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Mary Fallin, Governor
Mike Hunter,
Secretary of State
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Notices of Rulemaking Intent

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

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

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

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 20. STAFF

[OAR Docket #16-765]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 23. School Board Members
210:20-23-3. Requirements for new and incumbent school board member training [AMENDED]

SUMMARY:

The rule addressing instructional requirements for local school board members is being amended to clarify that board members who are appointed to fill a seat for fifteen (15) months or less may carry forward credit for training completed during the short-term appointment, if they are elected to the board for the subsequent term. The current rule language does not allow for this carryover, and the rule is being amended to better reflect the school board member training statute at 70 O.S. § 5-110, which allows for training completed "within fifteen (15) months preceding election."

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 5-110

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from November 1, 2016 until 4:30 p.m., Friday, December 2, 2016.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Friday, December 2, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #16-765; filed 10-7-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #16-766]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 3. Standards for Elementary, Middle Level, Secondary, and Career and Technology Schools
Part 5. Standard III: Administration and Organization
210:35-3-47. School reports and records [AMENDED]

Notices of Rulemaking Intent

SUMMARY:

House Bill 2784 (2016) amended the statute governing the storage of student records. The rule addressing student records must be updated to reflect the statutory changes, which include an authorization for school districts to store records electronically, and a requirement to maintain student transcripts for eighty (80) years. The amendments to the law require districts to develop policies for the destruction of non-transcript student records five to seven (5-7) years after the student graduates or withdraws from the district, and the rule update also addresses HB 2784's requirement for districts to notify former students (or the parents/guardians of minors) when non-transcript records are scheduled for destruction.

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 24-114

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from November 1, 2016 until 4:30 p.m., Friday, December 2, 2016.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Friday, December 2, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing. Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will

also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #16-766; filed 10-7-16]

TITLE 210. STATE DEPARTMENT OF EDUCATION

CHAPTER 35. STANDARDS FOR ACCREDITATION OF ELEMENTARY, MIDDLE LEVEL, SECONDARY, AND CAREER AND TECHNOLOGY SCHOOLS

[OAR Docket #16-767]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 9. Additional Standards for Secondary Schools
Part 7. Standard IV: Curriculum, Instruction, Assessment and Climate

210:35-9-31. Program of studies and graduation requirements [AMENDED]

SUMMARY:

The rule that outlines the graduation requirements for Oklahoma high school students must be updated to remove requirements related to End-of-Instruction (EOI) exams and the Achieving Classroom Excellence (ACE) Act, which were repealed by House Bill 3218 (2016).

AUTHORITY:

State Board of Education; 70 O.S. § 3-104; 70 O.S. § 11-103.6; 70 O.S. § 1210.523 (repealed)

COMMENT PERIOD:

Written comments on the proposed rule(s) will be accepted from November 1, 2016 until 4:30 p.m., Friday, December 2, 2016.

Written comments in electronic form will be accepted during the open public comment period via email at rules@sde.ok.gov or by fax at (405) 521-6256. During the open public comment period, written comments may also be hand delivered to the agency during regular business hours or via regular mail to the individual at the address shown below under "Contact Person."

Oral comments may be submitted for the record at the public hearing at the time, date, and place shown below.

PUBLIC HEARING:

A public hearing is scheduled for 2:00 p.m. on Friday, December 2, at the Hodge Education Building, State Board Room, Room 1-20, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Persons wishing to speak must sign in at the door of the State Board Room prior to the start of the hearing.

Time limitations may be imposed on oral presentations to ensure that all persons who desire to make oral comments will have an opportunity to do so.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of the proposed rule(s) may be obtained for review by the public from the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma. Electronic copies of proposed rules are also available for review thirty (30) days prior to the hearing on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. § 303(D), a Rule Impact Statement will be prepared and available for review at the Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma on and after the date of publication of this Notice of Rulemaking Intent. A copy of the RIS will also be available on the State Department of Education Legal Services website at: <http://ok.gov/sde/administrative-rules>

CONTACT PERSON:

Lori Murphy, Assistant General Counsel, Office of Legal Services, State Department of Education, Room 1-17, Hodge Education Building, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599. Telephone number: (405) 522-5260

[OAR Docket #16-767; filed 10-7-16]

**TITLE 270. OKLAHOMA FIREFIGHTERS PENSION AND RETIREMENT SYSTEM
CHAPTER 10. FIREFIGHTERS PENSION AND RETIREMENT PLAN**

[OAR Docket #16-759]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

270:10-1-8 [AMENDED]

SUMMARY:

The proposed rule amendment to 270:10-1-8(c) reflects the effective date in 11 O.S., Section 49-117.1 of November 1, 2013.

The proposed rule amendments to 270:10-1-8 require, commencing with the plan year ending on June 30, 2018 and for each plan year thereafter, an annual mandatory distribution of interest earnings from the Deferred Option Plan and the Deferred Option Plan under the Back DROP provision (collectively "Plan B") for members of the Oklahoma Firefighters Pension and Retirement System ("System") whose first period of employment with a participating employer of

the System occurred before November 1, 2013. Pursuant to 11 O.S., Section 49-106.1(F), except for a lump sum payment or an annuity, the Board of Trustees must approve all other methods of payment for Plan B distributions from a member's Plan B account. Thus, revisions to the rules are necessary to reflect the Board of Trustees' approved methods of payment for any interest earnings credited to a member's Plan B account on or about June 30, 2018, and thereafter.

The mandatory distribution of interest earnings applies to retired members, disabled members and surviving spouses. The mandatory distribution of interest earnings does not apply to an individual who is receiving a required minimum distribution from Plan B. The amount of the mandatory distribution of interest for any plan year is reduced by the amount of the voluntary withdrawals from the member's Plan B account.

The proposed amendments also set forth the mechanism for the calculation of interest earnings and the approved methods of payment for the annual mandatory distribution of interest earnings credited to a member's account on or about June 30, 2018, and thereafter. If a member fails to make an election, the proposed rule amendments state that such failure will result in an automatic rollover of such interest earnings to an individual retirement plan, consistent with Section 401(a)(31) of the Internal Revenue Code of 1986, as amended ("Code"), for any member before the member attains the later of age 62 or the member's normal retirement date, and a direct lump sum distribution to the member for any other member before such member attains age 70 1/2.

The proposed amendments also change the terms "beneficiary" and "beneficiaries" to "designated recipient" and "designated recipients" with respect to any payment to these individuals from the Plan B account in order to be consistent with 11 O.S., Section 49-106.1(G).

The proposed amendments to 270:10-1-8(l)(1)(F) and 270:10-1-8(m)(3) move language within a sentence to clarify the positions that may be held by a Plan B member if reemployed by a participating municipality and receiving in service distributions of the member's accrued benefit from the System after such member concludes participation in Plan B.

The proposed amendments to 270:10-1-8(l)(3) and 270:10-1-8(m)(7) change the numbering of (1) and (2) to (A) and (B) to avoid potential confusion with the subsection numbering system.

The proposed amendments to 270:10-1-8(m)(2)(C) add a cross-reference to (l) of 270:10-1-8.

The proposed amendments adding 270:10-1-8(p) detail the automatic rollover provisions required by Code Section 401(a)(31). The proposed amendments provide that in the event of a mandatory distribution greater than \$1,000 made on or after June 28, 2018, if the member does not elect to have the distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, then the State Board shall pay the distribution in a direct rollover to an individual retirement plan designated by the State Board.

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AUTHORITY:

Oklahoma Firefighters Pension and Retirement Board; 11 O.S., Sections 49-100.7 and 49-106.1.

COMMENT PERIOD:

Persons may submit oral or written comments through December 5, 2016 to Chase Rankin, Controller, Oklahoma Firefighters Pension and Retirement System 6601 Broadway Extension, Suite 100, Oklahoma City, OK 73116, (405) 522-4600 or by email to Chase.Rankin@firepension.ok.gov.

PUBLIC HEARING:

A public hearing will be held to provide a means by which persons may offer oral input on the content of the proposed rules: 10:30 a.m., Friday, December 16, 2016, 6601 Broadway Extension, Suite 100, Oklahoma City, OK 73116.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

n/a

COPIES OF PROPOSED RULES:

The proposed rules may be viewed on the System's website at <https://www.ok.gov/fprs/> and copies may be obtained from the Oklahoma Firefighters Pension and Retirement System office located at 6601 Broadway Extension, Suite 100, Oklahoma City, OK 73116. Copies may also be obtained by written request mailed to the attention of Chase Rankin, 6601 Broadway Extension, Suite 100, Oklahoma City, OK 73116, or emailed to Chase.Rankin@firepension.ok.gov.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S., §303(D), a rule impact statement is being prepared and will be available for review after November 13, 2016 at the above addresses.

CONTACT PERSON:

Chase Rankin, Controller, Oklahoma Firefighters Pension and Retirement System (405) 522-4600 or Chase.Rankin@firepension.ok.gov.

[OAR Docket #16-759; filed 10-5-16]

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

[OAR Docket #16-755]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 33. Regional University Baccalaureate Scholarship Program

610:25-33-4. Eligibility Requirements [AMENDED]

610:25-33-5. Criteria for Continued Eligibility [AMENDED]

SUMMARY:

The proposed rule changes address the following issues:

ACT Test Scores: To be eligible for the Regional University Baccalaureate Scholarship, students must score at least a 30

on the ACT unless they meet other designations. In recent years, ACT has expanded its options for taking the ACT test beyond the traditional six national Saturday testing dates each school year. Other official ACT testing options now include school-level testing administered at a school site during the school day, statewide ACT tests (not used in Oklahoma to date), and international tests. The proposed change recognizes these additional methods for students to obtain ACT scores considered official and valid by ACT. The language specifically excludes "residual" ACT tests administered by an individual college because ACT does not allow residual test scores to be used beyond the campus that administers the test.

Retention/Graduation Grade Point Average (GPA): The proposed changes allow, in addition to the cumulative GPA, the use of the student's retention/graduation GPA for meeting the program's continuing eligibility GPA requirements. The retention/graduation GPA calculation does not include activity courses or courses subject to academic forgiveness provisions authorized by State Regents' policy. State Regents' policy also uses the retention/graduation GPA for compliance with State Regent's system-wide academic enrollment requirements. In addition, on students' transcripts, the retention/graduation GPA is required to be shown but the reporting of the cumulative GPA is optional.

Final Semester Award: Students in the program are limited to eight semesters of scholarship eligibility and must enroll in at least twelve hours per fall or spring semester. The proposed revision would allow students in their final semester of undergraduate enrollment to be eligible for a half-semester award for at least six hours of enrollment. This provision is for students who need less than twelve hours in their final semester to complete their undergraduate degree. The change would prevent the student from having to take unnecessary courses to receive an award and would also prevent the program from having to pay a larger award for unnecessary courses.

AUTHORITY:

70 O.S. §3206 (i); Oklahoma State Regents for Higher Education

COMMENT PERIOD:

Interested persons may submit written and oral comments to David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., December 1, 2016.

PUBLIC HEARING:

A public hearing has not been scheduled; however, one can be requested by contacting David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., December 1, 2016.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after November 1, 2016.

CONTACT PERSON:

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

[OAR Docket #16-755; filed 10-4-16]

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

[OAR Docket #16-756]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Oklahoma Tuition Aid Grant Program
610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds
[AMENDED]

SUMMARY:

The proposed rule changes address the following issue:

Award Disbursement Policies: Colleges and universities continue to expand their offerings of more flexible non-traditional enrollment options. In addition, many certificate programs at state career technology centers (at which the Oklahoma Tuition Aid Grant - OTAG - is authorized to be used) are also offered in non-traditional enrollment periods based on clock hours rather than college semester credit hours. The proposed changes allow the OTAG award to be disbursed in a manner consistent with the student's actual enrollment period. The OTAG disbursement procedure will follow federal Pell Grant guidelines which are familiar to all student financial aid officers. The proposed change does not change the maximum annual award, but allows the award to be disbursed in a consistent and effective manner.

AUTHORITY:

70 O.S. §626.1 *et seq.*; 70 O.S. §3206 (i); Oklahoma State Regents for Higher Education

COMMENT PERIOD:

Interested persons may submit written and oral comments to David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., December 1, 2016.

PUBLIC HEARING:

A public hearing has not been scheduled; however, one can be requested by contacting David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., December 1, 2016.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after November 1, 2016.

CONTACT PERSON:

David B. Harting, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

[OAR Docket #16-756; filed 10-4-16]

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

[OAR Docket #16-757]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-4. Program requirements [AMENDED]

SUMMARY:

The proposed rule changes address the following issues:

Adding Statistics and Probability Course Option to Math Curriculum Requirements: The core curriculum requirements for Oklahoma's Promise are directly aligned with the core curriculum requirements for college admission as approved by the State Regents. In June 2016, the State Regents approved a modification to the college admission curriculum requirements for mathematics by adding statistics and probability to the list of acceptable courses. The proposed revision makes this same change to the Oklahoma's Promise curriculum requirements for mathematics.

ACT Test Scores: In addition to meeting the other Oklahoma's Promise program requirements, homeschool students and students graduating from non-accredited high schools are also required by state law to score a 22 or higher on the ACT test. In recent years, ACT has expanded its options for taking the ACT test beyond the traditional six national Saturday testing dates each year. Other official ACT testing options now

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include school-level testing administered at a school site during the school day, statewide ACT tests (not used in Oklahoma to date), and international tests. The proposed change would recognize these additional methods for students to obtain ACT scores considered official and valid by ACT. The language specifically excludes "residual" ACT tests administered by an individual college because ACT does not allow residual test scores to be used beyond the campus that administers the test. The language also requires that SAT test scores be considered in a manner comparable to the ACT test scores.

AUTHORITY:

70 O.S. §2601 *et seq.*; 70 O.S. §3206 (i); Oklahoma State Regents for Higher Education

COMMENT PERIOD:

Interested persons may submit written and oral comments to David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., December 1, 2016.

PUBLIC HEARING:

A public hearing has not been scheduled; however, one can be requested by contacting David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., December 1, 2016.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after November 1, 2016.

CONTACT PERSON:

David B. Harting, Associate General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

[OAR Docket #16-757; filed 10-4-16]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION

CHAPTER 25. STUDENT FINANCIAL AID AND SCHOLARSHIPS

[OAR Docket #16-758]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. Academic Scholars Program

610:25-1-3. General principles for operation of program [AMENDED]

610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]

SUMMARY:

The proposed rule changes address the following issues:

ACT Test Scores: In recent years, ACT has expanded its options for taking the ACT test beyond the traditional six national Saturday testing dates each year. Other official ACT testing options now include school-level testing administered at a school site during the school day, statewide ACT tests (not used in Oklahoma to date), and international tests. The proposed change would recognize these additional methods for students to obtain ACT scores considered official and valid by ACT. The language specifically excludes "residual" ACT tests administered by an individual college because ACT does not allow residual test scores to be used beyond the campus that administers the test. The language also requires that SAT test scores be considered in a manner comparable to the ACT test scores.

Institutional Nominee Transfers from Two-Year Colleges:

The proposed revision would allow Institutional Nominee students attending a two-year college to transfer to a four-year college once they have completed an associate's degree or accumulated at least 48 credit hours. Current policy requires the student to earn at least 48 hours at a two-year college during their first two years of college before transferring. The proposed change addresses those students that enter college with significant college credit already earned through concurrent enrollment or Advanced Placement (AP) credit. Per current policy, the student would still be required to attend at least one full year at the two-year college that initially nominated the student. The proposed change would also be consistent with the existing policy for four-year universities that requires the Institutional Nominee to attend at least one year at the nominating four-year university before transferring to another institution.

AUTHORITY:

70 O.S. §2401 *et seq.*; 70 O.S. §3206 (i); Oklahoma State Regents for Higher Education

COMMENT PERIOD:

Interested persons may submit written and oral comments to David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104, by 5:00 p.m., December 1, 2016.

PUBLIC HEARING:

A public hearing has not been scheduled; however, one can be requested by contacting David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 by 5:00 p.m., December 1, 2016.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

N/A

COPIES OF PROPOSED RULES:

Copies of proposed rules may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained at the Office of the Chancellor, Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK, 73104 on and after November 1, 2016.

CONTACT PERSON:

David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289.

[OAR Docket #16-758; filed 10-4-16]

Emergency Adoptions

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

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

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

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

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

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #16-760]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 21. Procedure for the Petroleum Storage Tank Docket
165:5-21-3.1. Applications to Close a Storage Tank in Place [NEW]

AUTHORITY:

Corporation Commission; Okla. Const. art. IX § 18, 17 O.S. §§ 301, 306 (12), 307 (A), 322 (4) *et seq.*, 75 O.S. §§ 250 *et seq.*, and OAPA.

COMMENT PERIOD:

July 12, 2016 through August 19, 2016

PUBLIC HEARING:

July 28, 2016 and September 1, 2016

ADOPTION:

September 1, 2016

APPROVED BY GOVERNOR:

September 30, 2016

EFFECTIVE:

Immediately upon Governor's approval.

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

On September 1, 2016 the Commission en banc acknowledged the need to remedy a rule conflict immediate to the benefit of tank owners seeking a variance. Variances vary from year to year and may number as many as forty (40) in a given year.

ANALYSIS:

The emergency rule is necessary because the Agency promulgated an administrative process for the regulated community that replaced the former rule that required formal hearing before an administrative law judge ("ALJ"). Unfortunately, the existing rule allowing a variance requiring formal hearing was not changed to allow for the administrative process. The end result is the Agency had a rule providing for an informal administrative review without hearing, but the root rule requiring formal hearing before an ALJ was still effective, thus causing a conflict with the rule amendment. At this point, the regulated community cannot avail themselves of the informal administrative process but must spend the time, effort and money to present their case to an ALJ.

CONTACT PERSON:

Jeffrey P. Southwick, Deputy General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73105, telephone (405) 522-4457, j.southwick@occcemail.com.

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

SUBCHAPTER 21. PROCEDURE FOR THE PETROLEUM STORAGE TANK DOCKET

165:5-21-3.1. Applications to close a storage tank in place

(a) Administrative review. For an application for a variance to close a storage tank in place, the Petroleum Storage Tank Division shall review the application administratively without the necessity of a hearing and it shall report its findings to the Commissioners to determine whether the variance and/or other relief, if any, should be granted.

(b) Remedies after denial or modification. If the Petroleum Storage Tank Division denies the relief requested by the application, or the Petroleum Storage Tank Division cannot agree to a modification, the applicant may withdraw its application or file a notice of hearing before an Administrative Law Judge and present their application for a recommendation on the merits of the variance sought. If the application for the variance is denied by the Administrative Law Judge, the Applicant may file exceptions as more fully defined under OAC 165:5-13-5.

[OAR Docket #16-760; filed 10-6-17]

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

[OAR Docket #16-754]

RULEMAKING ACTION:

EMERGENCY adoption

Emergency Adoptions

RULES:

Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Agency Services
317:30-5-241.1. [AMENDED]
(Reference APA WF # 16-09)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Article 10, Section 23 of the Oklahoma Constitution

ADOPTION:

August 11, 2016

APPROVED BY GOVERNOR:

September 22, 2016

EFFECTIVE:

Immediately upon Governor's approval or September 1, 2016, whichever is later.

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to file a balanced budget.

ANALYSIS:

Proposed outpatient behavioral health agency policy changes will reduce the number of SoonerCare compensable service plan updates to two in one year. Outpatient behavioral health agencies will now be reimbursed for one initial comprehensive treatment plan and one update thereto bi-annually. These changes were previously made in emergency rules approved by the OHCA Board on April 28, 2016 in rules identified by APA WF# 16-06. Rules are now being brought forward for consideration as an emergency rule since the same section of policy was amended by APA WF# 15-30, during the 2016 permanent rulemaking legislative session, and will supersede the emergency rules subsequently approved on April 28, 2016.

CONTACT PERSON:

Tywanda Cox at (405) 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR SEPTEMBER 1, 2016, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH AGENCY SERVICES

317:30-5-241.1. Screening, assessment and service plan

All providers must comply with the requirements as set forth in this Section.

(1) Screening.

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population and limitations.** Screening is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months. To qualify for reimbursement, the screening tools used must be evidence based or otherwise approved by OHCA and ODMHSAS and appropriate for the age and/or developmental stage of the member.

(2) Assessment.

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified practitioners.** This service is performed by an LBHP or Licensure Candidate.

(C) **Target population and limitations.** The Behavioral Health Assessment ~~by a Non-Physician, moderate complexity,~~ is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(D) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include at least one DSM diagnosis from the most recent DSM edition. The information in the assessment must contain but is not limited to the following:

- (i) Behavioral, including substance use, abuse, and dependence;
- (ii) Emotional, including issues related to past or current trauma;
- (iii) Physical;
- (iv) Social and recreational;
- (v) Vocational;
- (vi) Date of the assessment sessions as well as start and stop times;
- (vii) Signature of parent or guardian participating in face-to-face assessment. Signature required for members over the age of 14; and

- (viii) Signature and credentials of the practitioner who performed the face-to-face behavioral assessment
- (3) **Behavioral Health Services Plan Development.**
- (A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. Behavioral Health Service Plan Development is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. A Service Plan Development, Low Complexity is required every 6 months and must include an update to the bio-psychosocial assessment and re-evaluation of diagnosis.
- (B) **Qualified practitioners.** This service is performed by an LBHP or Licensure Candidate.
- (C) **Time requirements.** Service Plan updates must be conducted face-to-face and are required every six months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the qualified practitioner and member, but are only compensable twice in one year.
- (D) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:
- (i) member strengths, needs, abilities, and preferences(SNAP);
 - (ii) identified presenting challenges, problems, needs and diagnosis;
 - (iii) specific goals for the member;
 - (iv) objectives that are specific, attainable, realistic, and time-limited;
 - (v) each type of service and estimated frequency to be received;
 - (vi) the practitioner(s) name and credentials that will be providing and responsible for each service;
 - (vii) any needed referrals for service;
 - (viii) specific discharge criteria;
 - (ix) description of the member's involvement in, and responses to, the service plan, and his/her signature and date;
 - (x) service plans are not valid until all signatures are present (signatures are required from the member, if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP or Licensure Candidate; and
 - (xi) all changes in service plan must be documented in a service plan update (low complexity) or within the service plan until time for the update (low complexity). Any changes to the existing service plan must be signed and dated by the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the lead LBHP or Licensure Candidate.
 - (xii) Updates to goals, objectives, service provider, services, and service frequency, must be documented within the service plan until the six month review/update is due.
 - (xiii) Service plan updates must address the following:
 - (I) update to the bio-psychosocial assessment, re-evaluation of diagnosis service plan goals and/ or objectives;
 - (II) progress, or lack of, on previous service plan goals and/or objectives;
 - (III) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;
 - (IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;
 - (V) change in frequency and/or type of services provided;
 - (VI) change in practitioner(s) who will be responsible for providing services on the plan;
 - (VII) change in discharge criteria;
 - (VIII) description of the member's involvement in, and responses to, the service plan, and his/her signature and date; and
 - (IX) service plans are not valid until all signatures are present. The required signatures are: from the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP or Licensure Candidate.
- (E) **Service limitations:**
- (i) Behavioral Health Service Plan Development, Moderate complexity (i.e., pre-admission procedure code group) are limited to 1 per member, per provider, unless more than a year has passed between services, then another one can be requested and may be authorized by OHCA or its designated agent.
 - (ii) Behavioral Health Service Plan Development, Low Complexity: Service Plan updates are

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required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member, but are only reimbursable twice in one year. The date of service is when the service plan is complete and the date the last required signature is obtained. Services should always be age, developmentally, and clinically appropriate.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified practitioners.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist, an LBHP or Licensure Candidate. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Each qualified professional must have a current contract with the Oklahoma Health Care Authority.

(C) **Documentation requirements.** All psychological services must be reflected by documentation in the member's record. All assessment, testing, and treatment services/units billed must include the following:

- (i) date;
- (ii) start and stop time for each session/unit billed and physical location where service was provided;
- (iii) signature of the provider;
- (iv) credentials of provider;
- (v) specific problem(s), goals and/or objectives addressed;
- (vi) methods used to address problem(s), goals and objectives;
- (vii) progress made toward goals and objectives;
- (viii) patient response to the session or intervention; and
- (ix) any new problem(s), goals and/or objectives identified during the session.

(D) **Service Limitations.** Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Behavioral Health Provider Manual. Evaluation and testing is clinically appropriate and allowable when an accurate diagnosis and determination of treatment needs is needed. Eight hours/units of testing per patient over the age of three, per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and

documented in the medical record. Testing units must be billed on the date the actual testing, interpretation, scoring, and reporting are performed. A maximum of 12 hours of therapy and testing, per day per rendering provider are allowed. A child who is being treated in an acute inpatient setting can receive separate psychological services by a physician or psychologist as the inpatient per diem is for "non-physician" services only. A child receiving Residential level treatment in either a therapeutic foster care home, or group home may not receive additional individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent. Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider. For assessment conducted in a school setting the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Individuals who qualify for Part B of Medicare: Payment is made utilizing the SoonerCare allowable for comparable services. Payment is made to physicians, LBHPs or psychologists with a license to practice in the state where the services is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed.

[OAR Docket #16-754; filed 9-26-16]

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

[OAR Docket #16-753]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals

317:30-5-42.17 [AMENDED]

Part 45. Optometrists

317:30-5-432.1 [AMENDED]

(Reference APA WF # 16-02)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR §440.120

ADOPTION:

August 11, 2016

APPROVED BY GOVERNOR:

September 22, 2016

EFFECTIVE:

Immediately upon Governor's approval or September 1, 2016 whichever is later.

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists and finds that an imminent peril exists to the preservation of the public health, safety, or welfare which necessitates promulgation of emergency rules. The agency requests emergency approval of rule revisions to Optometrists policy to allow payment for refractions and for a fitting fee within a restructured and overall reduced reimbursement structure that result in budget savings.

ANALYSIS:

These emergency revisions are necessary to facilitate the restructuring of reimbursement for eyeglasses frames and lenses. In lieu of a single contracted vendor and the resultant volume discount, a reduced reimbursement rate and rate structure was negotiated in order to keep the current provider network for optical supplies. The new rate structure allows SoonerCare contracted providers of vision services to be reimbursed separately for refraction in an eye exam, thus necessitating rule revisions. In addition, the new rate structure allows SoonerCare contracted providers of eyeglasses to be paid a fitting fee, thus necessitating rule revisions. Previously, reimbursement for refraction was bundled into the payment for the eye exam and reimbursement for fitting was bundled into the payment for the eyeglass materials.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR SEPTEMBER 1, 2016, WHICHEVER IS LATER:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-42.17. Non-covered services

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage:

- (1) Inpatient admission for diagnostic studies that could be performed on an outpatient basis.
(2) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.
(3) Reversal of sterilization procedures for the purposes of conception are not covered.
(4) Medical services considered experimental or investigational.
(5) Payment for removal of benign skin lesions for adults.
(6) Refractions and visual aids.
(7) Charges incurred while the member is in a skilled nursing or swing bed.
(8) Sleep studies for adults.

PART 45. OPTOMETRISTS

317:30-5-432.1. Corrective lenses and optical supplies

- (a) When medically necessary, payment will be made for lenses, frames, low vision aids and certain tints for children. Coverage includes lenses and frames to protect children with monocular vision. Coverage includes two sets of non-high-index polycarbonate lenses and frames per year. Any high-index lenses or frames beyond this limit must be prior authorized and determined to be medically necessary. All non-high-index lenses must be polycarbonate.
(b) Corrective lenses must be based on medical need. Medical need includes a significant change in prescription or replacement due to normal lens wear.
(c) SoonerCare provides frames when medically necessary. Frames are expected to last at least one year and must be reusable. If a lens prescription changes, the same frame must be used if possible. Payment for frames includes the dispensing fee.
(d) Providers must accept SoonerCare's payment reimbursement as payment in full for services rendered, except when authorized by SoonerCare (e.g., copayments, other cost sharing arrangements authorized by the State).
(1) Providers must be able to dispense standard eyeglasses which SoonerCare would fully reimburse with no cost to the eligible member.
(2) If the member wishes to select eyeglasses with special features which exceed the SoonerCare allowable fee, the member may be billed the excess cost. The provider must obtain signed consent from the member acknowledging that they are selecting eyeglasses that will not be covered in full by SoonerCare and that they will be responsible to pay the excess cost. The signed consent must be included in the member's medical record.
(e) Replacement of or additional lenses and frames are allowed when medically necessary. The OHCA does not cover lenses or frames meant as a backup for the initial lenses/frames. Prior authorization is not required unless the number of glasses exceeds two per year. The provider must always document in the patient record the reason for the replacement or additional eyeglasses. The OHCA or its designated agent will conduct ongoing monitoring of replacement frequencies to ensure OHCA policy is followed. Payment adjustments will be made on claims not meeting these requirements.
(f) A fitting fee will be paid if there is documentation in the record that the provider or technician took measurements of the patient's anatomical facial characteristics, recorded lab specifications and made final adjustment of the spectacles to the visual axes and anatomical topography. A fitting fee can only be paid in conjunction with a pair of covered glasses.
(g) Bifocal lenses for the treatment of accommodative esotropia are a covered benefit. Progressive lenses, trifocals, photochromic lenses and tints for children require prior authorization and must satisfy the medical necessity standard. Polycarbonate lenses are covered for children when medically necessary. Payment is limited to two glasses per year. Any glasses beyond this limit must be prior authorized and determined to be medically necessary.

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(gh) Progressive lenses, aspheric lenses, tints, coatings and photochromic lenses for adults are not compensable and may be billed to the patient.

(hi) Replacement of lenses and frames due to abuse and neglect by the member is not covered.

(ij) Bandage contact lenses are a covered benefit for adults and children. Contact lenses for medically necessary treatment of conditions such as aphakia, keratoconus, following keratoplasty, aniseikonia/anisometropia or albinism are a covered benefit for adults and children. Other contact lenses for children require prior authorization and must satisfy the medical necessity standard.

[OAR Docket #16-753; filed 9-26-16]

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

[OAR Docket #16-764]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions

340:40-1-2 [AMENDED]

Subchapter 3. Initial Application

340:40-3-1 [AMENDED]

Subchapter 7. Eligibility

340:40-7-3 [AMENDED]

340:40-7-5 through 340:40-7-9 [AMENDED]

340:40-7-11 through 340:40-7-12 [AMENDED]

Subchapter 9. Procedures Relating to Case Changes

340:40-9-1 through 340:40-9-2 [AMENDED]

Subchapter 13. Child Care Rates and Provider Issues

340:40-13-3 [AMENDED]

(Reference WF 16-03)

AUTHORITY:

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes; CCDBG Act of 2014, P.L. 113-186; and Title 45 of the Code of Federal Regulations Parts 98 and 99.

ADOPTION:

September 13, 2016

APPROVED BY GOVERNOR:

September 29, 2016

EFFECTIVE:

Immediately upon Governor's approval or October 1, 2016, whichever is later.

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested effective October 1, 2016 to meet the federal deadline for implementation of the CCDBG Act of 2014, P.L. 113-186.

ANALYSIS:

The proposed revisions to Chapter 40, Subchapter 1 amend the rules to: (1) add the Child Care and Development Block Grant Act (CCDBG) of 2014 Public Law (P.L.) 113-186 to the legal authority for the Child Care Subsidy Program; and (2) update terminology.

CONTACT PERSON:

Dena Thayer at 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR OCTOBER 1, 2016, WHICHEVER IS LATER:

SUBCHAPTER 1. GENERAL PROVISIONS

340:40-1-2. Legal ~~base~~ basis and authority

The legal ~~base~~ basis for the ~~child care subsidy program~~ Child Care Subsidy Program is granted under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [~~P.L.~~ Public Law (P.L.) 104-193], Child Care and Development Block Grant Act of 2014 P.L. 113-186, the Balanced Budget Act of 1997 [P.L. 105-33], and 45 CFR Parts 98 and 99 of Title 45 of the Code of Federal Regulations. The ~~child care subsidy program~~ Child Care Subsidy Program also receives funding ~~under~~ per Title XX of the U.S. Social Security Act as Amended Title XX.

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits must be synchronized with the client's food benefits or Sooner-Care (Medicaid) benefits per Oklahoma Administrative Code (OAC) 340:40-9-1(e)(f). ~~The~~ Child Welfare Services or Adult and Family Services (AFS) staff process the application.

(1) **When an application is required.** An application is required when:

(A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;

(B) the client's subsidized child care benefits ~~have been~~ are 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 OAC 340:40-7-12(6) policy applied and one or more of the affected adopted children turns 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. When an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving ~~his~~ the person permission to act on behalf of the applicant or the applicant must

have designated ~~this~~the person as his or her authorized representative on the signed application.

(A) ~~If~~When the natural or adoptive parent or step-parent ~~of~~lives with the child ~~is in the home~~, he or she is considered the applicant and eligibility is based on ~~that the~~ parent's situation regardless of whether he or she has custody of the child.

(B) ~~If~~When both the natural and adoptive parent of the child ~~are living~~live in the same household and the adoption ~~has been finalized~~is final, the adoptive parent is considered the applicant and eligibility is based on ~~that the~~ adoptive parent's situation.

(C) ~~If~~When the natural or adoptive parent or step-parent 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~~When the child's parent is a minor, either the minor parent or the responsible adult the minor ~~is living~~lives with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) ~~If~~When the natural or adoptive parent ~~is living~~lives 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.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. When the applicant requests child care ~~is needed~~ for a child with disabilities, the worker, ~~and applicant also complete~~gives Form 08AD006E, Certification for Special Needs Child Care Rate for Licensed Child Care Homes and Centers, to the applicant.

(4) **Date of request**Request date. The request date of request, known as the application date for other Adult and Family Services programs, is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Date of application**Certification date. The certification 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 county office, including the name of the child care provider the client chooses to use.

(A) The provider must have a valid Oklahoma Department of Human Services (~~OKDHS~~)DHS 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~~may be completed face-to-face or over the phone 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~~informs the applicant or authorized representative of:

(A) his or her rights and responsibilities;

(B) all factors of eligibility including ~~which the requirement that the chosen child care providers are eligible to receive subsidy payment~~provider be contracted with DHS;

(C) the child care 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~~DHS 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 10-calendar days.

(8) **Timeliness.** To be considered timely, the worker must determine eligibility within two ~~working~~business days of receiving all necessary verification to certify or deny the application.

(A) ~~If~~When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date ~~of request~~.

(B) ~~The~~When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, 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**Presumptive 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~~may presumptively approve a maximum of 30-calendar days of child care, and without child care the applicant prior to making a complete eligibility determination when a reason described in (1) of this paragraph applies.

(1) Reasons include when the applicant:

(~~1~~) is in danger of losing a job; or

(~~2~~) cannot start a new job unless child care is immediately approved. In this circumstance it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care;

(B) is employed but has not received pay from the job and is not guaranteed a wage because he or she is self-employed or works on a commission only basis. Further care is not approved until the applicant provides proof he or she received earnings from the job;

(C) requests protective or preventive child care per OAC 340:40-7-8(f); or

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(D) requests good cause for refusal to cooperate in pursuing child support with Child Support Services per OAC 340:40-7-9 and has not provided good cause proof yet. Further care is not approved until the applicant provides good cause proof that supports the good cause claim.

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what he or she needs to provide before further care is approved.

(c) **Eligibility determination.** The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. ~~The~~After calculating family income, the worker uses ~~OKDHS~~DHS Appendix C-4, Child Care Eligibility/Co-paymentCoyayment Chart, to determine whether the household meets income guidelines. Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 40-7-13 for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period per Section 658E(c)(2)(N)(i) of the Child Care and Development Block Grant Act of 2014, Public Law 113-186. 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~~DHS does not pay for care for any day the child attends child care if ~~when~~ the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client or provider.

(C) ~~If~~When 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~~DHS pays, if ~~when~~ all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The worker denies the child care request or application is ~~denied~~ if ~~when~~ the applicant completes the application process and is determined ineligible, does not provide needed verification, or ~~requests cancellation of the application~~ fails to cooperate in determining eligibility.

(A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date.

(B) ~~A new~~When the worker denies the application because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary

verification within 60-calendar days of the original request date.

(C) When the worker denies the application because the applicant fails to cooperate in determining eligibility, a new application is not required when the applicant cooperates within 30-calendar days of the original request date.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-3. Age requirements

(a) A child is eligible for subsidized child care benefits through the day before he or she turns 13 years of age. When a child turns 13 years of age during an eligibility period, the child remains eligible until the next renewal.

(b) A child with disabilities may be eligible to receive subsidized child care benefits through the day before he or she turns 19 years of age. When a child with disabilities turns 19 years of age during an eligibility period, the child remains eligible until the next renewal.

(1) A child with disabilities is defined at Oklahoma Administrative Code (OAC) 340:40-7-3.1.

(2) When a child with disabilities is 13 years of age or older, the client must provide a statement from a licensed health care professional verifying that the child is physically or mentally incapable of self-care as age appropriate before care is approved and annually at review. If the licensed health care professional states that the child is capable of self-care as age appropriate, care is not approved.

(c) A child under court supervision may be eligible to receive subsidized child care benefits through the day before the child turns 19 years of age. When a child under court supervision turns 19 years of age during an eligibility period, the child remains eligible until the next renewal. When the child is 13 years of age or older, the client must provide a copy of the court order, a statement from the ~~Child Welfare worker~~child welfare specialist, or the Office of Juvenile Affairs (OJA) worker verifying this before care is approved and annually at ~~review~~ renewal.

340:40-7-5. Resources, residence, and citizenship

(a) ~~Resources are not considered in determining eligibility.~~ Household resources must not exceed \$1,000,000 for subsidized child care per Section 658P(4) of the Child Care and Development Block Grant Act of 2014, Public Law 113-186. Resources include, but are not limited to; liquid resources, such as cash; financial institution account balances; certificates of deposit; stocks; bonds; and real property other than home property.

(b) A parent or caretaker's statement that he or she lives in Oklahoma meets the residence requirement for child care.

(c) Only the child for whom child care is requested must meet the citizenship and alienage requirements.

(1) A child eligible to be included in a child care benefit must be either a:

(A) citizen or a national of the United States (U.S.), including the 50 states, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and Northern Mariana Islands. The child may be a citizen of the U.S. by being born in the U.S. or by being born in some other country but moving to the U.S. and being granted U.S. citizenship through the U.S. Citizenship and Immigration Services (USCIS), a bureau of the Department of Homeland Security; or

(B) qualified alien:

(i) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);

(ii) who is paroled into the U.S. ~~under~~ per Section 212(d)(5) of INA, ~~§~~ 8 United States Code (U.S.C.) 1182, for a period of at least one year;

(iii) who is granted conditional entry ~~pursuant to~~ per Section 203(a)(7) of INA, ~~§~~ 8 U.S.C. 1153, as in effect prior to April 1, 1980;

(iv) who is granted asylum ~~under~~ per Section 208 of INA;

(v) who is admitted to the U.S. as a refugee ~~un-~~ der per Section 207 of INA, ~~§~~ 8 U.S.C. 1157;

(vi) whose deportation is withheld ~~under~~ per Section 241(b)(3) of INA;

(vii) who is a Cuban or Haitian entrant ~~as de-~~ fin- ed in per Section 501(e) of the Refugee Education Assistance Act of 1980;

(viii) who was battered or whose parent or caretaker was battered ~~as defined in~~ per Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act as amended per ~~§~~ 8 U.S.C. 1641(c); or

(ix) who was a victim or whose parent or caretaker was a victim of a severe form of trafficking ~~pursuant to~~ per Section 107(b) of the Trafficking Victims Protection Act of 2000 ~~which that~~ was reauthorized and amended by ~~the~~ per Trafficking Victim's Protection Reauthorization Act of 2003.

(2) A declaration of citizenship and alien status is required for all children included in the child care benefit. This requirement is met when an adult member of the household completes and signs the application or ~~review form~~ renewal attesting to the citizenship and alien status for all children included in the benefit. Refer to Oklahoma Administrative Code (OAC) 340:65-3-1(g) for additional citizenship requirements for persons 14 years of age and older ~~pursuant to~~ per Section 71 of Title 56 and Section 20 of Title 74 of the Oklahoma Statutes.

(3) ~~A child who is an alien determined to have satisfactory~~ The worker must verify the alien status ~~must have the status verified of an alien child through the United States Citizenship and Immigration Services (USCIS) Systematic Alien Verification for Entitlements (SAVE). In situations which require a~~ When SAVE indicates that written inquiry the child's alien status documents must be submitted to the USCIS, the worker must not delay, deny,

~~terminate~~ close, or reduce benefits to an alien pending USCIS verification of submitted documentation.

340:40-7-6. Household composition and income consideration

(a) **Definition of household composition terms.** The worker determines household composition for income considerations using the definition of terms listed in (1) through (9) of this subsection.

(1) An adult is an emancipated minor or person 18 years of age or older. A child who is ~~also~~ a parent is considered an adult.

(2) A spouse is a person married by ceremony or common-law to another person. They ~~can be living~~ may live together or separately. ~~If~~ When they ~~are living~~ live separately, they are not considered part of the household ~~if~~ unless the separation is temporary ~~with no intention of severing the marital relationship or the separation is involuntary.~~

(3) A stepparent is a person who is or was a spouse ~~or has been a spouse~~ to the child's parent.

(4) A caretaker is an adult ~~the child is living with who is acting~~ who lives with and acts in the role of a parent to the child applying for or receiving subsidized child care benefits.

(A) ~~This person~~ The caretaker may or may not be:
 (i) related to the child by blood, adoption, or marriage; ~~and~~ or
 (ii) ~~may or may not be~~ legally and financially responsible for the child.

(B) The caretaker must pursue child support from the natural or adoptive parent per Oklahoma Administrative Code (OAC) 340:40-7-9.

(5) An adult non-relative is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.

(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child who needs child care. The term also includes other caretaker adults who are court-ordered to be legally and financially responsible for the child.

(7) A child is any unmarried, unemancipated, non-parental person under 18 years of age.

(8) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.

(9) A sibling is a minor child who has at least one parent in common with another child in the same household. ~~This~~ The definition of a sibling also includes a step-brother or step-sister.

(b) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care benefits, it is necessary to define who must be considered part of household composition for income consideration. All persons whose income is counted in determining the family share

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~~eo payment~~copayment are included to determine ~~whether~~ to use a family size of five members or less or for six or more members on ~~OKDHS~~Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Copayment Chart. Persons whose income must be considered in determining eligibility are:

- (1) the natural, adoptive, or stepparent of the child living in the home who needs child care;
- (2) the caretaker(s) of the minor child needing child care ~~if that~~when the caretaker is legally and financially responsible for the child;
- (3) the child needing child care and his or her siblings under 18 years of age living in the home;
- (4) ~~any~~an adult non-relative ~~opposite sex individual (ANROSI) who is living~~lives in the home with the natural or adoptive parent ~~provided, however, the income of the non relative adult of the opposite sex may be excluded if the parent and the adult non relative have separate living quarters and demonstrate no characteristics of a couple and acts in the role of a spouse. An adult non-relative is considered to be acting in the role of a spouse when the person lives with the parent or caretaker and they represent themselves as a couple and/or have a physical relationship with each other;~~ and
- (5) ~~any~~a child of the ~~ANROSI who is living~~an adult non-relative acting in the role of a spouse when the child lives in the home with the natural or adoptive parent.

(c) **Periods of Temporary absence of a household member.**

(1) When a household member is out of the home due to a temporary absence, he or she is considered a household member as long as he or she plans to return to the home. Any parent or caretaker(s) who remains in the home must meet a need factor per OAC 340:40- 7-8. Examples of temporary absence include, but are not limited to:

- (A) hospitalization for physical or mental health reasons;
- (B) incarceration;
- (C) attending school;
- (D) military service;
- (E) working or training away from home;
- (F) looking for a job away from home. ~~Refer to OAC 340:40-7-8(a)(6); and~~
- (G) vacation time for a child. When a child goes to stay with:

- (i) someone other than a natural or adoptive parent for a vacation, household composition, income, and need is based on the usual home situation. The person the child is staying with must also meet the need factor for child care; or
- (ii) a non-custodial natural or adoptive parent, that parent must apply for subsidized child care benefits for that time frame based on his or her own household's eligibility.

(2) ~~If~~When a child lives with each parent for part of the month, refer to (d) of this Section.

(3) ~~If~~When a child lives with a parent for part of the month and a caretaker for the rest of the month, the child's eligibility is based on the parent meeting the eligibility factors per OAC 340:40-7. The caretaker must also meet a need factor per OAC 340:40-7-7 during the time he or she has physical custody of the child.

(d) **Joint or shared custody.** When parents separate or divorce and ~~share~~have joint or shared custody of their child ~~and one or both need child care, either voluntarily or through a court order, the worker considers each parent's eligibility~~parent applies separately as well as his or her income for subsidized child care benefits.

(1) Joint or shared custody may be voluntary or court-ordered.

(2) The worker determines each parent's eligibility separately. This includes a separate income and need for child care determination.

(3) ~~If~~When only one parent qualifies for subsidized child care benefits, the worker only approves child care for the days and hours of care needed while that parent meets a need factor for child care and has physical custody of the child are approved.

(4) ~~If~~When both parents qualify for subsidized child care benefits, the worker approves each parent is approved only for the days and hours that parent meets a need factor for child care and has physical custody and meets a need factor of the child.

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 (DHS) provides subsidized child care benefits.

(1) The worker arranges to obtain from the client or collateral sources, documentation of the need factor.

(2) The worker and client negotiate the amount of travel time allowed for an activity based on what is a reasonable length of time.

(3) The worker does not approve child care for the hours the child attends school or Head Start.

(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 per Oklahoma Administrative Code (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 DHS during the night working hours per OAC 340:40-7-8(a)(5);

(3) ~~parent or caretaker is actively searching for a job per OAC 340:40-7-8(a)(6);~~

(4) parent or caretaker attends a training or formal education program designed to lead to employment per OAC 340:40-7-8(b) and (c);

(5) ~~parent or caretaker attends high school, General Educational Development (GED) high school equivalency classes, literacy, adult basic education (ABE), or~~

English as a Second Language (ESL) classes per OAC 340:40-7-8(c);

(5) parent or caretaker participates in Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) activities per OAC 340:40-7-8(d);

(6) parent or caretaker participates in an approved Temporary Assistance for Needy Families (TANF) Work activity per OAC 340:10-2-1;

(7) child needs care or supervision for part of the day as a protective or preventive service per OAC 340:40-7-8(e)(f); or

(8) child receives Supplemental Security Income (SSI) and needs care for enrichment purposes per OAC 340:40-7-8(f)(g).

(c) Need factor for two-parent or two-caretaker families.

Two-parent or two-caretaker families include two natural or adoptive parents, the natural parent and a stepparent, two grandparents, other relative married couples, or other non-relative married couples. When an unmarried couple applies, only the natural or adoptive parent must meet a need factor. The need for subsidized child care is met when:

(1) both parents or caretakers work during the same hours they request child care 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 DHS during the night working hours per OAC 340:40-7-8(a)(5). When both parents do not work night hours, one parent must work during the other parent's sleep time hours;

(3) ~~one or both parents are searching for a job per OAC 340:40-7-8(a)(6). When one parent or caretaker searches for a job, the other parent or caretaker must work or attend a training or formal education program during the same hours;~~

(4) one parent or caretaker attends a formal education or training program during the same hours the other parent or caretaker works per OAC 340:40-7-8(a) through (c);

(5) both parents or caretakers attend high school per OAC 340:40-7-8(c);

(6) one parent or caretaker attends high school during the same hours the other parent or caretaker works or attends a formal education or post high school training program per OAC 340:40-7-8(a) through (c);

(7) one parent or caretaker attends GED high school equivalency classes, literacy, ABE, or ESL classes during the same hours the other parent or caretaker works per OAC 340:40-7-8(a) through (c);

(8) one or both parents or caretakers participates in SNAP E&T activities per OAC 340:40-7-8(d);

(9) one or both parents or caretakers participate in approved TANF Work activities per OAC 340:10-2-1. When one parent or caretaker is not participating in TANF Work activities, that parent must meet a need factor per OAC 340:40-7-8 during the same hours;

(10) the child needs care or supervision for part of the day as a protective or preventive service per OAC 340:40-7-8(e)(f);

(10) the child receives SSI and needs care for enrichment purposes per OAC 340:40-7-8(f)(g); or

(11) one parent or caretaker is incarcerated and the other parent remains in the home. In this instance, the parent remaining in the home is treated as a single parent.

(d) **Need factor in joint custody cases.** When parents are separated or divorced and share custody of their child, voluntarily or through a court order, each parent's income and need for child care is considered separately.

(e) Need factor for a child attending an Early Head Start-Child Care (EHS-CC) Partnership grant program.

A child attending an EHS-CC Partnership grant program may be approved for a weekly unit type when the parent or caretaker qualifies for Child Care Subsidy and meets a need factor per (b) or (c) of this Section for some of the EHS-CC Partnership grant program care hours.

(f) **Activities that do not meet the need factor for child care.** The need factor for child care is not met and child care must not be approved for:

(1) job search for parents or caretakers not:
(A) participating in TANF Work activities per OAC 340:10-2-1; or

(B) ~~meeting the job search employment need factor per OAC 340:40-7-8(a)(6);~~

(2) online 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 per OAC 340:40-7-8(b) and (c);

(3) undergraduate classes or other training not expected to lead to a degree or certificate of completion 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 attend 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;

(8) hours a school age child could attend a public or private school, but the parent or caretaker chooses 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 or meets criteria per (5) or (6) of this subsection.

(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 the client can reduce the number of hours the child needs care by rearranging the client's work schedule. This is

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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 work the same hours plus reasonable travel time.

(3) The client must make at least minimum wage for the number of hours he or she works to meet the employment need factor unless the client qualifies for an exception per (D) or (E) of this paragraph. Criteria for determining minimum wage is specified in (A) through (C) of this paragraph.

(A) Minimum wage is determined by the federal government.

(B) The worker reviews the pay information provided by the client to determine whether the client makes at least minimum wage.

(i) When the paycheck or employer statement shows the hourly pay rate, the worker compares it to the federal minimum wage.

(ii) When the pay information provided does not show the client's hourly pay rate, the worker divides the number of hours the client works by the gross pay per pay period to determine the client's hourly pay rate.

(iii) When the client is considered self-employed per Oklahoma Administrative Code (OAC) 340:40-7-11(b)(2)(A), the worker divides the number of hours the client works by the net pay, after applicable business expenses, to determine the client's hourly pay rate. When the client and spouse are self-employed in the same business, the worker combines their work hours and divides the work hours by the net pay to determine their hourly pay rate.

(C) When the client works for an employer paying 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 or, when at renewal, does not approve further care.

(D) When the client is self-employed or works for an employer paying wages based on commission or other performance measures instead of a set wage, has received earnings and does not make 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 to increase his or her income within three to six months to at least minimum wage before the renewal is due. When the client does not cooperate in developing a plan or does not agree to implement the developed plan, the worker closes or denies the child care benefits not making at least minimum wage at renewal, further care is not approved.

~~(I) When the client's income increases to at least minimum wage during this time period, no further monitoring is needed until the next renewal.~~

~~(II) When after three to six months the client's income increases, but is less than minimum wage, the worker evaluates the likelihood of the client making at least minimum wage before approving more care. Factors to consider include how closely the client followed the plan, how much the hourly rate increased, and whether plan modifications could help the client increase earnings. The worker may approve an additional three to six months of care when appropriate.~~

~~(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.~~

(E) When 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), he or she is not required to make at least minimum wage for the number of hours worked.

(4) A ~~person~~ client 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 when he or she is unable to work while the child is in the home. When the person has flexible work hours and can work while the child is in school, care is not approved. When the person operates a licensed child care home, care is only approved in another licensed child care home or center when the client's own child places him or her over maximum licensed capacity;

(5) Subsidized child care benefits may 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 (DHS) 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 when the client 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 90 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 work or attend school for at least 90 calendar days between job search approval periods.~~

~~(B) When the client reports a new job and provides all required verification to prove continued eligibility within the job search period or 30 calendar days of the job search closure, a new application is not needed. When the client does not report a new job or provide required verification within the job search period or 30 calendar days of the job search closure, 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 obtain without the certificate of completion, accreditation, or licensure. Child care may 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 work 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 initial approval for child care and at renewal, 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 online 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 may choose his or her own school hours, care is not approved.

(4) The client must provide proof of progress ~~when requested at renewal~~. When the client is not making satisfactory progress, the worker does not approve 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 approved 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 after completion of the training program;

(B) there is no longer a demand for the type of work the ~~person~~ client 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 Innovation and Opportunity Act (WIA)~~(WIOA) 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~~ his or her 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~~ he or she attends, and when he or she is expected to graduate.

(2) ~~General Educational Development (GED)~~High school equivalency, 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~~high school equivalency, 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 end date 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 or literacy level.~~

(C) ~~When the class ends, the~~The worker reviews the client's progress at renewal prior to ~~approval for~~approving 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 is approved for this reason.~~ At renewal, the client must provide a statement from the school that includes:

(i) whether the client attends regularly;

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- (ii) whether the client is making satisfactory progress;
- (iii) an estimated end date to complete the program; and
- (iv) the days and hours the client currently attends classes.

(D) When the client is not attending regularly or making satisfactory progress, further child care for this reason is not approved at renewal.

(3) **English as a Second Language (ESL) classes.** The program must require classroom attendance with an instructor present. Child care may be approved for one 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 attends, and the end date 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~~ at renewal 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 is approved for this reason.~~ At renewal, the client must provide a statement from the school that includes:

- (i) whether the client attends regularly;
- (ii) whether the client is making satisfactory progress;
- (iii) an estimated length of time needed to complete the program; and
- (iv) the days and hours the client currently attends.

(C) When the client is not attending regularly or making satisfactory progress at renewal, the worker does not approve further child care for this reason ~~is not approved~~.

(4) **Formal education program.** A formal education program is defined as a course of study leading to the attainment of an associate or bachelor's degree. Child care may be approved for one parent or caretaker to attend a formal education program and 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 work during the same hours.

(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to initial approval for child care and at renewal, the client must provide:

- (i) proof of enrollment;

- (ii) the days and hours the client attends school or participates in activities required to maintain a scholarship; and
- (iii) when the client expects 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 online 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 may be completed whenever the client chooses, care is not approved.

(D) ~~The client must provide~~ worker must request proof of progress when requested at renewal when the class schedule does not show the client is progressing from freshman level classes to sophomore, junior, and senior level classes. When the client is not ~~attending regularly or~~ making satisfactory progress at renewal, the worker does not approve further child 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 approved 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~~WIOA 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) **Supplemental Nutrition Assistance Program (SNAP) Education and Training (E&T) related child care.**

Subsidized child care benefits may be provided for SNAP E&T program-related assigned activities.

(1) Prior to approval, the SNAP E&T coordinator confirms with the contracted service provider the:

- (A) activity is part of SNAP E&T;
- (B) assigned start date; and
- (C) scheduled days and hours of the activity.

(2) When a parent or caretaker stops participating in SNAP E&T activities for reasons other than employment, child care is continued for an additional 90-calendar days from the date the client stops participating as long as the client continues to use at the same child care provider. When the client wishes to change child care providers during the 90-calendar day period, care by a different provider is not approved.

(e) Temporary Assistance for Needy Families (TANF) related child care.

(1) TANF related subsidized child care benefits may be provided for:

(1A) any TANF Work activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, per OAC 340:10-2-1 including when:

(A) the person is waiting to enter an approved TANF Work activity. The worker limits approval to a time period not to exceed:

- (i) two weeks; or
- (ii) one month, on an exception basis, when child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period;

(B) prior to TANF approval, applicants are referred for immediate job search. TANF applicants are advised:

- (i) child care to job search is limited to 20 days that must be used within 30-calendar days from the date of request;
- (ii) TANF applicants may not choose in-home child care arrangements;
- (iii) child care is limited to the times the applicant is actually looking for a job; and
- (iv) 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

(2B) 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 per OAC 340:10-4-1. Prior to approval, the parent must provide proof of the substance abuse treatment plan from the treatment provider; or

(C) a child receiving a child only TANF benefit when the parent or caretaker relative meets a need factor included in this Section.

(2) When the parent or caretaker relative receiving TANF related subsidized child care stops meeting a need factor, the worker continues subsidized child care benefits for 90-calendar days at the same child care provider.

When the client wishes to change child care providers during the 90-calendar day period, care by a different provider is not approved.

(ef) 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 Services (CWS) staff completes protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. ~~When CWS staff contracts with an outside agency to provide~~ Subsidized protective or preventive services and child care is recommended, Adult and Family Services (AFS) staff ~~completes the child care requests with help from contracted agency staff~~ benefits are approved on a temporary basis. The worker helps the family develop a plan to reduce or eliminate the need for such child care beginning with the initial contact.

(1) Subsidized Reasons 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 may be approved include, but are not limited to, when:

(A) an outside agency contracting with CWS to provide Comprehensive Home-Based Services (CHBS) for a non-court involved family recommends child care be provided on a temporary basis;

(B) the parent or caretaker requests child care because of a medical condition that prevents the parent or caretaker from properly caring for the child;

(C) a homeless family requests child care while working to stabilize the family. Homeless means the family lacks a fixed, regular, and adequate night time residence, and includes families who:

(i) temporarily share housing with other persons due to loss of housing, economic hardship, or a similar reason;

(ii) temporarily live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative accommodations;

(iii) live in emergency or transitional shelters; or

(iv) live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings not designed for or ordinarily used, as a regular sleeping accommodation for human beings; or

(D) a family affected by a natural disaster requests child care to deal with the effects of the natural disaster, such as damage or loss of the home following a fire, flood, or tornado.

(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 may approve subsidized protective or preventive child care benefits for a maximum of 30-calendar days.

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(3) ~~When the family requests more than 30-calendar days of subsidized protective or preventive child care benefits, the worker must obtain approval from Adult and Family Services Child Care Subsidy staff before authorizing more care. The~~ Prior to requesting an extension, the client must provide a ~~statement~~ written recommendation from a professional working with the family stating:

(A) the names and ages of the children for whom child care is recommended;

(B) the reason child care is recommended;

(C) the days and hours child care is needed;

~~(D)~~ how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and

~~(E)~~ the length of time the professional expects care to be needed.

(4) ~~When the family receives CHBS services, the family is not responsible for paying a copayment. The~~ In other protective or preventive situations, the family may or may not be expected to help in ~~paying~~ pay the cost of the 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.~~

~~(7) When the family requests subsidized protective or preventive child care benefits, the worker scans supporting documentation into imaging and sends an email to the AFS Child Care Subsidy staff to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.~~

(fg) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental Security Income (SSI) to develop socialization skills and transition into a group setting, such as a classroom. When a child is not receiving SSI benefits, the child is not approved 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 instead of the activities of the parent or caretaker.

(2) Enrichment child care is limited to a maximum of two days per week not to exceed 10 full-time or part-time days per month.

(3) The parent or caretaker must provide a written recommendation from a professional working directly with the child 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 AFS Child Care Subsidy prior to authorizing care for this need factor.

340:40-7-9. Mandatory pursuit of child support and other potential income

(a) **Mandatory referral to Child Support Services (CSS).** When one or both of the child's parents are absent from the home, the client must agree to pursue child support through CSS for all children who must be included in the same household per Oklahoma Administrative Code (OAC) 340:40-7-6 before subsidized child care benefits are approved.

(1) **When a CSS referral is required.** The client is required to pursue child support for all children living in the home when one or both parents are absent, unless good cause exists per (2) or (6) of this subsection, including when:

(A) the parent or caretaker is not requesting subsidized child care benefits for every child living in the home;

(B) the client receives court-ordered child support;

(C) there is a joint custody agreement and neither parent is ordered to pay support;

(D) parental rights are terminated, except in the case of adoption, per Section 1-4-906 of Title 10A of the Oklahoma Statutes;

(E) an additional child, whose parent is absent, is added to the household after certification; or

(F) one or both parents leave the home after certification.

(2) **When a CSS referral is not required.** The client is not required to complete child support forms when:

(A) he or she is a foster parent to the child and the CSS referral was completed in the child's SoonerCare (Medicaid) case;

(B) the client is an adoptive parent and provides proof of a single parent adoption;

(C) a parent is temporarily out of the home per OAC 340:40-7-6(c) and considered part of the household;

(D) the child, whose parent is absent, is not required to be considered part of the household per OAC 340:40-7-6;

(E) the client is a minor parent ~~and is not living with his or her own parents. The minor parent must pursue child support for his or her own child but not for the minor parent;~~ or

(F) the child does not receive a subsidized child care benefit and is included in household composition because his or her parent is considered an adult non-relative of the opposite sex individual (~~ANROSI~~) acting in the role of a spouse per OAC 340:40-7-6(a) and (b).

(3) **Required forms.** The worker makes the referral to CSS by completing with the client Form 08TA001E, Absent Parent (AP) Information Sheet, for each absent parent. The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, per ~~paragraph~~ (6) of this subsection. The worker gives the Oklahoma Department of Human Services (DHS) Appendix C-16, Child Support Services and Responsibilities, to the client. The form explains CSS services and client expectations. The worker sends copies of legal documents concerning custody or child support to the appropriate CSS district office.

(4) **Oklahoma Centralized Support Registry (CSR).** After approval, the client must send all future child support payments to the CSR. DHS Appendix C-16 contains the address for the CSR. CSR returns the child support payments to the client unless the client receives Temporary Assistance for Needy Families per OAC 340:10-10-7.

(5) **Establishment of paternity.** When the worker is able to contact the alleged father, the worker asks whether he is willing to acknowledge paternity. When the alleged father agrees to acknowledge paternity, the worker gives or sends him Form 03PA209E, Acknowledgment of Paternity, to review. The worker advises him to contact CSS at the ~~telephone~~ number on the back of the form when, after review, he is willing to sign the form.

(6) **Good cause.** Good cause for refusal to cooperate in pursuing child support may be granted when cooperation is not in the best interest of the child or the parent. DHS may continue to pursue child support when CSS determines child support activities may be safely conducted without the client's cooperation.

(A) The client must sign Form 03TA012E, Cooperation Agreement and Request for Good Cause:

- (i) at the time of the initial application;
- (ii) at the time of an additional child request; or
- (iii) when circumstances result in an applicant or recipient's request for good cause.

(B) The worker does not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause when the applicant or recipient furnishes evidence or information supporting the good cause claim.

(C) DHS determines the client has good cause for refusing to cooperate only when:

- (i) there is possible physical or emotional harm to the child;
- (ii) there is possible physical or emotional harm to the parent or caretaker;
- (iii) the child was conceived as a result of incest or forcible rape;

(iv) legal proceedings for adoption of the child are pending before a court; or

(v) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(D) The applicant or recipient claiming good cause is responsible for supplying documentary evidence to establish the claim or furnishing sufficient information to permit DHS to investigate the good cause claim. Uncorroborated statements of the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. Examples of acceptable written statements include:

- (i) birth certificate, medical, or law enforcement records indicating the child was conceived as a result of incest or forcible rape;
- (ii) court documents or other records indicating legal proceedings for adoption are pending before a court of competent jurisdiction;
- (iii) criminal, medical, child protective services, social services, psychological, or law enforcement records indicating the putative or absent parent might inflict physical or emotional harm on the child or caretaker;
- (iv) medical records indicating the emotional health history and present emotional health status of the caretaker or child or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker or child;
- (v) a written statement from a public or licensed private social agency working with the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption; and
- (vi) sworn statements from persons other than the client with knowledge of the circumstances that provide the basis for the good cause claim.

(E) Upon request, the worker helps the client obtain applicable documentary evidence listed in (D)(i) through (vi) of this subsection. The client must specify the type of document or record needed and provide sufficient identifying information to make it possible for the worker to obtain the documents.

(b) **Failure to cooperate in the pursuit of child support.** Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.

(1) Actions indicating failure to cooperate include refusals to:

- (A) identify and assist in locating a known parent;
- (B) establish paternity; or
- (C) establish, modify, or enforce a support order.

(2) When the client refuses to cooperate at the time of application, the worker denies the application.

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(3) ~~When an applicant applies for subsidized child care and is in non-cooperation status with CSS, the applicant must verify cooperation with CSS before the worker approves subsidized child care benefits.~~

(34) ~~When, after certification, CSS informs the worker the client is not cooperating, the worker closes the subsidized child care benefits for all children included in the child care benefits effective 10 calendar days from the date action is taken remain open until the child care renewal is due. At renewal, the worker reviews the client's cooperation with CSS. When the client is not cooperating, further care is not approved.~~

(c) **Cooperation with CSS following denial or closure of the subsidized child care benefits.** The client must verify that he or she is cooperating with CSS before the worker approves subsidized child care benefits following a denial or closure based on non-cooperation with CSS.

(1) When the client cooperates with CSS and notifies the worker of the cooperation within 30-calendar days of the:

(A) denial of subsidized child care benefits, the client is not required to file a new application before benefits may be approved; or

(B) closure of the subsidized child care benefits, the worker reopens the benefits back to the closure date.

(2) When the client does not cooperate with CSS or cooperates, but waits to inform the worker of the cooperation for more than 30-calendar days from the denial or closure date, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification per OAC 340:40-3-1.

(d) **Exploration and development of potential income other than child support.** The worker explores potential sources of income, such as Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, veteran's benefits, and increased wages with the client at the time of application and each renewal for all members of the household whose income must be considered per OAC 340:40-7-6. The client must apply for, or continue to pursue, all potential sources of income for which it appears likely he or she may be eligible, except for SSI before the next child care renewal is due. The client is encouraged, but not required, to apply for SSI when the client indicates a household member has a disability. ~~The worker gives the client 90 calendar days to pursue potential identified income.~~

(1) When the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) When the client agrees to pursue all potential income and fails to do so within ~~90 calendar days~~ the 12 month eligibility period, ~~the worker closes subsidized child care benefits~~ further care is not approved at renewal.

(3) When the client is approved for the potential income or offered a pay raise in pay within the 12 month eligibility period and refuses to accept it, ~~the worker closes~~

~~the subsidized child care benefits effective 10 calendar days from the date the worker takes action~~ further care is not approved at renewal.

(4) When the client's pay decreases in rate of pay or number of hours worked, the worker explores why the decrease occurred. When the client requested the decrease to avoid a family share copayment increase or to maintain eligibility ~~for the subsidized child care benefits~~, the worker closes the subsidized child care benefits ~~are closed~~ at renewal.

(5) At each renewal, the worker determines whether the client continues to pursue potential income.

(A) When the client begins receiving previously identified potential income, the worker considers the income for the next negative action deadline after it is reported.

(B) When the client was not approved for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) When the client stops pursuing potential income and was not determined ineligible for ~~the income~~, ~~the worker closes the client's child care benefit for failure to cooperate effective 10 calendar days from the date the worker takes action~~ further care is not approved at renewal.

(6) When the client's subsidized child care benefits ~~closed~~ close at renewal because of failure to ~~cooperate~~ pursue potential income, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care may be approved.

(A) When the client verifies cooperation within 30-calendar days of the closure of subsidized child care benefits, the worker may reopen the benefits back to the date they were closed without imposing a penalty.

(B) When the client does not cooperate or waits to verify cooperation for more than 30-calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification per OAC 340:40-3-1.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded per Oklahoma Administrative Code (OAC) 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. Temporary disability insurance payment(s) and temporary ~~worker's~~ workers' compensation payments are considered as earned income

when payments are employer-funded and the person remains employed.

(1) **Wages.** Wages include total money earned for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before ~~any~~ deductions ~~are made~~, such as taxes, bonds, pensions, union dues, credit union payments, ~~and~~ or cafeteria plans are subtracted.

(A) Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) ~~and the~~ Basic Allowance for Subsistence (BAS).

(B) Only the portion of the cafeteria plan the client controls is counted as income.

(C) Reimbursements for expenses, such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from the gross income.

(D) Payments made for annual leave, sick leave, or severance pay are considered earned income during the month such income is received whether paid during employment or at termination of employment.

(E) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Self-employment income is considered based on procedures listed in this subsection.

(A) **Persons considered self-employed.** A person is considered self-employed when:

(i) he or she declares himself or herself to be self-employed;

(ii) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even when required to do so by law; or

(iii) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(B) **Records used and income calculation.** The worker uses the records described in (i) through (iii) of this subparagraph to calculate income. When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) When the person filed a federal income tax return for self-employment income for the most recent year, whether the person's income is derived from his or her own business or from working for an employer, the worker uses the net self-employment income shown on the person's federal income tax return and divides the income by 12 or the number of months the business has been in existence or the person started work for the employer, when less than 12 months. The worker verifies the person's start date with the employer when the person states he or she has not worked for the employer for at least 12 months.

(ii) When the person did not file an income tax return for the most recent tax year for his or her own business, the worker calculates self-employment income using the person's business records for the last 12 months or the number of months the business has been in existence when less than 12 months. When the client declares he or she has business expenses, the worker subtracts 50 percent of the gross self-employment income to arrive at the net profit.

(iii) When the person works for an employer, did not file a federal tax return as self-employed, and receives earnings from an employer, the person must provide proof of the last 12 months of income from the employer. The worker divides the gross income by 12 or the number of months the person ~~has~~ worked for the employer to determine monthly income. When the person declares he or she has business expenses, the worker subtracts 50 percent of the gross self-employment income before dividing the income by the applicable number of months to determine monthly income.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(D) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household ~~has~~ experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(E) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(F) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged and annualized over a 12-month period, even when the income is received in a short time period.

(i) ~~If~~When the average annualized amount does not accurately reflect the person's actual monthly circumstances because the person experienced a substantial increase or decrease in income, the worker calculates the self-employment income on anticipated earnings.

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- (ii) The worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns, when an increase or decrease of business has occurred.
- (iii) When the person has received the self-employment income for less than 12 months, the worker averages the income is averaged over the applicable number of months and projects the monthly amount ~~projected~~ for the coming year.
- (H) ~~When the person has received the self-employment income for a short time and there is insufficient data to make a reasonable income projection, the worker does not consider income from this source until the renewal is due. At the renewal, the worker averages income over the number of months received until a full year's information is available.~~
- (G) **Income from rental property.** Income from rental property is considered self-employment income.
- (H) **Income from room and board.** Payments from roomers or boarders are considered self-employment when the roomer or boarder is paying a reasonable amount. When the roomer or boarder is an adult non-relative ~~opposite sex individual (ANROSI) acting in the role of a spouse, OAC 340:40-7-6(b)(4) applies.~~
- (3) **On-the-job training.** Earned income from regular employment for on-the-job training (OJT) is considered as earned income. This includes OJT provided ~~under Sections 204(b)(1)(c) or 264(c)(1)(A) per Section 3(44) of the Workforce Investment Innovation and Opportunity Act (WIOA) for persons 19 years of age or and older.~~
- (4) ~~Workforce Investment Act (WIA). Income earned in OJT positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On the job training provided must be full time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom or institutional training and institutional training or intern assignments sponsored by WIA/WIOA, even when an hourly amount is paid for such training.—Refer to per OAC 340:40-7-12(25)(G) for other types of excluded WIA income.~~
- (5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended ~~per P.L. Public Law 93-113~~ are considered income unless excluded per OAC 340:40-7-12.
- (6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.
- (c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in ~~paragraphs~~
- (1) through (10) of this subsection are considered unearned income.
- (1) **Assistance payments.** Assistance payments include state means-tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance.
- (2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.
- (A) When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit used to meet the minor child's needs is considered income. This may include cash given directly to the minor child or money paid to a third party for room and board for the minor child.
- (B) The parent or caretaker or, when appropriate, the minor child must take action to become the payee within ~~90 calendar days~~ the 12 month eligibility period per OAC 340:40-7-9(d). When the parent, caretaker, or minor child does not take action is not taken within 90 calendar days by renewal, the worker counts the total Social Security benefit as income.
- (3) **Supplemental Security Income (SSI).** SSI is considered unearned income.
- (4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.
- (5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, made directly to the household from non-household members are counted as unearned income.
- (A) When a child care payment is paid directly to the child care provider, it is not considered income for the client.
- (B) When the absent parent reports he or she is paying a portion of the client's family share copayment to the child care provider, the only action taken by the worker is to record this in the case record.
- (C) When the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's copayment, it is considered as an additional copayment that must be met before the Oklahoma Department of Human Services (DHS) makes a subsidy payment to the provider.
- (D) Any other payment made to a third party for a household expense must be considered as income when a court order directs the payment be made to the household. Payments for medical support are excluded.
- (6) ~~Veterans~~ **Veterans' compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent

allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the client. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

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 a countable income source unless specifically mentioned per Oklahoma Administrative Code (OAC) 340:40-7-11 ~~as a countable source of income.~~

(2) **In-kind income.** In-kind income is excluded as income. In-kind income is defined as any gain or benefit that is not in the form of money paid directly to the household. This includes non-monetary or in-kind benefits, such as meals, clothing, public housing, or garden produce from a garden.

(3) **Money received from the sale of property.** Money received from the sale of property, such as stocks, bonds, or a house, or a car is excluded as income. This exclusion does not apply when 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 when used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment are excluded as income.

(6) **Household income for certain children adopted through Oklahoma Department of Human Services (DHS).** The income of all household members is exempt for a child only when conditions in (A) through (E) of this paragraph are met. The:

(A) child was adopted through DHS or a federally recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent applying for benefits;

(B) adoptive parent applying for benefits must provide:

- (i) a fully executed Form 04AN002E, Adoption Assistance Agreement, listing child care as an adoption assistance benefit for the child;
- (ii) Form 04AN033E, Post Adoption Child Care Referral;
- (iii) the Final Decree of Adoption; and
- (iv) a form of identity;

(C) adoptive parent and child are Oklahoma residents ~~of Oklahoma~~;

(D) child is 5 years of age or younger. When a child turns 6 years of age during the 12-month eligibility period, household income remains exempt until the next renewal; and

(E) adoptive parent meets an allowable need factor ~~as defined in~~ per OAC 340:40-7-7 and OAC 340:40-7-8 and provides proof. In a two-parent family, both parents must meet an allowable need factor.

(7) **Household income when at least one child attends an Early Head Start-Child Care (EHS-CC) Partnership grant program.** The household income is exempt for all children in care when at least one child attends an EHS-CC Partnership grant program and the household meets income guidelines per DHS Appendix C-4, Child Care Eligibility/~~Co-payment~~Copayment Chart.

(8) **Earnings of children.** Earnings ~~Exclude~~ the 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. The exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. When the child is a minor parent and the payee, the minor parent's earnings are treated as adult income.

(9) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted as income unless it is in excess of \$30 per calendar quarter.

(10) **Reimbursements.** Reimbursements for past or future expenses not exceeding actual expenses are excluded as income.

(11) **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 as income.

(12) **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 as income.

(13) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded as income. Verification the income is a loan is required.

(14) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs are excluded as income.

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(15) **Educational assistance.** Educational assistance is excluded when receipt is contingent upon the student regularly attending school.

(A) Examples of educational assistance include:

- (i) work study;
- (ii) scholarships;
- (iii) fellowships;
- (iv) educational loans when payment is deferred; and
- (v) veteran's education benefits.

(B) The educational assistance must be intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor.

(C) When the educational assistance is not intended to be a reimbursement and is a gain to the client, it is considered income.

(16) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act are excluded as income.

(17) **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 as income.

(18) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies received in-kind or in cash for rent, mortgage payments, or utilities ~~is~~are excluded as income.

(19) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(20) **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.

(21) **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 and per Section 10602 of Title 42 of the United States Code (U.S.C) are excluded as income. ~~{42 USC 10602}~~

(22) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by the DHS Developmental Disabilities Services are excluded as income.

(23) **Vendor payments.** Vendor payments made directly to the household's creditors, ~~or~~—a person, or an organization providing a service to the household, are excluded as income unless a court order or other legally binding agreement specifies the money is to be paid directly to the client.

(24) **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 considers the portion of the income received by the household applying for or receiving a child care benefit as income and excludes the remainder as income.

(B) When a minor parent is the payee and lives with ~~one of his or her parents or a parent~~ or caretaker, child support received for the minor parent is considered income for the parent or caretaker and not considered for the minor parent's child care benefit.

(25) **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 ~~per~~ ~~{P.L. 94-540}~~;
- (iv) by members of the Confederated Tribes of the Mescalero Reservation ~~per~~ ~~{P.L. 95-433}~~;
- (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 held in trust for certain Indian tribes ~~per~~ ~~{P.L. 94-114, Sec. 6}~~;

(E) Indian per capita payments distributed from judgment awards and trust funds made ~~pursuant to~~ ~~per~~ 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 the payments are paid per capita. 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, 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~~Innovation and Opportunity Act (WIA)(WIOA) or other federally-funded workforce training program to persons of all ages and student status with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income. ~~Refer to per~~ 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 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~~state and various organizations receive some Title V funds. These organizations include:

- (i) Experience Works formerly Green Thumb;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons;
- (v) United States (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) 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 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~~per 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 per~~ Chapter 18 of Title 38 of the ~~United States Code (USC)~~U.S.C.;

(S) federal 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) 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 per~~ Omnibus Budget Reconciliation Act of 1981.

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-1. Renewal of child care eligibility

(a) **Child care renewal.** ~~All conditions of eligibility are periodically reviewed per OAC 340:40-7. The client is sent notification when the renewal is due and the methods the client may use to complete it.~~ The client must complete the child care renewal at the end of the 12-month eligibility period in order to continue receiving benefits. Refer to Oklahoma Administrative Code 340:40-9-2(g) for reasons child care is closed prior to the renewal. At renewal, the client is sent a computer-generated notice informing the client:

- (1) the renewal is due;
- (2) the methods the client may use to complete the renewal;
- (3) types of verification that may be required; and
- (4) when benefits close if the renewal is not completed.

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(b) **Renewal time frame.** ~~When circumstances change between renewal months, the worker evaluates whether to complete a renewal early, a new application, or make changes to the client's family share co-payment and/or plan of service. A child care renewal for subsidized child care benefits must be completed due no later than 12 months from the date of approval or the last renewal unless the client receives SNAP and benefits must be synchronized per (f) of this Section:~~

~~(1) six months from the date of approval or the last renewal when the child does not receive public assistance; or~~

~~(2) 12 months from the date of approval or last 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 renewal.

(d) **Interview requirement.** An interview is not required at 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 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 renewal without changes;

(B) completing the renewal with changes; or

(C) closing the child care benefits.

(2) Benefits, when closed, may be reopened when the client provides required information by the last day of the month within 30-calendar days of closure.

(f) **Synchronization of benefits.** When the client is receiving other Adult and Family Services benefits ~~from the Oklahoma Department of Human Services~~ in addition to the subsidized child care benefits, certification and renewal dates must be coordinated with the other programs.

340:40-9-2. Case changes

(a) **Case changes.** The client must report ~~any~~ changes in his or her circumstances within 10-calendar days that would result in an increase or decrease in subsidized child care benefits ~~within 10-calendar days~~. The worker acts ~~on changes that increase or decrease within 10-calendar days of a reported change listed in this paragraph, except for (8), when the change increases or decreases the subsidized child care benefits within 10-calendar days of the reported change.~~ 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 composition;

(3) names and number of household members in child care;

(4) ~~the reason child care is needed;~~

~~(5) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed;~~

~~(6) the client's address or telephone number;~~

~~(7) the child care facility the child is attending;~~

~~(8) when child care is no longer being used or needed;~~

~~(9) when the reason for child care changes or the client no longer meets a need factor;~~

~~(10) family size; and~~

~~(11) when a child stops attending an Early Head Start-Child Care Partnership grant program.~~

(b) **Change of payee.** When a change of payee is reported, a new application must be taken. Refer to Oklahoma Administrative Code (OAC) 340:40-3-1 for application processes.

(c) **Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two working business days of the client providing all necessary verification to determine eligibility. When eligible, the child may be approved for subsidized child care benefits beginning with the date of request. Family share copayment increases due to adding an additional child to the subsidized child care benefits are effective the month after the month the client requests subsidized child care benefits for the child.

(d) **Changes that increase the subsidized child care benefits.** When the client reports a timely change ~~timely~~ that increases the subsidized child care benefits, the client and the worker jointly plan the effective date of the change. When the client does not report timely changes ~~timely~~, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

(e) **Changes that decrease the subsidized child care benefits.** When possible, the worker and client plan changes that decrease the subsidized child care benefits before implementing the change. When the client reports an increase in income, the worker uses Oklahoma Department of Human Services (DHS) Appendix C-4, Child Care Eligibility/Co-payment Copayment Chart, to determine whether the household meets income guidelines per OAC 340:40-5-1(8) and to apply or increase a family share copayment when appropriate. Unless the client consents to an earlier change date, the worker makes changes that decrease the client's subsidized child care benefits effective the next advance notice deadline date per DHS Appendix B-2, Deadlines for Case Actions.

(f) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports the change timely. The worker completes provider changes within two working business days of the date the client reports the change.

(g) **Closure of the subsidized child care benefits.** When the client is no longer eligible for subsidized child care benefits, the closure date varies depending on circumstances.

(1) When advance notice is required for reasons other than (2) through (6) of this paragraph, the worker closes the subsidized child care benefits effective 10-calendar days from the date action is taken.

(2) When the closure is based on anticipated income the client will receive in the next month, the worker closes the child care benefit effective the last day of the current calendar month.

(3) When at child care renewal, the client does not meet a need factor or is not pursuing child support or other potential income per OAC 340:40-7-9, the worker closes the child care benefit effective the last calendar day of the renewal month.

(4) When the client receiving Temporary Assistance for Needy Families (TANF) related subsidized child care per OAC 340:40-7-8(e) stops meeting a need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(5) When a client stops participating in Supplemental Nutrition Assistance Program Employment and Training activities per OAC 340:40-7-8(d) and does not meet another need factor, the worker closes the child care benefit effective 90-calendar days from the date the client stops participating.

(6) Ten-day advance notice is not required when the client gives written permission agreeing to an earlier closure date. The earliest date the worker closes the child care benefit is the date action is taken.

(7) When the client does not complete the benefit renewal timely, the system closes the child care benefit effective the last day of the renewal month.

(h) **Reopen action.** When a client's subsidized child care benefits close, benefits may be reopened within 30-calendar days of the closure effective date using current eligibility information unless the client must complete a new application per OAC 340:40-3-1(a)(1). A new application is required when:

- (1) the client's subsidized child care benefits are closed for more than 30-calendar days;
- (2) the payee changes; or
- (3) family income was excluded per OAC 340:40-7-12(6) for an adopted child turning 6 years of age unless the child can be added to an open income eligible case established for the child's siblings in which the adoptive parent's income is considered. When an adopted child turns 6 years of age during the eligibility period, household income is exempt until the next renewal, at which time, a new application is required.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-3. Child care payments and rates

(a) The Oklahoma Department of Human Services (~~OKDHS~~)(DHS) 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) Per Section 85.44B of Title 74 of the Oklahoma Statutes, ~~OKDHS~~DHS cannot make advance payments to child care providers.

(c) The rates paid by ~~OKDHS~~DHS are described on DHS 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, Certification for Special Needs Child Care Rate for Licensed Child Care Homes and Centers, approval process is followed;
- (4) whether the care is provided full-time, over four hours per day, or part-time, four hours or fewer per day;
- (5) whether the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, blended, or a weekly unit;
- (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~~DHS Appendix C-4-B 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~~DHS 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~~DHS staff approves care at only one of the facilities. The parent or caretaker may use care at two different providers for the same child when care is needed on different days of the week.

(g) Charges are authorized and payment is made only when the care provided is in accordance with the jointly developed child care plan of service between the client and ~~OKDHS~~DHS.

(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) typical child reaches 13 years of age; or~~
 - ~~(2) a child with disabilities or a child under court supervision reaches 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 approved effective the first of the month following the month Oklahoma Child Care Services (~~OCCS~~) licensing staff

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approves the provider for the rate. The rate is designated on ~~OKDHS~~DHS Appendix C-4-B by its star status.

[OAR Docket #16-764; filed 10-6-16]

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

[OAR Docket #16-763]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. Eligibility for Benefits
340:65-3-8 [AMENDED]
(Reference WF 16-05)

AUTHORITY:

Director of Human Services; Sections 162 of Title 56 of the Oklahoma Statutes and Section 5N of P.L. 113-186, CCDBG Act of 2014.

ADOPTION:

September 13, 2016

APPROVED BY GOVERNOR:

September 29, 2016

EFFECTIVE:

Immediately upon Governor's approval or October 1, 2016, whichever is later.

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested effective October 1, 2016 to meet the federal deadline for implementation of P.L. 113-186.

ANALYSIS:

The proposed revisions to Chapter 65, Subchapter 3 amend the rules to: (1) change the Child Care Subsidy renewal time frame from six to 12 months and remove the interview requirement for renewals based on a protective or preventive need factor to match Child Care Subsidy emergency rules; (2) update benefit renewal notification information and policy citations; and (3) simplify language.

CONTACT PERSON:

Dena Thayer at 405-521-4326

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F), AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR OR OCTOBER 1, 2016, WHICHEVER IS LATER:

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-8. Determination of continuing eligibility

(a) **Determination of continuing eligibility.** ~~Determining continuing~~The worker determines continued eligibility is a process 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/informing~~ the recipient at each contact of his or her responsibility to report changes within 10-calendar days of the date the change becomes known;
 - (2) ~~making contact with~~contacting the recipient when possible changes are indicated to ensure continuing eligibility;
 - (3) synchronizing the renewal dates for all benefits received by the household when possible; and
 - (4) determining continuing eligibility.
- (b) **Benefit renewal time frames.** The periodic renewal time frame varies depending on the program.
- (1) A benefit renewal must be completed at six-month intervals with a:
 - (A) Temporary Assistance for Needy Families (TANF) recipient due to:
 - (i) pending required immunizations per Oklahoma Administrative Code (OAC) 340:10-14-1;
 - (ii) payment standard reductions because of program violations per OAC 340:10-3-57(g) or (h);
 - (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) the exemption of 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; or
 - (B) ~~child care recipient per OAC 340:40-9-1; or~~ ~~(C)~~ food benefit recipient subject to a mid-certification renewal per OAC 340:50-9-5 ~~(d)~~ and ~~(e)~~.
 - (2) A benefit renewal must be completed at 12-month intervals, unless an earlier renewal date is warranted, with a:
 - (A) TANF recipient unless (b)(1)(A) of this Section applies;
 - (B) State Supplemental Payment (SSP) recipient;
 - (C) child care recipient ~~who is receiving TANF or SSP benefits per OAC 340:40-9-1~~;
 - (D) food benefit household subject to an annual mid-certification renewal per OAC 340:50-9-5 ~~(e)~~ (b) and ~~(h)~~ (c);
 - (E) food benefit household whose Supplemental Nutrition Assistance Program (SNAP) certification renewal must be completed at 12-month ~~months~~ month intervals 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 intervals for households subject to an annual mid-certification renewal per OAC 340:50-9-5 ~~(e)~~ (b) and ~~(h)~~ (c).
- (c) **Benefit renewal notification.** The recipient ~~is sent notification~~ receives a notice when the benefit renewal is due, ~~advising/informing~~ the recipient he or she must complete the

benefit renewal within a ~~certain~~specified 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 recipients for whom DHS determines eligibility per OAC 317:35-5-63 when they are not eligible to submit their renewals through okdhslive.org;~~
- (B) SSP recipients; and
- (C) TANF recipients.

(2) ~~The~~A computer-generated notice titled "~~Renew My Benefits~~" is sent to:

- (A) child care recipients; and
- (B) ~~SoonerCare (Medicaid) recipients in the online enrollment population; and~~
- ~~(C) food benefit recipients due for mid-certification renewal; and~~

~~(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 benefit renewal for all programs except TANF. TANF renewals must be signed by the recipient. ~~If~~When the recipient is ~~living~~lives with his or her spouse, both must sign the TANF renewal.

(e) **Interview requirements.** ~~Whether an interview is required for a benefit~~Benefit renewal varies~~interview requirements vary~~ depending on the program.

- (1) A face-to-face interview is required for the:
 - (A) TANF program; or
 - (B) Supplemental Security Income-Disabled Children's Program (SSI-DCP) service plan renewal per ~~OAC 340:70-8-1~~OAC 340:15-3-1.
- (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 client signed and completed the renewal is complete, including the signature, provided all required proof provided, and none of the information is questionable. ~~When information is not complete or is questionable~~necessary, the worker contacts the recipient to obtain required proof~~complete the renewal~~;
 - (B) ~~the~~ Child Care Subsidy program 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) mid-certification renewal, at 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 per OAC 340:50-3-2(a)(2).

(f) **Eligibility determination.** The worker determines eligibility after the benefit renewal is signed, all required proof is provided, an interview, if required, is conducted, and all information evaluated.

- (1) ~~The eligibility determination worker may be to:~~
 - (A) complete the benefit renewal without changes;
 - (B) complete the benefit renewal with changes; or
 - (C) close the benefit or benefits.
- (2) ~~Benefits closed may be reopened when~~When benefits close and the recipient provides required proof by the last day of the month of closure, benefits may be reopened.

[OAR Docket #16-763; filed 10-6-16]

**TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION**

[OAR Docket #16-761]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 9. Exemptions and Exclusions
Part 17. Economically At-Risk Leases
710:45-9-81. Definitions [AMENDED]
710:45-9-82. Exemption period [AMENDED]
710:45-9-83. Certification [AMENDED]
710:45-9-84. Refund procedure [AMENDED]

AUTHORITY:
68 O.S. §§ 203 and 1001.3a; Oklahoma Tax Commission

COMMENT PERIOD:
n/a

PUBLIC HEARING:
n/a

ADOPTION:
August 23, 2016 (Commission Order No. 2016-08-23-07)

APPROVED BY GOVERNOR:
September 30, 2016

EFFECTIVE:
Immediately upon Governor's approval

EXPIRATION:
Effective through September 14, 2017, unless superseded by another rule or disapproval by the Legislature

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

FINDING OF EMERGENCY:
Amendments to Section 1001.3a of Title 68 were enacted into law pursuant to SB 1577 authored by Senate President Pro Tempore Bingman of the Senate and Speaker Hickman of the House, and signed by the Governor on May 25, 2016. The statutory language took effect on July 1, 2016. Therefore, an emergency exists in which emergency rules need to be put in effect in order for the Oklahoma Tax Commission to implement these new provisions in the law.

ANALYSIS:
The law provides that beginning on or after January 1, 2015, "economically at-risk oil or gas lease" means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF of natural gas per day or less operated at a net loss or a net profit, after a deduction of certain costs, which is less than the total gross production tax remitted for such lease during the previous calendar year. The total amount of claims to be paid for such leases shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

CONTACT PERSON:
Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133.

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

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 17. ECONOMICALLY AT-RISK LEASES

710:45-9-81. Definitions

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

"Economically at risk oil or gas lease" means prior to calendar year 2015, any lease operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the previous tax reporting year. Beginning with calendar year 2015, and each year thereafter, economically at-risk lease means any oil or gas lease with one or more producing wells with an average production volume per well of ten (10) barrels of oil or sixty (60) MCF of natural gas per day or less. The "average production volume" shall be determined based upon the Oklahoma Corporation Commission well classification, wherein only the primary product shall be used to determine the "average production volume." For example, only production from wells classified as oil wells shall be considered to determine average daily production of oil and no production of natural gas from these oil wells shall be used to determine if the lease meets the definition. The lease in its entirety must be operated at a net loss or at a net profit which is less than the total gross production tax remitted for all products for such lease during the qualifying calendar year.

"Lease" means a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number. A lease may contain one or more wells which have identical interest and payout.

710:45-9-82. Exemption period

The exemption for economically at risk oil and gas leases is limited to calendar years 2005 through 2020, with each year being claimed separately. No claims for rebates regarding the economically at risk leases shall be permitted after December 31, 2015 for production periods occurring between calendar years 2005 through 2013. No claims for rebates regarding the economically at risk leases for production periods occurring between calendar years 2014 through ~~2020~~2015 shall be claimed or paid more than eighteen (18) months after the date that the refund is first available. Claims for rebates regarding economically at risk leases for production periods ending on or before December 31, 2015 shall not be claimed until after

July 1 of the year following the year of production. Claims for rebates regarding economically at risk leases for production periods occurring in calendar years 2016 through 2020 shall be claimed prior to July 1 of the year following the year of production. Any claims for refunds received on or after July 1 of each year will not be accepted by the Tax Commission.

710:45-9-83. Certification

(a) **General provisions.** This Section establishes criteria for determining whether an operator of an economically at risk oil lease has met the required conditions to apply for an exemption from gross production tax levied on such and establishes a procedure for the issuance of the refund.

(b) **Application to Oklahoma Tax Commission; determination; approval.** Any operator who desires to make application to have a lease certified as being economically at risk shall complete the appropriate OTC Form in its entirety and file it with the Commission. The application must be ~~notarized and~~ properly signed by the operator.

(c) **Formula used to determine if lease is economically at risk.** The application sets out the formula used to determine if a lease is economically at risk. This entails subtracting from the gross revenue from each lease for the previous calendar year, any severance taxes, royalty payments, and lease operating expenses, including expendable workover and recompletion costs for the previous calendar year, and overhead costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS). For purposes of this calculation, depreciation, depletion, and intangible drilling costs shall **not** be included in lease operating expenses.

(d) **Commission may require additional information.** For audit purposes, the Commission may require additional information, such as copies of the ~~operators~~ operator's Federal Income Tax Return, joint interest billings, or other documentation regarding lease production or expenses.

~~(e) **Letter of determination issued by Commission.** Within sixty days from the date the application is filed, the Commission shall make its determination and shall issue, either an approval letter or denial letter, to the lease operator. If the exemption is denied, an explanation for the denial will be provided. The applicant may file an appeal under provisions of 68 O.S. §227, 228 and the Rules of this Commission.~~

710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Commission, a refund of the gross production taxes paid in the previous calendar year for the lease shall be issued after July 1 of the subsequent year, to the well operator or a designee.

(b) **Limitation of refund.** For oil and natural gas produced from qualifying economically at risk leases in calendar years 2015 through 2020, the total amount of refunds to be paid, as provided for in 68 O.S. § 1001.3a, shall not exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) for all products combined. If the amount of claims exceeds Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00), the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund that

may be claimed by any taxpayer of a qualifying lease, so that the maximum amount authorized is not exceeded.

(c) Assignment of a designee. If the refund is to be issued to a party other than the recognized operator, a notarized affidavit, signed by the operator must be submitted to the Commission authorizing the designee to receive the refund.

[OAR Docket #16-761; filed 10-6-16]

**TITLE 710. OKLAHOMA TAX
COMMISSION
CHAPTER 50. INCOME**

[OAR Docket #16-762]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

- Subchapter 3. Returns and Reports
- Part 5. Filing Status; Elections; Accounting Periods and Methods
- 710:50-3-35. Filing status and elections [AMENDED]
- Subchapter 9. Refunds
- 710:50-9-3. Interest on refunds [AMENDED]
- Subchapter 15. Oklahoma Taxable Income
- Part 5. Other Adjustments to Income
- 710:50-15-50. Deductions [AMENDED]
- Part 7. Credits against Tax
- 710:50-15-74. Credit for investment/new jobs [AMENDED]
- 710:50-15-76. Oklahoma coal credits [AMENDED]
- 710:50-15-90. Oklahoma earned income tax credit [AMENDED]
- 710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures [AMENDED]
- 710:50-15-104. Credit for construction of energy efficient residential property [AMENDED]

AUTHORITY:

68 O.S. §§ 203, 2357.11, 2357.46, and 2357.104; Oklahoma Tax Commission

COMMENT PERIOD:

n/a

PUBLIC HEARING:

n/a

ADOPTION:

August 23, 2016 (Commission Order No. 2016-08-23-08)

APPROVED BY GOVERNOR:

September 30, 2016

EFFECTIVE:

Immediately upon Governor's approval

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproval by the Legislature

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Several statutory changes made by the 55th Legislature, 2nd Regular Session (2016) are effective for the 2016 tax year. Therefore, an emergency exists in which emergency rules need to be put in effect in order for the Oklahoma Tax Commission to implement these new provisions in the law.

ANALYSIS:

Sections 710:50-3-35 and 710:50-15-50 have been amended to implement the provisions of Senate Bill 1606 which requires state and local income taxes or sales taxes included in itemized deductions be added back to calculate Oklahoma taxable income (by subtracting them from itemized deductions) effective for tax year 2016. **68:2358**

Section 710:50-9-3 has been amended to implement the provisions of House Bill 2775 (effective July 1, 2016) which requires the Tax Commission to pay interest on refunds claimed on returns filed electronically if those refunds are not paid within forty-five (45) days. **68:217**

Section 710:50-15-74 has been amended to implement the provisions of Senate Bill 1582 which relates to the Investment/New Jobs Income Tax Credit, by limiting the amount of credit for various periods by implementing a \$25,000,000 annual cap for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018. **68:2357.4**

Section 710:50-15-76 has been amended to implement the provisions of Senate Bill 1614 which relates to the Coal Credit, by limiting this credit to seventy-five percent 75% of the amount allowed under current law, effective January 1, 2016. **68:2357.11**

Section 710:50-15-90 has been amended to implement the provisions of Senate Bill 1604 which relates to the Oklahoma Earned Income Credit, by eliminating the refundable aspect of this credit beginning with tax year 2016. **68:2357.43**

Section 710:50-15-103 has been amended to implement the provisions of House Bill 3204, which relates to the Credit for Railroad Modernization, by reducing this credit by twenty-five percent (25%) for tax years beginning on or after January 1, 2016. **68:2357.104**

Section 710:50-15-104 has been amended to implement the provisions of Senate Bill 1603, which relates to Credit for the Construction of Energy Efficient Homes, by eliminating this credit for any period on or after July 1, 2016. **68:2357.46**

CONTACT PERSON:

Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133.

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

SUBCHAPTER 3. RETURNS AND REPORTS

**PART 5. FILING STATUS; ELECTIONS;
ACCOUNTING PERIODS AND METHODS**

710:50-3-35. Filing status and elections

For the purpose of determining any income tax liability, a taxpayer's filing status, and any elections, such as itemized deductions (subject to the limitations in *OAC 710:50-15-50*), shall be the same as on the Federal Income Tax Return. In cases where no return has been filed, any information made available by the I.R.S., whether a Revenue Agents Report (R.A.R.), or other related return information, shall constitute the filing status and elections for the purpose of the determination, assessment, and collection of any Oklahoma Income Tax liability.

SUBCHAPTER 9. REFUNDS

710:50-9-3. Interest on refunds

(a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.

(b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be

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entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

- (1) For electronically-filed returns, thirty (30) days from the date a processible return is filed or due, whichever is later; and,
 - (2) For all other returns, one hundred fifty (150) days from the date a processible return is filed or due, whichever is later.
- (c) **Returns filed after January 1, 2010 and before July 1, 2016.** For returns filed after January 1, 2010 and before July 1, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:
- (1) For electronically-filed returns, twenty (20) days from the date a processible return is filed, and
 - (2) For all other returns, ninety (90) days from the date a processible return is filed.
- (d) **Returns filed on or after July 1, 2016.** For returns filed on or after July 1, 2016, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:
- (1) For electronically-filed returns, forty-five (45) days from the date a processible return is filed, and
 - (2) For all other returns, ninety (90) days from the date a processible return is filed.
- (e) **Processible return.** To be "processible", all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [See: 68 O.S. § 217(H)]
- (ef) **Exceptions.** Alternative statutory provisions apply in the following instances:
- (1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [See: 68 O.S. § 217(H)]
 - (2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.
 - (3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at 6 percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [See: 68 O.S. § 2373]

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-50. Deductions

- (a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions, subject to the limitation

in (i) of this Section. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.

(b) For tax year 2005 and prior, the standard deduction for Oklahoma is the larger of \$1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed \$2,000.00 (if married filing separately, the larger of \$500.00 or 15% not to exceed \$1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of \$3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,000.00.

(d) For tax year 2007, taxpayers filing as married joint or surviving spouse will have a standard deduction for Oklahoma of \$5,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$2,750.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,125.00.

(e) For tax year 2008, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$6,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$3,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$4,875.00.

(f) For tax year 2009, taxpayers filing as married joint, or surviving spouse will have a standard deduction for Oklahoma of \$8,500.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of \$4,250.00. Taxpayers filing as head of household will have a standard deduction for Oklahoma of \$6,375.00.

(g) For tax year 2010 and subsequent tax years, taxpayers will have a standard deduction for Oklahoma equal to the standard deduction allowed by the Internal Revenue Code of 1986 based upon the amount and filing status prescribed by the Code for purposes of filing federal individual income tax returns.

(h) Taxpayers will be required to add back the "qualified motor vehicle taxes" which were allowed as an itemized deduction on the Federal return under the provisions of the American Recovery and Reinvestment Act of 2009.

(i) For tax year 2016 and subsequent tax years, taxpayers shall add back state and local sales or income taxes which were allowed as an itemized deduction on the Federal income tax return.

PART 7. CREDITS AGAINST TAX

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.

(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on

the investment or new employees when other qualifications are met. (See OTC Form 506).

(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [See: 68 O.S. §§ 2357.4, 2357.5]

(d) **"Processing" defined.** For purposes of this Section, "processing" means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.

(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exists between the employer manufacturing or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

- (1) The right of the employer to control the details of the employees work;
- (2) The employer furnishing the tools and the workplace;
- (3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;
- (4) The employer's right to discharge the employee; and
- (5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years

following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.**

(1) No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) or Section 3911 et seq. of the Oklahoma Statutes (21st Century Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. Effective January 1, 2010, this limitation does not apply to the investment / new jobs credit earned under 68 O.S. § 2357.4 (which requires a \$40 million investment within a three (3) year time period). Further, the entity must pay an annualized wage which equals or exceeds the state average wage. The qualifying entity must also obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate. [See: 68 O.S. §§ 3607, 3909 and 3919]

(2) Business entities that benefit from proceeds of obligations issued by the Oklahoma Development Finance Authority from the Economic Development Pool may not claim any investment tax credits during the period of time that withholding taxes attributable to the payroll of said entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Oklahoma Development Finance Authority pursuant to the provisions Oklahoma Community Economic Development Pooled Finance Act.

(3) Effective for tax years beginning on or after January 1, 2016 and ending on or before December 31, 2018, no more than Twenty-five Million Dollars (\$25,000,000.00) of credit may be allowed as an offset in a taxable year. The formula to be used for the percentage adjustment shall be Twenty-five Million Dollars (\$25,000,000.00) divided by the amount of credits used to offset tax in the second preceding year. [68 O.S. § 2357.4(L)] The Tax Commission shall determine the percentage which may be claimed as a credit no later than September 1 of each calendar year. Any credits carried over into or earned during the 2016, 2017, and 2018 tax years but which are not allowed to be offset against income tax due to the application of the Twenty-five Million Dollar (\$25,000,000.00) cap may be carried over as outlined in subsection (g) and will be available to offset income tax in subsequent tax years.

(i) **Tax credit moratorium.**

(1) Credits based on assets placed in service or jobs created prior to July 1, 2010 are not affected by the tax credit moratorium and may be claimed as provided under 68 O.S. § 2357.4.

(2) No credit may be claimed for assets placed in service or new jobs created on or after July 1, 2010 through

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June 30, 2012. Credits generated during this time period are deferred, and may be claimed beginning with tax year 2012 returns, subject to the following limitations:

(A) Credits accrued during the period from July 1, 2010 through June 30, 2012, shall be limited to a period of two (2) taxable years.

(B) Only fifty percent (50%) of the total amount of the credit generated between July 1, 2010 and June 30, 2012 may be claimed each taxable year.

(C) Amended returns shall not be filed after July 1, 2012 to claim the credits generated between July 1, 2010 and June 30, 2012 for tax years prior to tax year 2012.

(3) For example, a calendar year taxpayer places qualifying assets of \$150,000.00 in service in August 2010 which generates \$1,500.00 of credit for investment/new jobs per tax year for a five (5) year period (tax year 2010 through 2014) for a total of \$7,500.00. This results in the taxpayer generating \$3,000.00 of tax credits between July 1, 2010 and June 30, 2012. The taxpayer can initially claim \$1,500.00 in tax year 2012 and \$1,500.00 in tax year 2013 of credits generated during the moratorium. Taxpayer may also claim an additional \$1,500.00 of credits in both tax year 2012 and 2013. Final \$1,500.00 of credits can be claimed in tax year 2014.

710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [See: 68 O.S. § 2357.11; *Wyoming v. Oklahoma*, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars (\$2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and eighty-five cents (\$2.85) per ton of Oklahoma-mined coal purchased, except as provided in (h) of this Section.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Two Dollars and fifteen cents (\$2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008, except as provided in (h) of this Section.

(3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and

ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars (\$3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** For tax years beginning on or after January 1, 2001, and ending on or before December 31, 2021, there shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars (\$68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents (\$0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2021, the credit shall be Five Dollars (\$5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state, except as provided in (h) of this Section.

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355*

of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes. [See: 68 O.S. § 2357.11(H)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(4) **Limitation of transferability.** Credits earned after December 31, 2013, shall not be transferable.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

(e) **Carryover provisions.** Any coal credit earned prior to January 1, 2014, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability for credits earned prior to January 1, 2014.

(f) **Refund of tax credits.** Credits earned on or after January 1, 2014, but not used, shall be refunded to the taxpayer at eighty-five percent (85%) of the face amount of the credits. If the taxpayer is a pass-through entity and does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity. The total amount of credits refunded or allocated shall not exceed the amount of the credit or refund to which the pass-through entity is entitled.

(g) **Tax credit moratorium.** No credit may be claimed for coal purchased, mined, produced or extracted during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for Oklahoma-mined coal for qualifying purposes purchased, mined, produced or extracted on or after July 1, 2012.

(h) **Tax credit limitation.** For any credits calculated pursuant to (a)(1) or (a)(2), or (b)(1) of this Section for activities occurring on or after January 1, 2016, the amount of credit allowed shall be equal to seventy-five percent (75%) of the amount otherwise provided. [68 O.S. § 2357.11(N)]

710:50-15-90. Oklahoma earned income tax credit

(a) Effective for tax years beginning on or after January 1, 2002, there shall be an Oklahoma Earned Income Tax Credit for resident and part year resident individuals.

(b) The Oklahoma Earned Income Tax Credit shall be an amount equal to five percent (5%) of the Federal Earned Income Tax Credit allowed under Section 32 of the Internal Revenue Code. Effective for tax year 2016 and subsequent tax years, if the credit exceeds the tax imposed by Section 2355 of Title 68, the excess amount shall not be refunded to the taxpayer, nor shall any amount be carried forward to a subsequent tax year. The Oklahoma Earned Income Tax Credit may not be paid in advance and must be claimed on the individual income tax return when filed.

(c) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred percent (100%). When the Oklahoma Adjusted Gross Income or the Federal Adjusted Gross Income ~~are~~ is negative the ratio will be determined as follows:

(1) When the Oklahoma Adjusted Gross Income is negative and is less than the Federal Adjusted Gross Income, the ratio shall be 0%. (For example: Oklahoma Adjusted Gross Income is negative \$1,000 and the Federal Adjusted Gross Income is negative \$500, the ratio shall be 0%).

(2) When the Federal Adjusted Gross Income is negative and is equal to or less than the Oklahoma Adjusted Gross Income, the ratio will be 100%. (For example: Oklahoma Adjusted Gross Income is negative \$500 and the Federal Adjusted Gross Income is negative \$1,000 the ratio is 100%).

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions.** For tax years beginning after ~~12/31/05~~ December 31, 2005 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

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

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.**

Emergency Adoptions

(1) The amount of the credit may not exceed the product of Five Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax years 2008 and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election

(2) Effective for tax years beginning on or after January 1, 2016, the credit is limited to seventy-five percent (75%) of the otherwise allowable credit. [68 O.S. § 2357.104(H)]

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an "eligible transferee" shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

(f) **Tax credit moratorium.** No credit may be claimed for qualified railroad reconstruction or replacement expenditures occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. Qualified railroad reconstruction or replacement expenditures occurring before July 1, 2010 will qualify for the tax credit regardless of when the Department of Transportation issues the certificate of verification of completion of the project. This credit may be claimed for tax year 2012 and subsequent tax years, for qualified railroad reconstruction or replacement expenditures on or after July 1, 2012.

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for tax the time period beginning on or after January 1, 2006, and ending on or before July 1, 2016 ~~year 2006~~, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.

(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) **"Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars (\$4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars (\$2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification.

However, at no time may the credit claimed exceed the tax liability.

(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. A credit will be allowed for eligible expenditures made prior to July 1, 2010 regardless of when the property is substantially complete. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures

made on or after July 1, 2012, by contractors who construct either energy efficient residential property or energy efficient manufactured homes.

(g) **Termination of the credit.** No credit may be claimed for any expenditure made on or after July 1, 2016 for which the credit would otherwise be allowable. The credit shall be allowed for eligible expenditures made prior to July 1, 2016; however, the property must be substantially complete before January 1, 2017.

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