- (i) total number of turtles of each species purchased or received;
- (ii) total purchase value of turtles purchased or received;
- (iii) total number and pounds of turtles of each species exported from Oklahoma.
- (iv) total pounds of red-eared, common snapping and softshell turtles purchased or received;

(7) Inaccurate or incomplete records or delinquent reports shall be violations of this rule.

800:15-9-3.1. Closed Areas

The following waters are closed to all commercial aquatic turtle harvest:

- (1) Waters located within a city, town or municipality.
- (2) ~~All waters of this state. All scenic river areas of the state as designated in 82 O.S., Section 1452 including:~~
 - (A) ~~Flint Creek and the Illinois River above the confluence of the Barren Fork Creek in Cherokee, Adair and Delaware Counties;~~
 - (B) ~~Barren Fork Creek in Adair and Cherokee Counties from Highway 59 West to the Illinois River;~~
 - (C) ~~Upper Mountain Fork River;~~
 - (D) ~~Big Lee's Creek; and~~
 - (E) ~~Little Lee's Creek.~~

[OAR Docket #13-557; filed 4-12-13]

TITLE 800. DEPARTMENT OF WILDLIFE CONSERVATION CHAPTER 20. RESTRICTION ON AQUATIC SPECIES INTRODUCTION

[OAR Docket #13-558]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Restricted Exotic Fish
800:20-1-2. List of restricted exotic species [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103, 5-401 and 6-302 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

These rules will allow anglers to possess bighead and silver carp in certain situations and add two species to the list of restricted crayfish.

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, 2013:

SUBCHAPTER 1. RESTRICTED EXOTIC FISH

800:20-1-2. List of restricted exotic species

(a) Until such time as is necessary for the Department of Wildlife Conservation to obtain adequate information for the determination of other harmful or potentially harmful exotic species, the importation into the State and/or the possession of the following exotic fish or their eggs is prohibited:

- (1) Walking Catfish: The Walking Catfish, (*Clarius batrachus*) and other members of the exotic catfish family

Claridae, including but not limited to species of the genera Clarias, Heteropneustes, Gymnallables, Channallabes, and Heterobranchus are prohibited. Any live specimens of Walking Catfish or other Claridae species within the boundaries of the State of Oklahoma are contraband and subject to seizure by the Department of Wildlife Conservation.

(2) Grass carp: Release of grass carp (diploid and/or triploid), also known as white amur or Chinese carp (*Ctenopharyngodon idella*) or their hybrids into public waters is prohibited in accordance with 29 O.S., Section 6-504. Only certified triploid grass carp may be imported, possessed, or introduced for the purpose of stocking private waters. Possession and transportation of diploid grass carp is permitted for the control of vegetation on licensed aquaculture facilities, the export to states allowing use of diploid grass carp and for production for sale to the human food market.

(3) Boney-tongue group: *Osteoglossum* spp., and *Arapaima* spp.

(4) Piranha group: *Serrasalmus* spp., *Pygocentrus* spp., *Rooseveltiella* spp., *Catoprion* spp., *Hydrocynus* spp., and *Salminus* spp.

(5) Electric Eel (*Electrophorus electricus*).

(6) Electric catfish (*Malapterus electricus*).

(7) Gar-pike topminnow (*Belonesox belizanus*).

(8) Snakehead groups: *Opicephalus* spp., and *Channa* spp.

(9) Pavon or Peacock Bass (*Chichla temensis* and *Chichia ocellaris*).

(10) Parasitic South American Catfish group (Candiru), genera & species of the Trichomycteridae family. *Vandellia* spp., *Tridens* spp., and *Pygidium* spp.

(11) Freshwater Stingray group: *Paratrygon* spp., *Potomotrygon* spp., and *Disceus* spp.

(12) Hourii (from South America): *Macrodon* spp., and *Hoplias* spp.

(13) Rudd and rudd hybrids (*Scardinius* spp.).

(14) Bighead carp (*Hypophthalmichthys molitrix*). This shall not interfere with the possession of dead bighead carp when reporting the fish to ODWC personnel.

(15) Silver carp (*Aristichthys nobilis*). This shall not interfere with the possession of dead silver carp when reporting the fish to ODWC personnel.

(16) Black carp (*Mylopharyngodon piceus*).

(17) Alewives (*Alosa pseudoharengus*).

(18) Rainbow smelt (*Osmerus mordax*).

(19) Blueback herring (*Alosa aestivalis*).

(b) Tilapia:

(1) The sale and use of all Tilapia species as bait is prohibited.

(2) The stocking of all Tilapia species in any heated-water reservoir including Sooner, Konawa and Boomer Reservoirs is prohibited.

(3) This shall not interfere with the sale of dead and/or processed Tilapia for human food or the sale or transport of Tilapia species for the purpose of aquatic vegetation control in privately owned ponds.

(c) Crayfish:

(1) Australian Red Claw (*Cherax quadricarinatus*)

(2) Rusty (*Orconectes rusticus*)

[OAR Docket #13-558; filed 4-12-13]

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

[OAR Docket #13-559]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Hunting on Corps of Engineers Lands
800:25-3-2. Areas open to ~~archery equipment and shotguns~~ shotguns with pellets ~~and bow and arrow~~ only [AMENDED]

800:25-3-3. Areas open to archery equipment only [AMENDED]

800:25-3-4. Areas open to archery and shotgun and muzzleloading firearms [REVOKED]

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns [AMENDED]

Subchapter 5. Migratory Bird Hunting Season

Part 25. Hunting at Tishomingo Wildlife Management Unit

800:25-5-106. General provisions [AMENDED]

Subchapter 7. General Hunting Seasons

Part 13. Deer

800:25-7-55. Deer-Youth Gun Season [AMENDED]

Part 19. Seasons On Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service

800:25-7-83.1. Beaver River WMA - McFarland Unit [AMENDED]

800:25-7-92. Chickasaw NRA [AMENDED]

800:25-7-108. Hickory Creek WMA [AMENDED]

800:25-7-116. Keystone WMA [AMENDED]

800:25-7-117. Lexington WMA [AMENDED]

800:25-7-120. Love Valley WMA [AMENDED]

Subchapter 9. Controlled Hunts

Part 1. Guidelines

800:25-9-5. Permit and fees [AMENDED]

Subchapter 37. Nuisance wildlife Control Program

Part 3. Wildlife and Feral Hog Nuisance and Depredation Rules

800:25-37-14. Specific Provisions [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103 and 5-401 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 3, 2012 - January 11, 2013.

Public hearing:

January 8, 2013

Adoption:

February 4, 2013

Submitted to Governor:

February 6, 2013

Submitted to House:

February 6, 2013

Submitted to Senate:

February 6, 2013

Gubernatorial approval:

February 18, 2013

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 4, 2013.

Final adoption:

April 4, 2013

Effective:

June 1, 2013

Permanent Final Adoptions

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

These rules clarify seasons, methods, and acreages for hunting on several COE properties, mainly Ft. Gibson, Lake Texoma, Eufaula, and Oologah. Allow more hunting opportunity on several Wildlife Management Areas, including expanding the boundary on Tishomingo and Keystone, allow either-sex deer hunting on Chickasaw NRA, and allow more antlerless days on Lexington. Also change "conibear" traps to "body gripping" traps, reduce spring turkey to 1 tom on Love Valley and Hickory Creek WMA's to be consistent with the county bag limit, and correct turkey hunting hours on Beaver WMA-McFarland Unit. Allow youth deer gun hunters to take a turkey in counties open to fall turkey rifle season, and remove duplicate controlled hunt application fee language (already covered in Title 29).

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, 2013:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-2. Areas open to archery equipment and shotguns with pellets and bow and arrow only

The following Corps of Engineers areas are open to archery equipment and shotguns with pellets and bow and arrow only:

- (1) Canton Lake: A 80-acre unit above State Highway 58A in the Sandy Cove Area.
- (2) Keystone Lake:
 - (A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.
 - (B) A 200-acre unit on the west side of the north end of the U.S. Highway 64 bridge.
 - (C) A 530-acre unit north of the New Mannford Ramp area.
 - (D) A 480-acre unit east of the Cimarron Park area.
 - (E) A 100-acre unit north and south of the Pawnee Cove Access Point.
 - (F) A 200-acre unit in the Old Mannford Ramp area.
 - (G) A 280-acre unit on the south side of the road ending at Washington Irving North.
 - (H) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.
 - (I) A 200-acre unit south of Highway 51 on Bakers Branch.
 - (J) A 135-acre area on the west side of Walnut Creek (old Walnut Creek #3).
- (3) Hugo Lake: ~~except~~Except, archery only during all deer seasons.
 - (A) A 2,373-acre unit in the Kiamichi Park Area.

- (B) A 418-acre unit in the Salt Creek Area.
 - (C) A 478-acre unit in the Wilson Point Area.
 - (D) A 481-acre unit in the Virgil Point Area.
 - (E) A 280-acre unit in the Sawyer Bluff Area.
 - (F) A 60-acre unit in the Rattan Landing Area.
 - (G) A 500-acre unit in the embankment area above Hugo Dam.
- (4) Tenkiller Ferry Lake:
 - ~~(A)~~ A 110-acre unit north of the asphalt road and east of ~~OK~~ Highway 10A.
 - ~~(B)~~ A 310-acre unit south and east of OK Highway 100.
 - (5) Copan Lake: ~~except~~Except, archery equipment only during all deer seasons.
 - (A) A 650-acre unit below the dam.
 - (B) A 100-acre unit east and southeast of Copan Point Park.
 - (C) Three islands north of Washington Cove Park.
 - (6) Fort Gibson Lake:
 - (A) A 300-acre unit on the north side of North Bay.
 - (B) A 800-acre unit on the south side of the Chouteau Creek, starting at U.S. ~~highway~~ Highway 69 and running east and south to State Highway 33.
 - (C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.
 - (D) A 480-acre unit on the west side of Mallard Bay.
 - ~~(E)~~ A 432-acre unit lying east of the Junction of Snug Harbor road and Whitehorn Cove road.
 - ~~(F)~~ A 103424-acre unit in Section 13 of the Blue Bill Point housing addition.
 - ~~(G)~~ A 160-acre unit west of the town of Murphy.
 - ~~(H)~~ A 650-acre unit on Pryor Creek beginning on the east side of State Highway 69 in sections Sections 29, 30 & 31.
 - ~~(I)~~ A 190-acre unit in the south 2 of ~~section~~ Section 12, north of the Blue Bill Recreation Area.
 - ~~(J)~~ A 120-acre unit west of the town of Hulbert.
 - (7) Sardis:
 - (A) A 950-acre unit in the Potato Hills Area.
 - (B) A 100-acre unit in the Sardis Cove Area.
 - (8) Webbers Falls Lock and Dam 16:
 - (A) A 37-acre unit on the peninsula north of the lock and dam.
 - (B) A 150-acre unit in the Hopewell Park Area.
 - (C) A 50-acre unit in the Arrowhead Park Area, only open for hunting 1 December ~~1~~ through 28 February 28.
 - (D) A 150-acre unit in the Brewer's Bend Area, only open for hunting 1 December ~~1~~ through 28 February 28.
 - (E) A 50-acre unit south of the Spaniard Creek Area.
 - (F) A 60-acre unit off ~~lock view~~ Lock View access road and south of the project office.
 - (G) A 400-acre unit in the Three Forks Area.
 - (9) Lake Texoma:
 - ~~(A)~~ A 355-acre unit in the Burns Run Area.

- (~~AB~~) A ~~380~~457-acre unit below Denison Dam.
 - (~~BC~~) A 60-acre unit in the Willow Springs Area.
 - (~~CD~~) A 100-acre unit on the north side of Alberta Creek.
 - (~~DE~~) A 110-acre unit on the Limestone Creek Area.
 - (~~EF~~) A 250-acre unit on the Treasure Island, North Island Group.
 - (~~FG~~) A 500-acre unit southwest of McLaughlin Creek.
 - (~~GH~~) A ~~1,100~~110-acre unit in the Washita Point Area.
 - (~~H~~) A 1,200-acre unit north of Newberry Creek.
 - (~~I~~) A 300-acre unit south of the Butcher Pen Area.
 - (~~JK~~) A 800-acre unit on either side of ~~highway~~Highway 70 on the east side of the lake.
 - (~~KL~~) A 1,000-acre unit in the Lakeside area.
 - (~~LM~~) A ~~800~~348-acre unit west of Platter.
 - (~~MN~~) A 226-acre unit on the west side of Wilson Creek.
- (10) Kaw Lake:
- (A) A 280-acre unit in the Traders Bend Area.
 - (B) A 320-acre unit in the Sarge Creek Cove Area.
 - (C) A 220-acre unit in the Burbank Landing Area.
 - (D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.
 - (E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.
- (11) Eufaula Lake:
- (~~A~~) Open for archery equipment 1 October through 28 February, ~~and~~ open for ~~shotgun~~shotguns with pellets from 1 November through 28 February.
 - (~~A~~) ~~A 320-acre unit in the Brooken Cove Area.~~
 - (~~iiB~~) A ~~165~~137-acre unit in the ~~highway~~Highway 31 Landing Area.
 - (~~iiC~~) A 12898-acre unit in Holiday Cove Recreation Area.
 - (~~iii~~) A 200-acre unit in Hickory Point Recreation Area.
 - (~~D~~) ~~A 100-acre unit below the dam on the north side of the river.~~
 - (~~E~~) ~~A 200-acre unit in the Juniper Creek Area.~~
 - (~~F~~) ~~A 600-acre unit know as Duchess Creek Island, except restricted to shotgun with slugs only during deer gun season.~~
 - (~~G~~) ~~A 500-acre unit in the Bunny Creek Area.~~
 - (~~ivH~~) A 90400-acre unit in the Gentry Creek Recreation Area.
 - (~~I~~) ~~A 400-acre unit in the Belle Starr North Area.~~
 - (B) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets.
 - (i) A 275-acre unit known as Duchess Creek Island.
 - (ii) A 47-acre unit in Juniper Park.
 - (iii) A 99-acre unit in the Coal Creek area.
 - (iv) A 69-acre unit southwest of the city of Crowder.
 - (v) A 116-acre unit east of the city of Crowder.
 - (vi) A 95-acre unit in the Rock Creek Heights area.
 - (vii) A 63-acre unit around Highway 9 Marina.
 - (viii) A 411-acre unit in the area of Highway 9A.
 - (ix) A 247-acre unit known as Bunny Creek.
 - (x) A 251-acre unit in Sandy Bass Bay.
 - (xi) A 32-acre unit in Dam Site area.
 - (xii) A 95-acre unit below Eufaula Dam, north of the river.
 - (xiii) A 443-acre unit in the Longtown Creek area known as Round Tree Landing.
 - (C) Open for hunting for all species that can be legally taken during legal open seasons by archery equipment and shotguns with pellets, except for the 2nd Friday through Monday in December: A 395-acre unit in the Brooken Cove Recreational Area.
- (12) Chouteau Lock and Dam (~~L&D-17~~): A 150-acre unit in the Tullahassee Loop Area. All lands beginning from the MK&T Railroad below Chouteau Lock and Dam 17 and continuing upstream to Newt Graham Lock and Dam 18, except that the Chouteau Lock and Dam 17 has a 600 yard "No Hunting" buffer area around both the lock and dam, and that Coal Creek Access Point and Afton Landing Park are closed to all hunting.
- (13) Hulah Lake:
- (A) A 200-acre unit in the Turkey Creek Point Area.
 - (B) A 60-acre unit below Hulah Dam.
 - (C) A 375-acre unit in the Caney Bend Area.
- (14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.
- (15) Oologah Lake:
- (A) A ~~800~~80-acre unit on the east side of Blue Creek Park.
 - (B) A 180 acre-unit on the south side of Spencer Creek Park.
 - (C) A 120-acre unit east of Double Creek Park.
 - (~~D~~) ~~A 640-acre island, known as Goose Island, southeast of Sunnyside Ramp.~~
- (16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.
- (17) Newt Graham Lock and Dam 18 (~~L&D-18~~): All lands presently designated as open to public hunting beginning from Newt Graham Lock and Dam 18 and continuing upstream to Interstate 44, except that the Newt Graham Lock and Dam 18 has a 600 yard "No Hunting" buffer area around it, and that Bluegill Access Point, Highway 33 Access Point and Bluff Landing Public Use Area are closed to all hunting.
- 800:25-3-3. Areas open to archery equipment only**
 The following Corps of Engineers areas are open to archery equipment only:
- (1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.
 - (2) Kaw Lake:

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- (A) A 400-acre unit in the Washunga Bay Area.
- (B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.
- (C) A 236-acre unit in the Osage ~~eoveCove~~ Area open from 1 December to 31 December ~~31~~.
- (D) A 60-acre unit south of Kaw City and west of Pioneer Park.
- (3) Fort Gibson:
 - (A) A 515-acre unit on the south side of Mallard Bay.
 - (B) A 360-acre unit on the north side of the mouth of North Bay.
 - (C) A 50-acre unit south of Jackson Bay Area.
 - (D) A 150-acre area on the northeast end of Ranger Creek.
 - (E) A 488-acre unit on the south side of Whitehorn Cove Concession.
 - (F) A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.
 - (G) A 320-acre unit South of North Bay and North of Wagoner City Park.
 - (H) A 140-acre unit North of Long Bay and South of Wagoner City Park.
 - (I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of ~~State~~ Highway 69.
 - (J) A 36-acre area in ~~section~~ Section 6, T16N, R20E.
 - (K) A 77-acre area on the north shore of Ranger Creek.
 - (L) A 166-acre area west of Taylor Ferry South ~~park~~ Park in ~~Seet~~ Sections 20 & 21, T17N, R19E.
- (4) Copan Lake:
 - (A) A 50-acre unit north of Copan Point Park.
 - (B) A 50-acre unit north of the Post Oak area.
 - (C) A 5-acre unit west of Post Oak Park between the old and new Highway ~~Hwy~~-10.
 - (D) A 340-acre unit north of the Washington Cove Park.
- (5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.
- (6) Skiatook Lake:
 - (A) A 138-acre unit in the Osage Park Area.
 - (B) A 150-acre unit area below Skiatook Dam.
 - (C) A 120-acre unit in Hominy Landing.
- (7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.
- (8) ~~Eufaula Lake: October 1 – February 28:~~
 - ~~(A) A 150-acre unit in Gentry Creek.~~
 - ~~(B) A 435-acre unit in the Belle Starr South Recreation Area from December 1 – February 28.~~
- (89) Pine Creek Lake:
 - (A) A 200-acre unit north of Highway 3 and south of the old highway.
 - (B) A 120-acre unit west of Little River Park.
- (940) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

- (1044) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)
 - (A) A 500-acre unit 2 mile North of Memorial Road on Midwest Boulevard
 - (B) 230-acre unit at Douglas and 150th street.
- (1142) Keystone Lake: A 570-acre area south of the town of Prue (old Walnut Creek #1).
- (12) Lake Texoma:
 - (A) A 610-acre unit in the Burns Run Area.
 - (B) A 125-acre unit south of Alberta Creek

800:25-3-4. Areas open to archery and shotgun and muzzleloading firearms [REVOKED]

~~The following areas are open to archery, shotgun, and muzzleloading firearms:~~

- ~~(1) Chouteau Lock and Dam (L&D 17): All lands presently designated as open to public hunting from U.S. Highway 51 north to Newt Graham.~~
- ~~(2) Eufaula Lake: A 100-acre unit southeast, across the lake from Arrowhead State Park.~~

800:25-3-5. Areas open to archery equipment and all legal firearms other than centerfire rifles and handguns

The following Corps of Engineers areas are open to archery equipment and all legal firearms other than centerfire rifles and handguns:

- (1) Tenkiller Lake:
 - (A) A 320-acre unit between Tenkiller State Park and Cato Creek Landing public use area.
 - (B) A 300-acre unit southeast of Etta Bend.
 - (C) A 1,090-acre unit known as the Tenkiller Basin Wildlife Management Area, located south of the dam embankment, spillway and project office, the area is open for hunting of all species which may legally be taken during the open seasons by archery equipment, shotguns (utilizing federally approved non toxic shot only), and rimfire firearms, except that the area is closed to all hunting from 1 October through 15 November and deer hunting is by archery equipment only.
- (2) Robert S. Kerr Lock and Dam (~~L&D 15~~):
 - (A) A 90-acre unit in Little SanBois Creek Public Use Area.
 - (B) A 160-acre unit on the eastern portion of Cowlington Point Public Use Area.
 - (C) A 200-acre unit on the eastern portion of Short Mountain Cove Public Use Area.
 - (D) A 160-acre unit south of the Carters Landing Area.
 - (E) A 135-acre unit in the Applegate Cove Area.
- (3) ~~Chouteau L&D 17:~~
 - ~~(A) All lands from U.S. Hwy 51 north to Newt Graham L&D 18.~~
 - ~~(B) All lands from the MD&T Railroad below Lock 17 north to Hwy 69 on the east side of the~~

Verdigris River, except the area from 600 feet above and below Lock 17.

~~(C) All lands from 600 feet below Chouteau Dam downstream to the Muskogee Turnpike on the west side of the Verdigris River.~~

SUBCHAPTER 5. MIGRATORY BIRD HUNTING SEASON

PART 25. HUNTING AT TISHOMINGO WILDLIFE MANAGEMENT UNIT

800:25-5-106. General provisions

The following general provisions apply to hunting at the Tishomingo Wildlife Management Unit (TWMU).

- (1) All hunters must check in and out of hunt areas regardless of game being hunted. Waterfowl hunters hunting west of the Washita River will use the check station. All other hunters may use the check station or the self registration boxes located at various hunter access points.
- (2) Access is limited to walk-in use only during deer muzzleloader and regular deer gun seasons. ~~Deer muzzleloader and deer gun season hunters are restricted to hunt only that portion of TWMU south and west of the Washita River.~~
- (3) The management unit will be open for waterfowl hunting until ~~12:00 noon only on Tuesday, Thursday, Saturday, and Sunday~~ 1:00 p.m. daily.

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 13. DEER

800:25-7-55. Deer-Youth Gun Season

- (a) **Age Requirements.** All youth under 18 years of age and eligible to purchase an antlerless or antlered youth deer gun permit. All participants, while hunting, are required to be accompanied by an adult, 18 years or older. The adult shall not hunt, except that the adult may archery hunt with valid licenses while accompanying the youth hunter. The adult hunter accompanying the youth hunter shall not possess any rifle, shotgun, or pistol.
- (b) **Dates.** The dates for the youth season shall be a Friday, Saturday, and Sunday as published in the current Oklahoma Hunting Guide and Regulations.
- (c) **Open Areas.** The season is open statewide. Wildlife Management Areas will be open as published in the current Oklahoma Hunting Guide.
- (d) **Bag Limit.** Two (2) deer, which may include no more than one (1) antlered deer. An unfilled antlerless or antlered youth deer gun permit shall be valid during the regular deer gun season in esignated zones.

(e) **Legal means of taking.** All rifles (conventional or muzzleloader), handguns, shotguns or bows legal during the deer gun season shall also be legal during the youth deer season.

(f) **Wild Turkey.** A wild turkey may also be taken during the deer youth gun season in counties which are also open during the regular Fall Turkey Gun Season. Age Requirements, Dates, and legal Means of Taking are the same as those for Deer Youth Gun Season. The Fall Turkey Bag Limit and Season Limit is the same as described in the current Oklahoma Hunting Guide and Regulations.

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-83.1. Beaver River WMA - McFarland Unit

The following hunting and trapping seasons apply to the McFarland Unit on Beaver River WMA:

- (1) Quail: Controlled Hunts Only.
- (2) Pheasant: Controlled Hunts Only.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.
 - (B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit, ~~hunting hours close 1 hour before official sunset.~~
- (6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive: Controlled Hunts Only.
- (15) Deer - gun: Controlled Hunts Only.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Closed season.
- (18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
- (19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

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800:25-7-92. Chickasaw NRA

The following hunting and trapping seasons apply to the Chickasaw NRA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey-Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom limit.
- (5) Turkey-Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer-archery: Same as statewide season dates, ~~except open to antlerless only.~~
- (14) Deer-primitive firearms: Same as statewide season dates, ~~except open to antlerless only.~~ Additional controlled hunts may be held.
- (15) Deer-gun: Same as statewide season dates. ~~Antlerless only.~~
- (16) Trapping: Closed season.
- (17) Pursuit with hounds: Same as statewide season dates.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-108. Hickory Creek WMA

The following hunting and trapping seasons apply to the Hickory Creek WMA:

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex.
 - (B) Gun: Same as statewide season dates, 1 tom.
- (5) Turkey - Spring: Same as statewide season dates, 2 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates.
- (9) Dove: Same as statewide season dates.

- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.
- (14) Deer - primitive firearms: Same as statewide season dates.
- (15) Deer - gun: Same as statewide season dates.
- (16) Trapping: Open to water sets and live box traps only.
- (17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
- (18) Predator/furbearer calling: Same as statewide season dates.
- (19) Waterfowl: Same as statewide season dates.

800:25-7-116. Keystone WMA

The following hunting and trapping seasons apply to the Keystone WMA: That portion of the Arkansas River arm of the Keystone WMA that was formerly the waterfowl refuge has restricted hunting. The west boundary of this portion is a northern extension of Swan Drive in the City of Cleveland. In this designated area, lands in Osage County and in the Arkansas River are restricted to archery and shotgun with pellets only; lands in Pawnee County are restricted to archery only.

- (1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
- (2) Pheasant: Closed season.
- (3) Prairie chicken: Closed season.
- (4) Turkey - Fall:
 - (A) Archery: Same as statewide season dates, either-sex, except closed during deer gun season.
 - (B) Gun: Same as statewide season dates; one tom limit.
- (5) Turkey - Spring: Same as statewide season dates, 1 tom limit.
- (6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
- (7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
- (8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.
- (9) Dove: Same as statewide season dates.
- (10) Rail and gallinule: Same as statewide season dates.
- (11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
- (12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
- (13) Deer - archery: Same as statewide season dates.
- (14) Deer - primitive firearms: Same as statewide season dates, bag limit of one antlered and one antlerless deer.
- (15) Deer - gun: Same as statewide season dates, except open to antlerless hunting on opening day only, bag limit

of one antlered and one antlerless deer, and Cottonwood Creek Wetland Development Unit lands are closed.

(16) Trapping: Open to water sets and live box traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-117. Lexington WMA

The following hunting and trapping seasons apply to the Lexington WMA:

(1) Quail: Same as statewide season dates, except open the Monday following the close of the first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey-Fall:

(A) Archery: Closed Season.

(B) Gun: Closed season.

(5) Turkey-Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(8) Crow: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(9) Dove: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(10) Rail and gallinule: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(11) Common snipe: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except open the Monday following the close of the first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer - primitive firearms: Same as statewide season dates, except closed to antlerless harvest the first ~~72~~ days.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Closed season.

(17) Pursuit with hounds: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide dates, except closed from opening day of archery season through the first nine days of deer gun season.

(19) Waterfowl: Same as statewide season dates except closed from opening day of archery season through the first nine days of deer gun season.

800:25-7-120. Love Valley WMA

The following hunting and trapping seasons apply to Love Valley WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, either-sex.

(B) Gun: Same as statewide season dates, 1 tom.

(5) Turkey - Spring: Same as statewide season dates, ~~21~~ tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer - primitive firearms: Same as statewide season dates.

(15) Deer - gun: Same as statewide season dates.

(16) Trapping: Open to water sets and live box traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed during the first nine days of deer gun season.

(18) Predator/furbearer calling: Same as statewide season dates.

(19) Waterfowl: Same as statewide season dates.

SUBCHAPTER 9. CONTROLLED HUNTS

PART 1. GUIDELINES

800:25-9-5. Permit and fees

The following is the permit process and fee information for participation in controlled hunts:

~~(1) Applicants must pay a \$5.00 application fee to be entered in controlled hunt drawings. The fee is nonrefundable and there are no exemptions.~~

~~(2) An internet access fee may also be applied.~~

Permanent Final Adoptions

(31) Successful resident controlled hunt applicants must obtain their hunt permit(s) which shall include all appropriate deer, antelope or elk licenses(s) unless exempt. Successful nonresident controlled hunt applicants must obtain a \$50 permit fee and all appropriate nonresident deer, antelope, or elk license(s). Resident landowner private lands antelope controlled hunt permits transferred are subject to the applicable resident or nonresident permit/license fees. These permits/licenses are valid only for the controlled hunt the applicant was selected for. Oklahoma Department of Wildlife Conservation issued resident lifetime hunting or lifetime combination license holders will not be charged a fee for their permit or licenses. Applicable federal fees are required to be paid by all successful applicants. All permits must be obtained within two weeks, or as otherwise specified by the Department, of notification of selection. Landowner private lands controlled antelope hunts must have all fees paid and permits transferred to the hunter within four weeks of notification of selection. All permit and license fees can be paid through the Controlled Hunt Web application, in person, or by mailing a money order or certified check to the Oklahoma City office of the Department of Wildlife Conservation. Personal checks or cash will not be accepted by mail.

(42) Both residents and nonresidents participating in controlled hunts on the Deep Fork NWR, Little River NWR, Tishomingo National Wildlife Refuge, Sequoyah NWR, Washita NWR, Wichita Mountains National Wildlife Refuge, Salt Plains National Wildlife Refuge and McAlester Army Ammunition Plant will be required to pay a Federal Area User Fee as established by the respective Federal area. Controlled youth hunt participants at Washita NWR are exempt from the user fee.

(53) Prior to applying for Oklahoma Department of Wildlife Conservation controlled hunts, applicants must purchase an Oklahoma hunting license during the current calendar year of the controlled hunt drawings. Landowner private land antelope controlled hunt applicants are exempt.

(64) Applicants must provide personal data requested and specify the category and hunt number desired.

SUBCHAPTER 37. NUISANCE WILDLIFE CONTROL PROGRAM

PART 3. WILDLIFE AND FERAL HOG NUISANCE AND DEPREDATION RULES

800:25-37-14. Specific Provisions

The following provisions shall be in effect to establish the legal methods that may be used to control nuisance/depredating wildlife or feral swine under such a permit.

(1) permittees are authorized to trap, shoot or euthanize nuisance wildlife in accordance with the stipulations on the permit.

(2) The sale, trade, barter, gifting or retention of beavers and coyotes or parts thereof, including live coyotes, taken under authority of a Depredation Permit is allowed. A copy of the depredation complaint form including the permittee's name and signature must accompany the coyote, beaver or parts thereof. The provisions of Title 29 O.S. 7-503A apply to live coyotes.

(3) permittees must follow all state and federal laws that apply except as otherwise provided in this section.

(4) All wildlife and or feral swine taken under a Nuisance and Depredation Permit shall be disposed of in a proper manner to prevent harm to the public. Carcasses shall be disposed of in accordance with O.S. Title 21, Section 1223.

(5) Traps and other similar devices set shall be checked at least once every 24 hours.

(6) All traps, snares and similar devices shall have the permit holder's name attached (except landowners).

(7) Signs must be conspicuously posted to inform the public that traps are in use. Signs must have minimum dimensions of 5" by 8" and the wording "TRAPS" must be included and be conspicuous on the signs and printed in letters at least 2" tall (except landowners).

(8) The following are legal methods which may be allowed under a Nuisance and Depredation Permit:

(A) box or live traps;

(B) smooth-jawed single spring or double spring offset jawed leg-hold steel traps with a jaw spread of no more than eight inches;

(C) snares which have a locking device that prevents the loop from having a circumference less than 10 inches;

(D) ~~one-bearbody~~ gripping style traps; size 330 may be used for water sets only; and

(E) shooting where permitted by law or by city ordinance.

(9) All trapping devices must be placed in a manner that will:

(A) minimize the risk of non-target species;

(B) minimize the risk to public and pets; and

(C) be out of the view of the general public.

(10) Shooting with firearms shall be subject to all state, county and municipal restrictions and ordinances.

(11) Night shooting may be allowed under a Depredation Permit only under the following conditions:

(A) Permittee must notify the game warden(s) in the county where activity will occur twenty-four (24) hours prior to such activity;

(B) night shooting beavers shall be with shotguns with buckshot or smaller only;

(C) there are no firearm restrictions for night shooting feral swine; and

(D) must be conducted in a safe manner to prevent injury to people, livestock and damage to personal property.

[OAR Docket #13-559; filed 4-12-13]

**TITLE 800. DEPARTMENT OF WILDLIFE
CONSERVATION
CHAPTER 30. DEPARTMENT OF
WILDLIFE LANDS MANAGEMENT**

[OAR Docket #13-560]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]
800:30-1-5. Vehicles [AMENDED]
800:30-1-7. Livestock and feral hogs [AMENDED]
800:30-1-21. Baiting on Wildlife Management Areas [AMENDED]

AUTHORITY:

Title 29 O.S., Sections 3-103 and 5-401 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission.

DATES:

Comment period:

December 3, 2012 - January 11, 2013.

Public hearing:

January 8, 2013

Adoption:

February 4, 2013

Submitted to Governor:

February 6, 2013

Submitted to House:

February 6, 2013

Submitted to Senate:

February 6, 2013

Gubernatorial approval:

February 18, 2013

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on April 4, 2013.

Final adoption:

April 4, 2013

Effective:

June 1, 2013

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. Use of Department Managed lands
800:30-1-7. Livestock and feral hogs [AMENDED]

Gubernatorial approval:

April 13, 2012

Register publication:

29 Ok Reg 1757

Docket number:

12-831

INCORPORATED BY REFERENCE:

n/a

ANALYSIS:

Open Candy Creek to camping, and prohibit air boats on Tishomingo WMU to be consistent with the National Wildlife Refuge restriction. Clarify methods, hunting hours, and weapons allowed regarding taking or pursuing feral hogs on Wildlife Management Areas during any open deer or turkey season. Allow horseback riding on WMA's during closed periods if no hunter conflicts are determined by the local biologist. Add wording to strengthen current baiting law on WMA's.

CONTACT PERSON:

Alan Peoples, Chief of Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

**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, 2013:**

**SUBCHAPTER 1. USE OF DEPARTMENT
MANAGED LANDS**

800:30-1-4. Camping

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season(s). Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(d) No overnight camping is permitted at the following areas unless otherwise authorized by the Department:

- (1) Altus-Lugert WMA.
- (2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.
- (3) Broken Bow WMA.
- (4) Canton WMA (waterfowl refuge portion).
- (5) Cherokee (GMA portion).
- (6) Dewey County WMA.
- (7) Drummond Flats WMA.
- (8) Eufaula WMA
- (9) Fort Gibson WMA.
- (10) Gist WMA.
- (11) Grady County WMA
- (12) Grassy Slough WMA.
- (13) Hackberry Flat (waterfowl refuge portion).
- (14) Hugo WMA (waterfowl refuge portion).
- (15) Major County Lands.
- (16) McClellan-Kerr WMA (includes waterfowl refuge portion).
- (17) McCurtain County Wilderness.
- (18) Okmulgee WMA (GMA portion).
- (19) Osage WMA (Western Wall Unit).
- (20) Ozark Plateau WMA.
- (21) Red Slough WMA.
- (22) Sparrow Hawk WMA.
- (23) Tenkiller WMA.
- (24) Van Osdol WMA.
- (25) Washita County WMA.
- (26) Whitegrass Flats WMA.
- (27) Wister WMA (waterfowl refuge portion).

(e) Hunter and fishermen camping is permitted only in designated camping areas at:

- (1) Atoka WMA (includes PHA portion).
- (2) Beaver River WMA.
- (3) Candy Creek WMA
- (~~3~~4) Canton WMA (except waterfowl refuge portion).
- (~~4~~5) Cherokee WMA (PHA portion).
- (~~5~~6) Chickasaw NRA (Arbuckle).
- (~~6~~7) Cimarron Bluff WMA.
- (~~7~~8) Cimarron Hills WMA
- (~~8~~9) Cooper WMA.
- (~~9~~10) Copan WMA.
- (~~40~~11) Cross Timbers WMA

Permanent Final Adoptions

- (~~4112~~) Ellis County WMA.
(~~4213~~) Fobb Bottom WMA.
(~~4314~~) Fort Cobb WMA.
(~~4415~~) Fort Supply WMA.
(~~4516~~) Hackberry Flat WMA (except waterfowl refuge portion).
(~~4617~~) Heyburn WMA .
(~~4718~~) Hickory Creek WMA.
(~~4819~~) Hugo WMA (except waterfowl refuge portion).
(~~4920~~) Hulah WMA.
(~~2021~~) James Collins WMA.
(~~2122~~) Kaw WMA.
(~~2223~~) Lexington WMA.
(~~2324~~) Mountain Park WMA.
(~~2425~~) Okmulgee WMA (PHA portion, i.e., the area north and east of the Deep Fork River).
(~~2526~~) Oologah WMA
(~~2627~~) Optima WMA.
(~~2728~~) Osage WMA (Rock Creek Unit).
(~~2829~~) Pushmataha WMA.
(~~2930~~) Sandy Sanders WMA.
(~~3031~~) Stringtown WMA
(~~3132~~) Schultz WMA.
(~~3233~~) Skiatook WMA.
(~~3334~~) Texoma-Washita Arm WMA.
(~~3435~~) Tishomingo WMU.
(~~3536~~) Waurika WMA.
(~~3637~~) Yourman WMA.
- (f) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
- (1) Cookson Hills WMA, only during open hunting seasons on the area.
 - (2) Ouachita WMA (Homer L. Johnston portion), only during deer and turkey seasons.
 - (3) John Dahl WMA, only during hunting seasons.
 - (4) Packsaddle WMA, only during open hunting seasons.
 - (5) Robbers Cave WMA, only during open deer and turkey seasons.
 - (6) Spavinaw Hills WMA, only during open hunting seasons on the area.
- (g) Hunter and fishermen camping is permitted only within 50 yards of roads designated as open for public use at:
- (1) Deep Fork WMA.
 - (2) Gary Sherrer WMA, only during open hunting seasons on the area.
 - (3) Keystone WMA.
 - (4) Love Valley WMA.
 - (5) Pine Creek WMA.
 - (6) Wister WMA, (except waterfowl refuge portion).
- (h) Camping is permitted in accordance with U.S. Forest Service regulations at:
- (1) Ouachita WMA - Le Flore Unit (Ouachita National Forest), except Homer L. Johnston Unit.
 - (2) Ouachita WMA - McCurtain Unit (Ouachita National Forest).
 - (3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
 - (4) Rita Blanca WMA (Cibola National Forest) - Rita Blanca National Grasslands.
- (i) Camping is permitted in designated camping areas only at McGee Creek WMA.

800:30-1-5. Vehicles

- (a) Except as otherwise provided, all motorized vehicles are required to stay on roads designated as open for public or hunter use. There are no exceptions for motorcycles, four-wheel drive vehicles, snowmobiles or all terrain vehicles. Travel on roads which are gated and locked or designated as closed is prohibited, unless otherwise specified in annual regulations for nonambulatory persons holding valid permits.
- (b) Only those vehicles registered as legal to operate on Oklahoma public roadways may be used or parked on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except on specified areas designated for off-road use; unless otherwise provided for nonambulatory persons holding valid permits. All vehicles used by nonambulatory permittees must conspicuously display a sticker designating the vehicle is being used by a nonambulatory permittee and motor vehicle permittees must conspicuously display a sticker designating the vehicle is being used by a motor vehicle hunt permittee.
- (c) Maximum speed limit shall be 25 mph unless otherwise posted.
- (d) Off-highway vehicle (OHV) use on the Ouachita WMA shall be the same as U.S. Forest Service rules and regulations for the Ouachita National Forest.
- (e) Off-highway vehicle (OHV) use on the Black Kettle and Rita Blanca WMAs shall be the same as U.S. Forest Service rules and regulations for the Cibola National Forest.
- (f) It shall be unlawful to operate an all-terrain vehicle (ATV) or off-road vehicle (ORV) on the Three Rivers WMA and Honobia Creek WMA except under the following restrictions:
- (1) During any open deer season.
 - (2) Any deer hunter licensed in Oklahoma, unless otherwise exempt.
 - (3) Any hunter while operating an ATV/ORV shall comply with daylight fluorescent orange head and chest covering as required for hunting deer gun seasons. If a crash helmet is worn, only the fluorescent orange chest covering is required.
 - (4) ATV/ORV use is restricted to WMA roads that are delineated on the current Three Rivers WMA map and Honobia Creek WMA map unless otherwise closed.
 - (5) Only unaltered standard manufactured ATV/ORV's with a 700 cc motor displacement or less are allowed.
 - (6) ATV/ORV use shall be restricted to a maximum speed of 25 mph.
 - (7) Operator and/or passenger under the age of 18 shall wear a crash helmet of a type which complies with standards established by C.F.R., Section 571.218.
 - (8) No operator of an ATV/ORV shall carry a passenger unless that ATV/ORV has been specifically designed by the manufacturer to carry passengers in addition to the operator.

(9) Leaving any ATV/ORV, treestand, or game camera unattended on the Three Rivers and Honobia Creek WMA's without the owner's name and address affixed thereto in a conspicuous manner is prohibited.

(10) Use of ATV/ORV off of delineated roads for retrieval of lawfully taken deer shall be permissible only with the following restrictions:

(A) ATV/ORV's shall not travel more than 2 mile from the nearest road.

(B) ATV/ORV's shall not cross rivers and streams unless on a road with constructed stream crossing structures.

(C) ATV/ORV's used for deer retrieval shall not be used in areas otherwise closed to the use of motor vehicles (walk-in only hunting areas, etc.)

(g) It is unlawful for any person to hunt, chase, capture, shoot, attempt to shoot, wound or kill any wildlife from a motor driven vehicle on any Department managed areas, except as provided for persons holding a nonambulatory motor vehicle hunting permit.

(h) It is unlawful for any person to transport a loaded firearm on any Department managed area. No crossbow may be transported in a motor vehicle unless uncocked or disassembled. No bow that is at full or partial draw may be transported in a motorized vehicle. In addition, no person may take, catch, capture, kill or pursue wildlife or otherwise attempt to use for any purpose a vehicle mounted spotlight or other powerful light at night for any purpose on Department managed lands, except as otherwise provided for hunting of furbearers and predators, taking of frogs, or for navigational purposes while in a water conveyance.

(i) Grassy Slough WMA, Hackberry Flat WMA, Red Slough WMA, Tishomingo WMU, Washita Arm WDU and Whitegrass Flats WMA are closed to all air driven water craft.

(j) It shall be unlawful for any person to use, transport, park, or unload any personal watercraft within the land and/or water boundaries of the Fort Gibson Wildlife Management Area.

(k) Air drive water craft use on the Tishomingo National Wildlife Refuge shall be the same as U.S. Fish and Wildlife Service rules and regulations.

800:30-1-7. Livestock and feral hogs

(a) **Livestock.** It is unlawful for any person to willfully or neglectfully allow unauthorized livestock to encroach upon any lands owned or managed by the Oklahoma Department of Wildlife Conservation.

(b) **Horses.** No person shall ride, drive, lead or keep a horse or other livestock on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except Honobia Creek WMA and Three Rivers WMA, during the period of October 1 through January 1 and spring turkey season, annually without prior written approval from the Oklahoma Department of Wildlife Conservation. Individuals or parties of less than 25 may ride on areas with prior written approval of the local biologist during the closed period if no hunting ~~seasons are in progress~~ conflict is determined by the biologist. U.S. Forest Service regulations shall apply to those lands owned by the Forest Service. See 800:25-7-71 [REVOKED] (renumbered to 800:30-1-20) also.

(c) **Use of horses.** Hunting on, from or with the aid of horses or mules on WMAs (except U.S. Forest Service lands, Honobia Creek WMA and Three Rivers WMA) is prohibited during daylight hours during the period of October 1 - January 1 and during spring turkey season. Persons holding nonambulatory permits or motor vehicle permits are exempt.

(d) **Feral hogs.** Feral hogs may be taken on lands owned or managed by the Oklahoma Department of Wildlife Conservation during any established hunting season with methods authorized by the Department for that hunting season, except that during any open deer and/or turkey season only appropriate methods, hunting hours, and weapons for that deer and/or turkey season are authorized for taking or pursuing feral hogs.

800:30-1-21. Baiting on Wildlife Management Areas

It shall be unlawful to place and/or hunt over bait on lands owned or managed by the Department of Wildlife Conservation. 'Bait' shall mean the placing, exposing, depositing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain or other feed.

[OAR Docket #13-560; filed 4-12-13]

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

1:2013-11.

EXECUTIVE ORDER 2013-11

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 Friday, April 19, 2013, in memory of those killed and injured in the bombing of the Alfred P. Murrah Federal Building on April 19, 1995.

We shall never forget the one hundred sixty-eight individuals who lost their lives, including nineteen children, or the more than eight hundred and fifty others who were injured. The people of Oklahoma will always remember the courage and compassion of those from around the world who were involved in the rescue and recovery and the tremendous outpouring of goodwill by countless others.

This executive order shall be forwarded to the Division of Capital Assets Management, which 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 15 day of April, 2013.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:

Larry V. Parman
Secretary of State

[OAR Docket #13-625; filed 4-16-13]

1:2013-12.

EXECUTIVE ORDER 2013-12

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 5:00 p.m.

on April 16, 2013 until 7:59 a.m. on Friday, April 19, 2013, in memory of those killed and injured in the senseless act of violence perpetrated at the Boston Marathon on April 15, 2013.

This executive order shall be forwarded to the Division of Capital Assets Management, which 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 16 day of April, 2013.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:

Larry V. Parman
Secretary of State

[OAR Docket #13-626; filed 4-16-13]

1:2013-13.

EXECUTIVE ORDER 2013-13

I, Mary Fallin, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution hereby establish the School Transportation Task Force.

The purpose of the task force shall be to study school transportation issues and make recommendations regarding ways to make school transportation systems more efficient and to reduce transportation costs. The School Transportation Task Force shall consist of twelve (12) appointed members including the Superintendent of Public Instruction or designee; one member who represents a statewide association of school board members; one member who represents a statewide organization that represents public school superintendents; two members who are directors of or oversee transportation for a public school district in the state; two members who represent school bus manufacturers or dealers; and one member who represents the alternative fuels program in the Office of Management and Enterprise Services.

Executive Orders

All members shall be appointed and serve at the pleasure of the Governor. The Governor shall select the chair who shall then select a vice-chair. The Speaker of the House of Representatives and the President Pro Tempore of the Senate are also invited to appoint one legislator each to serve as ex-officio members of the task force.

The task force shall investigate and make recommendations regarding the following issues:

1. The costs and benefits of converting school buses and bus fleets to compressed natural gas or another alternative fuel system;
2. The costs and benefits of privatizing school district transportation services;
3. Review and analyze data collected from school districts of current transportation costs; and
4. Study the transportation services and costs of school districts in other states.

The task force shall report its findings to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 31, 2013. This report shall include any recommendations approved by a majority of the members. This task force shall sunset upon issuance of its final report.

The task force shall meet at such times and places as it deems appropriate. Members shall serve without compensation. Administrative support for the task force, including personnel necessary to ensure the proper performance of the duties and responsibilities of the task force, shall be provided by the Oklahoma Department of Education.

This Executive Order shall be distributed to the Secretary of Education, who shall cause the provisions of this Order to be implemented.

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 16 day of April, 2013.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Larry V. Parman
Secretary of State

[OAR Docket #13-627; filed 4-18-13]

1:2013-14.

EXECUTIVE ORDER 2013-14

I, Mary Fallin, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article VI of the Oklahoma Constitution hereby establish the Oklahoma Port Task Force.

The purpose of the Oklahoma Port Task Force shall be to study and develop a comprehensive plan to accommodate the added burden on Oklahoma ports, roads, and bridges resulting from the reopening of the expanded Panama Canal. The Oklahoma Port Task Force shall consist of seven (7) appointed members including the Director of the Department of Transportation or designee; the Director of the Oklahoma Department of Commerce or designee; and two of the executive directors of active public ports in this state. All members shall be appointed and serve at the pleasure of the Governor. The Governor shall select the chair who shall then select a vice-chair. The Speaker of the House of Representatives and the President Pro Tempore of the Senate are also invited to appoint one legislator each to serve as ex-officio members of the task force.

The task force shall conduct an organizational meeting no later than ninety (90) days after the members have been appointed. The task force shall report its findings to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 31, 2014. This report shall include the results of its assessment and any recommendations approved by a majority of the members. This task force shall sunset upon issuance of its final report.

The Oklahoma Port Task Force shall meet at such times and places as it deems appropriate. Members shall serve without compensation. Administrative support for the task force, including personnel necessary to ensure the proper performance of the duties and responsibilities of the task force, shall be provided by the Oklahoma Department of Transportation. Entities of state government shall provide such assistance and information to the task force as may be required.

This Executive Order shall be distributed to the Secretary of Transportation, who shall cause the provisions of this Order to be implemented.

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 16 day of April, 2013.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Larry V. Parman
Secretary of State

[OAR Docket #13-628; filed 4-18-13]
